Consolidated Version of the Law of 10th August, 1915 on commercial companies and of the amending laws in force as at 23rd February, 2010

Translated from the French with selected notes and references to EU Directive sources

by

Philippe HOSS

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Section I. - General provisions

Art. 1.

Commercial companies are those companies the object of which is to conduct commercial activities.

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

They shall be divided into commercial companies in the strict sense and commercial associations.

Art. 2.

(\textit{Law of 25^{th} August, 2006})

[EC Regulation 2157/2001, art. 16.1]

«The law recognises as commercial companies with legal personality:

\begin{itemize}
  \item the \textit{société en nom collectif} \hspace{1cm} (general corporate partnership/unlimited company);
  \item the \textit{société en commandite simple} \hspace{1cm} (limited corporate partnership);
  \item the \textit{société anonyme} \hspace{1cm} (public company limited by shares);
  \item the \textit{société en commandite par actions} \hspace{1cm} (corporate partnership limited by shares);
  \item the \textit{société à responsabilité limitée} \hspace{1cm} (private limited liability company);
  \item the \textit{société coopérative} \hspace{1cm} (co-operative society);
  \item the \textit{société européenne SE} \hspace{1cm} (European company).
\end{itemize}

Each of them shall constitute a legal person separate from its members. The \textit{société européenne SE} (SE) shall acquire legal personality on the date on which it is registered in the register of commerce and companies.

The domicile of a commercial company is located at the seat of its central administration\footnote{The English version of EC Regulation 2157/2001 uses the term “head office”. As the term “central administration” is used in a number of translations of laws of the financial sector and by the financial industry that term will also be used herein.} (head office). Until evidence to the contrary shall have been finally brought, the central administration of a company is deemed to coincide with the place where its registered office is located.»

(\textit{Law of 18^{th} September, 1933})

«The acquisition of a participation in any of the above companies shall not of itself constitute a commercial activity.

(\textit{Law of 21^{st} December, 2006})

\textit{(abrogated paragraph)}
Commercial associations shall be subdivided into temporary commercial associations (associations momentanées) and commercial associations by participation (associations en participation).

They shall not constitute a legal person separate from that of their members.

Art. 3.

(Law of 18th September, 1933)
«Companies the object of which is civil [i.e. not commercial] and which subject themselves to the rules of article 1832 et seq. of the Civil Code, without prejudice to the amendments made thereto by this Appendix², shall similarly constitute a legal person separate from that of their members, and the service of any process on behalf of or upon such companies shall be valid if made in the name of, or against, the company alone.»

(Law of 23rd March, 2007)
«The rules laid down in paragraphs 2 to 5 inclusive of Article 181 shall apply to them.»

However, companies the object of which is civil may be incorporated in the form of any of the six types of commercial companies listed in the preceding Article³. However, in such case, those companies and any transactions undertaken by them shall be commercial and subject to the laws and practices of commerce.

Civil companies, regardless of the date of their incorporation and provided that no provision of their constitutive contract prohibits the same, may also be converted into commercial companies by resolution of a general meeting specifically convened for that purpose. Said meeting shall approve the articles of the company. Its resolution shall be valid only if approved by the vote of holders of corporate units representing at least three-fifths of the corporate units of the company.

(Law of 23rd March, 2007)
«Finally, any of the first six companies listed in Article 2, irrespective of the original nature of their object or the date of their incorporation and provided that no provision of their constitutive contract prohibits the same, may be converted into a company of one of the other types provided for in that Article except into a société européenne (SE).»

(Law of 25th August 2006)
[EC Regulation 2157/2001, art. 2.4, 37.1, 37.2, 66.1 and 66.2]
«A société anonyme governed by Luxembourg law may be converted into a société européenne (SE) if for at least two years it has had a subsidiary company governed by the law of another Member State of the European Economic Area⁴, hereafter a Member State.

A société européenne (SE) with its registered office in the Grand-Duchy of Luxembourg, may be converted into a société anonyme governed by Luxembourg law. No

² This should be understood as a reference to the law of 1933.
³ Following the change to the first paragraph of article 2 by the law of 25th August 2006, there are now seven types of companies listed.
⁴ The 27 EU Member States plus Iceland, Liechtenstein and Norway.
decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

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

(Law of 18th September, 1933)

«The rights of third parties are reserved.»

(Law of 23rd November, 1972)
[68/151/EEC art. 10]

«Art. 4.

Sociétés en nom collectif, sociétés en commandite simple, sociétés coopératives and civil companies shall, on pain of nullity, be established by means of a special notarial deed or by private instrument, conforming in the latter case to article 1325 of the Civil Code. Two originals shall be sufficient for civil companies and sociétés coopératives.

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

Art. 5.

Extracts of the deeds or instruments establishing sociétés en nom collectif and sociétés en commandite simple shall be published at the expense of the company.

Art. 6.

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

- a precise designation of the members who are jointly and severally liable;
- the firm name of the company, its object and the place where its registered office is located; the designation of the managers and the nature of, and limits to, their powers;
- the amount of the corporate capital and details of the assets contributed or to be contributed to a société en commandite simple by the members, with details of the corporate capacity in which they have been contributed or promised;
- a precise designation of the limited members who must contribute assets, with details of the obligations of each of them;
- the date on which the company commences and the date on which it ends.

Art. 7.

The extract of company instruments shall be signed: in the case of notarial deeds, by the notary who retains the complete deed and, in the case of private instruments, by all members who are jointly and severally liable.
Art. 8.

(Law of 20th April, 2009)
« The constitutive instruments of sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés coopératives and civil companies shall be published in their entirety. Powers of attorney, irrespective of whether they are in the form of a public deed or private instrument, which are annexed thereto, are not required to be published in the Mémorial, Recueil des Sociétés et Associations or to be deposited at the register of commerce and companies. »

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

- a precise designation of the members;
- the denomination of the company, its object and the place where its registered office is located;
- a designation of its managers and the nature of, and limits to, their powers;
- details of the assets contributed or to be contributed by each of the members, with an accurate valuation of any contributions in kind;
- the date when the company commences and the date when it ends.»

Art. 9.

(Law of 8th August, 1985)
[68/151/EEC art. 3]
«§1. Instruments, extracts therefrom or information the publication of which is provided for by law shall within one month after the date of the finalised instrument be lodged with the «register of commerce and companies». A receipt shall be issued in respect thereof. Documents so lodged shall be placed in a file kept for each company.»
(Law of 23rd November, 1972)
(...)(paragraph abrogated by the Law of 20th April, 2009)
§2. Any person may, without charge, examine documents lodged in respect of a specific company and obtain, even by a request sent in writing, a full or partial copy thereof, the only payment required being that of the «administrative costs as determined by Grand-Ducal regulation».

5 In the Mémorial A, this sub-paragraph is attached to the preceding sub-paragraph. It is featured separately here for better lisibility.
Such copies shall be certified true copies unless the applicant waives certification.»

(Law of 8th August, 1985)

«§3. Publication shall be made in the «Mémorial C, Recueil des Sociétés et Associations», the published documents shall be sent to the «register of commerce and companies»7 where they may be examined by any person free of charge and they shall be collected in a Recueil Spécial (Special Register).

Publication must take place within «two months»7 of lodgement.»

(Law of 2nd December, 1993)

«The publication in the «Mémorial C, Recueil des Sociétés et Associations»9 of annual accounts, consolidated accounts and all other documents and information’s relating thereto and the publication of which is required by law shall be made by means of a reference to the lodgement of such documents at the «register of commerce and companies».»7 »

(…) (paragraph abrogated by the Law of 19th December, 2002)

(Law of 23rd November, 1972)

«§4. Documents and extracts of documents will only be valid vis-à-vis third parties from the day of their publication in the «Mémorial C, Recueil des Sociétés et Associations»9 unless the company proves that the relevant third parties had prior knowledge thereof. Third parties may however rely upon documents or extracts thereof which have not yet been published.

With regard to transactions taking place before the sixteenth day following the day of publication, these documents or extracts of documents will not be valid vis-à-vis third parties who prove that it was impossible for them to have had knowledge thereof.

In the event of any discrepancy between the document filed and the document published in the «Mémorial C, Recueil des Sociétés et Associations», the latter is not valid vis-à-vis third parties. Third parties may however rely upon the same unless the company proves that they had knowledge of the text of the document filed.»

Art. 10.

(Law of 24th April, 1983)

«If a document is not lodged within the time limit prescribed in the foregoing article, the receveur de l’Enregistrement (the collector of registration duties) shall collect a fine equal to one per thousand of the capital of the company, which may however not amount to less than «twenty five euros» nor exceed «two hundred and fifty euros»10. This

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8 Grand-Ducal Regulation of 23rd January, 2003 enforcing the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
9 The denomination of the Recueil Spécial des Sociétés et Associations has been changed by Grand-Ducal Regulation of 23rd December, 1994 amending the Grand-Ducal Regulation of 9th January, 1961 on the three publications of the Mémorial.
10 Implicitly modified by the law of 1st August, 2001 on euro conversion (Mém.A - 117 of 18th September, 2001, p.2440; doc. parl. 4722).
fine shall be payable upon registration of the documents lodged out of time and shall be imposed by the collector ex officio.»

(Law of 23rd November, 1972)

«The fine shall be payable, in respect of public deeds, by the notary or notaries jointly and severally and, in respect of private instruments, by those members who are jointly and severally liable, or, in the absence thereof, by the founder members, and, likewise jointly and severally, by all persons legally obliged to lodge the relevant documents.

Any court action brought by a company whose constitutive instrument has not been published in the «Mémorial C, Recueil des Sociétés et Associations», in accordance with the foregoing Articles, shall be inadmissible.»

(Law of 23rd November, 1972)
[68/151/EEC art. 10]

«Art. 11.

Any contractual amendment to the instrument of a company must, on pain of nullity, be made in the form required for the constitutive instrument of the company.»

Art.11bis.

(Law of 23rd November, 1972)
[68/151/EEC art. 2.1.]

«§1. The following shall be lodged and published in accordance with the foregoing Articles:
1) documents required by law to be published in the «Mémorial C, Recueil des Sociétés et Associations», with the exception of convening notices, the lodgement of which is not compulsory;
2) instruments amending provisions which are required by law to be lodged and published;
3) extracts of any instrument relating to the appointment or termination of the appointment of:
(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 13]

a) «directors, members of the management and of the supervisory boards, managers and commissaires [corporate supervisory auditors] of sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée and civil companies»
b) the persons appointed for day-to-day management of sociétés anonymes;
c) liquidators of companies which have legal personality;

11 The denomination of the Recueil Spécial des Sociétés et Associations has been changed by Grand-Ducal Regulation of 23rd December, 1994 amending the Grand-Ducal Regulation of 9th January, 1961 on the three publications of the Mémorial.

12 See footnote under Article 61.
«The extract shall include a precise indication of the first and last names and of the private or professional address of the persons referred to therein.»

4) extracts of any instrument providing for the manner of liquidation and the powers of the liquidators if said powers are not exclusively and expressly defined by law or by the articles of the company;

5) extracts of any court decision which has become final or which is enforceable on a provisional basis which rules that a company is dissolved or that its constitution is void or that amendments to the articles thereof are void.

Such extract shall contain:

a) the firm name or the denomination of the company and the registered office thereof;

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

c) where applicable, the appointment of the liquidator or liquidators.

§2. The following shall be the subject of a declaration signed by the persons or corporate bodies with authority to do so on behalf of the company:

1) dissolution of the company by reason of expiry of its term or for any other reason;

2) the death of any of the persons mentioned in §1, 3) of this Article;

3) in sociétés à responsabilité limitée and civil companies, any changes of membership.

The said declarations shall be lodged and published in accordance with the foregoing Articles.

§3. The full text of the articles of incorporation, in an updated version after each amendment thereof, of sociétés anonymes, sociétés en commandite par actions and sociétés à responsabilité limitée shall be lodged in accordance with the foregoing Articles.

A notice in the «Mémorial C, Recueil des Sociétés et Associations» published in accordance with the foregoing Articles, shall indicate the subject matter and the date of the instruments the lodgement of which is provided for by this paragraph.

§4. The instruments and information the publication of which is provided for by the foregoing paragraphs are valid vis-à-vis third parties in accordance with the conditions laid down in Article 9, § 4».

(Law of 31st May, 1999)

«Art. 12.

(European Union Directive 2006/43)

«Companies shall act through their managers, directors or members of the management board, as the case may be, the powers of which shall be determined by law

13 The denomination of the Recueil Spécial des Sociétés et Associations has been changed by Grand-Ducal Regulation of 23rd December, 1994 amending the Grand-Ducal Regulation of 9th January, 1961 on the three publications of the Mémorial.
or by the constitutive instrument and by instruments adopted subsequently in accordance with the constitutive instrument.

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

(Law of 23rd November, 1972)
[68/151/EEC art. 7]

**Art. 12bis.**

Any person who enters into a commitment of any kind, including by acting as surety or *gestator rerum* (agent without formal authority), in the name of a company which is in the process of formation and has not yet acquired legal personality, shall be personally and jointly and severally liable therefor, subject to any agreement to the contrary, if the said commitments are not assumed by the company within two months of its incorporation, or if the company is not incorporated within two years after the commitment was entered into.

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

(Law of 24th April, 1983)
[68/151/EEC art. 11.2]

**Art. 12ter.**

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

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

If the clauses of the constitutive instrument regarding the distribution of profits or the apportionment of losses are contrary to article 1855 of the Civil Code, those clauses shall be deemed excluded, without prejudice to other sanctions; the same shall apply to any other provision which is contrary to a mandatory rule or to public policy or moral standards.

(Law of 23rd November, 1972)
[68/151/EEC art. 11.1 and 12]

**Art. 12quater.**

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

Such avoidance shall have effect as from the date of the order declaring it.
However, it will be valid against third parties only from the date of publication of the order as provided for by Article 11bis., § 1., 5) in accordance with the conditions set out in Article 9.

§ 2. The avoidance of a company vested with legal personality, on grounds of formal irregularities, in application of Article 4. or Article 12ter., 1st paragraph, 1) or 2), may not be relied upon by the company or by any member vis-à-vis third parties, even as a defence, unless it has been ordered by a court decision published in accordance with §1.

§ 3. §§s 1 and 2 shall apply to the avoidance of contractual amendments to the constitutive instruments of companies pursuant to article 11bis.

(Law of 23rd November, 1972)
[68/151/EEC art. 12.2 and 12.3]

«Art. 12quinquies.

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

The avoidance shall not of itself affect the validity of the company's commitments or of commitments entered into in favour of the company, without prejudice to the consequences deriving from the fact that the company is in liquidation.

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

(Law of 23rd November, 1972)
[68/151/EEC art. 12.1]

«Art. 12sexies.

No third party objections against a court order which declared that a company vested with legal personality is void or that a contractual amendment to the instruments governing the said company is void shall be admissible upon the expiry of a period of six months from publication of the court order in accordance with Article 11bis, § 1.5).»

Art. 13.

Associations momentanées and associations en participation shall not be subject to the formalities applicable to commercial companies in the strict sense.

Their existence shall be determined by the methods of proof accepted in commercial matters.
Section II. - Sociétés en nom collectif
(Unlimited Companies)

**Art. 14.**

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

**Art. 15.**

Only the names of the members may be included in the firm name.
Section III. - Sociétés en commandite simple  
(Limited corporate partnerships)

Art. 16.

A société en commandite simple is a company entered into by one or more unlimited members with unlimited and joint and several liability for all the obligations of the company, and one or more limited members, who are only liable for the debts and losses of the company up to the amount of the funds which they have promised to contribute thereto.

Art. 17.

A limited member may be forced by third parties to repay any interest and dividends which he has received if they have not been paid out of real profits of the company and, in such case, if there has been fraud, bad faith or gross negligence by the manager, the limited member may bring an action against him to recover the amount he had to so repay.

Art. 18.

The firm name must include the name of one or more unlimited members.  
The name of a limited member may not be included in the firm name.

Art. 19.

A limited member shall be prohibited, even pursuant to a power of attorney, to carry out any act of management.  
A limited member is not bound as a result of his advice or consultation, the carrying out of any control or supervisory measures or the giving of any authorisation to the managers for acts outside their powers.

Art. 20.

A limited member shall be jointly and severally liable, vis-à-vis third parties, for any commitments of the company in which he participated in violation of the prohibition contained in the foregoing Article.  
He shall also be jointly and severally liable to third parties for commitments in which he did not participate, if he has regularly managed the business of the company or has allowed his name to appear in the firm name.

Art. 21.

The assignment of corporate units or interests authorised by the corporate contract or subsequently consented to by all the members may only be made in accordance with the procedures laid down by civil law; no such assignment shall be
effective with respect to any of the commitments of the company existing before
publication of such assignment.

**Art. 22.**

In the event of the death of the manager, or if he becomes subject to legal
incapacity or is otherwise unable to act, and if it has been provided that the company is
to continue to exist, the president of the «Tribunal d'Arrondissement dealing with
commercial matters»

14 may, if the articles of the company do not otherwise provide
therefor, at the request of any interested party, appoint a limited member or some other
person as administrator who shall take all urgent and purely administrative measures for
such period as may be determined in the court order, which period may not exceed one
month.

The temporary administrator shall be liable only in respect of the performance of
his mandate.

Any interested party may object to the order; the objection shall be notified both
to the person appointed and to the person who applied for the appointment. The
proceedings regarding the objection shall be heard as in the urgency court.

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14 Amended by the law of 11th August, 1996 on the preparation and instruction of private cases (Mém.A - 53 of 20th
August, 1996, p.1660; doc.parl. 3771).
§ 1. On the nature and classification of sociétés anonymes and sociétés européennes (SE)

Art. 23.
(1) A société anonyme is a company whose capital is divided into shares and which is formed by one or more persons who only contribute a specific amount. In case the company comprises one person only, such person shall be designated as the “sole shareholder”.
The société anonyme may have a sole shareholder at its formation and as a result of all its shares being subsequently held by a single person.
The death or the dissolution of the sole shareholder does not result in the dissolution of the company.

(2) The société européenne (SE) is a société anonyme set up in accordance with article 2 of Council Regulation (EC) No 2157/2001 of 8th October 2001 on the Statute for a European Company (SE), which has established its registered office and its central administration in the Grand-Duchy of Luxembourg.
It has the possibility to transfer its registered office to another Member State without loss of its legal personality.
It shall be governed by the provisions of the present law applicable to the société anonyme and by the provisions specifically applicable to the société européenne (SE) under Council Regulation (EC) 2157/2001 of 8th October 2001 on the Statute for a European Company.

Art. 24.
A société anonyme has no firm name; it does not bear the name of any member thereof.

Art. 25.
(1) A société anonyme shall be described by a particular corporate denomination or by the designation of the object of its undertaking.
The said denomination or designation must be different from that of any other company.
If it is identical, or if the similarity thereof can lead to error, any interested party may cause it to be changed and may, as the case may be, claim damages.
(Law of 25th August, 2006)

«(2) Only sociétés européennes (SE) may include the abbreviation «SE» in their corporate denomination.

Nevertheless, companies and other legal entities registered in a Member State before the date of entry into force of Council Regulation (EC) 2157/2001 of 8th October 2001 on the Statute for a European company, in the corporate denomination of which the abbreviation «SE» appears, shall not be required to alter their corporate denomination. »

(Law of 25th August, 2006)

«§ 2. The incorporation of sociétés anonymes and sociétés européennes (SE) »


(Law of 24th April, 1983)

[77/91/EEC art. 6 and art 9.1]

«(1) The following requirements shall apply to the incorporation of a société anonyme:
1) (Law of 25th August, 2006) «there must be at least one member; »
2) the capital must be at least «30,986.69 euros»; however, that amount may be increased by Grand-Ducal regulation to be adopted upon consultation of the Conseil d’Etat in order to take into account either variations in national currency in relation to the unit of account or changes in Community regulations;
(Law of 25th August, 2006) «For a société européenne (SE), the capital must be at least 120,000 euro.»
3) the capital must be subscribed for in its entirety;
4) at least one fourth of each share must be paid-up in cash or by means of contributions other than cash.

(2) «(Law of 10th June, 2009) The notary, drawing up the instrument, shall verify that these conditions and those set in Articles 26-1, paragraph (2), 26-3 et 26-5 have been satisfied and shall expressly ascertain compliance therewith.»

(Law of 25th August, 2006)

[EC Regulation 2157/2001, art. 2.1, 2.2., 2.3, 2.5, 24.1]

«Art. 26bis.

(1) A société européenne (SE) may be formed by means of a merger of sociétés anonymes formed under the laws of a Member State with their registered office and central administration (head office) within the Community provided at least two of them are governed by the law of different Member States.

15 The date of entry into force is 8th October 2004.
16 Implicitly modified by the law of 1st August, 2001 on euro conversion (Mém.A - 117 of 18th September, 2001, p.2440; doc.parl. 4722).
In that case, the law of the Member State governing each merging company shall apply as in the case of a merger of sociétés anonymes, taking into account the cross-border character of the merger, with regard to the protection of the interests of:
- creditors of the merging companies;
- holders of bonds of the merging companies;
- holders of securities, other than shares, which carry special rights in the merging companies.

(2) A société européenne (SE) holding (holding SE) may be formed by sociétés anonymes and sociétés à responsabilité limitée formed under the law of a Member State with their registered office and central administration (head office) within the Community provided at least two of them:
   a) are governed by the law of different Member States, or
   b) have for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

(3) A subsidiary société européenne (SE) may be formed by civil [i.e. non commercial] or commercial companies with legal personality save for those companies which do not aim to realise profits, and by other legal bodies governed by public or private law, formed under the law of a Member State, with their registered office and central administration (head office) within the Community and who subscribe for its shares, provided at least two of them:
   a) are governed by the laws of different Member States, or
   b) have for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

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

(Law of 25 August, 2006)
[EC Regulation 2157/2001, art. 32.1]

«Art. 26ter.

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

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

Articles 26 quarter to 26 octies shall apply. »
«Art. 26quater.

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

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

The draft terms shall also indicate:

a) the corporate denomination and registered office of the companies forming the société européenne (SE) together with those proposed for the société européenne (SE);

b) the exchange ratio for the shares or corporate units and if applicable the amount of any cash compensation;

c) the terms for the allotment of shares in the société européenne (SE);

d) the rights conferred by the société européenne (SE) on the shareholders having special rights and on the holders of securities other than shares or corporate units, or the measures proposed concerning them;

e) any special advantage granted to the experts who examine the draft terms of merger\(^{17}\) or to the members of the administrative, management, supervisory or controlling bodies of the merging companies\(^{18}\);

f) the articles of incorporation of the société européenne (SE);

g) information on the procedures by which arrangements for employee involvement are determined in implementation of Directive 2001/86/EC\(^{19}\);

h) the minimum proportion of the shares or corporate units in each of the companies promoting the operation which the shareholders must contribute in order for the società européenne (SE) to be formed.

That proportion shall be shares or corporate units conferring more than 50% of the permanent voting rights. »

\(^{17}\) Read: draft terms for the formation.

\(^{18}\) Read: of the companies which promote the operation.

\(^{19}\) This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

(\textit{Law of 25\textsuperscript{th} August, 2006})

[EC Regulation 2157/2001, art. 32.3]

«Art. 26quinquies.

The draft terms for the formation shall be published for each of the companies promoting the operation in accordance with Article 9 and in the manner laid down in each Member State’s national law in accordance with article 3 of Directive 68/151/EEC, at least one month before the date of the general meeting called to decide on the draft terms of formation. »
(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 32.4 and 32.5]
«Art. 26sexies.»

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

(Law of 18th December, 2009) « For companies subject to Luxembourg law, such experts are appointed by the management body and must be selected among the réviseurs d'entreprises agréés [approved statutory auditors].» However, the report may be drawn up by one or more independent experts for all the companies promoting the operation. In that case, the appointment is made, on the joint application of the companies concerned, by a judicial or administrative authority in the Member State to which one of the companies concerned or the proposed société européenne (SE) is subject to in accordance with national provisions adopted in implementation of Directive 78/855/EEC, which authority in Luxembourg will be the judge presiding the chamber of the Tribunal d’Arrondissement dealing in commercial matters in the district in which the registered office of one of the concerned companies is located, sitting as in urgency matters.

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

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

(3) The rules provided in Article 26-1 paragraphs (2) to (4) shall not apply.

(4) Each expert shall be entitled to obtain from the companies promoting the operation all information and documents and to carry out all necessary verifications. »

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 32.6]
«Art. 26septies.»

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

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Employee involvement in the *société européenne* (SE) shall be decided pursuant to the provisions adopted in implementation of Directive 2001/86 EC\(^\text{20}\). The general meeting of each company promoting the operation may reserve the right to make registration of the *société européenne* (SE) conditional upon its express ratification of the arrangements so decided.»

\(\text{(Law of 25th August, 2006)}\)
[EC Regulation 2157/2001, art. 33]

«Art. 26 octies.

(1) The shareholders of the companies promoting the operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares or corporate units to the formation of the *société européenne* (SE). That period shall begin on the date upon which the instrument of incorporation of the *société européenne* (SE) shall have been approved by the meetings referenced to in Article 26septies.

(2) The *société européenne* (SE) shall be formed only if, within the period referred to in paragraph (1), the shareholders of the companies promoting the operation have contributed the minimum percentage of shares or corporate units in each company provided for in the draft terms for the formation and if all the other conditions are fulfilled.

(3) The establishment by the notary that all the conditions for the formation of the *société européenne* (SE) are fulfilled in accordance with paragraph (2) shall, in respect of each of the promoting companies, be published in the manner laid down in Article 9 and in the form provided by the national law of each Member State adopted in implementation of Article 3 of Directive 68/151/EEC.

Shareholders of the companies concerned who have not indicated within the period referred to in paragraph (1) whether they intend to make their shares or corporate units available to the promoting companies for the purpose of forming the *société européenne* (SE) shall have a further month in which to do so.

(4) Shareholders who have contributed their securities to the formation of the *société européenne* (SE) shall receive shares therein.

(5) The *société européenne* (SE) may not be registered until it is shown that the formalities referred to in Articles 26ter to 26septies and the conditions referred to in paragraph (2) have been fulfilled. »

\(\text{(Law of 25th August, 2006)}\)
[EC Regulation 2157/2001, art. 36]

«Art. 26 nonies.

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

\(^{20}\) This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.
Companies and other legal entities referred to in article 26bis paragraph (3) participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a société anonyme under national law. »

(Law of 24th April, 1983)
[77/91/EEC art. 9.2]

«Art. 26-1.

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

(Law of 28th June, 1984, Law of 18th December, 2009)
[77/91/EEC art. 10]

«(2) Contributions other than cash shall, prior to the incorporation, be reported upon by a réviseur d’entreprises agréé [approved statutory auditor] who shall be appointed by the founders »

(Law of 24th April, 1983)
[77/91/EEC art. 10]

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

(Law of 10th June, 2009)
[77/91/CEE art. 10a]

« (3bis) Where, upon a decision of the board of directors or the management board, the contribution other than cash is made up of transferable securities as defined in point 18 of Article 4, paragraph 1. of Directive 2004/39/EC of the European Parliament and of the Council of 21st April, 2004 on markets in financial instruments or money-market instruments as defined in point 19 of Article 4, paragraph 1. of that

21 The commentary to the bill of law indicates that the purpose of art. 104 of the law of 18th December 2009 on the audit profession is to provide that all references inter alia in the law of 1915 or in the law of 19th December 2002 to a réviseur d’entreprises agréé [approved statutory auditor] should be understood as also referring to a cabinet de révision agréé [approved audit firm].

22 «Transferable securities» means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as :

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures; »

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Directive\(^{23}\) and those securities or instruments are valued at the weighted average price at which they have been traded on one or more regulated market(s) as defined in point 14 of Article 4, paragraph 1, of that Directive\(^{24}\) during a period of 6 months preceding the effective date of the contribution other than in cash, paragraphs (2) and (3) are not applicable.

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

(3ter)

Where, upon a decision of the board of directors or the management board, the contribution other than in cash is made up of assets other than the transferable securities and money-market instruments referred to in paragraphs (3bis) to (3quater) which have already been subject to a fair value opinion by a réviseur d'entreprises [agréé]\(^{25}\) [approved statutory auditor] and where the following conditions are fulfilled:

(a) the fair value is determined for a date not more than six months before the effective date of the contribution;
(b) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Grand-Duchy of Luxembourg, which are applicable to the kind of assets to be contributed, paragraphs (2) and (3) are not applicable.

In the case of new circumstances\(^{26}\) that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the board of directors or the management board. For the purposes of the aforementioned revaluation, paragraphs (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding an aggregate percentage of at least 5% of the company’s subscribed

\(^{23}\) «Money-market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment. »

\(^{24}\) « Regulated market’, means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments [Note: meaning those instruments specified in Section C of Annex I of that Directive] - in the system and in accordance with its non-discretionary rules – in a way that results in a contract in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III [of that Directive]. »

\(^{25}\) Modification resulting from article 103 of the law of 18th December 2009 on the audit profession.

\(^{26}\) Modification resulting from article 103 of the law of 18th December 2009 on the audit profession.

\(^{26}\) The French version of the Directive (like the law) speaks of “new circumstances” (circonstances nouvelles) whereas the English version speaks of “new qualifying circumstances” and the German version of “neue erhebliche Umstände” (i.e. new significative circumstances). This can be compared to the consistency of the different language versions of the directive corresponding to the second sub-paragraph of paragraph (3bis).
capital on the day the decision on the increase in the capital is taken may demand a valuation by a réviseur d’entreprises agréé\(^{27}\) [approved statutory auditor], in which case paragraphs (2) and (3) are applicable. Such shareholders(s) may submit a demand up until the effective date of the contribution, provided that, at the date of the demand, the shareholder(s) in question still hold(s) an aggregate percentage of at least 5% of the company’s subscribed capital, as was the case on the day the decision on the increase in the capital was taken.

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

The second and third subparagraphs of paragraph (3ter) shall apply mutatis mutandis.\(^{27}\)

[77/91/EC art. 10 ter]

(3quinquies) Where a contribution other than in cash as referred to in paragraphs (3bis) to (3quater) occurs without a report of a réviseur d’entreprises agréé\(^{28}\) [approved statutory auditor] as referred to in paragraphs (2) and (3), a declaration containing the following particulars shall be published in accordance with Article 9 within one month after the effective date of the contribution:

(a) a description of the relevant contribution other than in cash;

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

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

(d) a statement that no new circumstances\(^{29}\) with regard to the original valuation have occurred.

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

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\(^{27}\) Modification resulting from article 103 of the law of 18th December 2009 on the audit profession.

\(^{28}\) Modification resulting from Article 103 of the law of 18th December 2009 on the audit profession.

\(^{29}\) Same discrepancy between language versions as described in the footnote to paragraph (3ter).
(3sexies) Where a contribution other than in cash is proposed to be made without a report by a réviseur d’entreprises agréé\(^\text{30}\) [approved statutory auditor] as referred to in paragraphs (2) and (3), in relation to an increase in the capital which is proposed to be made under Article 32, paragraphs (2) and (3), an announcement containing the date when the decision on the increase was taken and the information listed in paragraph (3quinquies) shall be published in accordance with Article 9 before the contribution of the asset as consideration other than in cash is to become effective. In that event, the declaration pursuant to subparagraph 1 of paragraph (3quinquies) shall be limited to a statement that no new circumstances\(^\text{31}\) have occurred since the aforementioned announcement was published. »

(4) Paragraphs (2) and (3) are not applicable where 90% of the nominal value or accounting par value of all the shares are issued against contributions other than cash made by one or more companies and where the following requirements are met:

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

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

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

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

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

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

\(^\text{30}\) Modification resulting from Article 103 of the law of 18th December 2009 on the audit profession.

\(^\text{31}\) The French and German versions of the directive coincide as they speak of «no new circumstances» («aucune circonstance nouvelle», «keine neuen Umstände»). The English version speaks of «no new qualifying circumstances».

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(Law of 24th April, 1983)
[77/91/EEC art. 11]

«Art. 26-2.»

(1) The acquisition by a company, within the two years following its incorporation, of any asset belonging to a natural or legal person, by whom or on whose behalf the constitutive instrument was signed, for a consideration of not less than one tenth of the subscribed capital, shall be subject to a verification and publication in the manner provided by Article 26-1 and shall be subject to approval by the general meeting of shareholders.» (Law of 25th August 2006; Law of 18th December, 2009) «The réviseur d’entreprises agréé [approved statutory auditor] is appointed by the board of directors or by the management board, as the case may be.»

(Law of 24th April, 1983)

«(2) Paragraph (1) shall not apply to acquisitions made in the normal course of the company’s business nor to acquisitions made at the instance or under the supervision of an administrative or judicial authority or to stock exchange acquisitions.»

(Law of 24th April, 1983)
[77/91/EEC art. 7]

«Art. 26-3.»

The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of these assets.»

(Law of 24th April, 1983)
[77/91/EEC art. 12]

«Art. 26-4.»

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

(Law of 24th April, 1983)
[77/91/EEC art. 8]

«Art. 26-5.»

(1) Shares may not be issued for an amount lower than their nominal value or, in the absence of a nominal value, their accounting par value;

(2) However, those persons who, professionally, undertake the placing of shares, may, with the consent of the company, pay less than the total amount of the shares subscribed by them during such a transaction.

(3) The minimum amount to be paid by such subscribers shall be fixed by Grand-Ducal regulation.»
The instrument constituting the company shall indicate:

1) (Law of 25th August, 2006) «the identity of the natural or legal person or persons by whom or on whose behalf it has been signed»;
2) the form of the company and its denomination;
3) the registered office;
4) the corporate object;
5) the amount of the subscribed capital and, where applicable, of the authorised capital;
6) the amount of the subscribed capital initially paid-up;
7) the classes of shares, where several classes exist, the rights attaching to each class, the number of shares subscribed to and, in the case of an authorised capital, the shares to be issued in each such class and the rights concerning each class, as well as:
   - the nominal value of the shares or the number of shares for which no nominal value is specified;
   - any special conditions restricting the transfer of shares;
8) whether the shares are in registered or bearer form and any provision in relation to the conversion of securities supplemental to, or derogating from, the law;
9) (Law of 18th December, 2009) « particulars of each contribution made otherwise than in kind, the conditions on which it is made, the name of the contributor and the conclusions of the report of the réviseur d'entreprise agréé [approved statutory auditor] provided for in Article 26-1; »
10) the reason for, and the extent of, any special advantages conferred at the time of incorporation of the company upon any person who participated in the incorporation of the company;
11) if applicable, the number of securities or units which do not represent the stated capital, as well as the rights attaching thereto, in particular the right to vote at general meetings;
12) insofar as they are not provided for by law, the rules determining the number and method of appointment of the members of the corporate bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among such corporate bodies;
13) the duration of the company;
14) at least the approximate amount of the costs, expenses and remuneration or charges of whatever form, which are payable by the company or chargeable to it by reason its incorporation.»

[77/91/EEC art. 2 and 3]
(Law of 24th April, 1983)

«Art. 27.

This provision is certainly the result of an oversight and should read : « otherwise than in cash ». 

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(Law of 24th April, 1983)

«Art. 28.

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

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

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

(Law of 24th April, 1983)

«Art. 29.

(1) The company may also be constituted by means of subscriptions.

(2) The constitutive instrument shall be drawn up in advance in the form of a notarial instrument and shall be published as a draft. The parties to that instrument shall be deemed to be the founders of the company.

(3) (…) (abrogated by the law of 10th July, 2005)

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

(5) (…) (abrogated by the law of 10th July, 2005)

(6) (…) (abrogated by the law of 10th July, 2005)

(Law of 24th April, 1983)

«Art. 30.

(1) On the scheduled date, the founder(s) shall present to the meeting, which shall be held in the presence of a notary, proof, together with supporting documents, that the conditions laid down by Article 26 have been satisfied.

(2) If the majority of the subscribers present in person or represented by the holder(s) of notarised or private proxies, other than the founder(s), have no objection to the incorporation of the company, the founder(s) shall declare that it is finally incorporated.

(3) If the targeted capital has not been subscribed for in its entirety, the company may nevertheless be incorporated with an amount of capital corresponding to the total amount subscribed for, provided that the instrument published in accordance with Article 9 has allowed for such a possibility.

(4) The notarised minutes of the meeting of the subscribers, which shall contain a list of the subscribers and a statement of the payments made, shall finally incorporate the company.»
30

(Law of 24th April, 1983)
«Art. 31.

(1) The founders shall be jointly and severally liable towards all interested parties, notwithstanding any provision to the contrary for:

   1) any portion of the capital which will not have been validly subscribed to, and any outstanding balance between the minimum capital provided for by Article 26 and the amount subscribed for; they shall ipso jure be deemed to be subscribers thereof;

   2) the full and complete payment of one fourth of the shares subscribed for, and the payment within a period of five years of the shares issued against contributions other than cash; they shall likewise be under a joint and several obligation for the full and complete payment of the portion of the capital of which they are deemed to be subscribers pursuant to the foregoing paragraph;

   3) the indemnification of the damage which is the immediate and direct result of either the avoidance of the company or the omission or incorrectness in the instrument or draft instrument of the company or in the subscription forms of the statements prescribed by Articles 27 and 29.

(2) Any person who enters into a commitment for a third party mentioned by name in the instrument and acting either as agent or as surety shall be deemed to be personally committed if they have no valid mandate or the commitment is not ratified within two months of the commitment.

   The founders shall be jointly and severally liable for these commitments.»

(Law of 24th April, 1983)
[77/92/EEC art.13]
«Art. 31-1.

The provisions concerning the incorporation of sociétés anonymes shall apply in the case of the transformation of a company of another form into a société anonyme.»

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 66.3, 66.4, 66.5, 66.6]
«Art. 31-2.

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

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

(2) The draft terms of conversion shall be published in accordance with Article 9 at least one month before the date of the general meeting called to decide on the draft terms of conversion.

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(Law of 18th December, 2009)

«(3) Prior to the general meeting referred to in paragraph (4), one or more réviseurs d'entreprises agréés [approved statutory auditors] appointed by the management body shall certify that the company has assets at least equivalent to its capital.»

(4) The general meeting of the société européenne (SE) shall approve the draft terms of conversion together with the articles of the société anonyme. The decision of the general meeting requires that the conditions as to quorum and majority laid down for the amendments to the articles are fulfilled. »

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 37.3 -37.7, art. 37.9]

«Art. 31-3.

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

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

(2) The draft terms of conversion shall be published in accordance with Article 9 at least one month before the date of the general meeting called to decide on the draft terms of conversion.

(Law of 23rd March, 2007; Law of 18th December, 2009)

« (3) Prior to the general meeting referred to in paragraph (4), one or more réviseurs d'entreprises agréés [approved statutory auditors] appointed by the management body shall certify that the company has net assets at least equivalent to its capital plus the reserves which may not be distributed under law or by virtue of the articles. »

(4) The general meeting of the société anonyme shall approve the draft terms of conversion together with the articles of the société européenne (SE). The decision of the general meeting requires that the conditions as to quorum and majority laid down for the amendments to the articles are fulfilled.

(5) The rights and obligations of the company to be converted on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the société européenne (SE).

(6) The registered office may not be transferred to another Member State pursuant to Articles 101-1 to 101-17, at the same time as the conversion is effected. »

33 Under Article 31-3(3) the test for conversion of a société anonyme into a société européenne is that the company must have net assets at least equivalent to capital and undistributable reserves.

34 Under Article 31-2 (3), the test for conversion of a société européenne into a société anonyme is that the company must have assets at least equivalent to its capital.
Any increase of capital shall be decided upon by the general meeting at the conditions provided for amendments to the articles.  

The constitutive instrument may, however, authorise the board of directors or the management board to increase the capital on one or more occasions up to a specified amount. »

The general meeting may also grant such authorisation by means of an amendment to the articles.

The rights attaching to the new shares shall be defined in the articles.

This principle has been set aside for certain conversions of share capital into euro under the Law of 10th December, 1998 (as amended with effect from 1st January, 2002 by the Law of 1st August, 2001);

(1) Any increase of capital shall be decided upon by the general meeting at the conditions provided for amendments to the articles.  

(2) «By derogation to paragraph (2), the board of directors or the manager(s) to take, by decision passed under private deed, the measures provided for in paragraph (1). This authorisation may not be valid beyond 31st December, 2001.

(3) By derogation to Articles 67-1(2), 116 4°, 117 4°, 194 and 199 of the law of 10th August, 1915 concerning commercial companies, as amended, and notwithstanding any contrary provisions of the articles, in the case of sociétés à responsabilité limitée having not more than twenty-five members, the par value may either be adapted to the new denomination and the new amount of the corporate capital or be removed.

(4) By derogation to paragraph (1) of Article 1 /This should be by derogation to paragraph (2)), the board of directors or the manager(s) may be authorised, by a resolution passed before 30th June, 2002 under private deed by the general meeting, or, in the case of sociétés à responsabilité limitée having not more than twenty-five members, the members deliberate at a simple majority in the circumstances provided in paragraphs (1) and (2) and their decision is not subject to any condition regarding a quorum of the corporate capital being present or represented.

By derogation to article 70, paragraph 3 of the law of 1915 and notwithstanding any provision to the contrary of the articles, the notices for any general meeting called to be held between the date of entry into force of this law and 31st December, 2001 and having as sole object one or more of the decisions referred to in article 1 must contain the agenda and must be made by a notice published 8 days at least before the meeting in a Luxembourg daily newspaper.

The board of directors or the manager(s) of sociétés anonymes, sociétés en commandite par actions, sociétés coopératives and sociétés à responsabilité limitée the capital of which is stated in ECU may, starting 1st January, 1999 by decision passed under private deed, replace in the articles all references to the ECU by references to the euro. Such a replacement does not constitute a change of the articles.

Article 9 of the law of 10th August, 1915 concerning commercial companies, as amended, shall apply to the private deed recording the decisions taken in application of article 1. Article 9 § 1 and § 2 of the law of 10th August, 1915 concerning commercial companies, as amended, shall apply to the private deed recording the decisions taken in application of article 3. By derogation to article 9 § 3 of the law of 10th August, 1915 concerning commercial companies, as amended, the private deed recording the resolutions taken in application of article 3 will not be published in the Mémorial C, Recueil des Sociétés et Associations.
(5) The authorisation shall be valid for only five years from publication of the constitutive instrument or the amendment of the articles. It may be renewed on one or more occasions by the general meeting deliberating in accordance with the requirements for amendments to the articles, for a period which, for each renewal, may not exceed five years.»

(Law of 24th April, 1983)
[77/91/EEC art. 27]
«Art. 32-1.

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

(2) (Law of 25th August, 2006) «The members of the board of directors or of the management board, as the case may be, shall be jointly and severally subject to the obligations of the founders under Article 31. »
[77/91/EEC art. 28]

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

(4) (Law of 25th August, 2006) «The increase of capital shall be recorded in a notarial instrument, prepared at the request of the board of directors or of the management board, as the case may be, against presentation of the documents proving the subscriptions and payments in the case of an increase carried out by way of subscriptions or where it is effected pursuant to the authorisation provided for in Article 32. The notarial instrument must be draw-up within one month from the end of the subscription period or within three months from the day on which that period commenced.»
[77/91/EEC art. 27]

«(5) In the case of non-cash contributions, the shares must be paid in full within five years from the time the increase of capital has been resolved. A report shall be drawn up by a réviseur d'entreprises agréé [approved statutory auditor] in accordance with article 26-1; this réviseur d'entreprises agréé [approved statutory auditor] is appointed by the board of directors or by the management board, as the case may be. The report of the réviseur d'entreprises agréé [approved statutory auditor] shall be filed in accordance with Article 9 paragraph 1.»
(Law of 24th April, 1983)
[77/91/EEC art. 26]

Art. 32-2.

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

(Law of 24th April, 1983)
[77/91/EEC art. 29.1, 2, 3, 4, 5 and 7]

Art. 32-3.

(1) Shares to be subscribed for in cash shall be offered on a pre-emptive basis to shareholders in the proportion of the capital represented by their shares.

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

(3) (Law of 25th August, 2006) «The right to subscribe may be exercised within a period determined by the board of directors or by the management board, as the case may be, which may not be less than 30 days from the start of the subscription period, which shall be announced by means of a notice determining the subscription period which shall be published in the Mémorial and in two newspapers published in Luxembourg. However, where all the shares are in registered form, the shareholders may be notified by registered letter. »

(4) The right to subscribe shall be transferable throughout the subscription period, and no restrictions may be imposed on such transferability other than those applicable to the shares in respect of which the right arises.

(5) (Law of 25th August, 2006) «The articles may not withdraw or restrict pre-emption rights. They may nevertheless authorise the board of directors or the management board, as the case may be, to withdraw or restrict these rights in relation to an increase of capital made within the authorised capital provided for in accordance with Article 32. Such authorisation shall not be valid for a longer period than the period provided for in Article 32(5).

A general meeting called upon to resolve, at the conditions prescribed for amendments to the articles, either upon an increase of capital or upon the authorisation to increase the capital in accordance with Article 32 (1), may limit or withdraw pre-emptive subscription rights or authorise the board of directors or the management board, as the case may be, to do so. Any proposal to that effect must be specifically announced in the convening notice. Detailed reasons therefor must be set out in a report prepared by the board of directors or by the
management board, as the case may be, and presented to the meeting, dealing in particular with the proposed issue price.»

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

(7) Unexercised subscription rights shall, after the end of the subscription period, be sold publicly by the company on the Luxembourg Stock Exchange; the proceeds of sale, after deduction of the expenses thereof, shall be held at the disposal of the shareholders for a period of five years. Any balance not claimed shall revert to the company.»

(Law of 24th April, 1983)
[77/91/EEC art. 25.4 and art. 29.6]

«Art. 32-4.

Articles 32, 32-1 and 32-3 shall apply to the issue of convertible bonds and bonds carrying subscription rights, but not to the conversion of such securities nor to the exercise of the right to subscribe, to both of which Article 32-2 shall nevertheless apply.»

Art. 33. (abrogated by the law of 10th July, 2005)

Art. 34. (abrogated by the law of 10th July, 2005)

Art. 35. (abrogated by the law of 10th July, 2005)

Art. 36. (abrogated by the law of 10th July, 2005)

§ 3. The shares and the transfer thereof

(Law of 21st December, 2006)

«Art. 37.

The capital of sociétés anonymes shall be divided into shares of equal value, with or without an indication of the value thereof.

In addition to shares representing the corporate capital, founders’ shares or similar securities may be created. The articles shall specify the rights attaching thereto.

Founders’ shares and similar securities shall, regardless of their name, be subject to the provisions of Article 26-1.

The shares and founders’ shares are in registered or bearer form.

Shares may be issued in denominations of less than one share, an appropriate number thereof conferring the same rights as a share.

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Shares and smaller denominations of shares shall bear a serial number. »

Art. 38.

If there are several owners of a share or smaller denomination of one share, the company shall be entitled to suspend the exercise of the rights attaching thereto until one person is designated as being the owner, vis-à-vis the company, of the share or smaller denomination.

Art. 39.

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

- the precise designation of each shareholder and the number of shares or fractional shares held by him;
- the payments made on the shares;
- transfers and the dates thereof or conversion of the shares into shares in bearer form, if the articles allow therefor.

Art. 40.

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

Certificates recording such entries shall be issued to the shareholders.

Transfers shall be carried out by means of a declaration of transfer entered in the said register, dated and signed by the transferor and the transferee or by their duly authorised representatives, and in accordance with the rules on the assignment of claims laid down in article 1690 of the Civil Code. The company may accept and enter in the register a transfer on the basis of correspondence or other documents recording the agreement between the transferor and the transferee.\(^{36}\)

Subject to any contrary provisions of the articles, transmission, in the case of death, shall be validly established vis-à-vis the company, provided that no objection is lodged, on production of a death certificate, the certificate of registration and an affidavit (acte de notoriété) attested by a juge de paix or a notary.

Art. 41.

(Law of 25th August, 2006)

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

\(^{36}\) Under the law of 22nd December 2006 inter alia introducing a transitory period until 31st December 2010 maintaining the benefit of the 1929 holding company regime, any transfer of shares in a company with the status of a 1929 holding company will, subject to certain exceptions provided by that law, be subject to the prior approval of 2/3 of the share capital given in a shareholders meeting.
However, one of the signatures may be affixed by a person delegated for that purpose by the board of directors or by the management board, as the case may be. In such case, it must be manual.

A certified true copy of the instrument delegating authority to such a person who is not a member of the board of directors or of the management board, as the case may be, shall be lodged in advance in accordance with Article 9, § 1 and 2. »

(Law of 23rd November, 1972)

«The share shall indicate:
the date of the constitutive instrument of the company and the date of publication thereof;
the capital of the company, the number and type of each class of shares and the nominal value of the securities or the interest in the company which they represent;
a brief description of the contributions made to the company and the conditions on which they are made;
any special advantages conferred upon the founders;
the duration of the company;
the day and the time of the annual general meeting and the municipality in which it is to be held.»

Art. 42.

The transfer of bearer shares shall be made by the mere delivery of the certificate.

Art. 43.

(Law of 7th September, 1987)

«Transfers of shares shall be valid only after the final incorporation of the company and after one fourth of the amount of the shares shall have been paid-up.»

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

The owners of shares or securities in bearer form may, at any time, request that they be converted, at their expense, into shares or securities in registered form.

The owners of shares or securities in registered form may at any time, unless the articles expressly prohibit the same, request conversion thereof into shares or securities in bearer form.

(Law of 8th August, 1985)

«Art. 44.

(1) Non-voting shares representing capital may be issued only on the following conditions:
1) they may not represent more than half of the corporate capital;

See the footnote under article 41.
2) they must, in case of distribution of profits, confer the right to a preferential and cumulative dividend corresponding to a percentage of their nominal value or accounting par value determined by the articles, without prejudice to any right which may be given to them in the distribution of any surplus profits;

3) they must confer a preferential right to the reimbursement of the contribution, without prejudice to any right which may be given to them in the distribution of liquidation proceeds.

(2) If the condition provided for in 1) is not, or ceases to be, fulfilled, the shares in question shall ipso jure and notwithstanding any provision to the contrary, have the voting rights provided for in Articles 67 and «67-1» without prejudice to the right conferred upon them by Article 46. The same shall apply to any shares to which the rights provided for in 2) and 3) are not, or cease to be, attached.»

(Law of 8th August, 1985)

«Art. 45.

(1) Preferred non-voting shares may be issued:
- at the incorporation of the company if provided for by the articles;
- by an increase of capital;
- by the conversion of ordinary shares into preferred non-voting shares.

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

(2) The general meeting shall determine the maximum amount of such shares to be issued within the limits laid down in Article 44 (1).

(3) If non-voting shares are created by the conversion of ordinary shares in issue or, where authority for that purpose is included in the articles if non-voting preferred shares are converted into ordinary shares, the general meeting shall determine, within the limits laid down in Article 44 (1), the maximum amount of shares to be converted and the conditions for conversion.»

(Law of 25th August, 2006) «The offer for conversion shall be made at the same time to all shareholders in proportion to the amount of capital held. The right to subscribe may be exercised within a period to be determined by the board of directors or by the management board, as the case may be, which may not be less than thirty days from the start of the subscription period which shall be announced by means of a notice determining the subscription period which shall be published in the Mémorial and in two Luxembourg newspapers. »

However, where all shares are in registered form, the shareholders may be notified by registered letter.»

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38 Modified by the law of 7th September, 1987.
39 See footnote under article 44.
Art. 46.

(1) The holders of shares issued pursuant to Article 44 shall be entitled to vote in every general meeting called upon to deal with the following matters:
- the issue of new shares carrying preferential rights;
- the determination of the preferential cumulative dividend attaching to the non-voting shares;
- the conversion of non-voting preferred shares into ordinary shares;
- the reduction of the capital of the company;
- any change to its corporate object;
- the issue of convertible bonds;
- the dissolution of the company before its term;
- the transformation of the company into a company of another legal form.

(2) They shall have the same voting rights as the holders of ordinary shares at all meetings, in case, despite the existence of profits available for that purpose, the preferential cumulative dividends have not been paid in their entirety for any reason whatsoever for a period of two successive financial years and until such time as all cumulative dividends shall have been received in full.

(3) Save where they have voting rights, no account shall be taken of non-voting preferred shares in determining the conditions as to quorum and majority at general meetings.

Art. 47.

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

Art. 48.

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

It shall comprise:
- the number of shares subscribed for;
- the amounts paid-up;
- a list of the shareholders who have not yet paid-up their shares, specifying the sums remaining due from them.

The publication of this list shall, as regards the changes of the shareholders recorded therein, have the same effect as a publication made in accordance with (Law of 23rd March, 2007) «Article 11bis».
In the event of an increase of capital, the statement shall indicate a mention of the portion of the capital which shall not yet have been subscribed for.

Art. 49.

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

However, a valid transfer of the shares shall release them, vis-à-vis the company, from the obligation to make any contribution to debts arising after the transfer, and vis-à-vis third parties they shall be released from the obligation to make any contribution to debts arising after publication of the transfer.

Every transferor shall have a right of recourse jointly and severally against his immediate transferees and the subsequent transferees.

(Title of Section abrogated by the law of 12th March, 1998)

(Law of 24th April, 1983)

[77/91/EEC art. 18]

Art. 49-1.

(1) The shares of a company may not be subscribed for by the company itself.

(2) If the shares of a company have been subscribed for by a person acting in his own name but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his own account.»

(3) (Law of 25th August, 2006) «The natural or legal persons as well as the parties to the instrument referred to in Article 29 paragraph (2) or, in the case of an increase of the subscribed capital, the members of the board of directors or of the management board, as the case may be, shall be obliged to pay-up any shares subscribed for in contravention of this Article. However, the above-mentioned persons may be released from that obligation on proving that no misconduct is attributable to them personally.»

(Law of 24th April, 1983)

[77/91/EEC art. 19]

Art. 49-2.

(1) (Law of 10th June, 2009) Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and the law on market abuse, the company may acquire its own shares, either itself or through a person acting in its own name but on the company’s behalf, only subject to the following conditions:

1°) the authorisation to acquire shares shall be given by the general meeting, which shall determine the terms and conditions of the proposed acquisition and in particular the maximum number of shares to be acquired, the duration of the period for which the authorisation is given and which may not exceed 5 years and, in the case of acquisition for value, the maximum and minimum consideration.
The board of directors or the management board shall satisfy themselves that, at the time of each authorised acquisition, the conditions referred to in points 2) and 3) are respected;

2°) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company’s behalf, may not have the effect of reducing the net assets below the amount mentioned in paragraphs (1) and (2) of Article 72-1;

3°) only fully paid-up shares may be included in the transaction.

(2) (Law of 25th August, 2006) «Where the acquisition of the company's own shares is necessary in order to prevent serious and imminent harm to the company, the condition under (1) 1° above shall not apply.

In such a case, the next general meeting must be informed by the board of directors or by the management board, as the case may be, of the reasons for and the purpose of the acquisitions made, the number and nominal values, or in the absence thereof, the accounting par value, of the shares acquired, the proportion of the subscribed capital which they represent and the consideration paid for them.»

(3) The condition under (1) 1° shall likewise not apply in the case of shares acquired by either the company itself or by a person acting in his own name but on behalf of the company for the distribution thereof to the staff of the company.

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

(Law of 24th April, 1983)
[77/91/EEC art. 20]

«Art. 49-3.

(1) Article 49-2 shall not apply to the acquisition of:

a) shares acquired pursuant to a decision to reduce the capital or in the circumstances referred to in Article 49-8;

b) shares acquired as a result of a universal transfer of assets;

c) fully paid-up shares acquired free of charge or acquired by banks and other financial institutions pursuant to a purchase commission contract;

d) shares acquired by reason of a legal obligation or a court order for the protection of minority shareholders, in the event, particularly of a merger, the division of the company, a change in the company’s object or form, the transfer abroad of the registered office or the introduction of restrictions on the transfer of shares;

e) shares acquired from a shareholder in the event of failure to pay them up;

f) fully paid-up shares acquired pursuant to an allotment by court order for the payment of a debt owed to the company by the owner of the shares;

g) fully paid-up shares issued by an investment company with fixed capital as defined in Article 72-3 and acquired at the investor’s request by that company or by a person acting in his own name but on behalf of that company.
These acquisitions may not have the effect of reducing the net assets below the aggregate of the subscribed capital and the reserves which may not be distributed under law.

(2) Shares acquired in the cases indicated under b) to f) of paragraph (1) must however be disposed of within a maximum period of three years after their acquisition, unless the nominal values, or, in the absence of nominal value, the accounting par value of the shares acquired, including shares which the company may have acquired through a person acting in its own name, but on behalf of the company, does not exceed 10% of the subscribed capital.

(3) If the shares are not disposed of within the period prescribed in paragraph (2), they must be cancelled. The subscribed capital may be reduced by a corresponding amount. Such a reduction shall be compulsory where the acquisitions of shares to be cancelled results in the net assets having fallen below the amount referred to in Article 72-1.

(Law of 24th April, 1983)
[77/91/EEC art. 21]

Art. 49-4.

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

(Law of 24th April, 1983)
[77/91/EEC art. 22]

Art. 49-5.

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

a) among the rights attaching to the shares, the voting rights in respect of the company's own shares shall be suspended;

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

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

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

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

c) in the case of acquisition or disposal for value, the consideration for the shares;
d) the number and nominal value, or, in the absence of nominal value, the accounting par value, of all the shares acquired and held in the company’s portfolio as well as the proportion of the subscribed capital which they represent.

(1) (Law of 10th June, 2009) «A company may not directly or indirectly, advance funds or make loans or provide security with a view to the acquisition of its shares by a third party except under the following conditions:

a) These transactions take place under the responsibility of the board of directors or of the management board at fair market conditions, especially with regard to interest received by the company and with regard to security provided to the company for the loans and advances referred to above. The credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto shall have been duly investigated.

b) The transactions shall be submitted by the board of directors or the management board for prior approval to the general meeting deliberating under the same conditions as for amendments to the articles. The board of directors or the management board shall present a written report to the general meeting, indicating the reasons for the transaction, the interest of the company in entering into the transaction, the conditions on which the transaction is entered into, the risks involved in the transaction for the liquidity and solvency of the company and the price at which the third party is to acquire the shares. This report shall be deposited at the register of commerce and companies in accordance with Article 9 §1 and will be published in the Mémorial in accordance with Article 9 §3 subparagraph 3.

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

d) Where a third party, by means of financial assistance from a company, acquires that company’s own shares within the meaning of Article 49-2 paragraph (1) or subscribes for shares issued in the course of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.»
Paragraph (1) shall not apply to transactions concluded by banks and other financial institutions in the normal course of business nor to transactions effected with a view to the acquisition of shares by or for the staff of the company. However, such transactions may not have the effect of reducing the net assets of the company below the aggregate of the capital and the reserves which may not be distributed under law or the articles.

Paragraph (1) shall not apply to transactions carried out with a view to acquire shares as described in Article 49-3, paragraph (1) sub g).

(Art. 49-6bis.)

In those cases where members of the board of directors or of the management board of the company being party to a transaction referred to in Article 49-6, paragraph (1) or of a parent company, or such parent company itself, or third parties acting in their own name but on behalf of the members of the board of directors or of the management board or on behalf of such company, are counterparties to a transaction referred to in Article 49-6, the commissaire(s) [supervisory auditor(s)] or the réviseur d'entreprises agréé [approved statutory auditor] shall provide a special report on the transaction to the general meeting who shall decide on that report.

(Art. 49-7.)

The acceptance of the company’s own shares as security either by the company itself or by a person acting in his own name, but on behalf of the company, shall be treated as an acquisition for the purposes of Articles 49-2, 49-3, paragraph (1) and Articles 49-5 and 49-6.

Paragraph (1) shall not apply to transactions concluded by banks and other financial institutions in the normal course of business.

(Art. 49-8.)

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

1) the redemption must be authorised by the articles before the redeemable shares are subscribed for;

2) the shares must be fully paid-up;

3) the terms and conditions for the redemption must be laid down in the articles;

40 Modification resulting from article 103 of the law of 18th December 2009 on the audit profession.
4) redemption can only be made by using sums available for distribution in accordance with (Law of 23rd March, 2007) «Article 72-1» or the proceeds of a new issue made with a view to carry out such redemption;

5) an amount equal to the nominal value, or, in the absence thereof, the accounting par value, of all the shares redeemed must be included in a reserve which can not be distributed to the shareholders except in the event of a reduction in the subscribed capital; the reserve may only be used to increase the subscribed capital by capitalisation of reserves;

6) sub-paragraph (5) shall not apply to a redemption using the proceeds of a new issue made with a view to carry out such redemption;

7) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums which are available for distribution in accordance with Article 72-1, paragraph (1).

8) notice of redemption shall be published in accordance with Article 9.»

(Law of 12th March, 1998)
[92/101/EEC art. 1]
«Art. 49bis.»

(1) a) The subscription, acquisition or holding of shares in a société anonyme by another company within the meaning of article 1 of Directive 68/151/EEC in which the société anonyme directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence shall be regarded as having been effected by the société anonyme itself.

b) Subparagraph a) shall also apply where the other company is governed by the law of a third country and has a legal form comparable to those listed in article 1 of Directive 68/151/EEC.

(2) However, where the société anonyme holds a majority of the voting rights only indirectly or can exercise a dominant influence only indirectly, paragraph (1) does not apply, but in such case the voting rights attached to the shares in the société anonyme held by the other company are suspended.

(3) For the purpose of this Article:

a) a société anonyme is deemed to be able to exercise a dominant influence if it:

- has the right to appoint or dismiss a majority of the members of the administrative organ, of the management organ or of the supervisory organ, and is at the same time a shareholder or member of the other company

or

41 Article IV of the law of 12th March, 1998 specifies:
«Article 49bis does not apply to acquisitions made before the entry into force of this law.
However, the voting rights attached to those share are suspended and those shares shall be taken into account in order to determine whether the condition laid-down in Article 49-2, paragraph (1) 2° is fulfilled.»
The law has been published on 31st March, 1998 and has entered into force on 4th April, 1998.
- is a shareholder or member of the other company and has sole control of the majority of the voting rights of the other company's shareholders or members under an agreement concluded with other shareholders or members of that company.

b) - a société anonyme is deemed to indirectly hold voting rights where such voting rights are held by a company having one of the legal forms referred to in paragraph (1) in which the société anonyme directly holds a majority of the voting rights

- a société anonyme is deemed to be able to indirectly exercise a dominant influence on an other company where the société anonyme directly holds the majority of the voting rights in a company having one of the legal forms referred to in paragraph (1) which

- has the right to appoint or dismiss the majority of the members of the administrative organ, of the management organ or of the supervisory organ and is, at the same time, a shareholder or member of the other company

or

- is a shareholder or member of the other company and has sole control of the majority of the voting rights of the other company's shareholders or members under an agreement concluded with other shareholders or members of that company.

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

(4) Paragraph (1) shall not apply where

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

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

(5) Paragraph (1) does not apply where the holding of shares in the société anonyme by the other company results from an acquisition made before the relationship
between the two companies corresponded to the criteria laid down in paragraph (1).
However, the voting rights attached to those shares shall be suspended and those
shares shall be taken into account in order to determine whether the condition
laid down in Article 49-2, paragraph (1) 2° is fulfilled.

(6) Paragraphs (2) and (3) of Article 49-3 and Article 49-4 shall not apply where
shares in a société anonyme are acquired by the other company referred to in
paragraph (1) provided:
a) the voting rights attached to the shares in the société anonyme held by the
other company are suspended;
b) (Law of 25th August, 2006) «the members of the management body of the
société anonyme are obliged to buy back from the other company the shares
referred to in paragraphs (2) and (3) of Article 49-3 and in Article 49-4 at
the price at which the other company acquired them; this sanction shall
be inapplicable only where such members prove that the société anonyme
played no part whatsoever in the subscription for or acquisition of the
shares in question.»

(Law of 25th August, 2006)
«§ 4. Management and supervision of sociétés anonymes and of sociétés
européennes (SE) »

«Sub-§1.- The board of directors»

Art. 50.

Sociétés anonymes are managed by agents appointed for a specific period, who may,
but are not required to be shareholders, who may be removed from office and who may

42 See Title II of Book IV of the Labour Code regarding comités mixtes (works council) in undertakings and the
representation of staff in sociétés anonymes.
43 Law of 25th July, 1990 concerning the status of directors representing the State or a public legal entity in a société
«Sole Article. In société anonymes in which the State or a public legal entity is a shareholder, the individuals who, on
proposal by the State or such legal entity, are appointed as directors or as member of the management board or of the
supervisory board, as the case may be, represent respectively the State or the public legal entity who caused their
appointment and they execute their instructions. To that end, they must transmit all necessary information which they
may have acquired respectively to the State or the public legal entity.
Their appointment ends at the time where the public legal entity who has caused their appointment will have notified
the withdrawal of their appointment to the board of directors or to the management board or the supervisory board, as
the case may be.
The public legal entity assumes the responsibilities, in their capacity as directors or as members of the management
board or supervisory board, as the case may be, of the persons appointed at its request, without prejudice to its
recourse against such individuals in case of serious personal misconduct. Any fees payable to such persons in any form
whatsoever are paid to the State or the public legal entity who caused their appointment; the government sitting in
council or the governing body of the public legal entity will determine the amounts to be paid to these directors or
members of the management board or supervisory board for the fulfilment of their duties.»
44 The law of 25th August 2006 has introduced the possibility for a société anonyme to adopt the two tier system
(management board plus supervisory board) as an alternative to the one tier system (board of directors). Article VIII of
such law generally provides that any legal or regulatory provision concerning commercial companies and which contain
a reference to the “board of directors” of a société anonyme must be understood, in the context of a société anonyme with a
management board and a supervisory board to be a reference to the management board of that company, unless, in
consideration of the duties allocated it must be understood as a reference to the supervisory board.
receive a salary or not.

Law of 25\textsuperscript{th} August, 2006
[EC Regulation 2157/2001, art. 43]

\textbf{Art. 51}

There must be at least three directors.\textsuperscript{45} However, where the company has been formed by a single shareholder or where it has been established at a general meeting of shareholders that the company has a single shareholder, the board of directors can be made up by one member until the ordinary general meeting following the establishment of the existence of more than one shareholder.

In the \textit{société européenne} (SE), the number of directors or the rules for determining it shall be laid down in its articles. However, there must be at least three directors where employee participation in the \textit{société européenne} (SE) is regulated in implementation of Directive 2001/86/EC\textsuperscript{46}.

They shall be appointed for a term set by the general meeting of shareholders; however, the first appointment may be made in the constitutive instrument of the company.\textsuperscript{47} This provision shall apply to the \textit{société européenne} (SE) without prejudice to the employee participation arrangements determined in implementation of Directive 2001/86/EC\textsuperscript{48}.

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

In case of vacancy of the office of a director appointed by the general meeting, the remaining directors so appointed may, unless the articles provide differently, fill the vacancy on a provisional basis. In such circumstances, the next general meeting shall make the final appointment.»

Law of 25\textsuperscript{th} August, 2006

\textbf{Art. 51bis}

Where a legal entity is appointed as director, it shall designate a permanent representative to exercise that duty in the name and for the account of the legal entity.

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

\textsuperscript{45} This number is increased to a minimum of nine for companies which fall within the scope of application of Articles L.426-2 et seq. of the Labour Code which also contain specific provisions which derogate here from regarding the method of their appointment.

\textsuperscript{46} This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

\textsuperscript{47} For undertakings established in Luxembourg in the form of a \textit{société anonyme} and (i) generally employing a staff of at least 1,000 during the last three years or (ii) where the government has a financial participation of at least 25\% or has granted a concession for the main activity: see also Articles L.426-1 et seq. of the Labour Code.

See also the law of 25th July, 1990 concerning the status of directors representing the government or a public legal entity in a \textit{société anonyme}.

\textsuperscript{48} See footnote under preceding paragraph.
The appointment and termination of the position of a permanent representative are subject to the same publicity rules as if he would act in his own name and for his own account.

**Art. 52.**

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

*(Law of 23rd November, 1972)*

[68/151/EEC art. 9.2 and 9.3]

**«Art. 53.»**

The board of directors shall have the power to take any action necessary or useful to realise the corporate object, with the exception of the powers reserved by law or by the articles to the general meeting. *(Law of 25th August, 2006)* [EC Regulation 2157/2001, art. 48.1] «In a société européenne (SE), the articles shall list the categories of transactions which require an express decision of the board of directors.»

It shall represent the company vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant. Writs served on behalf of or upon the company shall be validly served in the name of the company alone.

Any limitations to the powers conferred upon the board of directors by the preceding paragraphs resulting either from the articles of the company or from a decision of the competent corporate bodies are not valid vis-à-vis third parties, even if they are published.

However, the articles may authorise one or more directors to represent the company in any instrument or in legal proceedings, either singly or jointly. A clause to that effect is valid vis-à-vis third parties subject to the conditions laid down in Article 9.»

*(Law of 25th August, 2006)*

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

**Art. 54.** *(Abrogated by the law of 8th March, 1989)*

**Art. 55.** *(Abrogated by the law of 8th March, 1989)*

**Art. 56.** *(Abrogated by the law of 8th March, 1989)*

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Art. 57.

Any director having an interest in a transaction submitted for approval to the board of directors conflicting with that of the company, shall be obliged to advise the board thereof and to cause a record of his statement to be included in the minutes of the meeting. He may not take part in these deliberations.

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

(Law of 25th August, 2006; Law of 23rd March, 2007)

«By derogation to the first and second paragraphs, where the company comprises a single director, the transactions made between the company and its director having an interest conflicting with that of the company is only mentioned in the decisions register.»

(Law of 25th August, 2006)

«The preceding paragraphs shall not apply where the decision of the board of directors or by the single director relates to current operations entered into under normal conditions.»

Art. 58.

The directors shall not contract any personal obligation by reason of the commitments of the company.

Art. 59.

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

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

(Law of 23rd November, 1972)

[68/151/EEC art. 9.3]

Art. 60.

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

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

The clause by virtue of which the day-to-day management is delegated to one or more persons acting either alone or jointly will be valid vis-à-vis third parties under the conditions referred to in Article 9.

(Law of 25\textsuperscript{th} August, 2006)

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

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

(Law of 25\textsuperscript{th} August, 2006)

[68/151/EEC art. 9.1]

\textbf{Art. 60bis.}

The company shall be bound by any acts of the board of directors or the directors with capacity to represent the company in accordance with Article 53 fourth paragraph or by the person entrusted with day-to-day management, even if such acts exceed the corporate object, unless it proves that the third party knew that the act exceeded the corporate object or could not in view of the circumstances have been unaware of it, without the mere publication of the articles constituting such proof.»

(Law of 25\textsuperscript{th} August, 2006)

«\textit{Sub-§ 2. – The management board and the supervisory board}»\textsuperscript{49}

(Law of 25\textsuperscript{th} August, 2006)

\textbf{Art. 60bis-1.}

(1) The articles of any société anonyme may provide that it shall be governed by the provisions of the present sub-paragraph. In such case, the company shall remain subject to all the provisions applicable to sociétés anonymes, except those contained in Articles 50 to 60bis.

(2) The introduction or deletion from the articles of such a provision may be decided during the existence of the company.»

A. The management board

\textsuperscript{49} The law of 25th August 2006 has introduced the possibility for a société anonyme to adopt the two tier system (management board plus supervisory board) as an alternative to the one tier system (board of directors). Article VIII of such law generally provides that any legal or regulatory provision concerning commercial companies and which contain a reference to the “board of directors” of a société anonyme must be understood, in the context of a société anonyme with a management board and a supervisory board, as a reference to the management board of that company, unless, in consideration of the duties allocated it must be understood as a reference to the supervisory board.
Art. 60bis-2.

(1) The société anonyme is managed by a management board. The number of its members or the rules for determining it, shall be laid down in the articles in case of a société anonyme (SE). In a société anonyme, they are laid down in the articles, failing which they are determined by the supervisory board.

(2) In single-shareholder sociétés anonymes or in sociétés anonymes whose capital is less than 500,000 euros, a single person may exercise the functions incumbent on the management board.

(3) The management board fulfils its duties under the supervision of a supervisory board.

Art. 60bis-3.

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

The articles may nevertheless provide that the members of the management board shall be appointed by the general meeting. In such case the general meeting will have sole authority therefor.

Art. 60bis-4.

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

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

The appointment and termination of the position of a permanent representative are subject to the same publicity rules as if he would act in his own name and for his own account.

Art. 60bis-5.

The members of the management board may be removed by the supervisory board and, where provided for in the articles, by the general meeting.
Art. 60bis-6.

(1) The members of the management board shall be appointed for a term provided in the articles not exceeding six years. They may be reappointed.

(2) In case of vacancy of the office of a member of the management board, the remaining members may, unless the articles provide differently, fill the vacancy on a provisional basis.

(3) In such a case, the supervisory board or the general meeting, as the case may be, shall make the final appointment at the next meeting. The appointed member of the management board shall serve the term of office of the member whom he replaces.

Art. 60bis-7.

(1) The management board shall have the power to take any action necessary or useful to realise the corporate object, with the exception of those powers reserved by law or the articles to the supervisory board and to the general meeting.

(2) The articles of a société européenne (SE) shall list the categories of transactions which require authorisation of the management board by the supervisory board. Where a transaction requires the authorisation of the supervisory board and such authorisation is denied, the management board may submit the dispute to the general meeting.

(3) The management board shall represent the company vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant. Writs served on behalf of or upon the company shall be validly served in the name of the company alone.

(4) Any limitations to the powers conferred upon the management board by the preceding paragraphs resulting either from the articles of the company or from a decision of the competent corporate bodies are not valid vis-à-vis third parties, even if they are published. However, the articles may authorise one or more members of the management board to represent the company in any instrument or in legal proceedings, either singly or jointly. A clause to that effect is valid vis-à-vis third parties subject to the conditions laid down in Article 9.

Where in a société européenne (SE) a delegation of powers has been validly granted and where the holder of such delegation passes a deed which is within the limits of such delegation but belongs to a category of transactions which under the articles of the société européenne (SE), require an authorisation of the management board or the supervisory board, such holder shall bind the company, without prejudice to damages, if any.
Art. 60bis-8.

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

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

The clause by virtue of which the day-to-day management is delegated to one or more persons acting either alone or jointly will be valid vis-à-vis third parties under the conditions referred to in Article 9.

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

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

Art. 60bis-9.

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

Art. 60bis-10.

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

They shall be jointly and severally liable both towards the company and any third parties for damages resulting from the violation of this law or the articles of the company. They shall be discharged from such liability in the case of a violation to which they were not a party provided no misconduct is attributable to them and they have reported such violation to the first general meeting after they had acquired knowledge thereof.
The authorisation given by the supervisory board in accordance with paragraph (2) of article 60bis-7 shall not relieve the members of the management board from their liability.

B. The supervisory board

(Law of 25th August, 2006)  
[EC Regulation 2157/2001; art. 40.1]  
«Art. 60bis-11.  
(1) The supervisory board shall carry out the permanent supervision of the management of the company by the management board, without being authorised to interfere with such management.  
(2) It shall grant or deny the authorisations required pursuant to article 60bis-7, paragraph (2).»

(Law of 25th August, 2006)  
[EC Regulation 2157/2001; art. 41]  
«Art. 60bis-12.  
(1) The supervisory board shall have an unlimited right to inspect all the transactions of the company; it may inspect, but not remove, the books, correspondence, minutes and in general all the records of the company.  
(2) The management board shall, at least every three months, make a written report to the supervisory board on the progress and foreseeable development of the company’s business.  
(3) In addition, the management board shall promptly pass to the supervisory board any information on events likely to have an appreciable effect on the company’s situation.  
(4) The supervisory board may require the management board to provide information of any kind which it needs to exercise supervision in accordance with article 60bis-11.  
(5) The supervisory board may undertake or arrange for any investigations necessary for the performance of its duties.»

(Law of 25th August, 2006)  
«Art. 60bis-13.  
Each year, the supervisory board shall receive from the management board all documents listed in article 72 at the time set in such article for their delivery to the commissaires [supervisory auditors] and shall present to the general meeting its observations on the report of the management board and on the annual accounts.»
(Law of 25th August, 2006)

**Art. 60bis-14.**

The provisions of articles 51, 51bis and 52 shall apply to the supervisory board.

(Law of 25th August, 2006)

**Art. 60bis-15.**

1. The supervisory board may entrust one or more of its members with special mandates for one or more specific purposes.

2. It may decide to create commissions whose composition and duties it shall determine and who shall exercise their activities under its responsibility. The attribution of such duties may however not consist in a delegation to a commission of the powers reserved by law or by the articles to the supervisory board itself or result in a reduction or limitation of the powers of the management board.

(Law of 25th August, 2006)

**Art. 60bis-16.**

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

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

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

(Law of 25th August, 2006)

[EC Regulation 2157/2001, art. 39.3]

**Art. 60bis-17.**

1. No person may at the same time be a member of the management board and the supervisory board.

2. However, in the event of a vacancy in the management board, the supervisory board may appoint one of its members to act as a member of the management board. During such a period, the functions of the person concerned as a member of the supervisory board shall be suspended.

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30 See also Title II of Book IV of the Labour Code regarding *comités Mixtes* (works council) in undertakings and the representation of staff in *sociétés anonymes.*
(Law of 25th August, 2006)

«Art. 60bis-18.»

(1) Any member of the management board or the supervisory board having an interest in a transaction submitted for approval to the management board or the supervisory board conflicting with that of the company, shall be obliged to advise the management board or the supervisory board thereof and to cause a record of his statement to be included in the minutes of the meeting. He may not take part in these deliberations.

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

By derogation to the first and second paragraphs, where the management board or the supervisory board of the company comprises a single member, the transactions made between the company and the member of the management board or the supervisory board having an interest conflicting with that of the company, is only mentioned in the decisions register.

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

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

(Law of 25th August, 2006)

«Art. 60bis-19.»

The members of the management board and of the supervisory board may receive fees in that capacity. The type of remuneration and the amount of the fees payable to the members of the management board are determined by the supervisory board. The type of remuneration and the amount of the fees payable to the members of the supervisory board are determined by the articles, failing which by the general meeting. »
(Law of 25th August, 2006)
«Sub-§ 3. - Supervision by the commissaires [supervisory auditors]»

Art. 61.\(^{51}\) The supervision of the company must be entrusted to one or more commissaires\(^{52}\) [supervisory auditors], who may but are not required to be members. They shall be appointed by the general meeting of shareholders.

Unless otherwise provided in the constitutive instrument, commissaires [supervisory auditors] may be re-elected.

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

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

( Lawyers of 25th August, 2006) «If the number of commissaires [supervisory auditors] falls, as a result of death or otherwise, to less than one half of the commissaires [supervisory auditors] appointed, the board of directors or the management board, as applicable, must immediately convene a general meeting in order to fill the vacancies.»

Art. 62. The commissaires [supervisory auditors] shall have unlimited power of supervision and control over all of the operations of the company. They may inspect, but not remove, the books, correspondence, minutes and, in general, all the records of the company.

( Lawyers of 25th August, 2006) «Semi-annually, the board of directors or the management board, as applicable, shall provide them with a statement summarising the assets and liabilities. The commissaires [supervisory auditors] must report to the general meeting on the results of the mandate entrusted to them, making such recommendation as they consider fit, and must inform the meeting of the method adopted by them for verification of the inventories.»

\(^{51}\) For undertakings established in Luxembourg in the form of a société anonyme and (i) generally employing a staff of at least 1,000 during the last three years or (ii) where the government has a financial participation of at least 25% or has granted a concession for the main activity: see also Article L.426-12 of the Labour Code «The members of the board of directors or of the supervisory board representing staff of the companies within the scope of article L.426-1, including those representing staff, will unanimously appoint an independent statutory auditor – réviseur who will be in addition to the number of statutory auditors provided for by article 61 of the law of 10th August, 1915 concerning commercial companies. He will be appointed for a period equivalent to the duration of the appointment of the other statutory auditors; his appointment may be renewed.»

\(^{52}\) The traditionally used English term for « commissaire aux comptes » was « statutory auditor ». The latter term is however used by the English version of Directive 2006/43/EC to designate the audit professionals approved under such directive and who are exclusively authorised to carry out statutory audits. In Luxembourg, these professionals are the « réviseurs d’entreprises agréés » [approved statutory auditors]. This translation will feature the French terms « commissaire » or « commissaires aux comptes » followed by its proposed translation, « supervisory auditor », which refers to the duties of the commissaire (i) to supervise management and (ii) to review the accounts.

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

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

The expert must be approved by the company. Failing such approval, the president of «the Tribunal d’Arrondissement dealing with commercial matters»53, upon application by the commissaires [supervisory auditors] served in the form of a writ on the company, shall select the expert. The president shall hear the parties in chambers and shall issue his ruling as to the appointment of the expert in open court. This ruling need not be served on the company and is not subject to appeal.

(Law of 25th August, 2006)
«Sub-§ 4 Rules common to the management bodies, the supervisory board and the commissaires [supervisory auditors]»

(Law of 25th August, 2006)
«Art. 63.

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

(Law of 25th August, 2006)
«Art. 64.

(1) The directors, the members of the management board, the supervisory board and the commissaires [supervisory auditors] form collegiate bodies which shall deliberate in accordance with the articles and, in the absence of provisions in that respect, in accordance with the ordinary rules for deliberating assemblies.

(2) The board of directors, the management board and the supervisory board shall elect a chairman from among their members. If half of the members of the board of directors or of the supervisory board of a société européenne (SE) have been appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

(3) The board of directors or the management board of a société européenne (SE) shall meet at least once every three months at intervals laid down by the articles to discuss the progress and foreseeable development of the business of the société européenne (SE).

Each member of the board of directors, of the management board and of the supervisory board shall be entitled to examine all information submitted to the relevant board.

The supervisory board shall convene upon notice of its chairman. The chairman must convene it on the request of at least two of its members or by the management board. The board shall meet at intervals laid down by the articles. The supervisory board may invite the members of the management board to be present at the meetings of the board, in which case they shall have an advisory role only.

(Law of 25th August, 2006)

Art. 64bis.

(1) Unless otherwise provided by the articles and without prejudice to specific legal provisions, the internal rules relating to quorum and decision-taking in the board of directors, the supervisory board and the management board of the company shall be as follows:
   a) quorum: at least half of the members must be present or represented.
   b) decision-taking: a majority of the members present or represented.

(2) Where there is no relevant provision in the articles, the chairman of each corporate body shall have a casting vote in the event of tie.

(3) Unless otherwise provided by the articles, the internal rules may provide that for the calculation of quorum and majority, the directors or members of the management board participating in the board of directors or management board meeting by video conference or by telecommunication means permitting their identification may be deemed to be present. Such means shall satisfy technical characteristics which ensure an effective participation in the meeting of the board of directors or of the management board, whose deliberations shall be on-line without interruption. The meeting held at a distance by way of such communication means shall be deemed to have taken place at the registered office of the company.

Art. 65.

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

(Law of 25th August, 2006)

Art. 66.

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

54 For companies which constitute « public interest entities », the provisions set out in Art. 74 of the law of 18th December 2009 also apply, except, pursuant to article 72(2) of the law of 18th December 2009, in case of public interest entities which have not issued transferable securities admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC [MiFID]:

Article 1 (19) of the law of 8th December 2009 [2006/43/EC art. 2.13] defines « public interest entities » as follows:

« entities governed by Luxembourg law whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC [MiFID], credit institutions as defined in point (12) of Article 1 of the amended law of 5th April 1993 on the financial sector, Luxembourg insurance undertakings within the meaning of Article 25, point 1, h), of the amended law of 6th December 1991 on the insurance sector, except for those undertakings and entities referred to in article 26 point 4 of the amended law of 6th December 1991 on the insurance sector, pension funds referred to in article 25 point 1, h)), of the amended law of 6th December 1991 on the insurance sector and Luxembourg reinsurance undertakings referred to in article 25 point 1, m) of the amended law of 6th December 1991 on the insurance sector. A Grand-Ducal regulation may also designate other entities as public-interest entities, because of the nature of their business, their size or the number of their employees. »

[2006/43/EC art. 49]
Art. 74 [of the law of 18th December 2009] « Audit committee

(1) Each public-interest entity shall have an audit committee. At least one member of the audit committee shall be independent and shall have competence in accounting and/or auditing. The CSSF may specify the rules concerning the composition of audit committees.

In public-interest entities which meet the criteria of Article 2(1), point (f) of Directive 2003/71/EC [which corresponds to article 2.1 s) of the law of 10th July 2005 on the prospectuses for securities. These are small and medium sized enterprises], the functions assigned to the audit committee may be performed by the management or supervisory body as a whole, provided at least that when the chairman of such a body is an executive member, he or she is not the chairman of the audit committee.

(2) Without prejudice to the responsibility of the members of the administrative, management or supervisory bodies, or of other members who are appointed by the general meeting of shareholders of the audited entity, the audit committee shall, inter alia:

a) monitor the financial reporting process;

b) monitor the effectiveness of the company’s internal control, internal audit and, where applicable, risk management systems;

c) monitor the statutory audit of the annual and consolidated accounts;

d) review and monitor the independence of the réviseur d’entreprise agréé [approved statutory auditor] or cabinet de révision agréé [approved audit firm], and in particular with respect to the provision of additional services to the audited entity.

The CSSF may specify the rules set out in items a) to d) of this paragraph.

(3) In a public-interest entity, the proposal of the administrative or supervisory body for the appointment of a réviseur d’entreprise agréé [approved statutory auditor] or cabinet de révision agréé [approved audit firm] shall be based on a recommendation made by the audit committee.

(4) The réviseur d’entreprise agréé [approved statutory auditor] or cabinet de révision agréé [approved audit firm] shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

(5) Public interest entities which have a body performing equivalent functions to an audit committee may not apply paragraphs (1) to (4) in the conditions determined by the CSSF.

(6) The following are exempted from the obligation to have an audit committee:

a) any public-interest entity which is a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC [see article 309(2), law of 1915] if the entity complies with the requirements in paragraphs (1) to (4) of this Article at group level;

b) any public-interest entity which is a Luxembourg collective investment undertaking as defined in Article 2 paragraph (2) of the amended law of 20th December 2002 relating to undertakings for collective investment. Public-interest entities the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or
§ 5. General meetings


Art. 67.

(1) The general meeting of shareholders shall have the widest powers to adopt or ratify any action relating to the company.

Where the company comprises a single shareholder, he shall exercise the powers reserved to the general meeting.

The general meeting of a (Law of 23rd March, 2007) société européenne (SE) shall decide on matters for which it is given sole responsibility by:

a) the present law in accordance with Council Regulation 2157/2001/EC of 8th October 2001 on the statute for a European société européenne (SE),

b) the provisions of Luxembourg law adopted in implementation of Directive 2001/86/EC, to the extent that the registered office of the société européenne (SE) is located in the Grand-Duchy of Luxembourg.

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

- of a société anonyme governed by Luxembourg law to the extent that the registered office of the société européenne (SE) is situated in the Grand-Duchy of Luxembourg or

- by its articles in accordance with that law.

(2) The articles shall contain provisions governing proceedings at general meetings and the formalities necessary for admission thereto. In the absence of such provisions, appointments shall be made and resolutions shall be adopted in accordance with the ordinary rules of deliberating assemblies; minutes shall be signed by the bureau of the meeting and by the shareholders who request to do so; copies to be delivered to third parties shall be certified as conforming to the original by the notary having custody of the relevant original deed, in case the proceedings of the meeting have been recorded in a notarial deed, or by the person designated for management control over any of the issuers of its underlying investments are also exempted, provided that those collective investment undertakings are authorised and subject to supervision by the CSSF and that they have a depositary exercising functions equivalent to those under the amended law of 20th December 2002 relating to undertakings for collective investment;

c) any public-interest entity the sole business of which is to act as issuer of asset-backed securities as defined in Article 2 paragraph (5) of [Commission] Regulation (EC) No 809/2004 [Prospectus Regulation]. In such instances, the entity shall disclose the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.

d) any Luxembourg credit institution within the meaning of Article 1 point (12) of the amended law of 5th April 1993 on the financial sector, whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC [MiFID] and which has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100,000,000 and that it has not published a prospectus under Directive 2003/71/EC [Prospectus Directive].

55 This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.
that purpose by the articles, failing which by the chairman of the board of directors or of the management board, as the case may be, or by the person replacing him, such persons being liable for any damage which may result from their incorrect certification.

If the company comprises only one shareholder, his decisions shall be recorded in a minutes register held at the registered office.»

(3) (Law of 25th August, 2006)
«Every shareholder shall, notwithstanding any provision to the contrary, but in conformity with the provisions of the articles, be entitled to vote personally or by proxy. Subject to the articles providing therefor, shareholders participating in the meeting by way of video conference or by way of telecommunication means permitting their identification, shall be deemed to be present for the calculation of quorum and majority. Such means shall satisfy technical characteristics which ensure an effective participation in the meeting whose deliberations shall be online without interruption.

(3bis) The articles may authorise any shareholder to cast its vote by mail by means of a voting form the mentions of which shall be laid down in the articles. Voting forms which indicate neither the direction of a vote nor an abstention are void.

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

(4) Every shareholder may, notwithstanding any clause to the contrary in the constitutive instrument, take part in the deliberations, with a number of votes equal to the number of shares held by him, without limitation.

(5) (Law of 25th August, 2006)
«The board of directors or the management board, as applicable, is entitled to adjourn a meeting, while in session, to four weeks. It must do so at the request of shareholders representing at least one-fifth of the capital of the company. Any such adjournment, which shall also apply to general meetings called for the purpose of amending the articles, shall cancel any resolution passed. The second meeting shall be entitled to pass final resolutions provided that, in cases of amendments to the articles, the conditions as to quorum laid down in Article 67-1 are fulfilled.»

(6) If an ordinary general meeting, which is adjourned, was convened for the same day as a general meeting convened to amend the articles and if the latter is not quorate, the first meeting may be adjourned to a sufficiently remote date for it to be possible to reconvene the two meetings for the same day, provided however that the period of the adjournment may not exceed six weeks.

(7) The exercise of voting rights attached to shares in respect of which calls have not been paid shall be suspended until such time as those calls which have been duly made and are payable, shall have been paid.»

* See also art. 29. law of 11th January 2008 on transparency requirements on issuers of securities.
(Law of 7th September, 1987)

Art. 67-1.

(1) Unless otherwise provided by the articles, an extraordinary general meeting, resolving as hereinafter provided, may amend any provisions of the articles. However, the nationality of the company may be changed and the commitments of its shareholders may be increased only with the unanimous consent of the members and bondholders.

(2) (Law of 25th August, 2006)

«The general meeting shall not validly deliberate unless at least one half of the capital is represented and the agenda indicates the proposed amendments to the articles and, where applicable, the text of those which concern the objects or the form of the company. If the first of these conditions is not satisfied, a second meeting may be convened, in the manner prescribed by the articles, by means of notices published twice, at fifteen days interval at least and fifteen days before the meeting in the Mémorial and in two Luxembourg newspapers. Such convening notice shall reproduce the agenda and indicate the date and the results of the previous meeting. The second meeting shall validly deliberate regardless of the proportion of the capital represented. At both meetings, resolutions, in order to be adopted, must be carried by at least two-thirds of the votes cast. Votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or invalid vote.»

(3) (Law of 25th August, 2006)

«Except in case of merger, division or operations assimilated thereto pursuant to Articles 284 and 308, any amendments concerning the objects or form of the company must be approved by the general meeting of bondholders. Such meeting shall not validly deliberate unless at least one half of the securities outstanding are represented and the agenda indicates the proposed amendments. If the first of these conditions is not fulfilled, a second meeting may be convened, in accordance with the conditions laid down in paragraph (2). At the second meeting, bondholders who are not present or represented shall be regarded as being present and as voting for the proposals of the board of directors or of the management board, as applicable. However, the following requirements must be complied with on pain of nullity:

See footnote to article 32 (1) in case of conversion of capital into euro.
The convening notice must:

a) reproduce the agenda of the first meeting and indicate the date and the results of that meeting;

b) specify the proposals of the board of directors or of the management board, as applicable, on each of the items of such agenda, indicating the amendments proposed;

c) contain a notice to bondholders that failure on their part to attend the general meeting shall be deemed to indicate support for the proposals of the board of directors or of the management board, as applicable.

At both meetings, resolutions shall be validly passed if they are passed by two-thirds of the votes cast. Votes cast shall not include votes attaching to bonds in respect of which the bondholder has not taken part in the vote or has abstained or has returned a blank or invalid vote.

Art. 68.

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

(Law of 24th April, 1983)
[77/91/EEC art. 30]

«Art. 69.

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

(Law of 7th September, 1987)
[77/91/EEC art. 32.1 and 32.3]

«(2) If the reduction is to be carried out by means of a repayment to shareholders or a waiver of their obligation to pay up their shares, creditors whose claims predate the publication in the Mémorial of the minutes of the meeting may, within 30 days from such publication, apply for the constitution of security to the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters and sitting as in urgency matters. The president may only reject such an application if the creditor already has adequate safeguards or if such security is unnecessary, having regard to the assets of the company.

(Law of 24th April, 1983)
[77/91/EEC art. 32.2]

«(3) No payment may be made or waiver given to the shareholders until such time as the creditors have obtained satisfaction or until the judge presiding the chamber
of the Tribunal d’Arrondissement dealing with commercial matters and sitting as in urgency matters, has ordered that their application should not be acceded to.

[77/91/EEC art. 33.1]

(4) The provisions of paragraphs (2) and (3) shall not apply in the case of a reduction in the subscribed capital whose purpose is to offset losses incurred which are not capable of being covered by means of other own funds or to include sums of money in a reserve, provided that the reserve does not exceed 10% of the reduced subscribed capital. Except in the event of a reduction in the subscribed capital in accordance with paragraphs (2) and (3), it may not be distributed to shareholders or be used to release shareholders from their obligation to make their contributions. It may be used only for off-setting losses incurred or for increasing the subscribed capital by the capitalisation of reserves.

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

(Law of 24th April, 1983)

[77/91/EEC art. 35]

Art. 69-1.

(1) The articles may provide that, by resolution of the general meeting to be published in accordance with Article 9, all or some of the profits and reserves other than those which may not be distributed under law or the articles, shall be used to amortise the capital by means of the repayment at par of all the shares or of a portion of the shares drawn by lot, without the stated capital being reduced.

(2) Shares repaid shall be cancelled and replaced by bonus shares which shall carry the same rights as the cancelled shares, except the right to reimbursement of the contribution and the right to participate in the distribution of a first dividend allocated to the unamortised shares.

(Law of 24th April, 1983)

[77/91/EEC art. 37]

Art. 69-2.

(1) In the case of a reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in its own name but on behalf of the company, the withdrawal must always be resolved by the general meeting.

(2) Article 69, paragraphs (2) and (3) shall apply except in the case of fully paid-up shares which are acquired free of charge or by the application of distributable sums pursuant to (Law of 23rd March, 2007) «Article 72-1»; in such case, an amount equal to the nominal value, or in the absence thereof, the accounting par value, of all the withdrawn shares must be incorporated in a reserve. Such reserve may not, except in the event of a reduction of the subscribed capital, be
distributed to shareholders; it may be used for offsetting losses incurred or for increasing the subscribed capital by capitalisation of reserves.

(3) In the case referred to in paragraph (1) the decision of the general meeting shall be subject to a separate vote for each class of shares the rights of which are affected by the operation. Moreover, the provisions of Articles 31, paragraph (1) and 69, paragraph (4) shall not apply.

Art. 70.

(Law of 25th August, 2006)

«At least one general meeting must be held each year within the municipality and on the day and at the time indicated in the articles. The general meeting shall be held within six months of the closing of the financial year and the first general meeting may be held within eighteen months after its formation.»

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

If, following a request made by the shareholders pursuant to the second paragraph, the general meeting is not held within the prescribed period, the general meeting may be convened by an agent, appointed by the judge presiding the chamber of the Tribunal d’Arrondissement dealing with commercial matters and sitting as in urgency matters on the application of one or more shareholders who together hold the aforementioned proportion of the capital.

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

Convening notices for every general meeting shall contain the agenda and shall take the form of announcements published twice, with a minimum interval of eight days, and eight days before the meeting, in the Mémorial and in a Luxembourg newspaper.

Notices by mail shall be sent eight days before the meeting to registered shareholders, but no proof need be given that this formality has been complied with.

Where all the shares are in registered form, the convening notices may be made only by registered letters.

Art. 71. (Abrogated by the law of 7th September, 1987)

58 Read : after the formation of the company.
§ 6. Inventories and balance sheets

Art. 72.

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

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

The balance sheet shall separately mention fixed assets and current assets and, on the liability side, the debts of the company towards itself, bonds, indebtedness secured by mortgages or pledges and indebtedness without the benefit of security on assets.

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

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

Art. 72-1.

(1) Except for cases of reductions of subscribed capital, no distributions to shareholders may be made when on the closing date of the last financial year the net assets as set out in the annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus the reserves which may not be distributed under law or by virtue of the articles.

(2) The amount of the subscribed capital referred to under (1) shall be reduced by the amount of subscribed capital remaining uncalled if the latter amount is not included as an asset in the balance sheet.

(3) The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits carried forward and any amounts drawn from reserves which are available for that purpose, less any losses carried forward and sums to be placed to reserve in accordance with the law or the articles.

(4) The term "distribution" as used in the foregoing provisions includes in particular the payment of dividends and of interest relating to shares.

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(Law of 24th April, 1983)
[77/91/EEC art. 15.2]

«Art. 72-2.

(Law of 25th August, 2006)

(1) «No interim dividends may be paid unless the articles authorise the board of
directors or the management board, as applicable, to do so. Any such payment
shall in addition be subject to the following conditions:

a) interim accounts shall be drawn-up showing that the funds available for
distribution are sufficient;

b) the amount to be distributed may not exceed total profits made since the
end of the last financial year for which the annual accounts have been
approved, plus any profits carried forward and sums drawn from reserves
available for this purpose, less losses carried forward and any sums to be
placed to reserve pursuant to the requirements of the law or of the
articles;

c) the decision of the board of directors or the management board, as
applicable, to distribute an interim dividend may not be taken more than
two months after the date at which the interim accounts referred to under
a) above have been made up.

(Law of 23rd March, 2007) (abrogated paragraph)

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

(Law of 24th April, 1983)
[77/91/EEC art. 15.4]

«Art. 72-3.

(1) Article 72-1, paragraph (1) shall not apply to investment companies with fixed
capital.

(2) The following sociétés anonymes shall be regarded as investment companies with
fixed capital:

- the exclusive object of which is to invest their funds in various
transferrable securities, real estate or other assets with the sole purpose of
spreading the investment risks and giving their shareholders the benefit
of the results of the management of their assets,

and

- which offer their own shares for subscription to the public, provided that:
a) they include the words "société d'investissement" in their instruments, notices, publications, letters and other documents;
b) their total assets as set out in the annual accounts, at the closing date of the last financial year are or following such distribution would become less than one and a half times the company’s total liabilities to creditors as set out in the annual accounts;
c) the annual accounts must contain a note to that effect.\(^59\)

[(Law of 14th April, 1983)]
[77/91/EEC art. 16]

«**Art. 72-4.**

Any distribution made in infringement of Articles 72-1, 72-2, or 72-3 must be returned by the shareholders who have received it if the company proves that the shareholders knew of the irregularity of the distributions made in their favour or could not, in the circumstances, have been unaware of it.»

[(Law of 25\(^{th}\) August, 2006)]

«**Art. 73.**

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

1° (Law of 18\(^{th}\) December, 2009) «the annual accounts and the list of directors or of members of the management board and of the supervisory board as well as the list of the commissaires [supervisory auditors] or the réviseur d’entreprises agréé [approved statutory auditor];»

2° the list of sovereign debt, shares, bonds and other company securities making up the portfolio;

3° the list of shareholders who have not paid-up their shares, with an indication of the number of their shares and their domicile;

4° the report of the board of directors or of the management board, as applicable, and the observations of the supervisory board;

5° (Law of 18\(^{th}\) December, 2009) «the report of the comissaires [supervisory auditors] or of the réviseur d’entreprises agréé [approved statutory auditor].»

(Law of 18\(^{th}\) December, 2009)

«The annual accounts, as well as the report of the comissaires [supervisory auditors] or of the réviseur d’entreprises agréé [approved statutory auditor], the annual report and the observations of the supervisory board shall be sent to registered shareholders at the same time as the convening notice.»

Every shareholder shall be entitled to obtain free of charge, upon production of his title, fifteen days before the meeting, a copy of the documents referred to in the foregoing paragraph. »

\(^59\) Art. 15.4 of directors provides that a note to that effect is to be included in the annual accounts in case of a distribution “when its net assets fall below the amount specified” in Article 72-1(1).
Art. 74.

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

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

Art. 75.

The annual accounts, bearing at the commencement thereof the date of publication of the constitutive instruments of the company, must within one month after approval thereof be published by the directors or by the management board, as applicable, at the expense of the company in accordance with the provision of Article 9.

At the end of the annual accounts there shall be published the names, first names, occupations and domicile of the directors, the members of the management board, as applicable, and the commissaires [supervisory auditors] for the time being in office, as well as a table indicating the use and allocation of the net profits in accordance with the resolutions of the general meeting.

§ 7. Specific information to be included in documents

Art. 76.

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

1. the corporate denomination of the company;
2. the words "société anonyme", reproduced legibly and in full or the initials “SA” or, as the case may be, the initials “SE”, immediately before or after the denomination of the company;
3. a precise indication of the registered office;
4. the words «Registre de commerce et des sociétés, Luxembourg» or the initials «R.C.S. Luxembourg» followed by the registration number.

See also art. 25 of the law of 28th December, 1988 on the right of establishment.
If the above documents state the capital of the company, that statement shall take into account any decrease which it may have suffered according to the results of the various successive balance sheets and shall indicate both the portion not yet paid-up and, in the case of an increase of capital, the portion which has not yet been subscribed to.

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

**Art. 77.**

Any agent acting on behalf of a société anonyme in respect of which the requirements of the foregoing Article are not fulfilled may, depending on the circumstances, be declared personally liable for the commitments entered into therein by the company. In the event of overstatement of the capital or the failure to mention the portion not yet paid-up or subscribed to or the incorrect mention thereof, the third party, in case of failure by the company, shall be entitled to claim from such agent, a sum sufficient to ensure that he is placed in the same position as if the stated capital had been the true capital and had been paid-up or subscribed to in full or to the extent indicated.

*Law of 25th August, 2006*

«**Art. 78.**

In all instruments by which the company is bound, the signature of the directors, members of the management board, as applicable, managers and other agents must be immediately preceded or followed by an indication of the capacity in which they act.»

**§ 8. The issue of bonds**

**Art. 79.**

No bonds of any kind may be issued before incorporation of the company.

**Art. 80.** *(abrogated by the law of 10th July, 2005)*

**Art. 81.** *(abrogated by the law of 10th July, 2005)*

**Art. 82.** *(abrogated by the law of 10th July, 2005)*

**Art. 83.** *(abrogated by the law of 10th July, 2005)*
Art. 84.

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

Bearer bonds shall be signed by two directors or members of the management board, as applicable, or if the company comprises only one director or member of the management board, by such director or member. Unless otherwise provided in the articles, the signature may be manual, in facsimile or affixed by means of a stamp.

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

A certified true copy of the instrument delegating authority to a person who is not a member of the board of directors or of the management board, as applicable, shall be previously lodged in accordance with Article 9, 1st and 2nd paragraphs.

(Art of 23rd March, 2007) (abrogated paragraph)

The provisions of Articles 40 and 42 regarding ownership and transfer of shares, respectively in registered and bearer form, shall apply to bonds.

The provisions of Article 43, paragraphs (3) and (4) shall likewise be applicable.

Art. 85.

Holders of bonds shall be entitled to examine the documents lodged in accordance with Article 73. They may attend general meetings and shall be entitled to speak but not to vote.

(Art of 9th April, 1987)

Art. 86.

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

(Art of 25th August, 2006)

Art. 87.

(1) One or more representatives of the bondholders' group may be appointed at the time of the issue by the company or, during the term of the loan, by the general meeting of bondholders.

(2) If no representative has been appointed in the manner provided for in the foregoing paragraph, the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters in the district in which the registered office of the company is located, and sitting as in urgency matters, may, in case of urgency, at the application of the company, of any bondholder or of any interested third party, designate one or more representatives and determine their powers.

(3) The following may not be appointed as representatives of the bondholders' group:
1) the debtor company;
2) companies holding one tenth or more of the capital of the debtor company or in which the debtor company has a holding of one tenth or more;
3) companies guaranteeing all or part of the obligations of the debtor company;
4) (Law of 18th December, 2009) « members of the board of directors, of the management board or of the supervisory board, commissaires [supervisory auditors], réviseurs d'entreprises agréés [approved statutory auditors], and representatives of the aforementioned companies. »

(4) The general meeting of bondholders may dismiss the group representatives. They may also be removed for just cause by the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters in the district in which the registered office of the company is located, and sitting as in urgency matters, at the application of the company or of any bondholder.

(Law of 9th April, 1987)
« Art. 88. »

(1) Where the representative(s) of the bondholders' group are appointed by the company at the time of the issue, they shall exercise the powers enumerated below:
1) they implement the resolutions adopted by the general meeting of bondholders;
2) they accept on behalf of the bondholders' group, the collateral intended to secure the company's debt.
They may grant full or partial release of mortgage inscriptions in the event of reimbursement or payment to them of the sales price of the assets from which the charge is to be removed, as well as in the event of total or partial repayment of the bonds;
3) they take conservatory measures to protect the bondholders’ rights;
4) they shall be present at drawings by lot of bonds and shall supervise the proper execution of the amortisation plan and the payment of interest;
5) they represent the bondholders in any bankruptcy, suspension of payments, composition with creditors to prevent bankruptcy, controlled management and all similar procedures and declare in any such procedure all claims in the name and in the interest of the bondholders and prove the existence and the amount of such claims by all legal means;
6) they may be parties to legal proceedings as plaintiffs or defendants acting in the name and in the interest of the represented bondholders, without it being necessary for the latter to be joined to the proceedings.

(2) The general meeting of bondholders may, after a period of six months, restrict or extend the powers of the representatives of the bondholders' group appointed by the company at the time of the issue.
(3) Where the representative(s) of the bondholders’ group are appointed by the general meeting of bondholders during the term of the loan, the meeting may freely determine the powers of such representatives.

(Law of 9th April, 1987)

«Art. 89.

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

(Law of 9th April, 1987)

«Art. 90.

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

(Law of 9th April, 1987)

«Art. 91.

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

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

Other costs and expenses decided by the meeting or incurred by the representatives shall be borne by the bondholders without prejudice to the right of the court, at which litigation has been brought to which the bondholders are parties, to direct that they are to be joined in respect of costs. The meeting shall determine the manner in which they are to be paid. It may decide that the company is to advance the amount thereof and withhold that amount from the interest payable to the bondholders. In such case, the amount advanced by the company may not exceed one-tenth of the net annual interest. In the event of any dispute as to the appropriateness or amount of the advance, the judge presiding the chamber of the Tribunal d’Arrondissement dealing with commercial matters in the district where the registered office of the company is located, shall resolve the matter upon application of the representatives, the parties having been heard or duly summoned to attend.»
(Law of 25th August, 2006)

«Art. 92.

The representatives of the bondholders' group, the board of directors or the management board, as applicable, as well as the commissaire [supervisory auditor] or the board of commissaires [supervisory auditors] may convene the general meeting of bondholders.

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

(Law of 9th April, 1987)

«Art. 93.

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

(Law of 9th April, 1987)

«Art. 94.

Meetings shall be convened in the manner and within the time limits provided for in Article 70.»

(Law of 9th April, 1987)

«Art. 94-1.

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

Members of the corporate bodies of the company and any persons authorised to do so by the meeting attend the meeting with the right to speak but not to vote.

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

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

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

The manner in which meetings are to be conducted shall be determined by the articles of the company, the terms and conditions of the issue and the provisions of Article 67.»
«Art. 94-2.

(Law of 25th August, 2006)
«The meeting may:
1) in accordance with Article 87, appoint or remove the representatives of the group;
2) remove the special agents referred to in Article 89;
3) resolve as to the conservatory measures to be taken in the common interest;
4) modify or waive the specific collateral granted to bondholders;
5) postpone one or more interest payment dates, agree to a reduction of the interest rate or change the conditions of payment thereof;
6) extend the amortisation period, suspend the same and consent to changes in the conditions thereof;
7) agree to the substitution of bonds by shares of the company;
8) agree to the substitution of bonds by shares or bonds of other companies;
9) resolve to constitute a fund for the purpose of protecting common interests;
10) adopt any other measures whose purpose is to ensure the defence of the common interests of the bondholders or the exercise of their rights.

The decisions provided for under 5, 6, 7 and 8 may be taken only if the capital of the company has been fully called. (Law of 18th December, 2009) «In the same case, and in the circumstances envisaged under No. 4, the meeting may adopt decisions only if there has been tabled before it a statement, audited and certified by the commissaires [supervisory auditors] or the réviseurs d'entreprises agréés [approved statutory auditors], summarising the assets and liabilities of the company as at a date which shall not be more than two months before the date of the decision, accompanied by a report of the board of directors or of the management board, as applicable, justifying the proposed measures.»

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

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

«Art. 94-3.

(Law of 25th August, 2006)
(1) «Where the general meeting is called upon to resolve upon the matters provided for under items 1, 2 and 3 of Article 94-2, decisions shall be adopted by a simple majority of the votes cast by the represented security holders.

(2) In all other cases, the meeting may validly deliberate only if the members thereof represent at least one half of the value of the securities outstanding.
If this condition is not fulfilled, it is necessary to convene a new meeting which shall validly deliberate regardless of the proportion of the value of the securities outstanding which is represented.

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

(Art. 94-3)

(Art. 94-4.)

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

(Art. 94-5.)

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

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

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

(Art. 94-6.)

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

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

1) the designation of the creditor shall be replaced by that of the securities representing the secured debt;

2) the provisions as to the election of an address for service shall not apply.

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

(2) The registration shall not require any renewal during the term of the loan.

(3) The registration shall be reduced or cancelled upon the company's commitments having terminated or upon the consent of the meeting of bondholders.

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

(4) The representatives of the group are obliged, within eight days of receiving any amounts paid to them as a result of the proceedings referred to in the foregoing paragraph, to deposit the same either at the (Law of 23rd March, 2007) «caisse de consignation» or, with the authorisation of the court, with an authorised credit institution established in Luxembourg. A Grand Ducal regulation shall determine the rate of interest to be paid, which may exceed the maximum fixed by the law of 12th February, 1872 on payments deposited in escrow.

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

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

(Law of 9th April, 1987)
«Art. 94-7.

A company indebted on account of bonds which have been called for total or partial redemption and where a holder of such bonds has failed to present himself within the year following the date of payment, is authorised to deposit the sums due in escrow. Such deposit shall be made with the Luxembourg (Law of 23rd March, 2007) «caisse de consignation» or, with the authorisation of the court, with an authorised credit institution established in Luxembourg.»

(Law of 9th April, 1987)
«Art. 94-8.

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

(Law of 9th April, 1987)
«Art. 95.

The provisions of Articles 86 to 94-8 shall apply to foreign companies which submit a loan to Luxembourg law unless the conditions of issue of the loan provide otherwise. Luxembourg companies may derogate from the provisions of Articles 86 to 94-8 if they submit their loan to a foreign law.»
Art. 96.

Sociétés anonymes may not issue bonds which are redeemable by the drawing of lots for an amount greater than the issue price unless the bonds bear interest at a rate of at least 3%, all bonds are redeemable by the same sum and the amount of the annual payment comprising amortisation and interest is the same throughout the duration of the loan.

The aggregate amount of such bonds may in no case exceed the paid-up corporate capital.

Art. 97.

The provisions of the foregoing Article shall not apply to bond issues in respect of which the issue price is not more than one-tenth lower than the amount payable on redemption.

Art. 98.

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

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

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

(Law of 25th August, 2006; Law of 23rd March, 2007)

«§ 9. The duration and dissolution of sociétés anonymes and of sociétés européennes (SE)»

(Law of 7th September, 1987)

Art. 99.

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

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

In the latter case, Articles 1865,5° and 1869 of the Civil Code shall not apply. Application for dissolution of the company for just cause may however be made to the court. Except in the case of dissolution by court order, dissolution of the company may take place only pursuant to a resolution adopted by the general meeting in accordance with the conditions laid down for amendments of the articles.»

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[Law of 25th August, 2006]
[77/91/EEC art. 17]

«Art. 100.»

Without prejudice to stricter provisions in the articles, in the event of a loss of half the corporate capital, the board of directors or the management board, as applicable, shall convene a general meeting so that it is held within a period not exceeding two months from the time at which the loss was or should have been ascertained by them and such meetings shall resolve in accordance with the conditions provided in Article 67-1 on the possible dissolution of the company.

The same rules shall be observed where the loss equals at least three-quarters of the corporate capital provided that in such case, dissolution shall take place if approved by one-fourth of the votes cast at the meeting.

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

[Law of 25th August, 2006]
[EC Regulation 2157/2001, art. 64]

«Art. 101.»

(1) The Tribunal d'Arrondissement dealing with commercial matters, may, at the application of the procureur d'Etat (public prosecutor), order the dissolution and the liquidation of a société européenne (SE), with its registered office in the Grand-Duchy of Luxembourg but where its central administration (head office) is not located there.

The application and the procedural deeds shall be served through the greffe. If the company can not be contacted at its legal domicile in the Grand-Duchy of Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg.

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

a) by re-establishing its central administration (head office) in the Grand-Duchy of Luxembourg or;

b) by transferring the registered office by means of the procedure laid down in articles 101-1 to 101-17.

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

The decision ordering the dissolution shall take effect as of its date. However, vis-à-vis third parties, it shall only be valid in the conditions provided by Article 9.

The tribunal may either order the immediate closing of the liquidation, or determine the method of liquidation and appoint one or more liquidators. It may render applicable to such extent as it may determine, the rules governing the liquidation of a bankruptcy. Upon the closing of the liquidation, the liquidator shall report to the court and submit a statement on the corporate assets and their application.
(2) Where it is established either by the court at the application of the procureur d'Etat (public prosecutor), or any interested party that a société européenne (SE) has its central administration (head office) within the territory of the Grand-Duchy of Luxembourg, without, however, its registered office being situated there, the procureur d'Etat shall immediately inform the Member State in which the registered office of the société européenne (SE) is situated. 

(Law of 25th August, 2006)

§10.- Transfer of the registered office of a société européenne (SE)

(Law of 25th August, 2006)

[EC Regulation 2157/2001, art. 8.1.]

«Art. 101-1.

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

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

(Law of 25th August, 2006)

[EC Regulation 2157/2001, art. 8.2.]


(1) The board of directors or the management board, as applicable, of the société européenne (SE) transferring its registered office, shall draw up a transfer proposal in writing.

(2) The proposal shall indicate:

a) the corporate denomination, registered office and registration number of the société européenne (SE);

b) the proposed registered office of the société européenne (SE);

c) the proposed articles of the société européenne (SE) including, where appropriate, its new corporate denomination;

d) any implication the transfer may have on employees' involvement in the société européenne (SE);

e) the proposed transfer timetable;

f) any rights provided for the protection of shareholders and/or creditors or holders of securities other than shares. »
(Law of 25\textsuperscript{th} August, 2006)
[EC Regulation 2157/2001, art. 8.2.]

\textit{Art. 101-3.}

(Law of 23rd March, 2007)

«The transfer proposal shall be published in accordance with Article 9, two months at least before the date of the general meeting called upon to decide on the transfer proposal. »

(Law of 25\textsuperscript{th} August, 2006)
[EC Regulation 2157/2001, art. 8.3.]

\textit{Art. 101-4.}

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

(Law of 25\textsuperscript{th} August, 2006)
[EC Regulation 2157/2001, art. 8.4.]

\textit{Art. 101-5.}

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

(Law of 25\textsuperscript{th} August, 2006)
[EC Regulation 2157/2001, art. 8.6.]

\textit{Art. 101-6.}

The transfer requires the approval of the general meeting of the société européenne (SE). The decision of the general meeting shall be passed in accordance with the quorum and majority rules as prescribed for the amendment of the articles. No decision may be taken for two months after publication of the proposal pursuant to (Law of 23rd March, 2007) «Article 101-3». »

(Law of 25\textsuperscript{th} August, 2006)
[EC Regulation 2157/2001, art. 8.7.]

\textit{Art. 101-7.}

Creditors of a société européenne (SE) which is transferring its registered office, whose claims predate the publication of the transfer proposal pursuant to Article 101-3, may, notwithstanding any agreement to the contrary, within two months of such publication, apply to the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters in the district in which the registered office of the debtor company is located and sitting as in urgency matters, for the constitution of
security for matured or unmatured claims, in case the transfer would have as an effect to jeopardise the general lien of such creditors or to impede the enforcement of their claims. The president shall reject such application, where the creditor already has adequate safeguards or if such security is not necessary having regard to the position of the company after the transfer. The debtor company may cause the application to be turned down by paying the creditor even if his claim has not matured.

If the security is not provided within the time limit prescribed, the claim shall become immediately due and payable.

(Law of 25th August, 2006)


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

(Law of 25th August, 2006)


(1) The holders of securities, other than shares, to which special rights are attached, must be given rights in the company which has transferred its registered office at least equivalent to those conferred to them in the company prior to such transfer.

(2) Paragraph (1) shall not apply if the alteration to those rights has been approved by a meeting of such holders passed in accordance with the quorum and majority rules provided for in Article 101-6.

(Law of 18th December, 2009)

«(3) In the event the meeting provided for in the preceding paragraph is not convened or, in case such a meeting refuses the proposed alteration, the securities concerned shall be repurchased at the price corresponding to their valuation in the transfer proposal and verified by an independent expert appointed by the management body and chosen among the réviseurs d'entreprises agréés [approved statutory auditors].

(Law of 25th August, 2006)

[EC Regulation 2157/2001, art. 8.8.]

«Art. 101-10.

(1) The minutes of the meeting which resolves on the transfer shall be established as a notarial deed.

(2) The notary shall verify and certify the existence and legality of the deeds and formalities incumbent on the company for which he draws up his deed and of the transfer proposal.

(3) The notary shall issue a certificate attesting in a conclusive manner as to the completion of the acts and formalities which need to be accomplished prior to the transfer. »
Sub-§ 2.- The effectiveness of the transfer of the registered office

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 8.10.]

«Art. 101-11.

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

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 8.9.]

«Art. 101-12.

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

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 8.16.]


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

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 8.13]


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

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

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

Art. 101-16.

The new registration and the deletion of the old registration shall be publicised, Articles 9, 10 and 11bis of this law being applicable. »

Art. 101-17.

A société européenne (SE) which is subject to proceedings for dissolution, liquidation, bankruptcy, composition with creditors or other similar proceedings such as suspension of payments, controlled management or proceedings instituting a special management or supervision may not transfer its registered office. »
Section V. - Sociétés en commandite par actions
(Corporate Partnerships Limited By Shares)

Art. 102.

A société en commandite par actions is a company established by contract between one or more shareholders who are indefinitely and jointly and severally liable for the obligations of the company and shareholders who only contribute a specific share of capital.

(Law of 25th August, 2006)

Art. 103.

The provisions regarding sociétés anonymes shall apply to sociétés en commandite par actions subject to the modifications indicated in this Section.

Furthermore, a société en commandite par actions shall not be subject to the provisions specifically applicable to the (Law of 23rd March, 2007) «société européenne (SE) ».

Art. 104.

The company shall operate under a name which shall comprise only the name of one or more unlimited members. A specific corporate denomination or the designation of the object of its undertaking may be added thereto.

(Law of 23rd November, 1972)

[68/151/EEC art. 4]

Art. 105.

All instruments, invoices, notices, publications, letters, order forms and other documents issued by sociétés en commandite par actions must contain:

1) the firm name, accompanied by the corporate denomination, if any;
2) the words "société en commandite par actions" reproduced legibly and in full;
3) a precise indication of the registered office;
4) «the words "Registre de commerce et des sociétés, Luxembourg" or the initials "R.C.S. Luxembourg" followed by the registration number.»

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

Any change of the registered office shall be published in the «Mémorial C, Recueil des Sociétés et Associations», such publication to be arranged by the management.

61 See also art. 25 of the law of 28th December, 1988 on the right of establishment.

62 The denomination of the Recueil Spécial des Sociétés et Associations has been changed by Grand-Ducal Regulation of 23rd December, 1994 amending the Grand-Ducal Regulation of 9th January, 1961 on the three publications of the Mémorial.
The penalties provided for in Article 77 shall apply to any agent acting on behalf of the company in circumstances where these provisions are not complied with.»

(Law of 8th March, 1989)

«Art. 106.
Bearer shares shall be signed by the managers. Save if otherwise provided for in the articles, such signatures or one of them may be manual, in facsimile, printed or affixed by means of a stamp.»

(Law of 23rd November, 1972)

«Art. 107.
Management of the company is carried out by one or more unlimited members designated by the articles.
They shall also be liable as founders of the company.»

Art. 108.
Any limited shareholder who signs on behalf of the company, even by virtue of a power of attorney, or whose name appears in the firm name, shall, vis-à-vis third parties, incur the same liabilities as those provided for, in the same circumstances, by Article 20 in respect to limited members in a société en commandite simple.

Art. 109.
Supervision of the company must be entrusted to at least three commissaires [supervisory auditors].

Art. 110.
The supervisory board may give its opinion on any matters which the managers refer to it and it may authorise acts which fall outside their powers.

Art. 111.
Subject to any contrary provision of the articles, the general meeting of shareholders shall adopt and ratify measures affecting the interests of the company vis-à-vis third parties or amending the articles with the agreement of the managers only.
It shall represent the shareholders vis-à-vis the managers.

Art. 112.
In the event of death of the manager, as well as in the case of his legal incapacity or inability to act, and provided the articles provide that the company shall not terminate, the commissaires [supervisory auditors] may, unless otherwise provided for in the articles, appoint an administrator, who may or may not be a shareholder, who shall adopt urgent measures and those of ordinary administration until the general meeting is held.
The administrator shall, within fifteen days of his appointment, convene the
general meeting in accordance with the procedures in the articles.
He shall be liable only for the performance of his mandate.
Section VI. - Sociétés coopératives
(Co-operative Societies)

«Sub-Section 1. On sociétés coopératives in general»

§ 1. On the nature and incorporation of sociétés coopératives

Art. 113.

A société coopérative is a company made up of members the number and the contributions of which are variable and the corporate units of which may not be sold to third parties.

Art. 114.

A société coopérative has no firm name; it shall be described by a corporate denomination.

The company must be made up of at least seven persons.

It shall be managed by one or more agents, who may or may not be members and who shall only be liable for the performance of the duties entrusted to them.

The supervision of the company shall be entrusted to one or more commissaires [supervisory auditors], who may or may not be members.

The members may commit themselves jointly and severally or just severally, indefinitely or up to a specified amount.

Art. 115.

The constitutive instrument of the company must on the pain of nullity determine the following items:
1° the corporate denomination of the company, its registered office;
2° the object of the company;
3° the precise designation of the members;
4° the manner in which the corporate fund of the company is or will subsequently be made up, and the minimum amount to be subscribed for immediately.

However, no such nullity may be relied upon vis-à-vis third parties by the members; and between the members themselves, any such nullity shall produce its effects only as from the date of the application for a court order to declare such nullity.

Art. 116.

The instrument shall also indicate:

(Law of 7th September, 1987)

«1° The duration of the company, which may be limited or unlimited.

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

63 Title introduced by law of 10th June 1999.
In the latter case, Articles 1865, 5° and 1869 of the Civil Code shall not apply. Application for dissolution of the company for just cause may however be made to the court. Except in the case of dissolution by court order, dissolution of the company may take place only pursuant to a resolution adopted by the general meeting in accordance with the conditions laid down for amendments to the articles:

2° the conditions for admission to, and resignation from, membership and for exclusion of members and withdrawal of contributions;

(Law of 18th December, 2009)

3° how and by whom the business of the company is to be managed and controlled and, if appropriate, the method of appointment and removal of the managers, directors, commissaires [supervisory auditors] or réviseurs d’entreprises agréés [approved statutory auditors], the extent of their powers and their term of office;

4° the powers of the general meeting, the rights conferred upon members thereat, the procedure for convening meetings, the majority required for the validity of resolutions and the procedures for voting;

5° the sharing in profits and losses;

6° the extent of the liability of the members, whether they are liable for the commitments of the company jointly and severally or only severally, against their entire assets or only up to a specified assets.

**Art. 117.**

In the absence of provisions regarding the matters set out in the foregoing Article, the following provisions shall apply:

1° the duration of the company shall be ten years;

(Law of 25th August, 1986)

2° members may only be excluded from the company in the case of non-performance of the contract; the general meeting shall declare exclusions and shall authorise withdrawals of contributions;

(Law of 18th December, 2009)

3° the company shall be managed by a director and supervised by a commissaire [supervisory auditor] or a réviseur d’entreprise agréé [approved statutory auditor], which shall be appointed, removed and which shall deliberate, in the same manner as in a société anonyme;

4° all members may vote at the general meeting; they shall have equal votes; convening notices shall be in the form of registered letters, signed by management; the powers of the meeting shall be determined and its resolutions shall be adopted in accordance with the rules provided for sociétés anonymes;

5° profits and losses shall be shared each year, as to one-half in equal parts between the members and as to one-half in proportion with their respective contributions;

6° members shall be indefinitely and jointly and severally liable.

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64 See footnote to article 32 (1) in case of conversion of capital into euro.
Art. 118.

Every société coopérative must keep a register containing on the first page thereof the constitutive instrument of the company, and indicating thereafter:

1° the names, professions and addresses of society members;
2° the date of their admission, resignation or exclusion;
3° a statement of account of the sums paid or withdrawn by each of them;

(Law of 18th December, 2009)

«4° the date of audits carried out and the names of the commissaires [supervisory auditors] or réviseurs d'entreprises agréés [approved statutory auditors].»

Such register shall be numbered, initialled and signed either by one of the judges of the «Tribunal d'Arrondissement dealing with commercial matters» or by the mayor of the municipality, without charge.

The initials may be replaced by the seal of the court or the municipal administration.

Statements as to withdrawals of contributions shall be signed by the society member who made them.

§ 2. Changes in membership and in the corporate fund

Art. 119.

The status of society member as well as the number of corporate units for the time being held by any member shall be evidenced, without prejudice to any other means of evidence under commercial law, by the affixing of their signature, against their name, preceded by the date, in the register of the company.

(Law of 25th August, 1986)

«Art. 120.

Members are always entitled to resign under the conditions and on the terms which may be provided for in the articles. They may resign only during the first six months of the company’s financial year.»

Art. 121.

The resignation shall be evidenced by indication of that fact on the member's certificate and on the register of the company, against the name of the resigning member.

Such indications shall be dated and signed by the member and by a director.
Art. 122.

If the directors refuse to record the resignation or if the resigning member does not know how or is unable to sign, the said resignation shall be recorded at the registry (griffe) of the magistrate court (justice de paix) of the registered office.

The registrar shall prepare an affidavit and give notice thereof to the company by registered letter to be sent within twenty-four hours.

The affidavit shall be on unstamped paper and shall be registered free of charge.

Art. 123.

The exclusion from the company shall be recorded in a memorandum prepared and signed by a director. The memorandum shall describe the facts which confirm that the exclusion was ordered in accordance with the articles; it shall be transcribed in the register of members of the company and a conformed copy thereof shall, within two days, be forwarded to the excluded member by registered letter.

(Law of 25th August, 1986)

«Art. 124.

The resigning or excluded member may not cause the company to be liquidated.

Unless the articles provide differently, he is entitled to receive only the par value of his corporate units. In no circumstances can any part of the balance sheet which represents public funds granted to the société coopérative be distributed to him. If it results from the balance sheet of the financial year during which the resignation was given or the exclusion has occurred, that the value of the corporate units is below their par value, the rights of the member will be reduced in that proportion.»

Art. 125.

In the event of the death or bankruptcy of a member or of a composition with his creditors, the insolvency of a member or if he is subject to an order of restraint, his heirs, creditors or representatives shall receive his share in accordance with Article 124.

They may not cause the company to be liquidated.

Art. 126.

Any resigning or excluded member shall remain personally liable, within the limits of his commitment and for a period of five years from publication of his resignation or exclusion, except where a shorter prescription period is provided for by law, for all obligations entered into before the end of the year during which his withdrawal was published.

The same rules shall apply in the circumstances provided for in Article 125.

Art. 127.

The rights of each member shall be represented by a registered certificate, bearing the corporate denomination of the company, the names, first names, profession and
residence of the holder, the date of his admission, his successive subscriptions and his resignation, signed by the holder and by a director.

There shall be recorded thereon, sequentially according to their date, the amounts paid in and withdrawn by the holder. Such entries shall, as appropriate, be signed by a director or by the holder and shall constitute a receipt.

The certificate shall set out the articles of the company.

It shall be exempt from stamp duty and registration.

Art. 128.

The personal creditors of a member may only arrest the interest and dividends to which he is entitled and the portion of the assets allotted to him upon dissolution of the company.

§ 3. Measures in the interest of third parties

Art. 129.

Each year, at the time determined in the articles, management shall prepare an inventory and the balance sheet and the profit and loss account in the form laid down in Article 72.

A reserve shall be constituted in the manner laid down in that Article.

Art. 130.

All instruments, invoices, notices, publications and other documents issued by sociétés coopératives, the corporate denomination of the company must appear immediately preceded or followed by the following words, written legibly and in full: "société coopérative".

Art. 131.

Any agent acting on behalf of a société coopérative in an instrument in respect of which the requirements of the foregoing Article are not fulfilled may, depending on the circumstances, and in case of default by the company itself, be declared personally liable for the commitments entered into therein by the company.

(Law of 19th December, 2002)

«Art. 132.

The annual accounts, as defined by the law of 19th December, 2002 concerning the register of commerce and companies and the accounting and annual accounts of undertakings shall be lodged within one month of their approval at the register of commerce and companies.»

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66 See also art. 25 of the law of 28th December, 1988 on the right of establishment.
67 Article 26(1) of the law of 19th December, 2002 provides that the annual accounts comprise the balance sheet, the profit and loss account and the notes to the accounts.

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Art. 133.

The persons managing the company must lodge at the «register of commerce and companies»68 every six months a list, in alphabetical order, of the names, professions and addresses of all members, dated and certified as being true and correct by the signatories.

The signatories shall be liable for any incorrect information in the said lists.

(Law of 19th December, 2002)

«Art. 134.

Within one month days of their appointment, the managers must lodge at the register of commerce and companies, an extract of the instrument recording their appointment and their powers.

They must appear in person at the register of commerce and companies to record their signature or forward to the register of commerce and companies a notarised form thereof.»

Art. 135.

The public shall be allowed to inspect the lists of members, the instruments conferring management powers and the «annual accounts» free of charge. Any person may request a copy thereof, on unstamped paper, against payment of the «administrative costs».69

Art. 136.

Sociétés coopératives may form federations in order to jointly pursue, in full or in part, the objects provided for in their articles or in order to ensure the fulfilment of their obligations under the laws and regulations applicable to them.

Federations shall constitute a legal entity distinct from that of the societies comprised therein.

They shall be subject to the provisions applicable to sociétés coopératives, except that the said provisions may be supplemented or amended by government regulations, to the extent they apply to federations.

Art. 137.

(Law of 18th December, 2009)

« Article 69 (1), (2) and (4) of the amended law of 18th December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings is applicable.

The institution of the *commissaires* [supervisory auditors] provided for in articles 114, 116 item 3 and 117 item 3 shall not apply to those *coopératives* whose annual accounts are audited by a *réviseur d’entreprises agréé* [approved statutory auditor] pursuant to the first paragraph of this Article. »

In the event of infringement of the provisions regarding the auditing, the directors of the federations and of the companies shall be personally and jointly and severally liable for any damage resulting from such infringement.

*(Law of 10th June, 1999)*

«Sub-Section 2. – Sociétés coopératives organised as sociétés anonymes

*(Law of 10th June, 1999)*

«Art. 137-1.

(1) The *société coopérative* may also be organised as a *société anonyme*.

(2) The *société coopérative* organised as a *société anonyme* is subject to the provisions concerning *sociétés coopératives* except for the amendments contained in this sub-section.

(3) The *société coopérative* organised as a *société anonyme* is also subject to the provisions concerning *sociétés anonymes* contained in this law except for the amendments contained in this sub-section.

*(Law of 25th August, 2006)*

«It shall not be subject to the provisions specifically applicable to the *(Law of 23rd March, 2007)* «société européenne (SE)». »

(4) The provisions concerning the incorporation of *sociétés coopératives* organised as *sociétés anonymes* are applicable to the transformation of a company having another legal form in a *société coopérative* organised as a *société anonyme.*

*(Law of 10th June, 1999)*


The capital of a *société coopérative* organised as a *société anonyme* is made up of shares. All references to «corporate units» in sub-section 1 of this section are deemed to be references to «shares» to the extent the provisions of sub-section 1 apply to the *société coopérative* organised as a *société anonyme* and to the extent the two terms are used with the same meaning.»

*(Law of 10th June, 1999)*

«Art. 137-3.

Article 4, paragraph 2 does not apply to the *société coopérative* organised as a *société anonyme.*»
(Law of 10th June, 1999)

«Art. 137-4.»

(1) Without prejudice to the provisions of article 137-5, paragraph (1), article 23 does not apply to the société coopérative organised as a société anonyme.

(2) Article 26, paragraphs (1) 2), 3) and 4) and (2) do not apply to the société coopérative organised as a société anonyme.

The incorporation of a société coopérative organised as a société anonyme requires in addition to what is mentioned in article 26(1) 1), the immediate subscription of the corporate fund specified in the corporate deed.

(3) Articles 26-1 to 26-5 are not applicable to the société coopérative organised as a société anonyme.

(4) Article 27, 5), 8), 9), 10) and 14) does not apply to the société coopérative organised as a société anonyme.

Instead of the provisions set out in article 27, 6) and 7), the corporate deed shall indicate:
- the manner in which the corporate fund is or will subsequently be made up, and the minimum amount to be subscribed for immediately; and
- the number of shares subscribed to, the category of shares if more than one category exists, and the rights of each of such categories.

The corporate deed shall in addition indicate the conditions for admission to, and resignation from, membership and for exclusion of the members and withdrawal of contributions.

(5) Articles 28 to 36 are not applicable to the société coopérative organised as a société anonyme.

(6) In article 37, paragraph 1, the words «of equal value» are not applicable to the société coopérative organised as a société anonyme.

In article 37, paragraph 1, the shares mentioned are only registered shares in case of a società coopérative organised as a société anonyme.

In article 37, paragraph 2, the founder shares and similar securities mentioned may be in registered or bearer form in case of a società coopérative organised as a società anonyme.

(Law of 21st December, 2006)

«Article 37, paragraphs 3 and 4 are not applicable to a société coopérative organised as a société anonyme.»

(7) Articles 39 and 40 are not applicable to the società coopérative organised as a société anonyme.

(8) For a società coopérative organised as a société anonyme, articles 41 and 42 will only apply to founder shares and similar securities referred to in paragraph (6) above.

(9) Article 43 does not apply to the società coopérative organised as a société anonyme.

(10) Article 44(1) 1) does not apply to the società coopérative organised as a société anonyme.

(11) In article 45, paragraphs (2) and (3), the words «within the limits laid down in article 44(1)» do not apply to the società coopérative organised as a società anonyme.

(12) Article 46, paragraph (1), fourth indent, does not apply to the società coopérative organised as a società anonyme.
(13) Article 48 does not apply to the société coopérative organised as a société anonyme.

(14) Articles 49-1 to 49bis do not apply to the société coopérative organised as a société anonyme.

(15) Articles 69 to 69-2 do not apply to the société coopérative organised as a société anonyme.

(16) Articles 72-1 to 72-4 do not apply to the société coopérative organised as a société anonyme.

(17) In article 76, paragraph 1, 2), the reference to «société anonyme» is replaced by «société coopérative organisée comme une société anonyme».

(Law of 10th June, 1999)

«Art. 137-5.

(1) Articles 114 to 117 with the exception of paragraph 5 of article 114 are not applicable to the société coopérative organised as a société anonyme.

(2) Any member may consult the register referred to in article 118. Article 118, paragraphs 2 and 3 do not apply to the société coopérative organised as a société anonyme.

(3) The second sentence of article 120 does not apply to the société coopérative organised as a société anonyme.

(4) Articles 126 and 129 to 135 do not apply to the société coopérative organised as a société anonyme.

(5) Article 136 will apply both to the sociétés coopératives and the sociétés coopératives organised as a société anonyme.»

(Law of 10th June, 1999)


Section IX. - Rights Of Action And Prescription Periods and Section XI. - Criminal Law Provisions are applicable to the société coopérative organised as a société anonyme.»

(Law of 10th June, 1999)


Section XIII. - Company Accounts does not apply to the société coopérative organised as a société anonyme.»

(Law of 10th June, 1999)


(1) Section XIV. - Mergers applies to the société coopérative organised as a société anonyme subject to the following provisions.

(2) A société coopérative organised as a société anonyme may not acquire by way of merger a société anonyme or a société coopérative organised as a société anonyme unless the

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70 Section XIII has been abrogated effective 1st January, 2005.
shareholders or members of such other company fulfil the conditions required to become a member of the acquiring company.

(3) In sociétés coopératives organised as sociétés anonymes, each member has the right, notwithstanding any provision to the contrary of the articles, to withdraw at any time during the financial year and without having to satisfy any other condition, upon the calling of the general meeting for the purpose of resolving on the merger of the company with an acquiring company having the form of a société anonyme.

The withdrawal must be notified to the company by registered mail deposited at the post five days at least before the day of the meeting. It will only be effective if the merger is approved.

The notices to the general meeting will contain the text of paragraphs 1 and 2 of this paragraph (3).

(4) The provisions of paragraphs (2) and (3) of this article apply to the merger by incorporation of a new company.

(Law of 10th June, 1999)


(1) Section XV. - Division applies to the société coopérative organised as a société anonyme subject to the following provisions.

(2) A société coopérative organised as a société anonyme may not participate in a division as a recipient company unless the shareholders or members of the company being divided fulfil the conditions required to become a member in the recipient company.

(3) In sociétés coopératives organised as a société anonyme, each member has the right, notwithstanding any provision to the contrary of the articles, to withdraw at any time during the financial year and without having to satisfy any other condition, upon calling of the general meeting for the purpose of deciding on the division of the company for the benefit of the recipient companies of which one at least has another legal form.

The withdrawal must be notified to the company by registered mail deposited at the post five days at least before the day of the meeting. It will only be effective if the division is approved.

The notices to the general meeting will contain the text of paragraphs 1 and 2 of this paragraph (3).

(4) The provisions of paragraphs (2) and (3) of this article apply to the division by incorporation of new companies.

(Law of 10th June, 1999)

«Art. 137-10.

Section XVI. – Consolidated Accounts does not apply to the société coopérative organised as a société anonyme.»
Section VII. - Associations momentanées et associations en participation
(Temporary Commercial Associations and Commercial Associations by Participation)

Art. 138.

An association momentanée is an association whose object it is to undertake, without using a firm name, one or more specific commercial transactions.

The members are jointly and severally liable vis-à-vis the third parties with whom they have dealt with.

Art. 139.

An association en participation is an association by which one or more persons take an interest in transactions managed by one or more other persons in his or their own name.

The managers are jointly and severally liable vis-à-vis the third parties with whom they have dealt with.

Art. 140.

Associations momentanées and associations en participation are made between their members for such purposes, in such form, with such respective interests and on such conditions as may be agreed between them.
Section VIII. - The liquidation of companies

Art. 141.

Commercial companies shall, after dissolution, be deemed to exist for the purpose of their liquidation.

(Law of 25th August, 2006)

«The société européenne (SE) with its registered office in the Grand Duchy of Luxembourg is subject to the rules applicable to sociétés anonymes. »

All documents emanating from a dissolved company shall indicate that it is in liquidation.

Art. 142.

In the absence of any agreement to the contrary, the method of liquidation shall be determined and the liquidators shall be appointed by the general meeting of members. (Law of 7th September, 1987) «Where several classes of shares exist in sociétés anonymes and sociétés en commandité par actions, and the resolution of the general meeting is such as to change the respective rights thereof, the resolution must, in order to be valid, fulfil the conditions as to attendance and majority laid down in Article 67-1 with respect to each class.»

(Law of 18th September, 1933) «In sociétés en nom collectif, sociétés en commandite simple and sociétés à responsabilité limitée, resolutions shall be validly adopted only with the consent of half of the members holding three-quarters of the corporate assets; in the absence of such a majority, the matter shall be settled by the courts.»

(2nd paragraph repealed by the law of 23rd November, 1972)

(Law of 18th September, 1933)

«Where there are several liquidators, they shall form a committee which shall deliberate in accordance with Article 64.»

(Law of 25th August, 2006)

«Art. 143.

If no liquidators are appointed, the managing members in sociétés en nom collectif or in sociétés en commandite, the managers in sociétés à responsabilité limitée and the directors or members of the management board, as applicable, in sociétés anonymes and sociétés coopératives shall, vis-à-vis third parties, be deemed to be liquidators. »

Art. 144.

Unless the articles or the instrument of appointment provide otherwise, the liquidators may bring and defend any action on behalf of the company, receive any payments, grant releases with or without receipt, realise all securities of the company, endorse any negotiable instrument and transact or compromise on any disputes. They may dispose of immovable property of the company by
public auction if they consider the sale thereof necessary to pay the debts of the company or if there are seven or more members.

**Art. 145.**

They may, but only with the authorisation of the general meeting of members, given in accordance with Article 142, continue, until the sale thereof, with the industrial and commercial activity of the company, borrow moneys to pay the debts of the company, issue negotiable instruments, mortgage and pledge the assets of the company, dispose of the immovable property thereof, even by private contract, and contribute the assets of the company to other companies.

**Art. 146.**

The liquidators may require members to pay-up amounts which they have undertaken to pay to the company and which the liquidators consider necessary for the completion of the liquidation.

**Art. 147.**

Without prejudice to the rights of creditors benefiting from liens or mortgages, the liquidators shall pay all the debts of the company, proportionally and without distinction between debts which have matured and those that have not matured, subject to a discount in the case of the latter.

They may, however, under their personal guarantee, first pay the debts which have matured if the assets significantly exceed the liabilities or if the term debts have the benefit of adequate safeguards and without prejudice to the right of creditors to take recourse to the courts.

**Art. 148.**

After the payment or the deposit in escrow of the sums necessary for payment of the debts, the liquidators shall distribute to the members those amounts or assets capable of forming equal shares; they shall deliver to them any property which may have been retained for the purpose of apportionment.

They may, subject to the authorisation referred to in Article 145, repurchase the shares or the corporate units of the company either on the Stock Exchange or by subscription or tender, in which all the members shall be entitled to participate.

*(Law of 20th June, 1930)*

«**Art. 148bis.**»

*(Law of 8th August, 1985)*

«By way of derogation from the provisions of Article 147 and the first paragraph of Article 148, where a société anonyme has contributed all of its assets and liabilities to another société anonyme, the liquidators of the contributing
company may, complying as appropriate with Articles 26-1 and 44 of this law, distribute amongst the shareholders the shares allotted in consideration of the contribution, without having to first reimburse the bonds or deposit in escrow the amounts required for such reimbursement, the company receiving the contribution being directly liable for the performance of the obligations of the contributing company, in the same way as the latter was liable, all special collateral being maintained for the benefit of the bondholders.»

(Law of 20th June, 1930)

«The company which has received and the company which has made the contribution shall both have the Luxembourg nationality, unless the legislation of the jurisdiction of the contributing company allows the contribution to be made in such conditions even to a foreign company.»

(Law of 2nd April, 1948)

«In case all of the assets and liabilities of a société anonyme is taken over by the Government, it may pay the shareholders without being required to previously reimburse the bondholders or deposit the necessary amounts for such a reimbursement in escrow.»

Art. 149.

The liquidators shall be liable, both to third parties and to the company, for the execution of the mandate given to them and for any misconduct in the management of the liquidation.

Art. 150.

Each year, the results of the liquidation shall be submitted to the general meeting of the company, together with a statement as to the reasons which have prevented completion of the liquidation. In the case of sociétés anonymes, the balance sheet shall also be published.

Art. 151.

When the liquidation is completed, the liquidators shall make a report to the general meeting regarding the employment of the corporate assets and shall present supporting accounts and documents. The meeting shall appoint auditors to examine such documents and shall determine a further meeting which, after the auditors shall have issued their report, shall deliberate on the management of the liquidators. (Law of 31st May, 1999; Law of 18th December, 2009)

«The auditors only need to have the professional qualification of réviseurs d'entreprises agréés [approved statutory auditors] in case of companies which exceed two of the three criteria provided by article 35 of the amended law of 19th December, 2002 on the register of commerce and companies and the accounting

71 The French version uses the terms « commissaires » but the duties of the « commissaires » under this Article are different from the duties of the « commissaires aux comptes » referred to in Article 61 et seq.

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and annual accounts of undertakings and amending certain other legal provisions, and in case of companies which have exceeded the limits provided for by article 35 during the three years preceding the day of the beginning of their liquidation.»

Notice of completion of the liquidation shall be published in accordance with Article 9.

Such publication must also include:

1° an indication of the place designated by the general meeting where the corporate books and documents are to be lodged and retained for at least five years;

2° an indication of the measures taken for the deposit in escrow of the sums and assets due to creditors or to members, which it has not been possible to deliver to them.
Section IX. - Rights of action and prescription periods

Art. 152.

No court order in connection with commitments of the company ruling that members of a société en nom collectif or of a société en commandite simple or unlimited members in a société en commandite par actions or members of a société coopérative with unlimited liability, shall be personally liable may be delivered before an order has been made against the company itself.

Art. 153.

Creditors may, in all companies, obtain a court decision ordering the making of the payments provided for in the articles and which are necessary for safeguarding their rights; the company may cause the action to be dismissed by reimbursing its debts vis-à-vis such creditors at their value, after deduction of a discount.

(Law of 25th August, 2006)

«The managers, directors or members of the management board, as applicable, are personally obliged to execute any order given for that purpose. »

Creditors may, in accordance with Article 1166 of the Civil Code, exercise against the members or shareholders the rights of the company as regards any outstanding payments which are due by virtue of the articles, corporate resolutions or court orders.

Art. 154.

The «Tribunal d'Arrondissement dealing with commercial matters»72 may, in exceptional circumstances, upon application by shareholders or society members representing one-fifth of the corporate interests, notified by court process server upon the company in the form of a writ, appoint one or more auditors with the duty to examine the books and accounts of the undertaking.

The court shall hear the parties in chambers and shall give its decision in open court.

The order shall specify the matters to be investigated and shall determine the amount to be paid in escrow in advance to cover the payment of expenses; the said expenses may be included in those of the proceedings which may result from such findings.

The report shall be lodged at the registry.

Art. 155.

Members of associations momentanées shall be summoned directly and individually.

There shall be no direct right of action between third parties and a participant who has confined himself to mere participation.

**Art. 156.**

Actions against companies shall be prescribed after the same period as actions against individuals.

**Art. 157.**

The following prescribe after five years:
- all actions by third parties against members or shareholders, from the publication either of their withdrawal from the company or of an instrument of dissolution or the expiry of its contractual term;
- all actions by third parties for the recovery of dividends improperly distributed, from the distribution thereof;
- all actions against liquidators, in such capacity, from the publication prescribed by Article 151;
- (Law of 25th August, 2006) «all actions against managers, directors, members of the management board, members of the supervisory board, commissaires [supervisory auditors] or liquidators, for action taken by them in that capacity, as from the time of such action, or if they were fraudulently concealed, from the discovery thereof;»
- (Law of 23rd November, 1972) «all actions for the avoidance of a société anonyme, a société à responsabilité limitée or a société en commandite par actions, based on Article 12ter, paragraph 1, sub-paragraphs 1° and 2°, from publication where the contract has been performed for at least five years, without prejudice to any damages which may be due;
- all actions for the avoidance of a société coopérative, from publication where the contract has been performed for at least five years, without prejudice to any damages which may be due. However, the avoidance of sociétés coopératives whose existence is contrary to law may be applied for, even after expiry of the prescription period.»

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73 Pursuant to art. 10 2nd paragraph of the law of 18th December 2009 on the audit profession, professional liability actions against a réviseur d'entreprises agréé [approved statutory auditor] or a cabinet de réviseurs agréé [approved audit firm] shall be prescribed 5 years after the date of the audit report.
Section X. - Companies constituted in foreign jurisdiction

Art. 158.

All companies or associations constituted or having their registered office in a foreign jurisdiction may carry on business and act in the courts in the Grand-Duchy.

Art. 159.

(Law of 25th August, 2006)
«Any company whose central administration (head office) is in the Grand-Duchy shall be subject to Luxembourg law, even though the constitutive instrument may have been executed in a foreign jurisdiction.»

(Law of 31st May, 1999)
In case the domicile of a company is located in the Grand-Duchy of Luxembourg, it is of Luxembourg nationality and Luxembourg law is fully applicable to it.

In case the domicile of a company is located abroad but such company has in the Grand-Duchy of Luxembourg one or more locations where it conducts operations, the place of its most important establishment in the Grand-Duchy of Luxembourg, which it shall indicate for that purpose in the documents whose publication is required by law, shall constitute the secondary domicile of that company in the Grand-Duchy of Luxembourg.

The absence of a known domicile of a company constitutes a serious contravention of the law, which may lead to its dissolution and court-ordered close-down in application of articles 203 and 203-1.

Art. 160.

The Articles relating to the publication of instruments and balance sheets and Articles 76, 105 and 130, shall apply to foreign commercial companies or companies constituted in one of the forms of commercial companies, which establish a branch or any operational seat in the Grand Duchy.

The persons entrusted with the management of the Luxembourg branch or office shall be subject to the same liability towards third parties as if they were managing a Luxembourg company.

The Articles mentioned in paragraph 1 shall also apply to foreign companies with a branch or operational seat in the Grand Duchy at the time of coming into force of the present law.

(Law of 27th November, 1992)
«Art. 160-1.

For the companies referred to in Articles 160-2 and 160-6, Article 160, first paragraph is replaced by Articles 160-2 to 160-11.»
Branches opened in the Grand-Duchy of Luxembourg by a company which is governed by the law of another Member State of the European Community and to which Directive 68/151/EEC of 9th March, 1968 applies shall disclose, in accordance with Article 9, the following documents and particulars:

a) the address of the branch;

b) particulars on the activities of the branch;

c) the register in which the company file mentioned in Article 3 of Directive 68/151/EEC is kept, together with the registration number in that register;

d) the corporate denomination and legal form of the company and the name of the branch if it is different from the corporate denomination of the company;

e) the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings;

- as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 2, paragraph 1, item (d) of Directive 68/151/EEC;

- as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;

f) the dissolution of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation as provided for in Article 2, paragraph 1, items (h), (j) and (k) of Directive 68/151/EEC;

- bankruptcy proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;

g) the accounting documents in accordance with Article 160-3;

h) the closure of the branch.”

The compulsory disclosure provided for by Article 160-2, item g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with Directives 78/660/EEC, (Law of 27th November, 1992) 83/349/EEC and 84/253/EEC.
The documents referred to in the preceding paragraph must be published in the following languages: French, German, English.

(Law of 19th December, 2002)
[89/666/EEC art. 5]


Where a company has opened more than one branch in the Grand-Duchy of Luxembourg, the disclosure referred to in Article 160-3 may be made in the file of the branch of the company’s choice.

In that case, the disclosure obligations by the other branches shall consist in the number of that branch in that register.

(Law of 27th November, 1992)
[89/666/EEC art. 6]

«Art. 160-5.

Letters and order forms used by a branch shall state, in addition to the information prescribed by Article 4 of Directive 68/151/EEC, the register in which the file in respect of the branch is kept together with the registration number of the branch in that register.

(Law of 27th November, 1992)
[89/666/EEC art. 7 and art. 8]


Branches opened in the Grand-Duchy of Luxembourg of companies which are not governed by the law of a Member State of the European Community but which are of a legal form comparable with the types of company to which Directive 68/151/EEC applies, shall disclose the following documents and particulars:

a) the address of the branch
b) particulars on the activities of the branch;
c) the law of the State by which the company is governed;
d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;
e) the constitutive instrument and the articles of association if they are contained in a separate instrument, with all the amendments to these documents;
f) the legal form of the company, its registered office and its object and, at least annually, the amount of subscribed capital if these particulars are not given in the documents referred to in subparagraph e);
g) the corporate denomination of the company and the name of the branch if that is different from the corporate denomination of the company;
h) the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings:
- as a company organ constituted pursuant to law or as members of any such organs;
- as permanent representatives of the company for the activities of the branch;

The extent of the powers of those persons must be stated, together with whether they may act alone or must act jointly;

i) the dissolution of the company and the appointment of liquidators,
particulars concerning them and their powers and the termination of the liquidation;
- bankruptcy proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;
j) the accounting documents in accordance with Article 160-7;
k) the closure of the branch.

(Law of 27th November, 1992)
[89/666/EEC art. 9]


The compulsory disclosure provided for by Article 160-6. item (j) shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State which governs the company.

Where they are not drawn up in accordance with, or in a manner equivalent to, Directives 78/660/EEC and (Law of 23rd March, 2007) «83/349/EEC», accounting documents relating to the activities of the branch shall be drawn up and disclosed in accordance with Luxembourg law. (Law of 18th December, 2009) « Where the branch exceeds the criteria for a small company, as set out in article 35 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the audit of the accounting documents by one or more réviseurs d’entreprises agréés [approved statutory auditors] is compulsory. Article 36 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings also applies. »

(Law of 18th December, 2009)

« The appointment of the réviseur(s) d’entreprises agréé(s) shall be made by the person entrusted with the management of the branch.»

Articles 160-3, paragraph 2 and article 160-4 apply to the documents referred to in Article 160-7, first paragraph and the documents referred to in Article 160-6, item e).»

(Law of 19th December, 2002)

«Where these documents are not drawn up in accordance with or in a manner equivalent to directive 78/660/EEC and (Law of 23rd March, 2007)
83/349/EEC», accounting documents relating to the activities of the branch shall be drawn up and disclosed in accordance with Luxembourg law. (Law of 18th December, 2009) « Where the branch exceeds the criteria for a small company, as set out in article 35 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the audit of the accounting documents by one or more réviseurs d'entreprises agréés [approved statutory auditors] is compulsory.»

(Law of 27th November, 1992)
[89/666/EEC art. 10]

Article 160-5. shall apply to letters and order forms used by the branches covered by Article 160-6.»

(Law of 27th November, 1992)

The persons entrusted with the management of the Luxembourg branches are responsible for compliance with the obligations provided for by Articles 160-2 to 160-8.»

(Law of 27th November, 1992)
«Art. 160-10.

Where the disclosure made at the branch is different from the disclosure made at the company, the former shall prevail for dealings made with the branch.»

(Law of 27th November, 1992)

Article 160-3, first paragraph and Article 160-7, first and second paragraph do not apply to Luxembourg branches set up by credit institutions and financial institutions subject to Directive 89/117/EEC.

The same applies to branches established by foreign insurance companies.»

Art. 161. (abrogated by the law of 10th July, 2005)
Section XI. - Criminal law provisions


«Art. 162.

Any person who, purporting to be the owner of shares or bonds which do not belong to it, participates in a company constituted under the present law, in any vote in a general meeting of shareholders or bondholders and any person who has delivered shares or bonds so that they may be used for the purpose described above are punishable by a fine of «500 to 25,000 euros».


«Art. 163.

«The same penalty shall be imposed upon:

1° (Law of 23rd March, 2007) «the persons who fail to include the information required by Articles 26, 27, 29 and 31 in the instruments, draft instruments or notices published in the Mémorial or lodged in accordance with Article 9, in subscription forms, prospectuses, circulars addressed to the public, announcements and notices published in newspapers»;

2° the managers and directors who have failed to submit to the general meeting within six months after the end of the financial year, the annual accounts, the consolidated accounts, the management report, the certificate of the person entrusted with the audit as well as the managers and directors who have failed to publish such documents in violation of the requirements of Articles 75, 132, 197, 252 and 341 of this law and article 79 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.»

3° the directors, commissaires [supervisory auditors] or liquidators who have failed to convene, within three weeks of being requested to do so, the general meeting provided for in Article 70, second paragraph;

4° the persons who contravene the regulations adopted in implementation of Article 137, first paragraph concerning the audit of sociétés coopératives;

5° the managers of sociétés à responsabilité limitée and of civil companies and, in the latter, in the absence of managers, the members, who have failed to publish changes of membership in accordance with Article 11bis, §2, 3);

6° the managers who, directly or through intermediaries have opened a public subscription for corporate units or bonds of a société à responsabilité limitée;

7° the directors of sociétés anonymes who fail to lodge the report referred to in Article 49-5, paragraph (2), or who present a report not containing the minimum information prescribed thereby;

8° the persons referred to in Article 160-9 who have failed to carry out the publications provided for by Articles 160-2 to 160-4, 160-6, 160-7.

**Art. 164.**

Shall be regarded as guilty of *escroquerie* (fraud) and be subject to the penalties laid down in the *Code Pénal* (Criminal Code) any person who shall have caused any subscriptions or payments to be made, or shares, bonds or other securities of companies to be purchased:

- by simulating subscriptions or payments to a company;
- by publishing subscriptions or payments which they know not to exist;
- by publishing the names of persons described as being now or in the future associated with the company on any basis whatsoever, when they know that such description is untruthful;
- by publishing any other facts which they know to be false.

(1988 Law, 1994 Law)

**«Art. 165.****

Shall be subject to a jail term of one month to two years and a fine of «5,000 to 125,000 euros» any person who, by any fraudulent means, caused or attempted to cause the price of company shares, bonds or other securities to rise or fall.

(2006 Law)

**«Art. 166.****

The following shall be subject to a jail term of one month to two years and a fine of 5,000 to 125,000 euros or to either one such penalties:

1° the managers or directors who have fraudulently given incorrect information in the statement of bonds outstanding referred to in Article 94-1.

2° the managers or directors who, with fraudulent intent, have failed to publish the annual accounts, the consolidated accounts, the management report and the certificate of the person entrusted with the audit, as provided for by Articles 75, 132 and 341 and Article 79 of the law of 12th December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

3° (…) (1988 Law) (abrogated by the 2005 Law)


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75 See footnote to article 162.
(Law of 11th July, 1988)

«Art. 167.

Any manager or director who, in the absence of inventories, or notwithstanding inventories, or by means of fraudulent inventories, have caused dividends or interest to be distributed to shareholders which was not taken from the actual profits and any director who contravenes Article 72-2, shall be subject to the same penalty.»

(Law of 24th April, 1983)

«Art. 168.

The same penalties shall apply to any person who, in his capacity as director, commissaire [supervisory auditor], manager or member of the supervisory committee, knowingly:
- repurchased shares by decreasing the corporate capital or the legal reserve, contrary to the provisions of Article 49-2 in the case of sociétés anonymes;
- made loans or advances using company funds on shares or other interests in the company, contrary to Articles 49-6 and 49-7 in the case of sociétés anonymes.»

(Law of 12th March, 1998)

«- ordered, authorised or accepted that another company, as defined in Article 49bis, paragraph (1), sub-paragraphs a) and b), subscribes, acquires or holds shares in the conditions referred to in the provisions of sub-paragraphs a) and b) of paragraph (1) of Article 49bis and in violation of Article 49-2.»

(Law of 24th April, 1983)

«- made by any means whatsoever, at the expense of the company, payments on shares or corporate units or acknowledged payments to have been made which have not in fact been made in the prescribed manner and at the prescribed times;»

(Law of 11th July, 1988)

«Art. 169.

Shall be subject to a «criminal jail term of five to ten years» and a fine of «5,000 to 250,000 euros» any person who has committed forgery with fraudulent intent or the intent to cause damage, in the balance sheets or the profit and loss accounts of companies prescribed by law or by the articles thereof,
either by means of false signatures,
or by the forgery or alteration of records or signatures,

or by the fabrication of agreements, provisions, obligations or discharges
or by insertion thereof in the balance sheets or profit and loss accounts
after the event, or
by the addition or alteration of clauses, declarations or facts which these
documents are intended to include and record.»

Art. 170.

Any person making use of such false instrument shall be punished as if
he had done the forgery.

Art. 171.

The balance sheet shall exist, for the purpose of application of the
foregoing Articles, as from the time it is submitted for inspection to the
shareholders or members.


«Art. 171-1

Shall be subject to a jail term of one to five years and a fine of « 500 to
25,000 euros» or either one of these penalties, the legally appointed or de facto
directors, who, in bad faith,
- will have made a use of the assets or the credit of the company
which they knew was contrary to its interests, for personal
purposes or for the benefit of an other company or undertaking
in which they were directly or indirectly interested in;
- will have made a use of the power they had or the votes they
could cast, in that capacity, which they knew was contrary to its
interests, for personal purposes or for the benefit of an other
company or undertaking in which they were directly or indirectly
interested in.»

Art. 172.

The provisions of the first livre (book) of the Code Pénal (Criminal Code)
and «the provisions of Articles 130-1 to 132-1 of the Code d'Instruction Criminelle
(Criminal Procedure Code)» shall apply to the offences provided for in this law.

77 As amended pursuant to the law of 13th June, 1994 concerning penal sanctions (Mém.A - 59 of 7th July,
1994, p.1096; doc.parl. 2974) and the law of 1st August, 2001 on euro conversion (Mém.A - 117 of 18th
September, 2001, p.2440; doc.parl. 4722).
78 As amended pursuant to the law of 13th June, 1994 concerning penal sanctions (Mém.A - 59 of 7th July,
(Law of 25th August, 2006)

«Art. 173.

Evidence of the accusations made against managers, directors and commissaires [supervisory auditors] of sociétés en commandite par actions, sociétés anonymes and sociétés coopératives, by reason of facts relating to their management or supervision, shall be admitted, either against such persons or against the company, by all ordinary methods of proof unless the opposite is proven by the same methods, all in accordance with the law of 8th June 2004 on the freedom of expression in the media.»

(Law of 25th August, 2006)

«Art. 173bis.

The sanctions prescribed by articles 162 to 173 are applicable, depending on their respective duties, to the members of the management board and to the members of the supervisory board of sociétés anonymes governed by articles 60bis-1 to 60bis-19. »
ADDITIONAL PROVISIONS

Art. 174.

Title III of the *livre premier* (first book) of the commercial code, insofar as it has not been abrogated by the law of 16th April, 1879, is repealed as from the date of application of this law.

Art. 175.

The provisions of *(Law of 10th July, 2005) Articles 11, 39 to 42, 48, 62, 63, 67 to 69, 71, 72 to 75, 76, 78, 84* with the exception of the last paragraph, 85 and 152 shall apply to companies incorporated under the previous legislation. - The foregoing list is not limitative.

Articles 86 to 95 inclusive shall not apply to bonds issued before the date of application of the present law except with regard to the granting of special security to the holders of such bonds and the adoption of provisions consequential thereto.

Article 98 shall not apply to bonds issued prior to the date of application of the present law.

The prescription period of five years laid down in Article 157 shall apply even to acts done under the previous law and which would take more than five years to prescribe under the previous law.

Art. 176.

Commercial companies and civil companies incorporated in the form of any of the five commercial companies provided for in Article 3 which existed before the date of application of the present law may not be continued beyond the term fixed for their duration unless all the provisions in their articles which are contrary to this law are removed and the company is made subject to all the provisions hereof.

They may not, before the expiry of that period, make any changes to their articles otherwise than by bringing the clauses affected by the said changes into line with the provisions of the present law.

In such cases, if the relevant company is a *société anonyme*, it shall be exempted from governmental authorisation only if it proceeds in the manner laid down in the first paragraph.

*Sociétés anonymes* enjoying concessions in respect of railways or other works of public utility shall remain subject, in all cases, to the control and supervisory measures laid down in their present articles.
Art. 177.

No company which, after the date of application of this law, has duly operated for a period of one year without the validity thereof being contested, may be declared void under Articles 42 and 46 of the Commercial Code of 1807.

Art. 178.

Private powers of attorney, subscription forms and receipts, as provided for in this law, shall be exempt from stamp duty.
Section XII. - Sociétés à responsabilité limitée
(Private Limited Companies)

(Art. 179.

(1) Sociétés à responsabilité limitée are those in which a limited number of members contribute a specific amount, and the corporate units of which, exclusively represented by non-negotiable securities, may be transferred only in accordance with the terms and conditions provided for in this Section.

(Art. 180.

They may be incorporated to pursue any object whatsoever.

However, insurance, capitalisation and savings companies may not be constituted in that form."

(Art. 180-1.

Sociétés à responsabilité limitée may be incorporated for a limited or unlimited duration.

In the first case, the duration of the company may be successively extended in accordance with Article 199.

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

Neither can credit institutions, see art. 4 of the law of 5th April, 1993 on the financial sector.
Art. 181.

The number of members shall be limited to 40, except that such number may be exceeded in the event of transmission of corporate units upon death or the dissolution of a matrimonial community.

(2nd paragraph abrogated by the law of 28th December, 1992 [89/667/EEC art. 2])

Spouses may validly act as members in companies constituted as sociétés à responsabilité limitée, provided that the corporate contract does not modify the effects of the matrimonial regime of the spouses. In such case, the company may even be formed by the husband and wife as sole members.

(Law of 18th April, 1984)

«The legal guardian of a minor of age or of an incapacitated person may not, without the consent of the family council, participate on behalf of the minor or of the incapacitated person in a private limited company.

The legal representatives may not, even jointly, allocate the assets of a minor of age to a participation in a sociétés à responsabilité limitée unless authorised to do so by the juge des tutelles (court of protection).

A company in which the minor of age or the incapacitated person or the person having authority over them are members, is lawful.»

(Law of 28th April, 1988)

Art. 182.

The corporate capital must be at least «12,394.68 euros» (Law of 21st December, 2006) «It shall be divided into corporate units of an equal value, with or without mention of value ».

(Law of 18th September, 1933)

Art. 183.

The incorporation of a private limited company requires that:

(1° ...) (abrogated by the law of 28th December, 1992 [89/667/EEC art. 2]);

2° the capital be subscribed for in full;

3° the corporate units be fully paid-up at the time of incorporation of the company.»

(Law of 24th April, 1983)

«The subscribers to the constitutive instrument shall be deemed to be founders of the company. However, the constitutive instrument may designate as founder(s) one or more subscribers who together hold at least one third of the capital of the company. In such case, the other parties to the instrument who

Implicitly modified by the law of 1st August, 2001 on euro conversion (Mém.A - 117 of 18th September, 2001, p.2440; doc.parl. 472).
merely subscribe for corporate units for cash without directly or indirectly receiving any specific advantage shall be regarded as mere subscribers.»

(Law of 18th September, 1933)

«Art. 184.

(Law of 28th April, 1988; Law of 18th December, 2009)

«The provisions of Article 27 shall apply to sociétés à responsabilité limitée subject to those concerning the corporate capital and the role of a réviseur d’entreprises agréé [approved statutory auditor] in the description of contributions made otherwise than in cash.»

(Law of 23rd November, 1972)

«The founders within the meaning of Article 28 paragraph 2, and, in the event of an increase of the corporate capital, the managers, shall be jointly and severally liable towards all interested parties, notwithstanding any provision to the contrary for:

1° any portion of the capital which will not have been validly subscribed for as well as for any outstanding balance between the minimum capital required by Article 182 and the amount subscribed for; they shall ipso jure be deemed to be subscribers thereof;

2° the full and complete effective payment of the corporate units and of the portion of the capital for which they are deemed to be subscribers pursuant to 1° above;

3° the indemnification of any damage which is the immediate and direct result of either the avoidance of the company by application of Article 12ter or the omission or incorrectness of the statements prescribed by Article 27.

Any person who enters into a commitment for a third party mentioned by name in the instrument, either as agents or as surety, shall be deemed to be personally committed if he has no valid mandate or if the commitment is not ratified within two months of the commitment. The founders shall be jointly and severally liable for such commitments.»

(Law of 18th September, 1933)

«Art. 185.

Without prejudice to the obligations deriving from Article II81, every société à responsabilité limitée must maintain a register containing completed and conformed copies:

1° of the constitutive instrument of the company;

2° of the instruments amending said instrument.

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81 Article II of the law of 18th September, 1933 which amends Articles 2, 3, 4 paragraph 1, 8, 9 last paragraph, Article 11 paragraph 2, Articles 36, 83, 142 paragraph 1 and Article 163 of the law of 10th August, 1915 as at 18th September, 1933.
A list of the names, professions and addresses of the members, a record of transfers of corporate units and the date of service or acceptance thereof shall appear thereafter. Every member may inspect said register.»

(\textit{Law of 18th September, 1933})

\textbf{Art. 186.}

A \textit{société à responsabilité limitée} shall be described either by a corporate denomination or by an indication of the object of its undertaking or by a firm name comprising the names of one or more members. Article 25 paragraphs 2 and 3 shall apply to \textit{sociétés à responsabilité limitée}.

(...)(paragraph abrogated by the law of 28th December, 1992)

(\textit{Law of 23rd November, 1972})
[68/151/EEC art. 4]

\textbf{Art. 187.}

All instruments, invoices, notices, publications, letters, order notes and other documents issued by \textit{sociétés à responsabilité limitée} must state:

1) the corporate denomination of the company;
2) the words "\textit{société à responsabilité limitée}" reproduced legibly and in full;
3) a precise indication of the registered office;
4) \textit{(Law of 19th December, 2002)}
   - the words \textit{«Registre de commerce et des sociétés, Luxembourg»} or the initials \"R.C.S. Luxembourg\" followed by the registration number\textit{»}
   \textit{(Law of 28th April, 1988)}
5) the amount of the corporate capital.\textsuperscript{82}
\textit{(Law of 23rd November, 1972)}
   - Articles 76 paragraphs 2 and 3, 77 and 78 shall apply thereto.

(\textit{Law of 18th September, 1933})

\textbf{Art. 188.}

No loan may be obtained by the public issue of bonds nor may corporate units be the subject of a public issue.

The corporate units may not be represented by negotiable instruments whether in registered or bearer form or to order, but only by participation certificates in the name of a specific person. They may only be transferred in accordance with the substantive and procedural conditions provided for in the two following Articles.»

\textsuperscript{82} See also art. 25 of the law of 28th December, 1988 on the right of establishment.
Art. 189.

Corporate units may not be transferred *inter vivos* to non-members unless members representing at least three-quarters of the corporate capital shall have agreed thereto in a general meeting.

Corporate units may not be transmitted by reason of death to non-members except with the approval of owners of corporate units representing three-quarters of the rights owned by the survivors.

In the case referred to in paragraph 2, no consent shall be required where the corporate units are transferred either to heirs compulsorily entitled to a portion of the estate or to the surviving spouse or, insofar as the articles so provide, to other legal heirs.

Heirs or beneficiaries of last will provisions or contractual instruments affecting the estate who have not been approved and who have not found a transferee fulfilling the requisite conditions may cause the company to be prematurely dissolved, three months after giving formal notice, served on the manager by process-server and notified to the members by registered mail.

However, during the said period of three months, the corporate units of the deceased may be acquired either by the members, subject to the requirements of the last sentence of Article 199, or by a third party approved by them, or by the company itself if it fulfils the conditions required for the acquisition by a company of its own shares.

The repurchase price of the corporate units shall be calculated on the basis of the average balance sheet for the last three years and, if the company has not been operating for three financial years, on the basis of the balance sheet of the last year or of the last two years.

If no profit has been distributed, or if no agreement is reached as to the application of the basis for repurchase referred to in the foregoing paragraph, the price shall, in the event of disagreement, be determined by the courts.

The exercise of the rights attached to the corporate units of the deceased shall be suspended until the transfer of such rights is valid vis-à-vis the company.

Art. 190.

Transfers of corporate units must be recorded by a notarial instrument or by a private document.

Art. 190.

Transfers shall not be valid vis-à-vis the company or third parties until they shall have been notified to the company or accepted by it in accordance with the provisions of article 1690 of the Civil Code.
(Law of 23rd November, 1972)

«Art. 191.

Sociétés à responsabilité limitée shall be managed by one or more agents, who may but are not required to be members and who may receive a salary or not.

They shall be appointed by the members, either in the constitutive instrument or in a subsequent instrument, for a limited or undetermined period. Unless otherwise provided for in the articles, they may be removed, regardless of the method of their appointment, for legitimate reasons only.»

(Law of 23rd November, 1972)
[68/151/EEC art. 9]

«Art. 191bis.

Unless the articles provide otherwise, each manager may take any actions necessary or useful to realise the corporate object, with the exception of those reserved by law to be decided upon by the members.

Each manager shall represent the company vis-à-vis third parties and in legal proceedings, either as plaintiff or defendant. Writs served on behalf of or against the company shall be validly served in the name of the company alone.

Any limitations to the powers of the managers resulting from the articles are not valid vis-à-vis third parties, even if they have been published.

However, the articles may authorise one or more managers to represent the company alone or jointly, and any such clause shall be valid vis-à-vis third parties subject to the conditions laid down in Article 9.

The company shall be bound by any acts of the managers even if such acts exceed the corporate object, unless it proves that the third party knew that the acts exceeded the corporate object or could not in view of the circumstances have been unaware of it, without the mere publication of the articles being sufficient to constitute such proof.»

(Law of 18th September, 1933)

«Art. 192.

The managers shall be liable in accordance with Article 59.»

(Law of 18th September, 1933)

«Art. 193.

Resolutions of members shall be adopted at general meetings.

However, the holding of general meetings shall not be obligatory where the number of members does not exceed twenty-five. In such case, each member shall receive the precise wording of the text of the resolutions or decisions to be adopted and shall give his vote in writing.»
Art. 194.

No decision shall be validly adopted in the two cases envisaged in the foregoing Article unless it has been adopted by members representing more than half of the corporate capital. Unless otherwise provided for in the articles, if that figure is not reached at the first meeting or first written consultation, the members shall be convened or consulted a second time, by registered letter, and decisions shall be adopted by a majority of the votes cast, regardless of the portion of capital represented.

Art. 195.

Notwithstanding any provision to the contrary in the constitutive instrument, every member shall be entitled to take part in the resolutions. Each member shall have a number of votes equal to the number of corporate units held by him.

Art. 196.

In companies with more than twenty-five members, at least one annual general meeting must be held each year at the time determined in the articles. Other meetings may always be convened by the manager or managers, failing which by the supervisory board, if it exists, failing which by members representing more than half the capital of the company.

Art. 197.

Each year, management must prepare an inventory indicating all the movable and immovable assets of and all debts owed to and by the company, with an annex summarising all its commitments, and the debts of the managers, commissaires [supervisory auditors] and members towards the company. Management prepares the balance sheet and the profit and loss account in which the necessary depreciation charges must be made. The balance sheet shall separately mention fixed assets and the current assets and, on the liability side, the debts of the company towards itself, bonds, indebtedness secured by mortgages or pledges and indebtedness without the benefit of securities on assets. It shall specify on the liability side the amount of the indebtedness towards members. Each year, at least one-twentieth of the net profits shall be allocated to the creation of a reserve; the allocation shall cease to be compulsory when the

See footnote to article 32(1) in case of conversion of capital into euro.
reserve has reached an amount equal to one-tenth of the corporate capital, but shall again become compulsory if the reserve falls below such one-tenth.

The balance sheet and profit and loss account shall be submitted to the members for approval who shall vote specifically as to whether discharge is to be given to the management and the members of the supervisory board, if any.»

(Law of 18th September, 1933)

«Art. 198.

Every member, either personally or through an appointed agent, may obtain communication at the registered office of the inventory, the balance sheet and the report of the supervisory board set-up in accordance with Article 200.

In companies with more than twenty-five members, such communication shall be permitted only during the fifteen days preceding the said general meeting.»

(Law of 18th September, 1933)

«Art. 199.

Members may not change the nationality of the company otherwise than by unanimous vote. Any other changes to the articles shall, subject to any provision to the contrary, be resolved upon by a majority of members representing three-quarters of the corporate capital\(^{84}\). However, in no case may the majority oblige any of the members to increase his participation in the company.»

(Law of 18th September, 1933)

«Art. 200.

In all sociétés à responsabilité limitée with more than twenty-five members, supervision of the company must be entrusted to a supervisory board comprising one or more commissaires [supervisory auditors], who may or may not be members.

The board shall be appointed in the constitutive instrument of the company. It shall be subject to re-election at the times specified in the articles.

The powers of the members of the supervisory board and their responsibility shall be determined in accordance with Article 62 paragraphs 1 and 3 of the law.»

(Law of 29th December, 1992)

[89/667/EEC art. 4]

«Art. 200-1.

Articles 194, 196 and 199 are not applicable to companies with one sole member.»

\(^{84}\) See footnote to article 32 (1) in case of conversion of capital into euro.
(Law of 29th December, 1992)
[89/667/EEC art. 4 and 5]


The sole member exercises the powers of the general meeting.

The decisions of the sole member which are taken in the scope of the first paragraph are recorded in minutes or drawn-up in writing.

Also, contracts entered into between the sole member and the company represented by him are recorded on minutes or drawn-up in writing. This provision is not applicable to current operations entered into under normal conditions.»

(Law of 18th September, 1933)

«Art. 201.

An action for recovery of dividends not corresponding to profits actually earned may be taken against the members who have received them. The action for recovery shall prescribe five years after the date of distribution.»

(Law of 18th September, 1933)


Unless otherwise provided in the articles, the company shall not be dissolved by the fact that any of its members becomes subject to such order of restraint or is declared bankrupt, or his insolvency or death.

Article 128 shall apply to sociétés à responsabilité limitée.»
Section XII bis - Court-ordered dissolution and close-down

(Art. 203)

(1) The Tribunal d'Arrondissement dealing with commercial matters, may, at the application of the Procureur d'Etat (Public Prosecutor), order the dissolution and the liquidation of any company governed by Luxembourg law which pursues activities contrary to criminal law or which seriously contravenes the provisions of the commercial code or the laws governing commercial companies including those laws governing authorisations to do business.  

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

(3) Upon ordering the liquidation, the court shall appoint a supervisory judge and one or more liquidators. It shall determine the method of liquidation. It may render applicable to such extent as it may determine, the rules governing the liquidation of a bankruptcy. The method of liquidation may be changed by subsequent decision, either of the court's own motion or at the request of the liquidator or liquidators.

(4) Court decisions ordering dissolution and liquidation of a company shall be published by extract in the Mémorial. The court, may, in addition, and regardless of the publications to be made in newspapers printed in Luxembourg, order publication thereof, by extract, in such foreign newspapers as it may designate. The publications shall be arranged by the liquidator or liquidators.

(5) The court may decide that the judgement ordering dissolution and liquidation shall be enforceable on a provisional basis.

(6) In case the absence or an insufficiency of assets is ascertained by the supervisory judge, the expenses and fees of the liquidators, which shall be ruled upon by the court, shall be borne by the State and be paid as legal expenses.

(7) Actions against liquidators shall prescribe five years after publication of the completion of the liquidation.»

85 A serious violation of the law of 31st May, 1999 on, inter alia the domiciliation of companies shall constitute a ground of application of articles 203 and 203-1. (article 5 of the law of 31st May, 1999).
(Law of 31st May, 1999)

«Art. 203-1.

(1) The Tribunal d’Arrondissement dealing with commercial matters, may, at the application of the Procureur d’Etat (Public Prosecutor), order the close-down of any establishment of a foreign company which pursues activities contrary to criminal law or which seriously contravenes the provisions of the commercial code or the laws governing commercial companies including those laws governing authorisations to do business.\(^{86}\)

(2) The application and the procedural deeds shall be served through the greffe. If the company can not be contacted at its legal domicile in the Grand-Duchy of Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg. The court may in addition order publication thereof, by extract, in such foreign newspapers as it may designate.

(3) Court decisions ordering the close-down of the establishment of a foreign company shall be published by extract in the Mémorial\(^{87}\). The court, may, in addition, and regardless of the publications to be made in newspapers printed in Luxembourg, order publication thereof, by extract, in such foreign newspapers as it may designate. The publications shall be arranged by the Procureur d’Etat.

(4) The court may decide that the judgement ordering the close-down of the establishment of a foreign company shall be enforceable on a provisional basis.

(5) Shall be subject to a jail term of eight days to five years and a fine of «1,250 to 125,000 euros»\(^{88}\) or to one of those penalties, any person who shall be in breach of a judgement ordering a close-down pursuant to this article.

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\(^{86}\) A serious violation of the law of 31st May, 1999 on, inter alia the domiciliation of companies shall constitute a ground of application of articles 203 and 203-1. (article 5 of the law of 31st May, 1999).

\(^{87}\) The Mémorial C, Recueil des Sociétés et Associations.

\(^{88}\) Implicitly modified by the law of 1st August, 2001 on euro conversion (Mém. A – 117 of 18th September, 2001, p. 2440; doc. parl. 4722).
Section XIII. - Company accounts

(abrogated by the law of 19th December, 2002)\(^9\)

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\(^9\) Effective 1st January, 2005, this entire Section XIII has been abrogated pursuant to the law of 19th December, 2002. The law of 19th December, 2002 contains largely identical provisions. For a translation of those provisions, see Annex I hereto.
Section XIV. - Mergers

(Law of 7th September, 1987; Law of 23rd March, 2007)
[78/855/EEC art. 1] [2005/56/EC art. 4.2]

Art. 257.

The present Section shall apply to all companies with legal personality pursuant to this law and to economic interest groupings.

A merger can also occur where one or more of the companies or economic interest groupings which are acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to composition with creditors or a similar procedure such as the suspension of payments, controlled management or proceedings instituting special management or supervision of one or more of such companies.

(Law of 10th June, 2009)

A company or an economic interest grouping as referred to in the first paragraph may also enter into a merger transaction with a foreign company or a foreign-law-governed economic interest grouping, provided the latter's national law does not prohibit such a transaction and such foreign company or economic interest grouping complies with the provisions and formalities of the national law by which it is governed, without prejudice to the provisions of Article 21 of Regulation (EC) No 139/2004 of 20th January 2004 on the control of the concentrations between undertakings. These mergers shall hereafter be referred to as «cross-border mergers».

The foreign law provisions and formalities referred to in the previous paragraph in particular concern the decision-making process relating to the merger and, taking into account the cross-border nature of the merger, the protection of creditors of the merging companies, holders of bonds and holders of securities or corporate units, as well as employees with respect to rights other than those concerning employee participation.

Where one of the merging companies is operating under an employee participation system and the company resulting from the cross-border merger is a Luxembourg-law-governed company governed by such a system in accordance with the provisions referred to in Articles L.426-13 and L. 426-14 of the Labour Code, that company shall be required to take the form of a société anonyme.

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90 The law of 10th June 2009 inter alia on cross-border merger of limited liability companies amends a number of provisions and formalities concerning merger. Article 32 of that law provides for the application of the new rules for all mergers for which the common draft terms of merger referred to in Article 262 of the law of 1915 are published the first day of the first month following the entry into force of the new law i.e. all draft terms of merger published on or after 1st August 2009.

91 These articles are included in Section 4: «Employee participation in case of cross border mergers» of Chapter VI, Title II of Book IV of the Labour Code which implements article 16 of Directive 2005/56/EC.
Where in the provisions below a reference is made to a « company » or to
the « companies », such term shall be understood, save where specified
differently, as also referring to (an) « economic interest grouping(s) ».

(Law of 7th September, 1987)
[78/855/EEC art. 2]
« Art. 258.

A merger shall be carried out by the acquisition of one or more
companies by another or by the incorporation of a new company.

(Law of 7th September, 1987)
[78/855/EEC art. 3]
« Art. 259.

(Law of 10th June, 2009)
(1) « Merger by acquisition is the operation whereby one or more companies,
following their dissolution without liquidation, transfer to another pre-
existing company, all their assets and liabilities in exchange for the issue to
the members of the company or companies being acquired of shares or
corporate units in the acquiring company and a cash payment, if any, not
exceeding 10% of the nominal value of the shares or corporate units so
issued or, in the absence of a nominal value, of their accounting par
value.»

(2) « Merger by acquisition may also take place where one or more of the
companies being acquired are in liquidation, provided that those
companies have not yet begun to distribute their assets to their
members.»

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 17.2]
(3) « Where a société européenne (SE) is formed by way of a merger by
acquisition, the acquiring company shall take the form of a société
européenne (SE) when the merger takes place. »

(Law of 7th September, 1987)
[78/855/EEC art. 4]
« Art. 260.

(Law of 23rd March, 2007)
« (1) Merger by incorporation of a new company is the operation whereby
several companies, following their dissolution without liquidation,
transfer to a company which they incorporate, all their assets and
liabilities in exchange for the issue to their members of shares or
corporate units in the new company and a cash payment, if any, not
exceeding 10% of the nominal value of the shares or corporate units so
issued or, in the absence of a nominal value, of their accounting par value.

(2) Merger by incorporation of a new company may also take place where one or more of the companies which are ceasing to exist are in liquidation, provided that those companies have not yet begun to distribute their assets to their members.»

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 17.2]

(3) «Where a société européenne (SE) is formed by way of a merger by the formation of a new company, the société européenne (SE) shall be the newly formed company. »

Sub-Section I. - Merger by acquisition

[78/855/EEC art. 5] [EC Regulation 2157/2001, art. 20.1] [2005/56/EC art. 5]

«Art. 261.

(1) The administrative or management bodies of the merging companies shall draw up common draft terms of merger in writing.

(2) The common draft terms of merger shall specify:

a) the form, corporate denomination, and registered office of the merging companies and those proposed for the company resulting from the merger;

b) the share or corporate unit exchange ratio and, where appropriate, the amount of any cash payment;

c) the terms for the delivery of the shares or corporate units in the acquiring company;

d) the date as from which those shares or corporate units shall carry the right to participate in the profits and any special condition regarding that right;

e) irrespective of the effective date of the merger pursuant to Articles 272, 273, 273bis and 273ter, the date from which the operations of the company being acquired shall be treated for accounting purposes as being carried out on behalf of the acquiring company;

f) the rights conferred by the acquiring company to shareholders having special rights and to the holders of securities other than shares or corporate units, or the measures proposed concerning them;

g) any special advantages granted to the experts referred to in Article 266, to the members of the administrative, management, supervisory or control bodies of the merging companies.

(3) Where a société européenne (SE) is formed by way of a merger, the draft terms shall also include:

(1) The common draft terms of merger shall be published in accordance with Article 9 and in the National Gazette of each other Member State concerned, for each of the merging companies at least one month before the date of the general meeting convened to decide on the common draft terms of merger.

(2) In case of a cross-border merger, the publication shall also include following particulars:

   a) the type, name and registered office of the merging company;
   b) the register of commerce and companies in which the documents referred to in Article 9 are filed by the acquiring company and the number of the entry in that register, if it is a Luxembourg company; if the legislation of the State of the foreign law governed company provides for a register, the register in which the documents referred to in Article 3(2) of Directive 68/151/CEE of the Council of 9th March, 1968 on coordination of safeguards which, for the protection of the interests of members and others are required by Member States of companies

   92 This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.
   93 See first footnote under Art. 257.
within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community have been filed by the foreign law governed company and if the legislation of the State of the foreign law governed company provides for a registration number in that registry, the registration number in that register;

c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors of such company and the address at which complete information on those arrangements may be obtained free of charge. »

(Law of 7th September, 1987)
[78/855/EEC art. 7.1.]

«Art. 263.

[2005/56/EC art. 9.1]

«(1) A merger shall require the approval of the general meetings of each of the merging companies and, where appropriate, of the holders of securities other than shares or corporate units, after examination of the reports referred to in by Articles 265 and 266. That decision requires that the conditions as to quorum and majority laid down for amendments of the articles are fulfilled. »

(2) In sociétés en commandite simple and in sociétés coopératives, the voting rights of members are in proportion to their share in the corporate assets and the quorum will be calculated by reference to the corporate assets.

(3) The consent of all members is required:

1° in acquiring companies and in companies being acquired which are sociétés en nom collectif, sociétés coopératives the members of which have unlimited and joint liability, civil companies or economic interest groupings:

2° in the companies being acquired where the acquiring company is:

a) a société en nom collectif;

b) a société en commandite simple;

c) a société coopérative the members of which have unlimited and joint liability;

d) a civil company;

e) an economic interest grouping.

In the cases referred to in the first paragraph, items 1° and 2° a), b) and c) the unanimous consent of the holders of corporate units not representing capital will be required.

(4) In sociétés en commandite simple and in sociétés en commandite par actions, the consent of all the unlimited members will in addition be required.
If there is more than one category of shares, securities or corporate units, whether representing capital or not, and if the merger results in a modification to their respective rights, Article 68 shall be applicable.

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 23.2]

«Where a société européenne (SE) is formed by way of a merger, employee involvement in the société européenne (SE) shall be decided pursuant to the provisions implementing Directive 2001/86/EC. The general meeting of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.»

(Law of 10th June, 2009)
[2005/56/EC art. 9.2]

«In case of a cross-border merger, the general meeting of each of the merging companies may reserve the right to make implementation of the cross-border merger conditional on express ratification by it of the arrangements decided on with respect to the participation of employees in the company resulting from the cross-border merger.»

(Law of 7th September, 1987)
[78/855/EEC art. 8] [2005/56/EC art. 9.3]

«Art. 264.

(2) Except in the cases referred to in article 263 paragraphs (2) to (4), approval of the merger by the general meeting of the acquiring company is not necessary if the following conditions are fulfilled:

a) «the publication provided for by Article 262 is made, on behalf of the acquiring company, at least one month before the date of the general meeting of the company or companies being acquired convened to decide on the common draft terms of merger»

b) all the «members » of the acquiring company are entitled, at least one month before the date indicated in paragraph a), to examine at the registered office of that company the documents indicated in Article 267 paragraph (1);

c) one or more «members » of the acquiring company holding at least 5% of the shares (Law of 23rd March, 2007) or corporate units in the subscribed capital are entitled up to the day following the holding of the general meeting of the company being acquired to require the convening of a general meeting of the acquiring company to decide whether to approve the merger. The meeting must be convened in such a manner as to be held within one month of the request for it to be held.»
Art. 265.

[Law of 10th June, 2009]  [2005/56/EC art. 7]
«The administrative and management body of each of the merging companies shall draw up a detailed written report addressed to the members explaining the common draft merger terms of merger and setting out the legal and economic grounds for them, in particular for the share or corporate unit exchange ratio.

The report shall also indicate any special valuation difficulties which may have arisen.

In case of a cross-border merger, the report shall be made available to the members and representatives of the employees, or where there are no such representatives, to the employees themselves, no less than one month before the date of the general meeting which shall decide on the common draft terms of merger. The report shall explain the implications of that merger for members, creditors and employees. Where the management or administrative body of any of the merging companies receives, in good time, an opinion from the representatives of their employees, that opinion shall be appended to the report.»

Art. 266.

(1)  [Law of 7th September, 1987]  [Law of 10th June, 2009; Law of 18th December, 2009]  [78/855/EEC art. 9]  [2005/56/EC art. 8]
«The common draft terms of merger must be the subject of an examination and of a written report to the members. The examination shall be carried out and the report shall be drawn up for each of the merging companies by one or more independent experts to be appointed by the administrative or management body of each of the merging companies. The experts must be chosen among the réviseurs d'entreprises agréés [approved statutory auditors]. However, it is possible to cause the report to be drawn up by one or more independent experts for all the merging companies. In such case, the appointment shall be made, at the joint request of the merging companies, by the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters, in the district in which the registered office of the acquiring company is located, sitting as in urgency matters.

In case of a cross-border merger, that report must be made available one month before the date of the general meeting called to decide on the common draft terms of merger.»
In case of formation of a société européenne (SE) by way of merger or in case of a cross-border merger, the merging companies may jointly apply for the appointment of one or more independent experts to the judge presiding the chamber of the Tribunal d’Arrondissement dealing with commercial matters in the district in which the registered office of one of the companies is located, sitting as in urgency matters or, to a judicial or administrative authority in another State of one of the merging companies or mandate one or more independent experts approved by such an authority.

(2) In the report mentioned in paragraph (1), the experts must in any case state whether, in their opinion, the share exchange ratio is or is not fair and reasonable. Their statement must:

a) indicate the method or methods used to arrive at the proposed share exchange ratio;

b) indicate whether such method or methods are adequate in the circumstances and indicate the values arrived at by each of such methods, and give an opinion as to the relative importance attributed to such methods in determining the value actually adopted.

In addition, the report shall describe any special valuation difficulties which may have arisen.

(3) The rules laid down in paragraphs (2) to (4) of Article 26-1 shall not apply.

(4) Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary verifications.

(Law of 10th June, 2009)

(5) «Neither an examination of the common draft terms of merger by independent experts nor an expert report shall be required if all the members and holders of other securities conferring voting rights of each of the companies involved in the merger have so agreed. »

(Law of 7th September, 1987)
[78/855/EEC art. 11]

«Art. 267.

(1) (Law of 10th June, 2009) «Every member shall be entitled to inspect the following documents at the registered office at least one month before the date of the general meeting called to decide on the common draft terms of merger:

a) the common draft terms of merger;

The directive also allows application to the court and authorities of the Member State of the new company resulting from the merger.
b) the annual accounts and the annual reports of the merging companies for the last three financial years;

c) an accounting statement drawn up as at a date which must not earlier than the first day of the third month preceding the date of the common draft terms of merger, if the last annual accounts relate to a financial year which ended more than six months before that date;

d) the reports of the administrative or management bodies of the merging companies referred to in Article 265;

e) where applicable, the reports referred to in Article 266. »

(2) The accounting statement provided for in paragraph (1) c) shall be drawn up using the same methods and the same presentation as the last annual balance sheet.
It shall however not be necessary to take a fresh physical inventory.
Moreover, the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:
- interim depreciation and provisions;
- material changes in actual value not shown in the books.

(3) A full copy or, if so desired, a partial copy, of the documents referred to in paragraph (1) may be obtained by any (Law of 23rd March, 2007)
«member» upon request and free of charge.»

(Law of 23rd March, 2007)
«Art. 267 bis.

(1) A société à responsabilité limitée, a société coopérative or an economic interest grouping can only acquire another company or economic interest grouping if the shareholders or members of such other company or economic interest grouping fulfil the conditions to become shareholder or member of the acquiring company or economic interest grouping.

(2) In sociétés coopératives, each member has the right, notwithstanding any provision to the contrary of the articles of incorporation, to resign at any time and without having to satisfy any other condition, as from the time the general meeting is called in order to resolve on the merger of the company with an acquiring company having a different legal form.
The resignation must be notified to the company by registered mail, deposited at the post office five days at least before the date of the meeting. Such resignation will only be effective if the merger is approved.
The notice to the meeting must include the provisions of the first and second paragraph of this paragraph.
Creditors of the merging companies, whose claims predate the date of publication of the (Law of 23rd March, 2007) «deeds recording the merger provided for by Article 273» [provided for in Article 262] may, notwithstanding any agreement to the contrary, apply within two months of that publication to the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters in the district in which the registered office of the debtor company is located and sitting as in urgency matters, to obtain adequate safeguard of collateral for any matured or unmatured debts, where the merger would make such protection necessary. The president of the court shall reject the application if the creditor is already in possession of adequate safeguards or if such safeguards are unnecessary, having regard to the assets and liabilities of the company after the merger. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt.

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

If the company being acquired is a société en nom collectif, a société en commandite simple, a société en commandite par actions, a société coopérative the members of which have unlimited and joint liability, a civil company or an economic interest grouping, the members of the société en nom collectif, the unlimited members of the société en commandite simple or of the société en commandite par actions or the members of the société cooperative, of the civil company or of the economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which predate the effectiveness against third parties of the merger deed pursuant to Article 273.

If the acquiring company is a société en nom collectif, a société en commandite simple, a société en commandite par actions, a société coopérative the members of which have unlimited and joint liability, a civil company or an economic interest grouping, the members of the société en nom collectif, the unlimited members of the société en commandite simple or société en commandite par actions or the members of the société cooperative, of the civil company or of the economic interest grouping will be severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which pre-date the merger. They may nevertheless be relieved of such liability by an express provision included in the draft terms of the merger and in the merger deed, which will be effective vis-à-vis third parties in accordance with Article 273. »
(Law of 7th September, 1987)  
[78/855/EEC art. 14]  
«Art. 269.»

Without prejudice to the rules governing the collective exercise of their rights, Article 268 shall apply to the holders of bonds of the merging companies, unless the merger has been approved by a meeting of the bondholders or by the bondholders individually.»

(Law of 7th September, 1987)  
[78/855/EEC art. 15]  
«Art. 270.»

(1) (Law of 10th June, 2009) «The holders of securities other than shares or corporate units to which special rights are attached must be given rights, in the acquiring company, at least equivalent to those they possessed in the acquired company.»

(2) Paragraph (1) shall not apply if the alteration to those rights was approved by a meeting of the holders of such securities proceeding in accordance with the conditions as to quorum and majority provided for in Article 263.

(3) (Law of 10th June, 2009) «In the event of failure to convene the meeting provided for in the foregoing paragraph or if such a meeting refuses to accept the proposed alteration, the securities concerned shall be repurchased at the price corresponding to their valuation in the common draft terms of merger, as verified by the independent experts provided for in Article 266.»

(Law of 7th September, 1987)  
[78/855/EEC art. 16]  
[2005/56/EC art. 10 and 11]  
«Art. 271.»

(1) (Law of 10th June, 2009) «The minutes of the general meetings which decide upon the merger shall be drawn up in the form of a notarial instrument; the same shall apply to the common draft terms of merger where the merger need not to be approved by the general meetings of all the merging companies.

(2) The notary must verify and certify the existence and the validity of the legal acts and formalities required of the company in respect of which he is acting and of the common draft terms of merger.  
[EC Regulation 2157/2001, art. 25.2 and 26]  
In case of formation of a société européenne (SE) by way of a merger or in case of a cross-border merger, the notary shall, without delay, issue a certificate conclusively attesting the correct completion of the pre-merger
acts and formalities for the part of the procedure relating to the Luxembourg-law-governed company.
Where a société européenne (SE), formed by way of a merger, is intended to establish its registered office in the Grand-Duchy of Luxembourg, or where the cross-border merger is carried out through the acquisition by a Luxembourg-law-governed company of a foreign-law-governed company, the notary, in order to carry out the legality control incumbent upon him, shall receive from each merging company, the certificate referred to in the foregoing paragraph established by a notary or the competent authority in accordance with the national legislation of each merging company within a period of six months from its issuance, together with a copy of the common draft terms of merger approved by each company. The notary specially verifies that the merging companies have approved the common draft terms of merger in the same terms, and where appropriate that arrangements relating to employee participation have been adopted in accordance with legal provisions implementing Council Directive 2001/86/EC of 8th October, 2001 supplementing the Status for a European company with regard to the involvement of employees95 in/to96 Article 16 of Directive 2005/56/EC of the European Parliament and of the Council of 26th October, 2005 on cross-border mergers of limited liability companies97.

(3) In case of a cross-border merger, if the law of a State to which a merging company is subject provides for a procedure to scrutinise and amend the ratio applicable to the exchange of securities or corporate units, or a procedure to compensate minority members without preventing the registration of the cross-border merger, such procedure shall only apply if the other merging companies situated in a State which does not provide for such procedure explicitly accept, when approving the draft terms of the cross-border merger, the possibility for the members of that merging company to have recourse to such procedure to be initiated before the authority having jurisdiction over that merging company. In such cases, the notary or the competent authority referred to in the previous paragraph may issue the certificate referred to in the previous paragraph even if such procedure has commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the company resulting from the cross-border merger and all its members. »

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95 This directive has been implemented in Articles L.441-1 et seq. of the Labour Code.
97 See first footnote under Art. 257.
Art. 272.

The merger shall take effect when the concurring decisions of the companies involved shall have been adopted.

Art. 273.

1. **(Law of 10th June, 2009)** «The merger shall have no effect vis-à-vis third parties until after the publication in accordance with Article 9 of the minutes of the general meetings who decide on the merger for each merging company has been made or, in the absence of such a meeting, after the publication in accordance with Article 9 of a notary certificate drawn up at the request of the company concerned, recording that the conditions of Article 279 or of Article 281 are fulfilled, has been made.»

2. The acquiring company may carry out the publication formalities in respect of the acquired company or companies.

Art. 273bis.

1. By way of exception to Articles 272 and 273, the merger and simultaneous formation of a société européenne (SE) shall take effect on the date on which the société européenne (SE) is registered at the register of commerce and companies.

2. The société européenne (SE) may not be registered until the formalities provided in Article 271 have been completed.»

3. (…) **(abrogated by the Law of 10th June, 2009)**

Art. 273ter.

1. By derogation to Articles 272 and 273, the merger by acquisition of a foreign-law-governed company shall take effect and shall be effective against third parties, from the date of the publication in accordance with Article 9 of the minutes of the general meeting of the acquiring company which decides on the merger. This date must be after the verifications referred to in Article 271 have been made.
(2) The register of commerce and companies, shall without delay notify to the register in which each merging company was required to file documents, that the cross-border merger has taken effect.

(3) In case of a merger by acquisition of a Luxembourg law governed company, it shall be de-registered on receipt, by the register of commerce and companies, of the notification of the effectiveness of the merger by the register having jurisdiction over the acquiring Company, but not before. »

(Law of 7th September, 1987)
[78/855/EEC art. 19]
«Art. 274.

(Law of 23rd March, 2007)
«(1) The merger shall have the following consequences ipso jure and simultaneously:
   a) the universal transfer, both as between the company being acquired and the acquiring company and vis-à-vis third parties, of all of the assets and liabilities of the company being acquired to the acquiring company;
   b) the members of the company being acquired shall become members of the acquiring company;
   c) the company being acquired shall cease to exist;
   d) the cancellation of the shares or corporate units of the company being acquired held by the acquiring company or the company being acquired or by any person acting in his own name but on behalf of either of those companies.

(2) By way of exception to paragraph (1) a), the transfer of industrial and intellectual property rights and of ownership or other rights on assets other than collateral established on movable and immovable property will be valid vis-à-vis third parties on the conditions provided for in the specific laws governing such operations. The formalities may be completed within a period of six months after the date on which the merger takes effect.»

(Law of 25th August, 2006)
[EC Regulation 2157/2001, art. 29.4]

(3) «The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the société européenne (SE) following its registration.

(Law of 10th June, 2009)

« (4) In case of cross-border mergers, the rights and obligations of the merging companies arising from contracts of employment or from employment
relationships and existing at the date on which the cross-border merger takes effect in accordance with article 273ter paragraph (1) are transferred to the acquiring company at the date on which the cross-border merger takes effect. »

[78/855/EEC art. 21]
«Art. 275.

(Law of 10th June, 2009) « The shareholders of the acquired company may individually take proceedings and exercise a liability action against the members of the administrative or management bodies and the experts provided for in Article 266 to obtain indemnification for any damage which they may have suffered as a result of the misconduct of the members of the administrative or management bodies in preparing for and carrying out the merger or of the experts in the discharge of their duties. Any liability shall be joint and several for the members of the administrative or management bodies or the experts of the acquired company or, where appropriate, for all combined. However, each of them may relieve himself of any liability if he proves that no misconduct is attributable to him personally.»

(Law of 7th September, 1987)
[78/855/EEC art. 22]
«Art. 276.

(Law of 10th June, 2009)
« (1) The avoidance of a merger may only occur in the following circumstances:

a) the avoidance must be ordered by a court decision;
b) where a merger has taken effect pursuant to Article 272, it may only be avoided on the grounds that there was no notarial instrument or private deed, as the case may be, or if it is established that the resolution of the general meeting of either of the companies participating in the merger is void;
c) an action for an avoidance may not be brought after the expiry of a period of six months as from the date on which the merger took effect vis-à-vis the person alleging nullity thereof, or if the situation has been rectified;
d) where it is possible to remedy a defect liable to render a merger void, the competent court shall grant the companies involved a period of time within which to rectify the situation;
e) any court order declaring a merger void shall be published in the manner prescribed by Article 9;
f) third party objections to the court order declaring a merger void shall not be admissible after the expiry of six months from the publication of the court order made in accordance with Article 9;

g) the court order declaring a merger void shall not of itself affect the validity of obligations owed by or to the acquiring company which arose before the publication of the court order and after the date referred to in Article 272;

h) the companies which have been party to the merger shall be jointly and severally liable for the obligations of the acquiring company referred to in paragraph g).

[EC Regulation 2157/2001, art. 30]

(2) In derogation to paragraph (1) b), a merger intended for the formation of a société européenne (SE) may not be declared null and void once the société européenne (SE) has been registered at the register of commerce and companies. The société européenne (SE) may be dissolved in case of absence of scrutiny of the legality of the merger pursuant to Article 271(2).

[2005/56/EC art. 17]

(3) In derogation to paragraph (1) c), the avoidance of a merger by acquisition of a foreign law governed company which has become effective in accordance with Articles 273ter may not be ordered.»

Sub-Section II. - Merger by incorporation of a new company

(Law of 7th September, 1987)
[78/855/EEC art. 23]

"Art. 277.

(1) Articles 261, 262 and 263 as well as Articles 265 to 276 shall apply to mergers by the incorporation of a new company. For such purpose, "merging companies" or "company being acquired" shall describe the companies which cease to exist and "acquiring company" shall refer to the new company.

(2) Article 261, paragraph (2) a) shall also apply to the new company.

(3) (Law of 10th June, 2009) « The common draft terms of merger containing the draft constitutive instrument of the new company must be approved by the general meeting of each of the companies which will cease to exist. The new company shall exist as from the last approval. »

(4) The rules laid down in Article 26-1 (2) to (4) shall not apply to the incorporation of the new company.

(Law of 10th June, 2009)
« (5) Where the new company resulting from a cross-border merger is a Luxembourg-law-governed company, the legality control of the notary referred to in Article 271, paragraph (2) also covers the part of the procedure regarding the formation of that company. »


« Sub-Section III. - Acquisition of one company by another which holds 90% or more of the shares, corporate units and securities conferring voting rights in the first company»

[78/855/EEC art. 24]
«Art. 278.

(Law of 10th June, 2009) [2005/56/EC art. 15.1]

« If the acquiring company holds all the shares, all the corporate units and all other securities conferring voting rights in the companies to be acquired, those companies transfer all of their assets and liabilities to the acquiring company at the moment of their dissolution without liquidation. The operation shall be subject to the provisions of Section XIV, Sub-Section 1., with the exception of Article 261 paragraph (2) b), c) and d), Articles 265 and 266, Article 267, paragraph (1) d) and e), Article 274 paragraph (1) b) and Article 275.

The first paragraph hereof shall not apply to sociétés européennes (SE).

In case of a cross-border merger, the provisions of Article 265 and 267 paragraph (1) d) remain applicable. »

(Law of 7th September, 1987)
[78/855/EEC art. 25]
«Art. 279.

(Law of 10th June, 2009)

« (1) » (Law of 23rd March, 2007)

«Article 263 paragraph (1) shall not apply where, in the circumstances described in the foregoing Article,

a) the publication provided for by Article 262 is made as regards each of the companies involved in the operation at least one month before the operation takes effect as between the parties;

b) all the members in the acquiring company are entitled, at least one month before the operation takes effect as between the parties, to inspect, at the registered office of that company, the documents specified in Article 267, paragraph 1) a), b) and c).

Article 267, paragraphs (2) and (3) shall apply;

c) one or more members of the acquiring company holding at least 5% of the shares or corporate units in the subscribed capital are
entitled during the period provided for under b) to require that a
general meeting of the acquiring company be called in order to
decide whether to approve the merger. The meeting must be
covenied in such a manner so as to be held within one month of
the request for it to be held.»

(Law of 10th June, 2009)
[2005/56/EC art. 15.1]
« (2) In case of a cross-border merger, Article 263 paragraph (1) shall not
apply to the company or the companies being acquired. »

(Law of 7th September, 1987)
[78/855/EEC art. 26]
«Art. 280.

(Law of 23rd March, 2007)
«Articles 278 and 279 shall also be applicable to the acquisition
operations where all the shares, corporate units and other securities referred to in
Article 278 in the company or companies being acquired belong to the acquiring
company or to persons holding such shares, corporate units and securities in
their own name but on behalf of that company.»

(Law of 7th September, 1987)
[78/855/EEC art. 27]
«Art. 281.

(Law of 10th June, 2009)
« (1) » (Law of 23rd March, 2007)
«In the case of merger by acquisition of one or more companies by
another company which holds 90% or more, but not all, of their respective
shares or corporate units and other securities conferring voting rights in general
meetings, the approval of the merger by the general meeting of the acquiring
company shall not be necessary if the following conditions are fulfilled:

a) the publication prescribed in Article 262 is made, for the
acquiring company, at least one month before the date of the
general meeting of the company or companies being acquired
which have been convened to decide whether to approve the
draft terms of merger;

(Law of 10th June, 2009) « The provisions of this point a) shall not
apply to cross-border mergers of companies. »

b) all the members in the acquiring company are entitled, at least one
month before the date indicated under a), to inspect, at the
registered office of that company, the documents indicated in
Article 267, paragraph 1) a), b) and c).

Article 264 c) shall apply.»

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(Law of 10th June, 2009)

« (2) Where a cross-border merger by acquisition is carried out by a company which holds 90% or more but not all of the shares, corporate units and other securities conferring the right to vote at general meetings of the company or companies being acquired, reports by an independent expert or experts and the documents necessary for verification shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires. »

(Law of 7th September, 1987)
[78/855/EEC art. 28]

«Art. 282.

(Law of 23rd March, 2007)

«Articles 265, 266 and 267 shall not apply in case of a merger referred to in the foregoing Article if the following conditions are fulfilled:

a) the minority members of the company being acquired are entitled to have their shares or corporate units acquired by the acquiring company;

b) in those circumstances, they shall be entitled to receive consideration corresponding to the value of their shares or corporate units;

c) in the event of disagreement regarding such consideration, it shall be determined by the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters, in the district in which the registered office of the acquiring company is located and sitting as in urgency matters.»

(Law of 7th September, 1987)
[78/855/EEC art. 29]

«Art. 283.

(Law of 23rd March, 2007)

«Articles 281 and 282 shall also apply to acquisition operations where 90% or more, but not all, of the shares or corporate units and other securities referred to in Article 281 in the company or companies being acquired are held by the acquiring company and/or to persons who hold such shares, corporate units and securities in their own name, but on behalf of that company.»
Sub-Section IV. - Other operations assimilated to mergers

(Law of 7th September, 1987)
[78/855/EEC art. 30]
«Art. 284.

(Law of 23rd March, 2007)

«Where, notwithstanding the provisions of Articles 259 and 260, the cash balance exceeds 10%, Sub-Sections I. and II. and Articles 281, 282 and 283 shall continue to apply.

They shall also apply where one or more companies enter into liquidation and transfer their assets and liabilities to another company against the issue of shares or corporate units in the latter company to the members of the former company, with or without a cash balance.»
Section XV. - Divisions

Art. 285.

The present Section shall apply to all companies with legal personality pursuant to this law and to economic interest groupings.

A division can also occur where the company or economic interest grouping which is acquired or will cease to exist is the subject of bankruptcy proceedings, proceedings relating to composition with creditors or a similar procedure such as the suspension of payments, controlled management or a similar procedure instituting special management or supervision of one or more of those companies or economic interest groupings.

A company or an economic interest grouping as referred to in the first paragraph may also enter into a division transaction with a foreign company or economic interest grouping, provided the latters’ national law does not prohibit such a transaction.

Where in the provisions below a reference is made to a « company » or to the « companies », such term shall be understood, save where specified differently, as also referring to (an) « economic interest grouping(s) ». »

Art. 286.

A division shall be carried out by acquisition, by the incorporation of new companies or by a combination of the two procedures.

Art. 287.

Division by acquisition is the operation whereby a company, following its dissolution without liquidation, either transfers following its dissolution without liquidation all of its assets and liabilities to more than one company, or transfers, without dissolution, to one or more than one company part or all of its assets and liabilities in exchange for the allocation to the members of the company being divided of shares or corporate units in the companies receiving contributions as a result of the division and a cash payment, if any, not exceeding 10% of the nominal value of the shares or corporate units allocated or, in the absence of a nominal value, of their accounting par value. »
Division by acquisition may also take place where the company being acquired is in liquidation, provided that it has not yet begun the distribution of its assets amongst its members.

Division by the incorporation of new companies is the operation whereby a company, either transfers following its dissolution without liquidation, all of its assets and liabilities to more than one newly incorporated company, or transfers, without dissolution, part or all of its assets and liabilities to one or more than one newly-incorporated company in exchange for the allocation to its members of shares or corporate units in the recipient companies and a cash payment, if any, not exceeding 10% of the nominal value of the shares or corporate units allocated or, in the absence of a nominal value, of their accounting par value.

Division by the incorporation of new companies may also take place where the company which will cease to exist is in liquidation, provided that it has not yet begun distribution of its assets amongst its members.

Sub-Section I. - Division by acquisition

The management bodies of the companies involved in the division shall draw up draft terms of division.

The draft terms of division shall specify:

a) the form, corporate denomination and registered office of the companies involved in the division;
b) the share or corporate unit exchange ratio and, where appropriate, the amount of the cash payment;
c) the terms for the delivery of shares or corporate units in the recipient company;
d) the date as from which those shares or corporate units shall carry the right to participate in the profits and any special conditions relating to that right;
e) the date from which the operations of the company being divided shall be treated, for accounting purposes, as being carried out on behalf of one or other of the recipient companies;
f) the rights conferred by the recipient company to members having special rights and to the holders of securities other than shares or corporate units, or the measures proposed concerning them;

g) any special advantage granted to the experts referred to in Article 294, to the members of the management bodies and to the commissaires aux comptes [supervisory auditors] of the companies involved in the division;

h) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies;

i) the allocation amongst the members of the company being divided of shares or corporate units in the recipient companies, and the criterion upon which such allocation is based.

(3) a) Where an asset is not allocated in the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, the asset or the amount corresponding to the value thereof shall be allocated to all the recipient companies in the proportion to the assets98 allocated to each of them in the draft terms of division.

b) Where a liability is not allocated in the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable therefor.

The joint and several liability of the recipient companies shall however be limited to the net assets allocated to each of them.»

(Law of 7th September, 1987)
[82/891/EEC art. 4]
«Art. 290.

Draft terms of division shall be published in accordance with Article 9 for each of the companies involved in the division, at least one month before the date of the general meeting convened to decide on the draft terms of division.»

(Law of 7th September, 1987)
[82/891/EEC art. 5.1]
«Art. 291.

(Law of 23rd March, 2007)
«(1) A division shall require the approval of the general meeting of each of the companies involved in the division and, where appropriate, of the holders of securities other than shares or corporate units. That decision requires that the conditions as to quorum, presence and majority laid down for amendments to the articles are fulfilled.»

98 The English version of the directive refers to: "net assets" as does the German version (Nettoaktivvermögen).
(2) In sociétés en commandite simple and in sociétés coopératives, the voting rights of members are in proportion to their share in the corporate assets and the quorum will be calculated by reference to the corporate assets.

(3) The consent of all members is required:
1° in the companies being divided and in the recipient companies which are sociétés en nom collectif, sociétés coopératives the members of which have unlimited and joint liability, civil companies or economic interest groupings;
2° in the companies being divided where at least one of the recipient companies is:
   a) a société en nom collectif;
   b) a société en commandite simple;
   c) a société coopérative the members of which have unlimited and joint liability;
   d) a civil company;
   e) an economic interest grouping.

In the cases referred to in the first paragraph, items 1° and 2° a), b) and c) the unanimous consent of the holders of corporate units not representing capital will be required.

(4) In sociétés en commandite simple and in sociétés en commandite par actions, the consent of all the unlimited members will in addition be required.

(5) If there is more than one category of shares, securities or corporate units, whether representing capital or not, and if the division results in a modification to their respective rights, Article 68 shall be applicable.»

(Law of 7th September, 1987)
[82/891/EEC art. 6]
«Art. 292.

(Law of 23rd March, 2007)
«Except in the cases referred to in Article 291 paragraphs (2) to (4), approval of the division by the general meeting of a recipient company is not necessary if the following conditions are fulfilled:
   a) the publication provided for by Article 290. is made, for the recipient company, at least one month before the date of the general meeting of the company being divided convened to decide on the draft terms of division;
   b) all the members of the recipient company are entitled, at least one month before the date indicated under a), to examine, at the registered office of that company, the documents indicated in Article 295, paragraph (1);
   c) one or more members of the recipient company holding at least 5% of the shares or corporate units of the subscribed capital are entitled, until the day following the holding of the general meeting of the company being divided, to require the convening
of a general meeting of the recipient company to decide whether
to approve the division. The meeting must be convened so as to
be held within one month of the request for it to be held.

(Law of 7th September, 1987)
[82/891/EEC art. 7]
(Art. 293.

(Law of 23rd March, 2007)
(1) «The management bodies of each of the companies involved in the
division shall draw up a detailed written report explaining the draft terms
of division and setting out the legal and economic grounds for them and,
in particular, the share or corporate unit exchange ratio and the criterion
determining their allocation.

(2) The report shall also indicate any special valuation difficulties which may
have arisen. It shall also disclose the preparation of the report on the
verification of the contributions other than cash, referred to in Article
26-1 paragraph (2) and the lodgement thereof in accordance with Article
9, paragraphs (1) and (2).

(3) The management bodies of the company being divided must inform the
general meeting of the company being divided and the management
bodies of the recipient companies, so that they can inform the general
meetings of their companies, of any material change in the assets and
liabilities which have occurred between the date of the preparation of the
draft terms of division and the date of the general meeting of the
company being divided which is to decide on the draft terms of division.»

(Law of 7th September, 1987)
[82/891/EEC art. 8]
(Art. 294.

(Law of 23rd March, 2007)
(1) «The draft terms of division must be the subject of an examination and of
a written report to the members. The examination shall be carried out
and the report shall be drawn up for each of the companies involved in
the division by one or more independent experts to be appointed by the
board of directors of each of the companies involved in the division.
(Law of 18th December, 2009) «The experts must be chosen among the
réviseurs d'entreprises agréés [approved statutory auditors].»
However, it is possible to cause the report to be drawn up by one or
more independent experts for all the companies involved in the division.
In such case, the appointment shall be made, at the joint request of the
companies involved in the division, by the judge presiding the chamber
of the Tribunal d'Arrondissement dealing with commercial matters in the
district where the registered office of the company being divided is located and sitting as in urgency matters.

(2) In the report mentioned in paragraph (1), the experts must in any case declare whether, in their opinion, the share exchange ratio is or is not fair and reasonable. Their statement must:
   a) indicate the method or methods used to arrive at the proposed share exchange ratio;
   b) indicate whether that method or methods are adequate in the circumstances and indicate the values arrived at by each of such methods, and give an opinion as to the relative importance attributed to such methods in determining the value adopted.
In addition, the report shall describe any special valuation difficulties, which may have arisen.

(3) The report provided for in Article 26-1 and the report on the draft terms of division may be prepared by the same expert or experts.

(4) Each expert shall be entitled to obtain from the companies involved in the division all relevant information and documents and to carry out all necessary verifications.

(Law of 7th September, 1987)

82/891/EEC art. 9

«Art. 295.

(Law of 23rd March, 2007)

(1) «Every member shall be entitled to inspect the following documents at the registered office, at least one month before the date of the general meeting called to decide on the draft terms of division:
   a) the draft terms of division;
   b) the annual accounts and the annual reports for the three last financial years of the companies involved in the division;
   c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of division if the last annual accounts relate to a financial year which ended more than six months before that date;
   d) the reports of the management bodies of the companies involved in the division, referred to in Article 293, paragraph (1);
   e) (Law of 10th June, 2009) « if applicable, the reports referred to in Article 294. »

(2) The accounting statement provided for in paragraph (1) c) shall be drawn up using the same methods and take the same presentation as the last balance sheet.
It shall not however be necessary to take a fresh physical inventory.
Moreover, the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:
- interim depreciation and provisions;
- material changes in actual value not shown in the books.

(3) A full copy, or if so desired, a partial copy of the documents referred to in paragraph (1) may be obtained by any members on request and free of charge.«

(Law of 7th September, 1987)
[82/891/EEC art. 10]
«Art. 296.

(Law of 23rd March, 2007; Law of 10th June, 2009)
« (1) An examination of the draft terms of division and the expert report provided for in article 294, paragraph 1 shall not be required if all the members and holders of other securities conferring the right to vote in each of the companies involved in the division have so agreed.

(2) The requirements of Articles 293 and 295, paragraph (1) (c) and (d) do not apply if all the members and the holders of other securities conferring the right to vote in each of the companies involved in the division have so agreed.»

(Law of 23rd March, 2007)
«Art. 296bis.

(1) A société à responsabilité limitée, a société coopérative or an economic interest grouping can only participate in a division transaction as a recipient company or economic interest grouping, if the shareholders or members of the company or economic interest grouping to be divided fulfil the conditions required to become shareholder or member of such recipient company or economic interest grouping.

(2) In sociétés coopératives, each member has the right notwithstanding any provision to the contrary in the articles of incorporation, to resign at any time and without having to satisfy any other condition, from the time the general meeting is called in order to resolve on the division of the company for the benefit of recipient companies of which one at least has a different legal form. The resignation must be notified to the company by registered mail, deposited at the post office five days at least before the date of the meeting. Such resignation will only be effective if the division is approved. The notice to the meeting must feature the text of the first and second sub-paragraphs of this paragraph.»
(Law of 7th September, 1987)

[82/891/EEC art. 12.1, 2, 3, 4, 6, 7]

«Art. 297.

(Law of 23rd March, 2007)

(1) «Creditors of the companies involved in the division, whose claims pre-date the date of publication of the deeds recording the division provided for in Article 302, may, notwithstanding any agreement to the contrary, apply within two months of such publication to the judge presiding the chamber of the Tribunal d’Arrondissement dealing with commercial matters in the district in which the registered office of the debtor company is located and sitting as in urgency matters, to obtain adequate safeguards for any matured and unmatured debts where the division would make such protection necessary. The application shall be rejected if the creditor already has adequate safeguards or if such safeguards are not necessary, having regard to the financial situation of the companies involved in the division. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt. If the safeguards are not provided within the time limit prescribed, the debt shall immediately fall due.

(2) Insofar as a creditor or bondholder of the company being divided has not obtained satisfaction from the company to which the obligation has been transferred to in accordance with the draft terms of division, the recipient companies shall be jointly and severally liable for that obligation. The joint and several liability of the recipient companies shall however be limited to the net assets allocated to each of them.»

(Law of 23rd March, 2007)

«(3) If the company being divided is a société en nom collectif, a société en commandite simple, a société en commandite par actions, a société coopérative the members of which have unlimited and joint liability, a société civile or an economic interest grouping, the members of the société en nom collectif, the unlimited members of the société en commandite simple or société en commandite par actions or the members of the société coopérative, of the civil company or of the economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which pre-date the effectiveness vis-à-vis third parties of the merger deed pursuant to Article 302.

(4) If the recipient company is a société en nom collectif, a société en commandite simple, a société en commandite par actions, a société coopérative the members of which have unlimited and joint liability, a société civile or an economic interest grouping, the members of the société en nom collectif, the unlimited members of the société en commandite simple or société en commandite par actions or the members of the société coopérative, of the civil company or of the economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved
company which pre-date the effectiveness vis-à-vis third parties of the division and which, in this latter case, have been transferred to the recipient company in accordance with the draft terms of division and Article 289, (3), b).

(Law of 7th September, 1987)
[82/891/EEC art. 12.5]

«Art. 298.

Without prejudice to the rules governing the collective exercise of their rights, Article 297 shall apply to holders of bonds of the companies involved in the division, unless the division has been approved by a meeting of the bondholders or by the bondholders individually.»

(Law of 7th September, 1987)
[82/891/EEC art. 13]

«Art. 299.

(Law of 23rd March, 2007)
« (1) The holders of securities, other than shares or corporate units, to which special rights are attached must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division at least equivalent to those they possessed in the company being divided.

(2) Paragraph (1) shall not apply if the alteration to those rights was approved by a meeting of the holders of such securities, proceeding in accordance with the conditions as to quorum and majority provided for in Article 291.

(3) In the event of failure to convene the meeting provided for in the foregoing paragraph or if such a meeting refuses to accept the proposed alteration, the securities concerned shall be repurchased at the price corresponding to their valuation in the draft terms of division, and verified by the experts provided for in Article 294.»

(Law of 7th September, 1987)
[82/891/EEC art. 14]

«Art. 300.

(Law of 23rd March, 2007)
(1) «The minutes of the general meetings which decide upon the division shall be drawn up in the form of a notarial instrument; the same shall apply to the draft terms of division where the division does not need to be approved by the general meetings of all the companies involved in the division.

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(2) The notary must verify and certify the existence and validity of the legal acts and formalities required of the company in respect of which he is acting and of the draft terms of division.

(3) Sociétés en nom collectif, sociétés en commandite simple, sociétés coopératives, civil companies and economic interest groupings shall, for the adoption of the deeds referred to in (1), adopt the form of a notarial instrument or of a private deed, as is provided for in relation to their incorporation.

(Law of 7th September, 1987)
[82/891/EEC art. 15]
«Art. 301.

The division shall take effect when the concurring decisions of the companies involved shall have been adopted.»

(Law of 7th September, 1987)
[82/891/EEC art. 16]
«Art. 302.

(1) The division shall have no effect vis-à-vis third parties until after the publication prescribed in Article 9 shall have been made for each of the companies involved in the division.

(2) Any recipient company may carry out the publication formalities in respect of the company being divided.»

(Law of 7th September, 1987)
[82/891/EEC art. 17]
«Art. 303.

(Law of 23rd March, 2007)
(1) «The division shall have the following consequences, ipso jure and simultaneously:

a) the transfer, both as between the company being divided and the recipient companies and vis-à-vis third parties, of all of the assets and liabilities of the company being divided to the recipient companies; such transfer shall be made with the assets and liabilities being divided in accordance with the allocation provided for in the draft terms of division or in Article 289 paragraph (3);

b) the members of the company being divided become members of one or more of the recipient companies in accordance with the allocation provided for in the draft terms of division;

c) the company being divided ceases to exist;

d) the cancellation of the shares or corporate units of the company being divided held by the recipient company or companies or by the company being divided or by a person acting in his own name but on behalf of those companies.»
(2) By way of exception to paragraph (1) a), the transfer of industrial and intellectual property rights and of ownership or other rights on assets other than collateral established on movable and immovable property will be valid vis-à-vis third parties under the conditions provided for in the specific laws governing such operations. The recipient company or companies may complete such formalities.

[82/891/EEC art. 18]

«Art. 304.

The shareholders of the company being divided may individually take proceedings and exercise a liability action against the members of the management bodies and the experts of the company being divided to obtain compensation for any damage which they may have suffered as a result of the misconduct of the members of the management bodies in preparing for and carrying out the division or of the experts in the discharge of their duties. Any liability shall be joint and several for the members of the management bodies or the experts of the company being divided or, where appropriate, for all combined. However, each of them may relieve himself of any liability if he proves that no misconduct is attributable to him personally.

(Law of 7th September, 1987)
[82/891/EEC art. 19]

«Art. 305.

(Law of 23rd March, 2007)

«The avoidance of a division may occur in the following circumstances:

a) the avoidance must be ordered by a court decision;
b) where the division has taken effect pursuant to Article 301, it may only be avoided on the grounds that there was no notarial instrument or private deed, as applicable, or if it is established that the resolution of the general meeting of either of the companies involved in the division is void;
c) an action for avoidance may not be brought after the expiry of a period of six months as from the date on which the division took effect vis-à-vis the person alleging nullity, or if the situation has been rectified;
d) where it is possible to remedy a defect liable to render the division void, the competent court shall grant the companies concerned a period of time within which to rectify the situation;
e) a court order declaring a division void shall be published in the manner prescribed by Article 9;
f) third party objections to the court order declaring a division void shall not be admissible after the expiry of six months from publication of the court order in accordance with Article 9;

g) the court order declaring a division void shall not of itself affect the validity of obligations owed by or to the recipient companies which arose before publication of the court order and after the date referred to in Article 301;

h) each of the recipient companies shall be liable for its obligations which arose after the date on which the division took effect and before the date on which the court order declaring the division void was published. The company being divided shall also be liable for such obligations. The liability of the recipient company shall however be limited to the net assets allocated to it.\(^9\)

(Law of 7th September, 1987)
[82/891/EEC art. 20]

Art. 306.

(Law of 23rd March, 2007)

«Where the recipient companies are together the holders of all the shares or corporate units in the company being divided and of all other securities conferring the right to vote at general meetings, the approval of the division by the general meeting of the company being divided shall not be necessary if the following conditions are fulfilled:

a) the publication prescribed in Article 290 is made as regards each of the companies involved in the operation, at least one month before the operation takes effect between the parties;

b) all the members of the companies involved in the operation are entitled, at least one month before the operation takes effect between the parties, to inspect at the registered office of their company the documents indicated in Article 295 paragraph (1). Article 295 paragraphs (2) and (3) shall also apply;

c) one or more members of the company being divided holding at least 5% of the shares in the subscribed capital are entitled during the period provided for under b) to require that a general meeting of the company being divided be called in order to decide whether to approve the proposed division. The general meeting must be convened so as to be held within one month after the request for it to be held;

d) where a general meeting of the company being divided is not convened in order to decide whether to approve the division, the information provided for by Article 293 paragraph (3) shall cover

\(^9\) The directive (art. 19.1 (h) provides that the liability of the company being divided may by limited to the share of net assets transferred to the recipient company on which account the obligations arose.
any material change in the assets and liabilities occurring after the
date of preparation of the draft terms of division.»

Sub-Section II. - Division by the incorporation of new companies

(Law of 7th September, 1987)
[82/891/EEC art. 22]
«Art. 307.

(Law of 23rd March, 2007)
(1) «Articles 289, 290, 291, 293 and 294 paragraphs (1), (2) and (4) and
Articles 295 to 305 shall apply to divisions by the incorporation of new
companies.
For such purpose, "companies involved in the division" shall refer to the
company being divided and the expression "recipient company" shall
refer to each of the new companies.
(2) The draft terms of division shall indicate, in addition to the information
referred to in Article 289 paragraph (2), the form, corporate
denomination and registered office of each of the new companies.
(3) The draft terms of division containing the draft constitutive instrument
of each of the new companies must be approved by the general meeting
of the company being divided.
(4) The report provided for in Article 26-1 paragraph (2) and the report on
the draft terms of division may be drawn up by the same expert or
experts.
(5) The rules laid down in Article 294 and Article 295 regarding the expert's
report shall not apply to the incorporation of new companies where the
shares or corporate units in each of the new companies are allocated to
the members of the company being divided in proportion to their rights
in the capital of that company.»

Sub-Section III. - Other operations assimilated to division

(Law of 7th September, 1987)
[82/891/EEC art. 24]
«Art. 308.

(Law of 23rd March, 2007)
«Where, notwithstanding the provisions of Articles 287 and 288, the cash
payment exceeds 10%, Sub-Sections I. and II. shall continue to be applicable.
The same shall apply where a company enters into liquidation and
transfers its assets and liabilities to more than one company against the issue of
shares or corporate units in the latter companies to the members of the former
company, with or without a cash payment.»

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Section XVbis. – Transfers of assets, branch of activity transfers and all assets and liabilities transfers

(Law of 23rd March, 2007)

«Art. 308bis-1.

The present Section shall apply to all companies with legal personality pursuant to this law and to economic interest groupings.

Where in the provisions below a reference is made to a « company » or to the « companies », such term shall be understood, save where specified differently, as also referring to (an) « economic interest grouping(s) ».

(Law of 23rd March, 2007)

«Art. 308bis-2.

The company contributing a part of its assets to another company and the receiving company may jointly determine to submit such transaction to the provisions of Articles 285 to 308, with the exception of Article 303. In such case, the contribution results *ipso jure* in the transfer to the receiving company of the assets and of the liabilities attaching thereto.

(Law of 23rd March, 2007)

«Art. 308bis-3.

The contribution of a branch of activity is a transaction by which a company contributes, without dissolution, to another company, one of its branches of activity as well as the liabilities and assets attaching thereto in exchange for the issue of shares or corporate units of the receiving company.

The company which contributes a branch of activity to another company and the receiving company may jointly determine to submit the transaction to the provisions of Articles 285 to 308, with the exception of Article 303. In such case, the contribution results *ipso jure* in the transfer to the receiving company of the assets and of the liabilities attaching thereto.

A branch of activity is a division which from a technical and organisational point of view exercises an independent activity and is capable of functioning by its own means.\(^{100}\)

(Law of 23rd March, 2007)

«Art. 308bis-4.

An all assets and liabilities contribution is a transaction by which a company contributes, without dissolution, all its assets and liabilities to one or

\(^{100}\) Under Council Directive 90/434/EEC inter alia on the common system of taxation applicable to mergers and division, a branch of activity is defined as « all the assets and liabilities of a division of a company which from an organisational point of view constitute an independent business, that is to say an entity capable of functioning by its own means. »

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more existing or new companies in exchange for the issue of shares or corporate units in the receiving company(ies).

The company making the all assets and liabilities contribution to another company and the receiving company may submit the transaction to the provisions of Articles 285 to 308, with the exception of Article 303. In such case, the contribution results *ipso jure* in the transfer to the receiving company of the assets and of the liabilities attaching thereto.»

*(Law of 23rd March, 2007)*

«**Art. 308bis-5.**

In the case of a transfer of assets or a branch of activity transfer or an all assets and liabilities transfer, with or without consideration, falling within the definitions of Articles 308bis-3 and 308bis-4, the parties may determine to submit the transaction to the regime provided for by Articles 285 to 308, with the exception of Article 303. In such case the transfer results *ipso jure* in the transfer to the receiving company of all of the assets and of the liabilities attaching thereto.

This determination is expressly mentioned in the draft terms of transfer established pursuant to Article 289 and in the transfer deed filed pursuant to Article 302. Such draft terms and such deed are, if applicable, drawn up in the form of a notarial deed.»
Section XVter. – Transfers of professional assets

(Law of 23rd March, 2007)
«Art. 308bis-6.

Companies, economic interest groupings and natural persons may transfer all or part of their professional assets, comprising all assets and liabilities, to another person within the framework of a professional assignment.

Articles 285 to 308, with the exception of article 303, shall apply where the transferring and the receiving persons are companies with legal personality pursuant to this law or economic interest groupings and where the members of the transferring company or grouping receive shares or corporate units in the receiving company or grouping.

A company, an economic interest grouping or a natural person referred to in the first paragraph, may also enter into a transfer transaction of their professional assets with a foreign company, economic interest grouping or natural person provided the latters’ national law does not prohibit such a transaction.

The transfer of professional assets results ipso jure in the transfer to the receiving company of the assets and liabilities attaching thereto.»

(Law of 23rd March, 2007)
«Art. 308bis-7.

The persons participating in the transfer enter into the transfer agreement, if applicable following approval of their general meeting, resolving at the quorum, presence and majority provided for the amendment of the articles. The provisions of Article 291 paragraphs 2 to 5 as well as of Article 292 shall, as the case may be, be complied with.

Such agreement must be in writing. The provisions of Article 300 must be complied with.»

(Law of 23rd March, 2007)
«Art. 308bis-8.

(1) The management bodies of the persons involved in the transfer shall draw up draft terms of transfer.

(2) The draft terms of transfer shall specify: a) the form, corporate denomination or name, and the registered office or domicile of the persons involved in the transfer; b) an inventory which shall clearly indicate the assets and liabilities to be transferred; c) the total value of the assets and liabilities to be transferred; d) the consideration, if any.

(3) The transfer of the professional assets is only authorised if the inventory shows an excess of assets.

101 Literally : legal subject
(4) a) Where an asset can not be allocated on the basis of the draft terms of transfer and where the interpretation of these terms does not make a decision on its allocation possible, such asset shall remain with the transferring person.

b) Where a liability can not be allocated on the basis of the draft terms of transfer and where the interpretation of those terms does not make a decision on its allocation possible, the transferring person and the receiving person shall be jointly and severally liable therefor.

The joint and severable liability of the receiving person shall however be limited to the net assets allocated to it.

(Law of 23rd March, 2007)

«Art. 308bis-9.

Draft terms of transfer shall be published in accordance with Article 9 for each of the persons involved in the transfer, at least one month before the execution of the transfer agreement meaning, if applicable, one month at least before the date of the general meeting convened to decide on the draft terms of transfer.

(Law of 23rd March, 2007)

«Art. 308bis-10.

The management bodies of each of the persons involved in the transfer shall draw up, in order to allow the decision to be taken, a detailed written report explaining the drafts terms of transfer and setting up the legal and economic grounds for them namely:

a) the purpose and consequences of the transfer of the professional assets;

b) the transfer agreement;

c) the consideration for the transfer.

(Law of 23rd March, 2007)

«Art. 308bis-11.

(1) The transferring person shall be jointly and severally liable during three years with the receiving person for the satisfaction of the debts which pre-date the transfer of the professional assets.

(2) Any action against the transferring person prescribe at the latest three years after the publication of the transfer of the professional assets. If the claim matures after that publication, the prescription runs as from that maturity.

(3) The persons involved in the transfer of the estate must upon the request of their creditors referred to in (1), provide security:
a) if the joint and severable liability terminates before the end of the three year period; or
b) if the creditors establish it is likely that the joint and severable liability is an insufficient safeguard.
Creditors shall formulate their claim to that end in accordance with the procedure provided in Article 297 which shall be applicable by analogy.

(4) The creditors of the transferring person and of the receiving person whose claims are not comprised in the transferred professional assets and which pre-date the date of the publication of the transfer provided for in Article 308bis-12, may also apply for the provision of security in accordance with the procedure provided in Article 297.

(5) The persons involved in the transfer of the professional assets who are ordered to provide security may instead pay the claim to the extent that this does not cause any damage to the other creditors.»

(Law of 23rd March, 2007)
«Art. 308bis-12.

The transfer of the professional assets shall take effect when the concurring decisions of the persons concerned shall have been adopted.
The transfer of the professional assets shall have no effect vis-à-vis third parties until after the publication prescribed in Article 9 shall have been made for each of the persons involved in the transfer.»

(Law of 23rd March, 2007)

(1) The transfer of the professional assets shall have the consequence, ipso jure, of the transfer to the receiving person(s) of all the assets and liabilities specified in the inventory.

(2) By way of exception to paragraph (1), the transfer of industrial and intellectual property rights and the ownership or other rights on assets other than collateral, established on moveable and immovable property, will be valid vis-à-vis third parties under the conditions provided for in the specific laws governing such operations. The receiving person(s) may complete such formalities.»

(Law of 23rd March, 2007)
«Art. 308bis-14.

The avoidance of a transfer of professional assets may occur only in the following circumstances:
a) the avoidance must be ordered by a court decision;
b) when the transfer of the professional assets has taken effect pursuant to Article 308bis-12, first paragraph, it may only be avoided on the grounds that there was no written deed or, if
applicable, in case of breach of the provisions of Article 300, or if it is established that the resolution of the general meeting of either of the companies involved in the transfer of the professional assets is void;

c) an action for avoidance may not be brought after the expiry of a period of six months as from the date on which the transfer of professional assets took effect vis-à-vis the person alleging nullity, or if this situation has been rectified;

d) where it is possible to remedy a defect liable to render the transfer of professional assets void, the competent court shall grant the companies concerned a period of time within which to rectify the situation;

e) a court order declaring a transfer of professional assets void shall be published in the manner prescribed by Article 9;

f) third party objections to the court order declaring a transfer of professional assets void shall not be admissible after the expiry of six months from publication of the court order in accordance with Article 9;

g) the court order declaring a transfer of professional assets void shall not of itself affect the validity of obligations owed by or to the receiving person which arose before publication of the court order and after the date referred to in Article 308bis-12, first paragraph;

h) the receiving person shall be liable for its obligations which arose after the date on which the transfer of professional assets took effect and before the date on which the court order declaring the transfer of professional assets void was published. The receiving person shall also be liable for such obligations. The liability of the receiving person shall however be limited to the net assets allocated to it.»
Section XVI. - Consolidated accounts

Sub-section 1. - Conditions for the preparation of consolidated accounts

Art. 309.

All sociétés anonymes, sociétés en commandite par actions or sociétés a responsabilité limitée and the companies referred to in Article 204, paragraphs (2) and (3) incorporated under Luxembourg law must draw up consolidated accounts and a consolidated annual report if it:

a) has a majority of the shareholders' or members' voting rights in another undertaking; or
b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is at the same time a shareholder in or member of that undertaking; or
c) is a shareholder in or member of an undertaking, and controls alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking.

A société européenne (SE) having its registered office in the Grand-Duchy of Luxembourg shall be governed by the provisions applicable to sociétés anonymes.

For the purposes of this Section, the company having the rights set out in paragraph (1) shall be referred to as the parent company. The undertakings with regard to which the rights set out above are held shall be referred to as subsidiary undertakings.

Pursuant to Regulation (EC) n°1606/2002 of the European Parliament and of the Council of 19th July, 2002 on the application of international accounting standards, listed companies, for each financial year starting on or after 1st January, 2005 shall prepare their consolidated accounts in conformity with the "international accounting standards" meaning the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS) and related interpretations and interpretations and standards adopted in the future by the International Accounting Standards Board (IASB).

Pursuant to that same Regulation, Member States may permit or require listed companies to prepare their annual accounts and companies other than listed companies to prepare their consolidated and/or their annual accounts in conformity with international accounting standards. See also article 27 of the law of 19th December, 2002 on register of commerce and companies reproduced in Annex I.

The law of 19th December, 2002 has abrogated article 204 effective 1st January, 2005. Article 25 of the law of 2002 corresponds to article 204 but, as it has a wider scope of application, in particular concerning sociétés en nom collectif and sociétés en commandite simple, it must be questioned whether this extended scope also applies to consolidated accounts by reason of the then outdated cross reference to article 204 contained in this article 309(1).
(Law of 11th July, 1988)
[83/349/EEC art. 2]

«Art. 310.

(1) For the purposes of Article 309 paragraph (1), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent company or of another subsidiary undertaking must be added to those of the parent company.

(2) For the purposes of Article 309 paragraph (1), the rights mentioned in paragraph (1) above must be reduced by the rights:
   a) attaching to shares or corporate units held on behalf of a person who is neither the parent company nor a subsidiary undertaking thereof;
   or
   b) attaching to shares or corporate units held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

(3) For the purposes of Article 309 paragraph (1), sub-paragraphs a) and c) the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares or corporate units held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.»

(Law of 11th July, 1988)
[83/349/EEC art. 3]
«Art. 311.

(1) Without prejudice to Articles 317 and 318, a parent company and all of its subsidiary undertakings shall be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

(2) For the purposes of paragraph (1) above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent company which is the parent of the undertakings to be consolidated.»
(Law of 11th July, 1988)
[83/349/EEC art. 5]

Art. 312.

(1) By way of derogation from Article 309 paragraph (1) and without prejudice to Articles 313 to 316, a financial holding company within the meaning of Article 209 paragraph (2) shall be exempt from the obligation to draw up consolidated accounts and a consolidated annual report provided that all the following conditions are met:

a) the financial holding company has not intervened during the financial year, directly or indirectly, in the management of the subsidiary undertaking;

b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of the subsidiary undertaking’s administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the financial holding company with majority voting rights and no member of the administrative, management or supervisory bodies of the financial holding company or of a shareholder or member thereof with majority voting rights, is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the financial holding company or of any of its subsidiary undertakings;

c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year;

d) the exemption is granted by the supervisory authority for financial holding companies after fulfilment of the above conditions has been checked.

(2) A financial holding company which has been exempted from drawing up consolidated accounts and a consolidated annual report must disclose in the notes to its own annual accounts, by way of derogation from Article 248 paragraph (2) of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

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104 As article 209 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 31(2) of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

105 As article 248 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 65 paragraph (2) of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

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indications laid down in Article 248 paragraph (1), sub-paragraph 2\(^{106}\), as regards any majority holding in subsidiary undertakings.

b) Such disclosures in respect of majority holdings may, however, be omitted when their nature is such that they would be seriously prejudicial to the company, its shareholders or members or one of its subsidiary undertakings.

Any such omission must be disclosed in the notes to the accounts.»

*(Law of 11th July, 1988)*

[83/349/EEC art. 6]

**Art. 313.**

(1) By way of derogation from Article 309 paragraph (1), a parent company shall be exempted from the obligation to draw up consolidated accounts and a consolidated annual report if at the balance sheet date of the parent company, the undertakings who would have to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria set out below:

*(Grand-Ducal Regulation of 22nd December, 2000)*

[by reference to amended article 27 of 78/760/EEC]

- balance sheet total 12.5 million euro
- net turnover 25 million euro
- average number of full-time staff employed during the financial year 250

(2) The figures of the criteria relating to the balance sheet total and net turnover may be increased by 20%, if the set-off referred to in Article 322 paragraph (1) and the elimination referred to in Article 329 paragraph (1) items (a) and (b) are not effected.

(3) This exemption shall not apply where one of the undertakings to be consolidated is a company the securities of which are admitted to official listing on a stock exchange established in a Member State of the European Community.

(4) Article 216\(^{107}\) shall be applicable.

(5) The amounts indicated above may be amended by Grand-Ducal Regulation.»

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\(^{106}\) As article 248 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 65 paragraph (1) sub-paragraph 2 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

\(^{107}\) As article 216 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 36 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
By way of derogation from Article 309 paragraph (1), any parent company which is also a subsidiary undertaking shall be exempted from the obligation to draw up consolidated accounts and a consolidated annual report if its own parent undertaking is governed by the law of a Member State of the European Community, in the following two cases:

a) where that parent undertaking holds all of the corporate units or shares in the exempted undertaking. The corporate units or shares in that company held by members of its administrative, management or supervisory bodies pursuant to a legal obligation or the articles shall be ignored for this purpose; or

b) where that parent undertaking holds 90% or more of the corporate units or shares in the exempted company and the remaining shareholders in or members of that company have approved the exemption.

The exemption shall be conditional upon compliance with all of the following conditions:

a) the exempted company and, without prejudice to Articles 317 and 318, all of its subsidiary undertakings are consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State of the European Community;

b) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed;

bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above and the report by the person responsible for auditing those accounts shall be published for the exempted company in the manner prescribed by Article 9 of this law.

c) the notes to the annual accounts of the exempted company must disclose:

aa) the name and registered office of the parent undertaking which draws up the consolidated accounts referred to in (a) above; and

bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report."
Art. 315.

In cases not covered by Article 314 paragraph (1), any parent company which is also a subsidiary undertaking of which is governed by the law of a Member State of the European Community, is exempted from the obligation to draw up consolidated accounts and a consolidated annual report, provided that all the conditions set out in Article 314 paragraph (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own at least 10% of the subscribed capital of that undertaking, in the case it is a société anonyme or a société en commandite par actions, and at least 20%, in the case it is a société à responsabilité limitée, have not requested the preparation of consolidated accounts at least six months before the end of the financial year.

Art. 316.

By way of derogation from Article 309 paragraph (1), any parent company which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State of the European Community, is exempted from the obligation to draw up consolidated accounts and a consolidated annual report if all of the following conditions are fulfilled:

a) the exempted company and, without prejudice to Articles 317 and 318, all of its subsidiary undertakings are consolidated in the accounts of a larger body of undertakings;

b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with the provision of this Section or in a manner equivalent thereto,

c) the consolidated accounts referred to in (a) above must have been audited by one or more person authorised to audit accounts under the national law governing the undertaking which drew them up.

Article 314 paragraph (2), sub-paragraphs (b) (bb) and (c) and Article 315 shall apply.

Art. 317.

(1) An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 319 paragraph (3).
(2) Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated accounts if, they are material\textsuperscript{108} for the purposes of Article 319 paragraph (3).

(3) In addition, an undertaking need not be included in consolidated accounts where:

a) severe long-term restrictions substantially hinder the parent company in the exercise of its rights over the assets or management of that undertaking.

b) the information necessary for the preparation of consolidated accounts in accordance with this law cannot be obtained without disproportionate expense or undue delay.

c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

\textit{(Law of 11th July, 1988)}

[83/349/EEC art. 14]

\textit{"Art. 318.}\n
(1) Where the activities of one or more undertakings to be consolidated are so different that their inclusion in the consolidated accounts would be incompatible with the obligation imposed in Article 319 paragraph (3), such undertakings must, without prejudice to Article 336, be excluded from the consolidation.

(2) Paragraph (1) above shall not be applicable merely by virtue of the fact that the undertakings to be consolidated are partly industrial, partly commercial, and partly provide services, or because such undertakings carry on industrial or commercial activities involving different products or provide different services.

(3) Any application of paragraph (1) above and the reasons therefor must be disclosed in the notes to the accounts. Where the annual or consolidated accounts of the undertakings thus excluded from the consolidation are not published in Luxembourg in accordance with Article 9 of this law, they must be attached to the consolidated accounts or made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request at a price which may not exceed its administrative cost.

\textsuperscript{108} The English version of the directive specifies: "as a whole"; the German version is identical to the English version ("sofern sie insgesamt").
Sub-Section 2. - Manner of preparation of consolidated accounts

(Law of 11th July, 1988)
[83/349/EEC art. 16]

«Art. 319.

(1) Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts. These documents shall constitute a composite whole.

(2) Consolidated accounts shall be drawn up clearly and in accordance with this law.

(3) Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.

(4) Where the application of the provisions of this Section would not be sufficient to give a true and fair view within the meaning of paragraph (3) above, additional information must be given.

(5) Where, in exceptional cases, the application of a provision of Articles 320 to 338 and Article 342 is incompatible with the obligation provided in paragraph (3) above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph (3). Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.»

(Law of 11th July, 1988)
[83/349/EEC art. 17]

«Art. 320.

(1) Articles 206 to 214, 217 to 230 and 232 to 234 of Section XIII\(^{109}\) shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Section and taking account of the indispensable adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.

(2) Stocks may be combined in the consolidated accounts where detailed disclosure in accordance with the layout provided in Articles 213 and 214\(^{110}\) can be made only at disproportionate expense.»

\(^{109}\) As Section XIII is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to Articles 28 to 34, 37 to 46 and 48 to 50 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

\(^{110}\) As articles 213 and 214 are abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 34 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

(1) The book values of shares or corporate units in the capital of the undertakings included the consolidation shall be set off against the proportion of the capital and reserves of the undertakings included in the consolidation which they represent:

a) That set-off shall be made on the basis of book values as at the date at which such undertakings are included in the consolidation for the first time. Differences arising from such set-off shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.

b) Such set-off may also be made on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or corporate units or, in the event of an acquisition in two or more stages, as at the date on which the undertaking became a subsidiary undertaking.

c) Any difference remaining after the application of sub-paragraph (a) or resulting from the application of sub-paragraph (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes as compared to the preceding financial year must be explained in the notes to the accounts. Positive and negative differences may be set-off provided that a breakdown is given in the notes to the accounts.

(2) However, paragraph (1) above shall not apply to shares or corporate units in the capital of the parent company held either by that company itself or by another undertaking included in the consolidation. In the consolidated accounts such shares or corporate units shall be treated as own shares or corporate units in accordance with Section XIII.\textsuperscript{111}

\textsuperscript{111} As Section XIII is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to Chapter II of Title II of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
Art. 323.

(1) Instead of the method provided for in Article 322, consolidating companies may offset the book values of shares or corporate units held in the capital of an undertaking included in the consolidation against the corresponding percentage of capital only, provided that:

a) the shares or corporate units held represent at least 90% of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares or corporate units of that undertaking other than those described in Article 32-2 paragraph (2);

b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares or corporate units by an undertaking included in the consolidation;

c) the arrangement referred to in (b) above did not include a cash payment exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares or corporate units issued.

(2) Any difference arising as a result of the application of paragraph (1) above shall be added to or deducted from consolidated reserves, as appropriate.

(3) The application of the method described in paragraph (1) above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the accounts.

Art. 324.

The amounts attributable to shares or corporate units in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with the heading "Minority interests."

Art. 325.

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit and loss account.
(Law of 11th July, 1988)
[83/349/EEC art. 23]

«Art. 326.»

The amount of any profit or loss attributable to shares or corporate units in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit and loss account as a separate item with the heading "Minority interests".

(Law of 11th July, 1988)
[83/349/EEC art. 24]

«Art. 327.»

Consolidated accounts shall be drawn up in accordance with the principles provided for in Articles 328 to 331.

(Law of 11th July, 1988)
[83/349/EEC art. 25]

«Art. 328.»

(1) The methods of consolidation must be applied consistently from one financial year to another.

(2) Derogations from the provisions of paragraph (1) above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes to the accounts and the reasons for them must be given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

(Law of 11th July, 1988)
[83/349/EEC art. 26]

«Art. 329.»

(1) Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:

a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts.

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These eliminations may be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.

(2) Derogations may be made from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail disproportionate expenses. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes to the consolidated accounts.

(3) Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 319 paragraph (3).»

(1) Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent company.

(2) However, consolidated accounts may be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation, that fact shall be disclosed in the notes to the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking’s balance sheet date and the consolidated balance sheet date.

(3) Where the balance sheet date of an undertaking included in the consolidation precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.»

(1) If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, that
obligation may be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit and loss account.»

*(Law of 11th July, 1988)*
[83/349/EEC art. 29]

**Art. 332.**

(1) Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Articles 235 to 247.

(2) a) The undertaking company which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, other methods of valuation complying with the aforementioned Articles may be used in consolidated accounts.

b) Where use is made of these derogations that fact shall be disclosed in the notes to the consolidated accounts and the reasons therefor given.

(3) Where assets and liabilities included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 319 paragraph (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the consolidated accounts and the reasons for them given.

(4) Account shall be taken in the consolidated balance sheet and in the consolidated profit and loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

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«Art. 1 [As regards annual accounts, see footnote under article 65 in Annex I].

Art.2 The undertakings referred to in Article 309 of the amended law of 10th August 1915 on commercial companies are authorised to derogate from Articles 332, 337 and 339 of the amended law of 10th August 1915 on commercial companies when drawing up their consolidated accounts, if they choose to opt for a valuation at fair value of financial instruments including derivatives in accordance with articles 1 and 2 of Directive 2001/65/EC of the European Parliament and of the Council of 27th September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions.

Art.3 This Grand-Ducal Regulation comes into force on first October 2006. It shall apply to the consolidated accounts of undertakings for their fiscal years ending after that date.»

113 As articles 235 to 247 are abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to articles 51 to 64 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
(5) Where assets included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments shall have been eliminated. However, such assets may be incorporated in the consolidated accounts without elimination of the adjustments, provided that the amount of the adjustments, together with the reasons for them, are disclosed in the notes to the consolidated accounts.»

(Law of 11th July, 1988)
[83/349/EEC art. 30]
«Art. 333.
(1) The item referred to in Article 322 paragraph (1) (c), if it corresponds to a positive consolidation difference, shall be dealt with in accordance with the rules laid down in Article 242 paragraph (2)\textsuperscript{114}.
(2) A positive consolidation difference may be immediately and clearly deducted from reserves.»

(Law of 11th July, 1988)
[83/349/EEC art. 31]
«Art. 334.
An amount shown as a separate item, referred to in Article 322 paragraph (1) (c), if it corresponds to a negative consolidation difference may be transferred to the consolidated profit and loss account only:

a) where that difference corresponds to the expectation, at the date of acquisition, of unfavourable future results in the relevant undertaking, or to the expectation of costs which that undertaking would incur, insofar as such an expectation materialises;

or

b) insofar as such a difference corresponds to a realised gain.»

(Law of 11th July, 1988)
[83/349/EEC art. 32]
«Art. 335.
(1) Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, that other undertaking may be included in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.

\textsuperscript{114} As article 242 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 59 paragraph (2) of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
(2) Articles 317 to 344 shall apply mutatis mutandis to the proportional consolidation referred to in paragraph (1) above.

(3) Where this Article is applied, Article 336 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 336.»

(Law of 11th July, 1988)
[83/349/EEC art. 33]

«Art. 336.

(1) Where an undertaking included in a consolidation exercises a significant influence over the operations and the financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 221\(^\text{115}\), that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders’ or members’ voting rights in that undertaking. Article 310 shall apply.

(2) When this Article is applied for the first time to a participating interest covered by paragraph (1) above, that participating interest shall be shown in the consolidated balance sheet either:

a) at its book value calculated in accordance with the valuation rules laid down in Section XIII\(^\text{116}\). The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time; or

b) at an amount corresponding to the proportion of the associated undertaking’s capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Section XIII\(^\text{117}\) shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time.

c) The consolidated balance sheet or the notes to the accounts must indicate whether (a) or (b) has been used.

\(^{115}\) As article 221 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 41 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

\(^{116}\) As Section XIII is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to Chapter II of Title II of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

\(^{117}\) See footnote under article 336(2)(a).
d) For the purposes of the application of (a) and (b) above, the difference may be calculated as at the date of acquisition of the shares or corporate units or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

(3) Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 332 paragraph (2), they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes to the accounts.

(4) The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.

(5) Insofar as the positive difference referred to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Article 333 and Article 342 paragraph (3).

(6) The proportion of the profit or loss of the associated undertaking attributable to such participating interests shall be shown in the consolidated profit and loss account as a separate item under an appropriate heading.

(7) The eliminations referred to in Article 329 paragraph (1) (c) shall be effected insofar as the facts are known or can be ascertained. Article 329 paragraph (2) and (3) shall apply.

(8) Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the capital and reserves shown in such consolidated accounts.

(9) This Article need not be applied where the participating interests in the capital of the associated undertaking is not material for the purposes of Article 319 paragraph (3).

(Law of 11th July, 1988)
[83/349/EEC art. 34]
«Art. 337.»

In addition to the information required under other provisions of this Section, the notes to the accounts must set out information in respect of the following matters:

118 See first footnote under Article 332.
1. The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in a foreign currency, the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

2. a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent company, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Article 309 following application of Article 310 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 309 paragraph (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.

   b) The same information must be given in respect of undertakings excluded from the consolidation pursuant to Articles 317 and 318 and, without prejudice to Article 318 paragraph (3), an explanation of the reasons for the exclusion of the undertakings referred to in Article 317 must be given.

3. a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 336 paragraph (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

   b) The same information must be given in respect of the associated undertakings referred to in Article 336 paragraph (9), together with the reasons for applying that provision.

4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 335, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

5. The name and registered office of each of the undertakings, other than those referred to in paragraphs (2), (3) and (4) above, in which undertakings included in the consolidation and those excluded pursuant to Article 318, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least 20% of the capital, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This
information may be omitted where, for the purposes of Article 319 paragraph (3), it is of negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50% of its capital is held directly or indirectly by the abovementioned undertakings.

6. The total amount of debts shown in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount of debt shown in the consolidated balance sheet and secured by collateral on assets granted by undertakings included in the consolidation, with an indication of the nature and form of the collateral.

7. The total amount of any financial commitments that are not included in the consolidated balance sheet, insofar as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

8. The consolidated net turnover as defined in Article 232\textsuperscript{119}, broken down by categories of activity and into geographical markets insofar as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organised, these categories and markets differ substantially from one another.

9. a) The average number of staff employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit and loss account, the staff costs relating to the financial year.

b) The average number of staff employed during the financial year by undertakings to which Article 335 has been applied shall be disclosed separately.

10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief by way of derogation from the principles set out in Articles 235, 239, 240 and 242 to 247\textsuperscript{120} and Article 332 paragraph (5). Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.

\textsuperscript{119} As article 232 is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to article 48 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

\textsuperscript{120} As articles 235, 239, 240 and 242 to 247 are abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to articles 51, 55, 56 and 59 to 64 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

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11. The difference between the tax charged to the consolidated profit and loss account for the financial year and to those for earlier financial years and the amount of tax already paid or payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.

12. The amount of the fees granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent company by reason of their responsibilities in the parent company and its subsidiary undertakings, and the amount of any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies. This information must be given as a total for each category.

13. The amount of advances and loans granted to the members of the administrative, managerial and supervisory bodies of the parent company by the parent company or by the of its subsidiary undertakings, with indications of the interest rates, main conditions and amounts repaid, if any, as well as commitments entered into on their behalf by way of guarantee of any kind. This information must be given as a total for each category.

14) Separately, the total fees for the financial year received by the réviseur d’entreprises agréé or the cabinet de révision agréé or the statutory auditor or the audit firm for the statutory audit of the consolidated accounts, the total fees received for other assurance services, the total fees received for tax advisory services and the total fees received for other non-audit services.

121 The English version of directive 2006/43/EC uses the term « charged » throughout this provision whereas the French version uses « perçus » which has been translated by « received ».

122 The following terms used in this paragraph 14) are defined as follows by the law of 18th December 2009 on the audit profession:

« audit firm » [cabinet d’audit] [means] a legal person or any other entity, regardless of its legal form, that is approved in accordance with directive 2006/43/EC by the competent authorities of another Member State to carry out statutory audits of annual or consolidated accounts.

« cabinet de révision agréé » [approved audit firm] [means] a legal person or any other entity, regardless of its legal form which is a member of IRE and is authorised under article 5 of the law of 18th December 2009.

« competent authorities » [means] the authorities or bodies designated by law that are in charge of the regulation and/or oversight of statutory auditors or audit firms or third country auditors or third country audit entities or of specific aspects thereof; the reference to « competent authority » in a specific article [of the law of 18th December 2009] means a reference to the authority or body(ies) responsible for the functions referred to in that article;


« réviseur d’entreprises agréé » [approved statutory auditor][means] a réviseur d’entreprises who is a member of IRE who is approved in accordance with the law of 18th December 2009 to carry out:

a) statutory audits and
b) any other duties which are exclusively entrusted to him by law.

« statutory audit » [means] an audit of annual accounts or of consolidated accounts to the extent required by law.
Art. 338.

(1) The disclosures prescribed in Article 337 paragraph (2), (3), (4) and (5) may:
   a) take the form of a statement deposited in accordance with Article 9; this must be disclosed in the notes to the accounts;
   b) be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. Any such omission must be disclosed in the notes to the accounts.

(2) Paragraph 1 (b) shall also apply to the information prescribed in Article 337 paragraph (8).

Sub-Section 3. - The consolidated annual report

Art. 339.

(1) The consolidated annual report must include a fair review of the development of business and the position of the undertakings included in the consolidation taken as a whole.

(2) In respect of those undertakings, the report shall also give an indication of:
   a) any important events that have occurred since the end of the financial year;
   b) the likely future development of those undertakings taken as a whole;
   c) the activities of those undertakings taken as a whole in the field of research and development;
   d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent company's shares or corporate units held by that company itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. These particulars may be disclosed in the notes to the accounts.

« statutory auditor » [contrôleur légal des comptes] [means] a natural person who is approved in accordance with directive 2006/43/EC by the competent authorities of another Member State to carry out statutory audits of annual or consolidated accounts.

123 See first footnote under Article 332.
Sub-Section 4. - The auditing of consolidated accounts

(Law of 11th July, 1988) [83/349/EEC art. 37]

(1) «(Law of 18th December, 2009) «An undertaking which draws up consolidated accounts must have them audited by one or more réviseurs d'entreprises agréés [approved statutory auditors].»

(Law of 18th December, 2009)
«(2) The réviseurs d'entreprises agréés [approved statutory auditors] entrusted with the audit must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.»

Sub-Section 5. - The publication of consolidated accounts

(Law of 11th July, 1988) [83/349/EEC art. 38]
«Art. 341.

(Law of 18th December, 2009)
«(1) Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the réviseur d'entreprises agréé [approved statutory auditor] entrusted with the auditing of the consolidated accounts, shall be published for the company which drew up the consolidated accounts as laid down by Article 9. »

(Law of 19th December, 2002)
«(2) «Article 79 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall apply with respect to the consolidated annual report.

(3) Articles 80 and 81 of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall apply.»

(Law of 24th July, 1993) [90/604/EEC art. 9]
«Art. 341-1.

Consolidated accounts may, in addition to the publication in the currency or unit of account in which they are drawn up, be published in ECU translated at

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124 As regards certain rules on the appointment, termination and resignation of réviseurs d'entreprises agréés [approved statutory auditors], please refer to the footnote under article 69 of the law of 19th December 2002 reproduced in Annex I.

125 Please also refer to the footnote under art. 26-1(2).
the rate of exchange prevailing on the consolidated balance sheet date. That rate shall be published in the notes to the accounts.»

**Sub-section 6. - Transitional and final provisions**

*(Law of 11th July, 1988)*

[83/349/EEC art. 39]

«**Art. 342.**

(1) When, for the first time, consolidated accounts are drawn up in accordance with this Section for a body of undertakings which was already connected as described in Article 309 paragraph (1), before 1st January 1988, account may be taken, for the purposes of Article 322 paragraph (1), of the book value of the shares or corporate units and the proportion of the capital and reserves which they represent as at a date before or the same as that of the first consolidation.

(2) Paragraph (1) above shall apply *mutatis mutandis* to the valuation, for the purposes of Article 336 paragraph (2) of the shares or corporate units or of the proportion of capital and reserves which they represent, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 335.

(3) Where the separate item referred to in Article 322 paragraph (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Section, it shall be permissible:

a) for the purposes of Article 333 paragraph (1), that the limited period of more than five years provided for in Article 242 paragraph (2) to be calculated as from the date of the first consolidated accounts drawn up in accordance with this Section; and

b) for the purposes of Article 333 (2), that the deduction be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Section.»

*(Law of 11th July, 1988)*

[83/349/EEC art. 40]

«**Art. 343.**

(1) Until a date to be fixed by Grand-Ducal Regulation, it shall be possible to derogate from the provisions of this Section concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes to the accounts:
a) with regard to any undertaking to be consolidated which is a credit institution or an insurance undertaking;
b) where the undertakings to be consolidated comprise principally credit institutions or insurance undertakings.

Such derogations shall be specified by Grand-Ducal Regulation. A Grand-Ducal Regulation may provide for derogations from Article 313 insofar as the limits and criteria to be applied to the above undertakings are concerned.

(2) Until a date to be fixed by Grand-Ducal Regulation, but at the latest for financial years ending in 1993, parent companies which are credit institutions (...) shall be exempt from the obligation to draw up consolidated accounts and a consolidated annual report.

(Law of 8th December, 1994)

«Parent companies which are insurance undertakings are exempted from the obligation to draw up consolidated accounts and a consolidated annual report in respect of the financial year commencing before 1st January, 1995.»

(Law of 11th July, 1988)

«That fact must be disclosed in the annual accounts of the parent company and the information prescribed in point 2 of Article 248 paragraph (1) must be given for all subsidiary undertakings.

(3) Until the date mentioned in paragraph (2), parent companies which are credit institutions (...) may be omitted from the consolidation without prejudice to Article 336 (Law of 8th December, 1994) « and until the date referred to in the second subparagraph of paragraph (2) above, subsidiary undertakings which are insurance undertakings may be left outside the consolidation without prejudice to Article 336.» The information prescribed in Article 337 item (2) must be given in the notes to the accounts in respect of any such subsidiary undertakings.

The annual or consolidated accounts of such subsidiary undertakings must, insofar as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent company or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.»

(Law of 11th July, 1988)
[83/349/EEC art. 41]
«Art. 344.

(1) Undertakings which are connected as described in Article 309 paragraph (1) and those other undertakings which are similarly connected with one
of the aforementioned undertakings, shall be affiliated undertakings for the purposes of Section XIII\(^{126}\) and for the purposes of this Section.

(2) Article 310 and Article 311 paragraph (2) shall apply.

(3) Parent companies which do not have the legal form of a société anonyme, a société en commandite par actions or a société à responsabilité limitée and which are therefore not required to draw up consolidated accounts and a consolidated annual report shall be excluded from the application of paragraph (1).»

(\textit{Law of 11th July, 1988})

\textit{\textbf{Art. 344-1.}}

This Section shall apply to consolidated accounts for the financial year commencing on 1 January 1990 or during calendar 1990.»

\footnote{\footnotesize{\textit{As Section XIII is abrogated effective 1st January, 2005, this reference should be understood from that date as a reference to Chapter II of Title II of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.}}}

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ANNEX I

Chapters I, II and IV of Title II of the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.\(^{127}\)

Title II. Commercial books (Law of 19th December 2002)

Chapter I. - On the obligation to keep accounting books and draw up and deposit annual accounts

Art. 24\(^{128}\)

(Art. 8) For the application of this Title, “undertakings” are

1° individuals who are business persons;

2° commercial companies, European economic interest groupings and economic interest groupings.

Individual business persons not domiciled in Luxembourg, foreign law undertakings referred to sub 2° in the first paragraph and European economic interest groupings with registered seat abroad are only subject to the provisions of this chapter\(^{129}\) in respect of their branches or seats of activity established in Luxembourg. Their branches and seats of activity established in the country are together considered as one undertaking. Books, accounts and supporting documents concerning such seats and branches must be kept in Luxembourg.

Art. 9. Each undertaking must keep accounting books which are appropriate to the nature and extent of its activities and comply with the specific legal provisions which are relevant for those activities.

Art. 10. The accounting books of legal entities shall take into account all their transactions, assets and rights of any kind and all their liabilities, obligations and commitments of any kind. The accounting books of business persons who are individuals shall take into account those same items where they relate to the business activity of such individuals; they shall separately state the equity allocated to that business activity.

Art. 11. The accounting books shall be kept in accordance with a system of books and accounts which comply with the standard rules of double entry bookkeeping.

All transactions are recorded without delay, fairly and without omission and in chronological order, either in a single ledger, or in a system of specialised ledgers.

127 Except for article 27, the reproduced provisions entered into force on 1st January, 2005.
129 Presumably the reference should be to Chapter I of the law of 19th December 2002 as there is no chapter in Title II of Book I of the Commercial code.
In the latter case, all data recorded in specialised ledgers are reported in a single centralised ledger together with an indication of the various accounts affected.

Art. 12. Accounts used are defined in a chart of accounts which is appropriate for the undertaking’s activities. The chart of accounts is permanently kept at the registered office of the undertaking to be available to all who are concerned by it. The content and lay-out of a minimum standard chart of accounts are determined by a Grand-Ducal regulation\(^{130}\) which shall define the content and the operating mode of the accounts listed in the standard minimal chart of accounts.

Art. 13. Individual business persons and sociétés en nom collectif or sociétés en commandite simple whose turnover for the last financial year, excluding value added tax, does not exceed 100,000 euros, are entitled not to keep their accounting books in accordance with the requirements of article 12.

The amount referred to in the first paragraph can be modified by Grand-Ducal regulation.

In case the financial year has a duration of less or more than 12 months, the amount referred to in the first paragraph is multiplied by a fraction, the denominator of which is 12 and the numerator of which is the number of months included in the relevant financial year, any incomplete month being counted as a full month.

Individual business persons and sociétés en nom collectif or sociétés en commandite simple which launch their activities, are entitled not to keep their accounting books in accordance with the requirements of article 12, as long as forecasts established on a good faith basis show that the turnover, excluding value added tax, expected to be reached at the end of the first financial year does not exceed the amount referred to in the first paragraph, calculated, where necessary, in accordance with the previous paragraph.

Article 12 does not apply to credit institutions, insurance and reinsurance companies and financial holding companies.

Art. 14. Supporting documents, correspondence received and copies of the outgoing correspondence must be kept in a chronological order and by following a methodical classification.

Art. 15. Any undertaking shall draw up once a year a complete inventory of its assets and rights of any kind and of its liabilities, obligations and commitments of any kind.

After their reconciliation with the inventory, the accounting books shall be summarised in a descriptive document which shall form the annual accounts.

\(^{130}\) Grand-Ducal regulation of 10th June 2009 on a standard chart of accounts (Mémorial A 145 of 22nd June 2009, p. 1999).
Art. 16. With the exclusion of the balance sheet and the profit and loss account, the documents and the information referred to in articles 11, 12, 14 and 15 can be archived in copy form. These copies shall have the same value in evidence as original documents of which they are presumed, unless proven otherwise, to be an accurate copy when they are made in the framework of a consistently followed management method and provided that they comply with the conditions set forth by a Grand-Ducal regulation.

The documents and the information referred to articles 11, 12, 14 and 15, regardless of the form in which they are archived, must be kept for ten years starting at the end of the financial year to which they relate.

Art. 17. Duly and regularly kept business accounting books may be accepted by the judge as evidence of commercial facts and transactions between business persons.

Art. 18. The accounting books which business undertakings are obliged to keep, and with respect to which they have not complied with the above requirements, can neither be used as evidence or prove any matter in courts to the benefit of those who kept them; without prejudice to the provisions of the Book [of the Commercial Code] on Bankruptcy and Fraudulent Insolvency.

Art. 19. In a litigation, the communication of the accounting books may be ordered by the judge, even on his own initiative, in order to withdraw therefrom any information concerning the dispute.

Art. 20. In case the accounting books which are offered, requested or ordered to be presented are located in a place which is distant from the court hearing the dispute, the court may address a formal assistance request to the Tribunal d’Arrondissement sitting in commercial matters of the relevant location or delegate a juge de paix, to review the accounting books, draw up a report on their content and provide such report to the court hearing the case.

Art. 21. If the party to the dispute whose books are proposed [by the other party] to be recognised as [determining] evidence refuses to communicate them, the judge may order that the other party has the right to settle the litigation by its declaration under oath.
Chapter II. – Annual accounts

Section 1. - General provisions

Art. 25.

The present Chapter applies to the undertakings referred to in article 8 of the Commercial Code except for

1° individuals who are business persons and sociétés en nom collectif or en commandite simple, referred to in article 13 of the Commercial Code;
2° credit establishments and insurance and re-insurance companies;
3° sociétés d'épargne-pension à capital variable (savings-pension companies with variable capital).

This Chapter applies to sociétés d'investissement à capital variable (SICAV, investment companies with variable capital) and to financial holding companies, to the extent specified in articles 30 and 31.

«Art. 26.133

(1) The annual accounts referred to in article 15 of the Commercial Code comprise the balance sheet, the profit and loss account and the notes to the accounts; these documents shall constitute a composite whole.

(2) The annual accounts shall be drawn up clearly and in accordance with the provisions of this Chapter.

(3) The annual accounts shall give a true and fair view of the undertaking’s assets, liabilities, financial position and results.

(4) Where the application of the provisions set out hereafter would not be sufficient to give a true and fair view within the meaning of paragraph (3), additional information must be given.

(5) Where in exceptional cases the application of a provision of this Chapter is incompatible with the obligation laid down in paragraph (3) above, that provision must be derogated from in order to give a true and fair view within the meaning of paragraph (3). Any such derogation must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and results.

131 Footnotes will indicate the abrogated article of the law of 1915 to the relevant provision corresponds in essence. There may however be differences between the now abrogated provisions of the law of 1915 and those of the law of 2002.
132 Pursuant to Regulation (EC) n°1606/2002, of the European Parliament and of the Council of 19th July, 2002 on the application of international accounting standards, a Member State may permit or require listed companies to prepare their annual accounts and companies other than listed companies to prepare their consolidated and/or their annual accounts in conformity with "international accounting standards" meaning the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS) and related interpretations and interpretations and standards adopted in the future by the International Accounting Standards Board (IASB). See also article 27 hereafter.
133 Corresponds to abrogated article 205 of the law of 1915.
(6) Where a provision of this Chapter requires a quantitative or qualitative assessment, such an assessment must be made by the undertakings in accordance with the criterion laid down in paragraph (3). The person or persons entrusted with the verification of the accounts and the annual report shall verify that this requirement is complied with.

Art. 27.

The Minister of Justice can, in special cases and on the reasoned opinion of the Commission des normes comptables, grant derogations from the rules issued under articles 11, 12 and 15 of the Commercial Code, the provisions of this Chapter and articles 309 to 344-1 of the amended law of 10th August, 1915 on Commercial Companies. A Grand-Ducal regulation may authorise the undertakings referred to in article 25 or certain categories thereof to draw-up their balance sheet and their profit and loss account under a layout which derogates from Sections 3 and 5 of this Chapter, on the condition that such undertakings in accordance with Article 75, deposit a balance sheet and a profit and loss account complying with the provisions of Section 3 and 5 of this Chapter.

Section 2. - General provisions concerning the balance sheet and the profit and loss account

[78/660/EEC art. 3]

Art. 28. 135

The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons therefor.

[78/660/EEC art. 4]

Art. 29. 136

(1) In the balance sheet and in the profit and loss account, the items prescribed in Articles 34 and 46 must be shown separately in the order indicated. A more detailed subdivision of the items is authorised provided that the layouts are complied with.

134 Pursuant to Regulation (EC) n°1606/2002, of the European Parliament and of the Council of 19th July, 2002 on the application of international accounting standards, a Member State may permit or require listed companies to prepare their annual accounts and companies other than listed companies to prepare their consolidated and/or their annual accounts in conformity with "international accounting standards" meaning the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS) and related interpretations and interpretations and standards adopted in the future by the International Accounting Standards Board (IASB).

135 Corresponds to abrogated article 206 of the law of 1915.

136 Corresponds to abrogated article 207 of the law of 1915.
The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by arabic numerals must be adopted where the special nature of an undertaking so requires.

The balance sheet and profit and loss account items that are preceded by arabic numerals may be combined where:

a) they are immaterial in amount for the purposes of Article 26, paragraph (3),

b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes to the accounts.

In respect of each balance sheet and profit and loss account item, the figure relating to the corresponding item for the preceding financial year must be shown. Where the figures from one year are not comparable to figures of the next year and where the figures of the preceding year have been adjusted, this must be disclosed in the notes to the accounts, with relevant comments.

Save where there is a corresponding item for the preceding financial year in accordance with paragraph (4), a balance sheet or profit and loss account item for which there is no amount shall not be shown.

[78/660/EEC art. 5]

Art. 30. 137

(1) By way of derogation from paragraphs (1) and (2) of Article 29, investment companies shall draw up their annual accounts in accordance with the rules laid down on the basis of Article 86(2) of the amended law of 30th March, 1988 relating to undertakings for collective investment. For the purposes of this Article, “investment companies” shall mean those companies the sole object of which is to invest their funds in various transferable securities, real property and other assets, with the sole aim of spreading investment risks and giving their shareholders or members the benefit of the results of the management of their assets.

(2) By way of derogation from paragraphs (1) and (2) of Article 29, a Grand Ducal regulation may prescribe a particular layout for the balance sheet and profit and loss account of those companies associated with fixed-capital investment companies if the sole object of those associated companies is to acquire fully paid shares issued by those investment companies.

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137 Corresponds to abrogated article 208 of the law of 1915.
138 This reference should as from 14th February, 2004, be read as also being a reference to Article 110(5) of the law of 20th December, 2002 relating to undertakings for collective investment. The reference to Article 86(2) of the law of 1988 no longer applies after 12th February, 2007 as such law has been abrogated effective 13th February, 2007.

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Art. 31.  
(1) By way of derogation from paragraphs (1) and (2) of Article 29, financial holding companies shall draw up their balance sheet and profit and loss account in accordance with a special layout to be prescribed by Grand Ducal regulation.  
(2) The financial holding companies referred to above are those companies the sole object of which is to acquire holdings in other undertakings and manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, without prejudice to the rights of the financial holding companies as shareholders or members.

Art. 32.  
A Grand Ducal regulation may amend the layouts of the balance sheet and profit and loss accounts in order to include the appropriation of profit or the treatment of loss.

Art. 33.  
Any set-off between asset and liability items or between income and expenditure items is prohibited.

Section 3. - Layout of the balance sheet

Art. 34.  
ASSETS

A. Subscribed capital unpaid,

I. Subscribed capital not called

II. Subscribed capital called but unpaid

139 Corresponds to abrogated article 209 of the law of 1915.  
140 In respect of abrogated article 209 of the law of 1915, this is the Grand Ducal regulation of 24th June, 1984.  
141 Corresponds to abrogated article 210 of the law of 1915.  
142 Corresponds to abrogated article 211 of the law of 1915.  
143 Corresponds to abrogated article 213 of the law of 1915.
B. Formation expenses

C. Fixed assets

I. Intangible assets

1. Costs of research and development
2. Concessions, patents, licences, trademarks and similar rights and assets, if they were:
   a) acquired for valuable consideration and need not be shown under C. I.3
   b) created by the undertaking itself
3. Goodwill, to the extent that it was acquired for valuable consideration
4. Payments on account

II. Tangible assets

1. Land and buildings
2. Plant and machinery
3. Other fixtures and fittings, tools and equipment
4. Payments on account and tangible assets in course of construction

Financial assets

1. Shares in affiliated undertakings
2. Loans to affiliated undertakings
3. Participating interests
4. Loans to undertakings with which the company\textsuperscript{144} is linked by virtue of participating interests.
5. Securities held as fixed assets.
6. Other loans
7. Own shares or own corporate units, with an indication of their nominal value or, in the absence thereof, their accounting par value

D. Current Assets

I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

\textsuperscript{144} Presumably this would need to be read as “the undertaking”.

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II. Debtors

1. Claims resulting from sales and the provision of services/trade debtors
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

2. Amounts owed by affiliated undertakings
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

3. Amounts owed by undertakings with which the company is linked by virtue of participating interests
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

Other debtors

   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

III. Transferable Securities

1. Shares in affiliated undertakings
2. Own shares or own corporate units, with an indication of their nominal value or, in the absence thereof, their accounting par value
3. Other transferable securities

IV. Cash at bank, cash in postal cheque accounts, cheques and cash in hand

E. Regularisation accounts/prepayments and accrued income

**LIABILITIES**

A. Capital and reserves

I. Subscribed capital
II. Share premium account
III. Revaluation reserve
IV. Reserves

   1. Legal reserve
   2. Reserve for own shares or own corporate units
   3. Reserves provided for by the articles
4. Other reserves

V. Profit or loss brought forward
VI. Profit or loss for the financial year
VII. Capital investment subsidies
VIII. Gains which are temporarily not taxable

A. Bis Subordinated Debt

B. Provisions for liabilities and charges

1. Provisions for pensions and similar obligations
2. Provisions for taxation
3. Other provisions

C. Creditors

1. Bonds\(^{145}\)
   a) Convertible Bonds
      a) becoming due and payable within one year
      b) becoming due and payable after more than one year
   b) Non-Convertible Bonds
      a) becoming due and payable within one year
      b) becoming due and payable after more than one year

2. Amounts owed to credit institutions
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

3. Payments received on account of orders insofar as they are not shown separately as deductions from stocks
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

4. Debts on purchases and provisions of services/trade creditors
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

5. Bills of exchange payable
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

\(^{145}\) The English version of the directive uses the term "Debenture loans".

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6. Amounts owed to affiliated undertakings
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

8. Tax and social security debt
   a) Tax debts
   b) Social security debts

9. Other creditors
   a) becoming due and payable within one year
   b) becoming due and payable after more than one year

D. Regularisation accounts/accruals and deferred income

[78/660/EEC art. 11]

Art. 35. 146

Undertakings which on their balance sheet dates do not exceed the limits of two of the following three criteria:

[1999/60/EC art. 1.1.]
- balance sheet total: 3.125 million euro
- Net turnover: 6.25 million euro
- average number of full-time staff employed during the financial year: 50

may draw up their balance sheet in the form of an abridged balance sheet showing only those items preceded by letters and roman numerals in Article 34, disclosing separately the claims on debtors and amounts due to creditors which are due and payable after more than one year, respectively in items D. II under "Assets" and C. under "Liabilities", but in total for each.

The amounts stated above may be amended by Grand Ducal regulation.

[78/660/EEC art. 12]

Art. 36. 147

(1) Where on its balance sheet date an undertaking exceeds or ceases to exceed the limits of two of the three criteria indicated in Article 35, that

146 Presumably this would need to be read as "the undertaking."
147 Corresponds to abrogated article 215 of the law of 1915.
fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.

(2) The balance sheet total referred to in Article 35 shall consist of items A. to E. under "Assets" in the layout prescribed in Article 34.

[78/660/EEC art. 13]

Art. 37. 149

(1) Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes to the accounts, if such disclosure is necessary for the comprehension of the annual accounts.

(2) Own shares and own corporate units and those in affiliated undertakings may be shown only under the items prescribed for that purpose.

[78/660/EEC art. 14]

Art. 38. 150

All commitments by way of guarantee of any kind must, if there is no obligation to show them as liabilities, be clearly set out at the foot of the balance sheet or in the notes to the accounts, a distinction being made between the various types of guarantee provided for by law and specific disclosure being made of any collateral granted on assets.

Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

Section 4. - Special provisions relating to certain balance sheet items

[78/660/EEC art. 15]

Art. 39. 151

(1) Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.

(2) Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activity.

(3) a) Movements in the various fixed asset items shall be shown in the balance sheet or in the notes to the accounts. To this end there shall be shown separately, starting with the purchase price or production cost, for each fixed asset item, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the

148 Corresponds to abrogated article 216 of the law of 1915.
149 Corresponds to abrogated article 217 of the law of 1915.
150 Corresponds to abrogated article 218 of the law of 1915.
151 Corresponds to abrogated article 219 of the law of 1915.
value adjustments of previous financial years. Value adjustments shall be shown either in the balance sheet, as clear deductions from the relevant items, or in the notes to the accounts.

b) If, when annual accounts are drawn up in accordance with this Section for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of the present sub-paragraph b) must be disclosed in the notes to the accounts.

c) Where Article 54 is applied, the movements in the various fixed asset items referred to in sub-paragraph a) of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.

(4) Paragraph (3) items a) and b) shall apply to the presentation of "Formation expenses".

[90/604/EEC art. 1]

(5) Paragraph (3) a) and paragraph (4) shall not apply to the abridged balance sheet of the undertakings referred to in Article 35.

[78/660/EEC art. 16]

[90/604/EEC art. 1]

Art. 40.152

Rights to immovables and other similar rights as defined by civil law must be shown under "Land and Buildings".

[78/660/EEC art. 17]

Art. 41.153

For the purposes of this Chapter, [participating interest] shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the undertaking's activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds twenty per cent.

[78/660/EEC art. 18]

Art. 42.154

Expenditure incurred during the financial year but relating to a subsequent financial year must be shown under the asset item “Regularisation accounts/prepayments and accruals”.

152 Corresponds to abrogated article 220 of the law of 1915.
153 Corresponds to abrogated article 221 of the law of 1915.
154 Corresponds to abrogated article 222 of the law of 1915.
Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date, whether that reduction is final or not.

Provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred or certain to be incurred but uncertain as to their amount or as to the date on which they will arise.

Provisions may also be created in order to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to their amount or as to the date on which they will arise.

Provisions for liabilities and charges may not be used to adjust the values of assets.

Income received before the balance sheet date, but relating to a subsequent financial year, must be shown under the liabilities item “Regularisation accounts/accruals and deferred income”.

Section 5. - Layout of the profit and loss account

A. Charges

1. Reduction in stocks of finished goods and in work in progress
   a) Consumption of merchandise, raw materials and consumables
   b) Other external charges
2. Staff costs
   a) Wages and salaries
   b) Social security costs accruing by reference to wages and salaries
   c) Complementary pensions

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155 Corresponds to abrogated article 223 of the law of 1915.
156 Corresponds to abrogated article 224 of the law of 1915.
157 Corresponds to abrogated article 225 of the law of 1915.
158 Corresponds to abrogated article 228 of the law of 1915.
d) Other social security costs
4. a) Value adjustments in respect of formation expenses and tangible and intangible fixed assets
   b) Value adjustments in respect of current assets
5. Other operating charges
6. Value adjustments in respect of financial assets and of transferable securities held as current assets
7. Interest payable and similar charges
   a) concerning affiliated undertakings
   b) other interests payable and charges
8. 159
9. 160
10. Extraordinary charges
11. Tax on profit or loss
12. Other taxes not shown under the above items
13. Profit or loss for the financial year

B. Income
1. Net turnover
2. Increase in stocks of finished goods and in work in progress
3. Work performed by the undertaking for its own purposes and capitalised
4. Other operating income
5. Income from participating interests
   a) derived from affiliated undertakings
   b) other participating interests
6. Income from other transferable securities and from loans forming part of the fixed assets
   a) derived from affiliated undertakings
   b) other income
7. Other interest receivable and similar income
   a) derived from affiliated undertakings
   b) other interests receivable and similar income
8. 161
9. Extraordinary income
10. Profit or loss for the financial year.

[78/660/EEC art. 27]

Art. 47. 162

(1) Undertakings which on their balance sheet date do not exceed the limits of two of three of the following criteria:

159 Left blank in the law.
160 Left blank in the law.
161 Left blank in the law.
162 Corresponds to abrogated article 231 of the law of 1915.
may derogate from the layouts prescribed in Article 46 by combining items A 1, A 2 and B 1 to B 4 inclusive under one item called "Gross Profit" or "Gross Loss", as the case may be.

Article 36 shall apply.

(2) The above amounts may be amended by Grand Ducal regulation.

Section 6. - Special provisions relating to certain items in the profit and loss account

[78/660/EEC art. 28]

Art. 48. 163

The net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the undertaking's ordinary activities, after deductions of sales rebates and of value added tax and other taxes directly linked to the turnover.

[78/660/EEC art. 29]

Art. 49. 164

(1) Income and charges that arise otherwise that in the course of the undertaking's ordinary activities must be shown under "Extraordinary Income" or "Extraordinary Charges".

(2) Unless the income and charges referred to in paragraph (1) are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes to the accounts. The same shall apply to income and charges attributable to another financial year.

[78/660/EEC art. 30]

Art. 50. 165

Taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss may be aggregated and shown in the profit and loss account in one item set out before "Other taxes not shown under the above items".

163 Correlates to abrogated article 232 of the law of 1915.
164 Correlates to abrogated article 233 of the law of 1915.
165 Correlates to abrogated article 234 of the law of 1915.
Where this derogation is applied, undertakings must disclose in the notes to the accounts, the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the extraordinary profit or loss.

**Section 7. - Valuation rules**

[78/660/EEC art. 31]

**Art. 51.**

(1) The valuation of the items shown in the annual accounts shall be made in accordance with the following general principles:

a) the undertaking is presumed to be carrying on its business as a going concern;

b) the methods of valuation may not be modified from one financial year to another;

c) valuation must be made on a prudent basis, and in particular

   aa) only profits made at the balance sheet date may be included;

   bb) account must be taken of all foreseeable liabilities and potential losses which have arisen in the course of the financial year concerned or of a previous financial year, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up;

   cc) account must be taken of all depreciations, irrespective of whether the result of the financial year is a loss or a profit;

d) account must be taken of income and charges relating to the financial year in respect of which the accounts are drawn up irrespective of the date of receipt or payment of such income or charges;

e) the components of asset and liability items must be valued separately;

f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

(2) Departures from these general principles are permitted in exceptional cases. Any such departures must be disclosed in the notes to the accounts and the reasons for them must be given together with an assessment of their effect on the assets and liabilities, the financial position and the profit or loss.

166 Corresponds to abrogated article 235 of the law of 1915.
Art. 52.167
The items shown in the annual accounts shall be valued in accordance with Articles 53, 55, 56, 59 to 64, which are based on the principle of purchase price or production cost.

Art. 53.168
(1) a) Formation expenses must be written off within a maximum period of five years.
   b) Insofar as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.

(2) The amounts entered under the "Formation Expenses" item must be commented upon in the notes to the accounts.

Art. 54.169
A Grand Ducal regulation may, by way of derogation from Article 52, permit or require in respect of all undertakings or certain classes of undertakings:
   a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;
   b) valuation for the items shown in annual accounts, including capital and reserves, which are designed to take account of inflation by methods other than that provided for in a);
   c) revaluation of tangible fixed assets and financial fixed assets.

The regulation providing for the valuation methods mentioned under a), b) or c) shall determine their content and limit and the rules for their application whilst complying with Article 33 of Directive 78/660/EEC of 25th July, 1978.

167 Corresponds to abrogated article 236 of the law of 1915.
168 Corresponds to abrogated article 237 of the law of 1915.
169 Corresponds to abrogated article 238 of the law of 1915.
Art. 55.\textsuperscript{170}

(1) a) Fixed assets must be valued at purchase price or production cost, without prejudice to b) and c) below.

b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.

c) aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.

bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.

cc) The value adjustments referred to in aa) and bb) must be charged to the profit and loss account and disclosed separately in the notes to the accounts if they have not been shown separately in the profit and loss account.

dd) Valuation at the lower of the values provided for in aa) and bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

d) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes to the accounts.

(2) The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

(3) a) The production cost shall be calculated by adding to the purchase price of the raw materials and consumables the costs directly attributable to the product in question.

b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent to which they relate to the period of production.

(4) Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent to which it relates to the period of production.

In that event, the inclusion of such interest under "Assets" must be disclosed in the notes to the accounts.

\textsuperscript{170} Corresponds to abrogated article 239 of the law of 1915.
[78/660/EEC art. 36]

Art. 56. ¹⁷¹

By way of derogation from Article 55 paragraph (1) item c) sub cc), investment companies, within the meaning of Article 30, may set off value adjustments to transferable securities directly against capital and reserves. The amounts in question must be shown separately under "Liabilities" in the balance sheet.

[78/660/EEC art. 60]

Art. 57. ¹⁷²

Investment companies within the meaning of Article 30 must value the investments in which they have invested their funds on the basis of market value.¹⁷³ Investment companies with variable capital are exempted from showing separately the amounts of the value adjustments mentioned in Article 56.

[78/660/EEC art. 59]

Art. 58. ¹⁷⁴

(1) Undertakings may show in the balance sheet participating interests, as defined in Article 41, in the capital of undertakings over the operating and financial policies of which they exercise significant influence, in accordance with paragraphs (2) to (9) below as sub-items of the items “Shares in affiliated undertakings” or “Participating interests”, as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders’ or members’ voting rights in that undertaking. Article 310 of the amended law of 1915 on commercial companies shall apply.

(2) When this Article is first applied to a participating interest covered by paragraph (1), it shall be shown in the balance sheet either:

a) at its book value calculated in accordance with Articles 51 to 64. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes to the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or

b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest.

¹⁷¹ Corresponds to abrogated article 240 of the law of 1915.
¹⁷² Corresponds to abrogated article 241 of the law of 1915.
¹⁷³ This needs to be read together with Articles 28(4) and 40 of the law of 20th December, 2002 relating to undertakings for collective investment.
¹⁷⁴ Corresponds to abrogated article 241-1 of the law of 1915.
The difference between that amount and the book value calculated in accordance with the valuation rules provided for by Articles 51 to 64 shall be disclosed separately in the balance sheet or in the notes to the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.

c) The balance sheet or the notes to the accounts must indicate whether a) or b) has been used.

d) For the application of a) and b), the calculation of the difference may be made as at the date of acquisition of the shares or corporate units or, where the acquisition took place in two or more stages, as at the date at which the shares or corporate units became a participating interest within the meaning of paragraph (1) above.

(3) Where items of the assets or liabilities of the undertaking in which a participating interest within the meaning of paragraph (1) above is held have been valued by methods other than those used by the company, drawing up the annual accounts, these items may, for the purpose of calculating the difference referred to in paragraph (2) item a) or item b), be revalued by the methods used by the company, drawing up its annual accounts. Disclosure must be made in the notes to the accounts where such revaluation has not been made.

(4) The book value referred to in paragraph (2) item a), or the amount corresponding to the proportion of capital and reserves referred to in paragraph (2) item b) shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.

(5) Insofar as a positive difference covered by paragraph (2) item a) or item b) cannot be related to any category of assets or liabilities, it shall be dealt with in accordance with the rules applicable to the “Goodwill” item.

(6) a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph (1) above shall be shown in the profit and loss account as a separate item with an appropriate heading.

b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.

c) It is permitted that the proportion of the profit or loss attributable to the participating interests referred to in paragraph (1) are shown in the profit and loss account to the extent of the

175 Presumably this would need to be read as "the undertaking".
176 Presumably this would need to be read as "the undertaking".
amount corresponding to dividends already received or the payment of which can be claimed.

(7) The eliminations referred to in Article 329 paragraph (1) item c) of the amended law of 1915 on commercial companies are made to the extent that the facts are known or can be ascertained. Article 329 paragraphs (2) and (3) of the amended law of 1915 on commercial companies shall apply.

(8) Where an undertaking in which a participating interest within the meaning of paragraph (1) is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.

(9) This article need not be applied where a participating interest as defined in paragraph (1) is not material for the purposes of Article 26, paragraph (3).

[78/660/EEC art. 37]

Art. 59.  

(1) Article 53 paragraphs (1) and (2) shall apply to the "Costs of research and development" item. However, those costs may be written off over a period exceeding five years where the results of the research and development work may be used beyond that period. Where this faculty is used, that fact shall be disclosed in the notes to the accounts together with the reasons therefor.

(2) Article 53 paragraph (1) item a) shall apply to the "Goodwill" item. However, companies 178 may write goodwill off systematically over a period exceeding five years provided that this period does not exceed the useful economic life of this asset. Where this faculty is used, that fact shall be disclosed in the notes to the accounts together with the reasons therefor.

[78/660/EEC art. 38]

Art. 60.  

Tangible fixed assets, raw materials and consumables which are constantly being replaced and the overall value of which is of secondary importance to the undertaking may be shown under "Assets" at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

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177 Corresponds to abrogated article 242 of the law of 1915.
178 Presumably this would need to be read as "undertakings".
179 Corresponds to abrogated article 243 of the law of 1915.
Art. 61.  

(1) a) Current assets must be valued at purchase price or production cost, without prejudice to items b) and c) below.  
b) Current assets shall be subject to value adjustments with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.  
c) Exceptional value adjustments are allowed where these are necessary on the basis of a reasonable commercial assessment, to prevent that the valuation of those items needs to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes to the accounts.  
d) Valuation at the lower value provided for in b) and c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.  
e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes to the accounts.  

(2) The definitions of purchase price and of production cost given in Article 55 paragraph (2) and (3) shall apply. Article 55 paragraph (4) shall also apply. Distribution costs may not be included in production costs.  

Art. 62.  

(1) The purchase price or production cost of stocks of goods of the same category and all fungible items including transferable securities may be calculated either on the basis of weighted average prices or by the "first in, first out" (FIFO) method, the "last in, first out" (LIFO) method, or a similar method.  

(2) Where the value shown in the balance sheet, following application of the methods of calculation specified in paragraph (1), differs materially, at the balance sheet date, from the price on the basis of the last known market price prior to the balance sheet date, the amount of that difference must be disclosed in total by category in the notes to the accounts.  

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180 Corresponds to abrogated article 244 of the law of 1915  
181 Corresponds to abrogated article 245 of the law of 1915.
Art. 63. 182

(1) Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes to the accounts.

(2) The amount of this difference must be written off by reasonable yearly amounts and must be completely written off no later than the time of repayment of the debt.

Art. 64. 183

Provisions for liabilities and charges may not exceed in amount the sums which are necessary.

The provisions shown in the balance sheet under "Other Provisions" must be disclosed in the notes to the accounts if they are material.

Section 8. - Contents of the notes to the accounts

Art. 65. 184

(1) In addition to the information required under other provisions of this Section, the notes to the accounts must at least set out information in respect of the following matters:

1° the valuation methods applied to the various items in the annual accounts and the methods employed in calculating the value adjustments. For items included in the annual accounts which are, or were originally, expressed in a foreign currency, the bases of conversion used to express them in local currency must be disclosed;

2° the name and registered office of each of the undertakings in which the undertaking, either itself or through a person acting in its own name but on the company's 185 behalf, holds at least twenty per cent of the capital, showing the proportion of the capital held, as well as the amount of

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182 Corresponds to abrogated article 246 of the law of 1915.
183 Corresponds to abrogated article 247 of the law of 1915.
184 Corresponds to abrogated article 248 of the law of 1915.

Art. 1 The undertakings referred to in article 77, second paragraph items 1° to 3° of the law of 19th December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings are authorised to derogate from Articles 65 and 68 of such law when drawing up their annual accounts in order to comply with the publication requirements of article one paragraphs 2) b), 3) and 4) of Directive 2001/65/EC of the European Parliament and of the Council of 27th September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions.
Art. 2 [for consolidated accounts see footnote under article 322 of the law of 10th August, 1915].
Art. 3 This Grand-Ducal Regulation comes into force on first October 2006. It shall apply to the consolidated accounts of undertakings for their fiscal years ending after that date.
185 Presumably this would need to be read as "the undertaking's".
capital and reserves and the profit or loss for the latest financial year of
the undertaking concerned for which the accounts have been approved.
This information may be omitted where for the purposes of Article 26
paragraph (3) it is of negligible importance only. The information
concerning capital and reserves and the profit or loss may also be omitted
where the undertaking concerned does not publish its balance sheet and
less than fifty per cent. of its capital is held, directly or indirectly, by the
company186; the name, registered office and the legal form of each
undertaking of which the company187 is the member having unlimited
liability. This information may be omitted when, for the purposes of
Article 26 paragraph (3), it is of negligible importance only;

3° the number and the nominal value or, in the absence of a nominal value,
the accounting par value of the shares subscribed for during the financial
year within the limits of an authorised capital;

4° where there is more than one class of shares, the number and the
nominal value or, in the absence of a nominal value, the accounting par
value of each class;

5° the existence of any founders’ shares, convertible bonds or similar
securities or rights, with an indication of their number and the rights they
confer;

6° amounts owed by the undertaking becoming due and payable after more
than five years as well as the undertaking’s entire debts secured by
collateral on assets furnished by the company188 with an indication of the
nature and form of the collateral. This information must be disclosed
separately for each creditor’s item, as provided for in the layouts
prescribed in Article 34;

7° the total amount of any financial commitments that are not included in
the balance sheet, insofar as this information is of assistance in assessing
the financial position. Any commitments concerning pensions and
commitments vis-à-vis affiliated undertakings must be disclosed
separately;

8° the net turnover within the meaning of Article 48, broken down by
categories of activity and into geographical markets insofar as, taking
account of the manner in which the sale of products and the provision of
services falling within the undertaking’s ordinary activities are organised,
these categories and markets differ substantially from one another;

9° the average number of staff employed during the financial year, broken
down by categories;

10° the extent to which the calculation of the profit or loss for the financial
year has been affected by a valuation of the items which, by way of
derogation from the principles laid down in Articles 51, 53, 55, 56 and 59

186 Presumably this would need to be read as "the undertaking".
187 Presumably this would need to be read as "the undertaking".
188 Presumably this would need to be read as "the undertaking".
to 64, was made in the financial year concerned or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;

11° the difference between the tax charged for the financial year and for earlier financial years and the amount of tax already paid or payable in respect of those years, to the extent that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;

12° (Law of 25th August, 2006) «the amount of the emoluments granted in respect of the financial year to the members of the management and supervisory bodies in that capacity and any commitments arising or entered into in respect of retirement pensions for former members of those bodies. This information must be given as a total for each category; »

13° (Law of 25th August, 2006) «the amount of advances and loans granted to the members of the management and supervisory bodies, with indications of the interest rates, main conditions and the amounts which may have been repaid, as well as the commitments entered into on their behalf by way of guarantees of any kind. This information must be given as a total for each category. »

14° information concerning the income (charges) in respect of the financial year, which is receivable (are payable) after the end of the financial year and are shown under "Debtors" ("Creditors"), where such income (charges) is or are material.

[83/349/EEC art. 42]

15° a) the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the undertaking forms a part as a subsidiary undertaking;

b) the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings included in the body of undertakings referred to in a) of which the undertaking forms part as a subsidiary undertaking;

c) the place where copies of the consolidated accounts referred to in a) and b) may be obtained unless they are unavailable.

(Law of 18th December, 2009)

[2006/43/EC art. 49.1]

«16° separately, the total fees for the financial year received\(^9\) by the réviseur d'entreprises agréé [approved statutory auditor] or the cabinet de révision agréé\(^9\)

\(^9\) The English version of directive 2006/43/EC uses the term « charged » throughout this provision whereas the French version uses « perçus » which has been translated by « received ».
[approved audit firm] or the statutory auditor or the audit firm for the statutory audit of the annual accounts, the total fees received for other assurance services, the total fees received for tax advisory services and the total fees received for other non-audit services.\footnote{190} This requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under article 1 of Directive 83/349/EEC, provided that such information is given in the notes to the consolidated accounts.

\footnote{190}Certain terms used in this provision are defined by the law of 18th December 2009 on the audit profession. Please refer to the footnote under article 337 item 14 of the law of 1915.

\footnote{191}Corresponds to abrogated article 249 of the law of 1915.

\footnote{192}Corresponds to abrogated article 250 of the law of 1915.

\footnote{78/660/EEC art. 43.2}
(2) Paragraph (1) 2° shall not apply to financial holding companies.

\footnote{90/604/EEC art. 4}
(3) The information provided for in paragraph (1) 12° may be omitted if it allows to identify the position of a specific member of such bodies.

\footnote{78/660/EEC art. 44}
Art. 66.\footnote{191}

\textit{(Law of 18th December, 2009)}
\footnote{2006/43/CE art. 49.1}

«The undertakings referred to in Article 35 shall be authorised to prepare abridged notes to their accounts without the information required in Article 65 paragraph (1) 5° to 12° and 16. However, the notes to the accounts must disclose the information specified in Article 65 paragraph (1) 6° in total for all the items concerned.»

\footnote{90/604/EEC art. 5}
These same undertakings are also exempted from the obligation to disclose in the notes to their accounts, the information provided by Article 39, paragraph (3) a) and paragraph (4) , Article 44, paragraph (2), Article 50, second paragraph, Article 53, paragraph (2), Article 62, paragraph (2) , Article 64, second paragraph and Article 65, paragraph (1) 14°.

\footnote{78/660/EEC art. 44}
Article 36 shall apply.

\footnote{78/660/EEC art. 45}
Art. 67.\footnote{192}

(1) The information prescribed in Article 65 paragraph (1) 2°:
a) may take the form of a statement deposited in accordance with Article 9 of the amended law of 1915 on commercial companies; this must be disclosed in the notes to the accounts;
b) may be omitted when their nature is such that it would be seriously prejudicial to any of the undertakings to which Article 65 paragraph (1) 2° relates.

The omission of such information must be disclosed in the notes to the accounts.

(Law of 18th December, 2009)
[2006/43/CE art. 49.1]

«(2) Paragraph (1) b) shall also apply to the information prescribed in Article 65 paragraph (1) 8°.

The companies referred to in Article 47 shall be authorised to omit the information prescribed in Article 65 paragraph (1) 8°.

The companies referred to in article 47 are also authorised to omit disclosure of the information specified in article 65 paragraph (1) 16°, provided that such information is delivered to the CSSF on its request. »

[83/349/EEC art. 46]
(3) The information referred to in Article 65 paragraph (1) 2° first sentence concerning the amount of capital and reserves and profits and losses for the last financial year for which the accounts have been drawn up may be omitted:

a) where the undertakings concerned are included in consolidated accounts drawn up by the parent company or in the consolidated accounts of a larger body of undertakings as referred to in Article 314 paragraph (2) of the amended law of 1915 on commercial companies; or

b) where the holdings in their capital have been dealt with by the parent company in its annual accounts in accordance with Article 58 or in the consolidated accounts drawn up by that parent company in accordance with Article 336 of the amended law of 1915 on commercial companies.

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193 Presumably the references to “companies” in this and the following sentences would need to be read as “The undertakings”.
194 Commission de Surveillance du Secteur Financier, the regulator over the financial sector and over the audit profession.
Section 9. - Contents of the annual report

[78/660/EEC art. 46]

Art. 68.


(2) The report shall also give an indication of:
   a) any important events that have occurred since the end of the financial year;
   b) the company's likely future development;
   c) activities in the field of research and development;
   d) in respect of the acquisitions of own shares, the information prescribed in Article 49-5 paragraph (2) of the amended law of 1915 on commercial companies.

[89/666/EEC art. 11]

   e) the existence of branches of the company.

[90/604/EEC art. 6]

(3) Companies referred to in Article 35 are not obliged to prepare annual reports provided they include in their notes to the accounts the information concerning the acquisition of own shares as prescribed in Article 49-5, paragraph (2) of the amended law of 1915 on commercial companies.

Section 10. - Auditing

Art. 69.

[78/660/EEC art. 51.1.a]


195 Corresponds to abrogated article 251 of the law of 1915. See footnote under article 65.

196 These are
   (i) sociétés anonymes, sociétés en commandite par actions and sociétés à responsabilité limitée,
   (ii) sociétés en nom collectif and sociétés en commandite simple where all their members which have unlimited liability are companies of the type referred to in article 1 paragraph (1) sub-paragraph (1) of amended directive 78/660/EEC or companies which are not governed by the laws of a Member State of the European Community but which have a legal form comparable to those referred to in directive 68/151/EEC of 9th March, 1968; and
   (iii) the types of company referred to in (ii) where all their members having unlimited liability are themselves organised as one of the types of companies referred to in (ii) or in article 1 paragraph (1) sub-paragraph (1) of amended directive 78/660/EEC.

197 Corresponds to abrogated article 256 of the law of 1915.

198 See the footnote under Article 68(1).
[approved statutory auditors] appointed by the general meeting.»

In the companies referred to in «Article L. 426-1 of the Labour Code»200, those persons shall be designated by the general meeting upon the proposal of the undertaking's comité mixte.

(Law of 18th December, 2009) « The persons referred to in the two foregoing paragraphs shall be appointed for a period laid down in a contract for the provision of services, which may be terminated only on serious grounds or by mutual agreement.»201, 202, 203

[78/660/EEC art. 51.1. (b) and 51.2]

b) The person or persons responsible for auditing the accounts must also verify that the annual report is consistent with the annual accounts for the financial year.

(2) The companies referred to in Article 35 shall be exempted from the obligation laid down in paragraph (1). Article 36 shall apply.

(3) (Law of 18th December, 2009) « The institution of the commissaires aux comptes [supervisory auditors] provided for in Articles 61, 109 and 200 of the amended law of 1915 on commercial companies shall not apply to those companies which have their annual accounts audited by a réviseur d'entreprises agréé [approved statutory auditor] pursuant to paragraph (1).»

See the footnote under article 26-1 (2) of the law of 1915.

As amended pursuant to article 3 of the law of 31st July 2006 introducing a Labour Code.

The law of 18th December 2009 on the audit profession contains provisions regarding the appointment, dismissal and resignation of réviseurs d'entreprises agréés [approved statutory auditors] and cabinets de révision agréés [approved audit firms]: [Directive 2006/43/EC, article 37]

« Article 25. Appointment of réviseurs d'entreprises agréés [approved statutory auditors] or cabinets de révision agréés Réviseurs d'entreprises agréés [approved statutory auditors] and cabinets de révision agréés [approved audit firms] are appointed by the general meeting of shareholders or members of the audited entity, without prejudice to the provisions contained in other laws. [Directive 2006/43/EC, article 38]

Article 26. Dismissal and resignation of réviseurs d'entreprises agréés [approved statutory auditors] or cabinets de révision agréés Réviseurs d'entreprises agréés [approved statutory auditors] and cabinets de révision agréés [approved audit firms] may only be dismissed on proper grounds. Divergence of opinion on accounting treatments or audit procedures shall not be proper grounds for dismissal. The audited entity and the réviseur d'entreprises agréé [approved statutory auditor] or the cabinet de révision agréé [approved audit firm] shall inform the CSSF of the dismissal or resignation of the réviseur d'entreprises agréé [approved statutory auditor] or the cabinet de révision agréé [approved audit firm] during the term of the mandate and give an adequate explanation of the reasons therefor.»

These provisions use certain terms defined in the law of 18th December 2009. Please refer to the footnote under article 337 item 14 of the law of 1915.

In addition, in accordance with article 38 of the law of 13th July 2007 relating to markets in financial instruments, the réviseur d'entreprises agréé [approved statutory auditor] of a Luxembourg law company whose shares or units are admitted to dealing on a regulated market authorised in Luxembourg, must justify its professional qualification and an adequate professional experience to the CSSF and any replacement of the réviseur d'entreprises agréé [approved statutory auditor] is subject to prior authorisation of the CSSF.

For Luxembourg companies whose transferable securities are admitted to trading on a regulated market of any Member State, the proposal of the administrative or supervisory body for the appointment of a réviseur d'entreprises agréé [approved statutory auditor] or cabinet de révision agréé [approved audit firm] shall be based on a recommendation made by the audit committee. See footnote under article 66 of the law of 1915.
In the case referred to in paragraph (2) and where the annual accounts or the annual report are not drawn up in accordance with the present law, any interested party may request the president of the Tribunal d'Arrondissement dealing with commercial matters and sitting as in urgency matters to designate at the expense of the company, for a period of up to five years, a person fulfilling the requirements of paragraph (1) and for the purposes of that paragraph.

Section 11. - Special conditions applicable to parent companies and subsidiaries

[83/349/EEC art. 43]

Art. 70. 204

(1) Subsidiaries need not apply the provisions of this Chapter or of Chapter IV regarding the content, the audit and the publication of annual accounts, if the following conditions are fulfilled:

a) the parent undertaking must be subject to the laws of a Member State of the European Community;

b) all shareholders or members of the subsidiary have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary;

d) the declarations referred to in b) and c) are published by the subsidiary in accordance with Article 79 second paragraph sub 1° to 3°;

e) the annual accounts of the subsidiary are included in the consolidated accounts drawn up by the parent undertaking in accordance with Section XVI.

f) the exemption referred to above is disclosed in the notes to the consolidated accounts drawn up by the parent undertaking;

g) (Law of 18th December, 2009) « the consolidated accounts referred to in (e), the consolidated annual report, the report by the réviseur d'entreprises agréé [approved statutory auditor] responsible for auditing those accounts must be published by the subsidiary in the form provided for by Article 9 of the amended law of 1915 on commercial companies.»

204 Corresponds to abrogated article 256-1 of the law of 1915.

205 There is no 1°, 2° or 3° in Article 79. By comparison with the reference to Article 252(1) first paragraph in the abrogated Article 256-1 of the law of 1915, the reference should presumably be to Article 79(1) first paragraph.
Art. 71. 206

A parent company need not apply the provisions of this Chapter and of Chapter IV concerning the audit and publication of the profit and loss account where the following conditions are fulfilled:

a) the parent company draws up consolidated accounts in accordance with Section XVI of the amended law of 1915 on commercial companies and is included in the consolidated accounts;

b) the above exemption is disclosed in the notes to the annual accounts of the parent company;

c) the above exemption is disclosed in the notes to the consolidated accounts drawn up by the parent company;

d) the profit or loss of the parent company determined in accordance with this Chapter is shown in the balance sheet of the parent company.

Art. 72. 207

The present Section is not applicable to those companies incorporated under Luxembourg law referred to in article 1, paragraph 1, sub-paragraphs 2 and 3 of the Council Directive 78/660/EEC of 25th July, 1978 where:

(1) the companies referred to in article 1, paragraph 1, sub-paragraph 1 of Council Directive 78/660/EEC of 25th July, 1978 which are members having unlimited liability in any of the companies referred to in companies incorporated under Luxembourg law referred to in article 1, paragraph 1 sub-paragraphs 2 and 3 of Council Directive 78/660/EEC of 25th July, 1978 draw up, have audited and publish, with their own accounts and in conformity with the provisions of this Section the accounts of those companies.

(2) a) the accounts of these companies are drawn up, audited and published in conformity with the provisions of Directive 78/660/EEC by a company referred to in Article 1, paragraph (1), first sub-paragraph of that Directive which is a member having unlimited liability and is governed by the law of another Member State of the European Community;

206 Corresponds to abrogated article 256-2 of the law of 1915.
207 Corresponds to abrogated article 256-3 of the law of 1915.
208 The sociétés en nom collectif and sociétés en commandite simple described under items (ii) and (iii) in the footnote to Article 68(1).
209 Sociétés anonymes, sociétés en commandite par actions and sociétés à responsabilité limitée.
210 The sociétés en nom collectif and sociétés en commandite simple described under items (ii) and (iii) in the footnote to Article 68(1).
211 Sociétés anonymes, sociétés en commandite par actions and sociétés à responsabilité limitée.
b) these companies are included in consolidated accounts drawn up, audited and published in accordance with Directive 83/349/EEC by a member having unlimited liability, or where they are included in the consolidated accounts of a larger body of undertakings drawn up, audited and published in conformity with Directive 83/349/EEC by a parent undertaking governed by the law of a Member State. This exemption must be disclosed in the notes to the consolidated accounts.

(3) In these cases, these companies must reveal to whomsoever so requests the name of the company publishing the accounts.
Chapter IV. – Deposit and disclosure of annual accounts

Art. 75.

Undertakings as defined in article 8 of the Commercial Code212 with the exception of those referred to in article 13 of the Commercial Code213, shall deposit with the register of commerce and companies their annual accounts, duly approved in the case of legal entities, and the balance of the accounts featured in the minimum normalised accounting scheme defined at article 12 of the Commercial Code, within a month of their approval and at the latest seven months after the accounting closing date of the calendar year, in the case of individual business persons or the financial year end, in case of legal entities.

A Grand-Ducal regulation taken on the opinion of the Council of State and the Commission des normes comptables will determine the procedure for the deposit, the form in which the documents are lodged in application of the preceding paragraph and the conditions upon which they can be submitted to arithmetic and logical controls.

Art. 76.

The documents to be deposited in accordance with the preceding article are transmitted by the register of commerce and companies to the Service central de la statistique et des études économiques which ensures that they are archived and conserved electronically.

Art. 77.

A Grand-Ducal regulation shall determine the conditions of access of the public and of public administrations to the informations kept at the Service central de la statistique et des études économiques in accordance with article 76 of this Chapter and the applicable tariff.

The access of the public is limited to the annual accounts of the following companies:

1° (Law of 25th August, 2006)  
«the sociétés anonymes, the sociétés européennes (SE), the sociétés en commandite par actions, the sociétés à responsabilité limitée and the sociétés coopératives;  
2° the sociétés en nom collectif and sociétés en commandite simple where all their members which have unlimited liability are companies of the type set out in the Article 1, paragraph 1 sub paragraph 1 of the amended Directive 78/660/EEC of 25th July, 1978214 or companies which are not governed by the laws of a Member State of the European Community but which

212 See the first footnote under article 25.  
213 See the third footnote under article 25.  
214 Sociétés anonymes, sociétés en commandite par actions and sociétés à responsabilité limitée.
have a legal form comparable to those referred to in Directive 68/151/EEC of 9th March, 1968;

3° the types of company referred to sub 2° where all their members having unlimited liability are themselves organised as one of the types of companies referred to in that paragraph or in Article 1, paragraph 1 sub paragraph 1 of the amended Directive 78/660/EEC\(^{215}\).

A copy of the annual accounts of the companies referred to in the preceding paragraph is lodged in the file of the company held at the register of commerce and companies.

Art. 78.

Without prejudice to the investigation powers attributed to the authorities trusted with the prudential supervision of the financial sector and of the insurance sector, any undertaking having deposited at the register of commerce and companies the documents referred to in article 75 of this Chapter will, from the day of deposit, have complied with its obligations of communication of the above mentioned documents vis-à-vis the administrations of the State and of the public institutions which within the exercise of their legal duties have the right to require the presentation of those documents and which have therefore full right of access to the information contained in those documents.

[78/660/EEC art. 47.1.]

\(\textit{Art. 79.}^{216}\)

(1) For the companies referred to in items 1° to 3° of the second paragraph of article 77\(^{217}\), the annual accounts duly approved and the annual report, together with the opinion drawn up by the person responsible for auditing the accounts, must be deposited at the register of commerce and companies within one month of approval and no later than seven months after the financial year end, in accordance with Article 9 of the amended law of 1915 on commercial companies.

However, the annual report need not be published as prescribed in the foregoing paragraph.

In such case, the report shall be made available to the public at the registered office of the company. It must be possible to obtain a copy of all or part of such report free of charge upon request.

[90/605/EEC art. 1.3.]

(1) bis The companies referred to in items 2° and 3° of the second paragraph of Article 77 are exempted from publishing their annual accounts in accordance with Article 9 of the amended law of 1915 on commercial

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\(^{215}\) See the preceding footnote.

\(^{216}\) Corresponds to abrogated article 252 of the law of 1915.

\(^{217}\) The directive refers to its article 11 which corresponds to article 35.
companies provided that those accounts are available to the public at the registered office, where:

a) all the members having unlimited liability are the companies referred to in Article 1 paragraph 1, sub paragraph 1 of the amended Directive 78/660/EEC of 25th July, 1978 governed by the laws of other Member States of the European Community and none of those companies publishes the accounts of the company concerned with its own accounts; or where

b) all the members having unlimited liability are companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

Copies of the accounts must be obtainable upon request. The price of such a copy may not exceed its administrative cost.

In case of failure to comply with the obligations imposed in this paragraph, Article 163, 3° of the amended law of 1915 on commercial companies shall apply.

[78/660/EEC art. 47.2]

(2) By way of derogation from paragraph (1), the companies referred to in the second paragraph of Article 77 may publish:

a) abridged balance sheets showing only those items preceded by letters and roman numerals in Article 34, disclosing separately the claims and debts which are due and payable after more than one year in respectively items D II under "Assets" and C under "Liabilities", but in total for all the items concerned;

[90/604/EEC art. 7]

b) abridged notes to the accounts in accordance with Article 66.

[78/660/EEC art. 47.2 and 47.3]

Article 36 shall apply.

In addition, such companies need not publish their profit and loss account and annual report and the opinion of the person responsible for auditing the accounts.

(3) The companies mentioned in Article 47 shall be authorised to publish:

a) abridged balance sheets showing only those items preceded by letters and roman numerals in Article 34, disclosing separately, either in the balance sheet or in the notes to the accounts:

- items C I 3, C II 1, 2, 3 and 4, C III 1, 2, 3, 4 and 7, D II 2 and 3 and D III 1 and 2 under "Assets" and item C 1, 2, 6 and 7 under "Liabilities", in Article 34;

[218 The directive refers to its article 11 which corresponds to article 35.]
- the information required in brackets in item D II under "Assets" and item C under "Liabilities" in Article 34, in total for all the items concerned and separately for items D II 2 and 3 under "Assets" and items C 1, 2, 6 and 7 under "Liabilities";\(^{219}\)

b) abridged notes to their accounts without the information required in Article 65 paragraphs (1) 5°, 6°, 8°, 10° and 11°. However, the notes to the accounts must give the information specified in Article 65 paragraph (1) 6°, in total for all the items concerned. This paragraph shall be without prejudice to paragraph (1) insofar as it relates to the profit and loss account, the annual report and the opinion of the person responsible for auditing the accounts. Article 36 shall apply.

(4) For the purposes of the application of the present Article, the opinion of the person responsible for auditing the accounts may be limited to the confirmation that the annual accounts give a fair view of the assets and liabilities, the financial position and the profit or loss of the company, and that the annual report is consistent with the annual accounts or, on the contrary, that the opinion is subject to qualifications or is refused.

[78/660/EEC art. 48]

Art. 80. \(^{220}\)

Whenever the annual accounts and the annual report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of his report. If the person responsible for auditing the accounts has made any qualifications or has refused to certify the accounts, that fact must be disclosed and the reasons given.

[78/660/EEC art. 49]

Art. 81. \(^{221}\)

If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the deposit made in accordance with Article 252 paragraph (1). Where such filing has not yet been made, the fact must be disclosed.

\(^{219}\) The reference to "information in brackets" has been taken from the abrogated article 252 (3) of the law of 1915 and has been maintained herein by error given the new layout of items D and C of Article 34 as compared to their layout in the law of 1915 (Article 213). The provision should be understood as referring to "the information required in respect of claims and debts which are due and payable after more than one year in respectively item D II under "Assets" and C under "Liabilities", in total for all the items concerned and …"

\(^{220}\) Corresponds to abrogated article 253 of the law of 1915.

\(^{221}\) Corresponds to abrogated article 254 of the law of 1915.
The report issued by the person responsible for auditing the accounts may not accompany this publication, but it must be disclosed whether the report was issued with or without qualification, or whether it was refused.

[78/660/EEC art. 50]

**Art. 82.**

The following must be published together with the annual accounts, and in the same manner:

- the proposed appropriation of the profit or treatment of the loss
- the appropriation of the profit or treatment of the loss,

in case these items do not appear in the annual accounts.

[90/604/EEC art. 8]

**Art. 83.**

Annual accounts may, in addition to the publication in the currency or unit of account in which they are drawn up, be published in euro translated at the exchange rate prevailing on the balance sheet date. The rate shall be disclosed in the notes to the accounts.

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222 Corresponds to abrogated article 255 of the law of 1915.
223 Corresponds to abrogated article 255-1 of the law of 1915.
### ANNEX II

**LIST OF LAWS AND REGULATIONS AMENDING THE LAW OF 1915**

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<td>- modifiant et complétant certaines dispositions de la loi modifiée du 23 décembre 1909 portant création d'un registre de commerce et des sociétés ;</td>
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<td>- modifiant et complétant la loi modifiée du 28 décembre 1988 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales;</td>
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<td>- complétant la loi du 12 juillet 1977 relative aux sociétés de participations financières (holding companies);</td>
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## Annex III

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