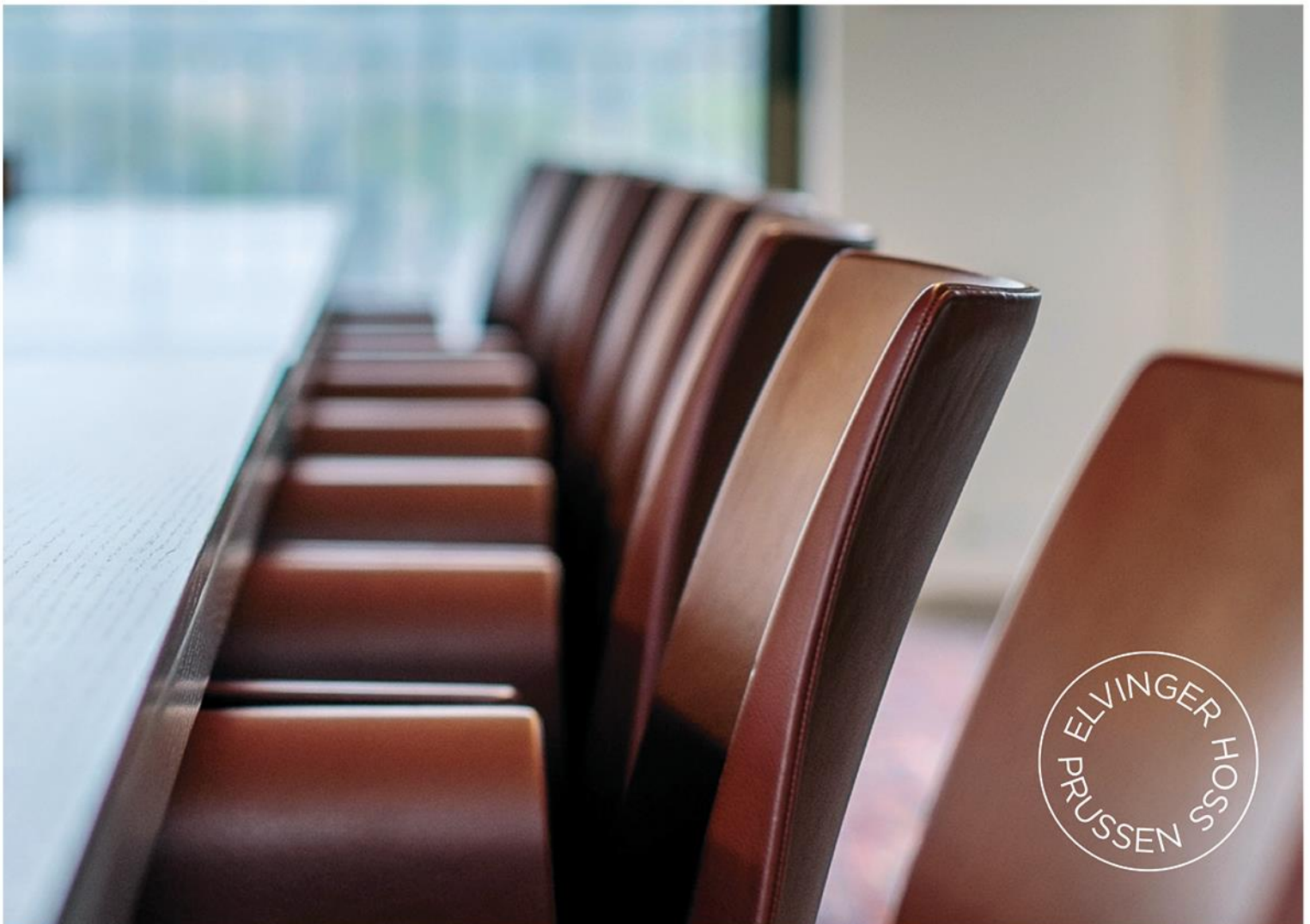


Legislation relating to commercial
companies

Translated by Philippe Hoss

In force as at 1 June 2016



LEGISLATION RELATING TO COMMERCIAL COMPANIES

TRANSLATED BY PHILIPPE HOSS

- Law of 10 August 1915 on commercial companies
- Extracts of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings
- Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies
- Extracts of the Civil Code and the Criminal Code regarding companies

in force as at 1 June 2016

With selected notes and references to EU sources

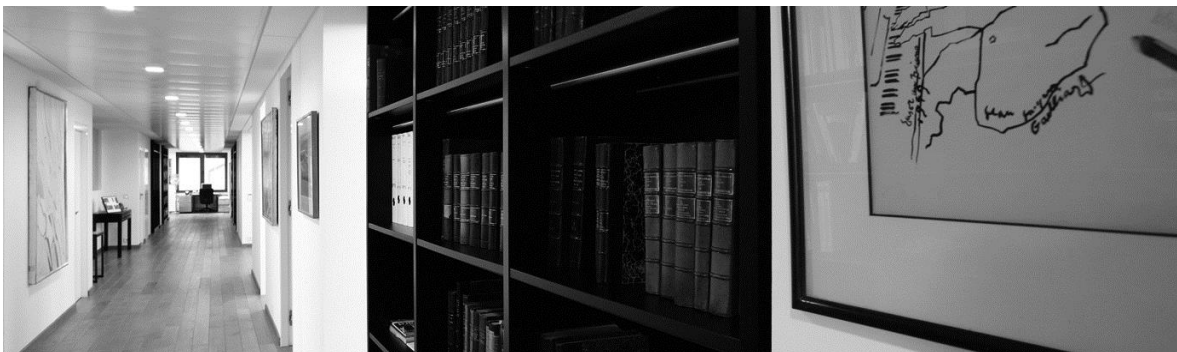


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Section I. - General provisions

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.

(Law of 12 July 2013)

[EC Regulation 2157/2001, art. 16.1]

«The law recognises as commercial companies with legal personality:

the <i>société en nom collectif</i>	(general corporate partnership/unlimited company);
the <i>société en commandite simple</i>	(common limited partnership);
the <i>société anonyme</i>	(public company limited by shares);
the <i>société en commandite par actions</i>	(corporate partnership limited by shares);
the <i>société à responsabilité limitée</i>	(private limited liability company);
the <i>société coopérative</i>	(co-operative society);
the <i>société européenne</i> (SE)	(European company).

Each of them shall constitute a legal person separate from its members. The *société européenne* (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 administration¹ (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.

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

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

Art. 3.

(Law of 18 September 1933)

«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

¹ 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.

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 23 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 23 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 25 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 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 18 September 1933)

«The rights of third parties are reserved.»

(Law of 23 November 1972)

[*2009/101/EC art. 11*]

«Art. 4.

Sociétés en nom collectif, sociétés en commandite simple, sociétés coopératives, civil companies (*Law of 12 July 2013*) «and *sociétés en commandite spéciale*» shall, on pain of

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 25 August 2006, there are now seven types of companies listed.

⁴ The 28 EU Member States, plus Iceland, Liechtenstein and Norway.

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, sociétés coopératives, (Law of 12 July 2013) «sociétés en commandite simple and sociétés en commandite spéciale.»

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

Art. 5.

Extracts of the deeds or instruments establishing *sociétés en nom collectif, sociétés en commandite simple* (Law of 12 July 2013) «and *sociétés en commandite spéciale*» shall be published at the expense of the company.

Art. 6.

(Law of 12 July 2013)

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

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

Art. 7.

The extract of company 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.

(Law of 23 November 1972)

[2009/101/EC art. 2]

«Art. 8.

(Law of 20 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 on the «*Recueil électronique des sociétés et associations*»⁵ 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 18 September 1933 providing for *sociétés à responsabilité limitée* and making certain changes to the legal

⁵ Amended by Article 20, the catch all Article of the Law of 27 May 2016.

and tax regime applicable to commercial and civil companies⁶, 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.»⁷

Art. 9.

(abrogated by the Law of 27 May 2016)

Art. 10.

(Paragraph abrogated by the Law of 27 May 2016)

(Paragraph abrogated by the Law of 27 May 2016) Any court action brought by a company whose constitutive instrument has not been published on the «*Recueil électronique des sociétés et associations*»⁸, in accordance with the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, shall be inadmissible.»

(Law of 23 November 1972)

[2009/101/EC art. 11]

«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 23 November 1972)

[2009/101/EC art. 2]

«§1. The following shall be filed and published in accordance with *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁹»:

⁶ Art. III of the Law of 18 September 1933, 2 paragraph: Will be considered as a family company, (...) a civil company, which is not in the form of a commercial company whose partner shares are allocated by the constitutive document, as to 9/10 at least, either to the spouses alone, or to the father and mother or the survivor of them and their direct issue or direct relatives by marriage, or, in case of death of the father and the mother, to the brothers and sisters in co-ownership and to respectively their spouse and their direct issue and direct relatives by marriage.

⁷ In the *Mémorial A*, this sub-paragraph is attached to the preceding sub-paragraph. It is featured separately here for better lisibility.

⁸ Amended by Article 20, the catch all Article of the Law of 27 May 2016.

⁹ «Chapter *Vbis*. – Publications in the *Recueil électronique des sociétés et associations*

Art. 19-1. Deeds, extracts therefrom and information the publication of which is provided for by law shall be filed by electronic means with the register of commerce and companies within one month after the date of the finalised deed.

- 1) (...) *Item deleted by the Law of 27 May 2016*
- 2) (...) *Item deleted by the Law of 27 May 2016*
- 3) extracts of any instrument relating to the appointment or termination of the appointment of:
 (Law of 25 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]¹⁰ of *sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, (Law of 12 July 2013) «sociétés en commandite simple, sociétés en commandite spéciale»* and civil companies;»
 - b) the persons appointed for day-to-day management of *sociétés anonymes*;
 - c) liquidators of companies which have legal personality» (Law of 12 July 2013) «and, as the case may be, of *sociétés en commandite spéciale.* »
 (Law of 28 July 2014)
 «d) depositaries of *sociétés anonymes* and of *sociétés en commandite par actions* appointed in application of Article 42. »
 (Law of 31 May 1999)
 «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:

Art. 19-2. (1) The publication provided for by law and relating to the persons referred to in Article 1, except for state and municipal public institutions, shall be carried out by electronic means on a central electronic platform for official publications designated as the *Recueil électronique des sociétés et associations*. The publication on the *Recueil électronique des sociétés et associations* shall solely contain information which is required to be published by law, as well as deeds amending information which is required by law to be filed and published. In any legal or regulatory provision or in any deed or document, references to the *Recueil électronique des sociétés et associations* may be made by using its abbreviated form: “RESA”.

(2) Publication shall be made within fifteen days of filing, except for convening notices for general meetings for which the person making the file shall indicate the dates on which publication is to be made.

(3) Information which is required by law to be published on the *Recueil électronique des sociétés et associations* shall be filed and published either in full, or by way of an extract, or by way of a reference to the filing, according to what the law requires.

Publication in full corresponds to the full reproduction of the deed or document.

Publication by way of extract corresponds to publication of the information required by law.

Publication by way of a reference to the filing corresponds to publication of the subject and date of the deed or document filed.

¹⁰ See footnote under Article 61.

- 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 filed and published in accordance with (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹¹ ».

- §3. (*Law of 27 May 2016*) «The following documents shall be filed and published by means of a reference to their filing in accordance with the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹²:

- 1) 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*.
- 2) the annual accounts, the consolidated accounts as well as any other documents and information related thereto and which must be published as required by law.

- §4. (*Law of 27 May 2016*) 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 19-3 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹³».

¹¹ See footnote under Article 11 §1.

¹² See footnote under Article 11 § 1.

¹³ Article 19-3 of the Law of 2002: “Deeds or extracts of deeds are only valid vis-à-vis third parties from the day of their publication on the *Recueil électronique des sociétés et associations*, unless the company proves that the relevant third parties had prior knowledge thereof. Third parties may however rely upon deeds or extracts thereof which have not yet been published. With regard to transactions taking place before the sixteenth day following the publication date, these deeds or extracts of deeds 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 on the *Recueil électronique 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.

(Law of 23 November 1972)

[2009/101/EC art. 9]

«Art. 12.

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 39.1]

«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 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 23 November 1972)

[2009/101/EC art. 8]

«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 24 April 1983)

[2009/101/EC art. 12 point (b)]

«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 23 November 1972)

[2009/101/EC art. 12 point (a) and 13]

«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 (Law of 27 May 2016) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁴.»

§ 2. (Law of 12 July 2013) «The avoidance of a company vested with legal personality or of a *société en commandite spéciale*, on grounds of formal irregularities, in application of Article 4., Article 12ter., 1st paragraph, 1) or 2), Article 16, paragraph (7), 1st sub-paragraph, item a), or Article 22-1, paragraph (8), 1st sub-paragraph, item a), 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 (Law of 27 May 2016) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁵.»

(Law of 23 November 1972)

[2009/101/EC art. 13.2 and 13.3]

«Art. 12quinquies.

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

The 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 23 November 1972)

[2009/101/EC art. 13.1]

«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

¹⁴ See footnote under Article 11bis §4.

¹⁵ See footnote under Article 11bis.

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.

(Law of 12 July 2013)

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

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

Section II. - Sociétés en nom collectif

(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.

(Law of 12 July 2013)

« Section III. - Sociétés en commandite simple and sociétés en commandite spéciale

(Common limited partnerships and special limited partnerships)

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

Art. 16.

(Law of 12 July 2013)

- «(1) A *société en commandite simple* is a common limited partnership entered into, for a limited or an unlimited period of time, by one or more unlimited partners with unlimited and joint and several liability for all the obligations of the common limited partnership, and one or more limited partners who only contribute a specific amount constituting partnership interests which may be but need not be represented by instruments as provided in the partnership agreement.
- (2) The contributions of the partners to the common limited partnership may be in the form of contributions in cash, in kind or in the form of services. The contributions, including the admission of new partners in cases other than a transfer of partnership interests, shall be made in accordance with the conditions and formalities provided in the partnership agreement.
- (3) The limited partnership may issue debt instruments.
- (4) Unless otherwise provided in the partnership agreement, an unlimited partner may also be a limited partner, provided that there always are at least one unlimited partner and one limited partner who are legally distinct from each other.
- (5) The common limited partnership shall be designated by a specific corporate denomination, or by a firm name comprising the names of one or more partners.
- (6) Each *société en commandite simple* must maintain a register containing:
- a) a complete and conformed up-to-date copy of the partnership agreement of the limited partnership;
 - b) a list of all the partners featuring their first and last names, their professions and their private or professional address or, in the case of legal entities, their corporate denominations or firm names, their legal forms, their exact addresses and their registration numbers in the register of commerce and companies if the legislation of the State governing the relevant legal entity provides for such number, as well as the partnership interests held by each of them;
 - c) a record of all transfers of partnership interests issued by the limited partnership and the date of notification or acceptance of such transfers.
- Each partner may inspect said register, subject to the restrictions provided in the partnership agreement.
- (7) A *société en commandite simple* may be declared void only in the following cases:

- a) if the constitutive instrument does not state the firm name or the corporate denomination of the partnership or its corporate object;
- b) if the corporate object is unlawful or contrary to public policy;
- c) if the partnership does not include at least one unlimited partner and one distinct limited partner who are validly committed.

Articles 12quater to 12sexies shall apply. »

Art. 17.

(Law of 12 July 2013)

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

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

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

Unless otherwise provided in the partnership agreement, each manager may on behalf of the common limited partnership take any action necessary or useful to the fulfilment of the corporate object. Any restrictions provided in the partnership agreement with respect to the powers of the managers are not valid vis-à-vis third parties, even if they are published. However, the partnership agreement may authorise one or more managers to represent the limited partnership, either singly or jointly, and a clause to that effect is valid vis-à-vis third parties subject to the conditions laid down in «Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹⁶.

The common limited partnership shall be bound by any acts of the manager(s), 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.

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

Writs served on behalf of or upon the common limited partnership shall be validly served in the name of the common limited partnership alone.»

Art. 18.

(Law of 12 July 2013)

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

He shall be prohibited from carrying out any act of management vis-à-vis third parties.

¹⁶ Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §4.

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

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

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

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

Art.19.

(Law of 12 July 2013)

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

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

Art. 20.

(Law of 12 July 2013)

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

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

- a) resolutions of partners shall be adopted at general meetings or by way of consultations in writing during which each partner shall receive the exact wording of the text of the resolutions or decisions to be adopted and shall cast his vote in writing;
- b) resolutions shall be validly adopted by a majority of the votes cast, regardless of the portion of partnership interests represented, except for resolutions on

amendments to the corporate object, a change of nationality, a conversion of legal form or liquidation which shall each be adopted only with the consent of partners representing three-quarters of the partnership interests and in all cases with the consent of all unlimited partners.

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

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

- 1° the annual accounts;
- 2° the management report, if any;
- 3° the report of the *réviseurs d'entreprises agréés* [approved statutory auditors], if any;
- 4° any other information provided for in the partnership agreement. »

Art. 21.

(Law of 12 July 2013)

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

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

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

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

Art. 22.

(Law of 12 July 2013)

«In the event of the unlimited partner's death, dissolution, legal incapacity, removal, resignation, inability to act or bankruptcy or in case the unlimited partner is in another situation affecting the rights of creditors generally, and there is no other unlimited partner and it has been provided that [in such an event] the partnership would continue to exist, the unlimited partner shall be replaced. Unless the partnership agreement contains specific provisions dealing with such a situation, the judge presiding the chamber of the *tribunal d'arrondissement* [district court] dealing with commercial matters may by its order appoint, at the request of any interested party, a provisional administrator, who may, but need not be a partner, who shall alone take all urgent and purely administrative measures, until the partners shall have resolved on the matter, which resolution the administrator shall cause to be passed within fifteen days following his appointment. The administrator shall be liable only for the performance of his mandate. Any interested party may object to the order; the objection shall be notified to the partnership, the person appointed and the person who applied for the appointment. The proceedings regarding the objection shall be heard as in urgency matters. »

(Law of 12 July 2013)

« Sub-section 2.- Sociétés en commandite spéciale (special limited partnerships) »

(Law of 12 July 2013)

«Art. 22-1.

- (1) A *société en commandite spéciale* is a partnership entered into, for a limited or an unlimited period of time, by one or more unlimited partners with unlimited and joint and several liability for all the obligations of the partnership, and one or more limited partners who only contribute a specific amount consisting in partnership interests which may be but need not be represented by instruments as provided in the partnership agreement.
- (2) The *société en commandite spéciale* shall not constitute a legal entity distinct from that of its partners. It shall be designated by a specific denomination or by a firm name comprising the names of one or more partners.
- (3) The contributions of the partners to the *société en commandite spéciale* may be in the form of contributions in cash, in kind or in the form of services. The contributions, including the admission of new partners in cases other than a transfer of partnership interests, shall be made in accordance with the conditions and formalities provided in the partnership agreement.
- (4) The limited partnership may issue debt instruments.
- (5) Unless otherwise provided in the partnership agreement, an unlimited partner may also be a limited partner, provided that there always are at least one unlimited partner and one limited partner who are legally distinct from each other.

- (6) Each *société en commandite spéciale* must maintain a register containing:
- a) a complete and conformed up-to-date copy of the partnership agreement of the limited partnership;
 - b) a list of all the partners featuring their first and last names, their professions and their private or professional addresses, or, in the case of legal entities, their corporate denominations or firm names, their legal forms, their exact addresses and their registration numbers in the register of commerce and companies if the legislation of the State governing the relevant legal entity provides for such a number, as well as the partnership interests held by each of them;
 - c) a record of all transfers of partnership interests issued by the limited partnership and the date of notification or acceptance of such transfers.

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

- (7) The domicile of a *société en commandite spéciale* is located at the seat of its central administration (head office). Until evidence to the contrary shall have been finally brought, the central administration is deemed to coincide with the place where its registered office is located as specified in its partnership agreement.
- (8) A *société en commandite spéciale* may be declared void only in the following cases:
- a) if the constitutive instrument does not state the firm name or the denomination of the limited partnership or its object;
 - b) if the object is unlawful or contrary to public policy;
 - c) if the partnership does not include at least one unlimited partner and one distinct limited partner who are validly committed. Articles 12quater to 12sexies shall apply. »

(Law of 12 July 2013)

«Art. 22-2.

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

(Law of 12 July 2013)

«Art. 22-3.

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

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

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

Unless otherwise provided in the partnership agreement, each manager may on behalf of the limited partnership take any action necessary or useful to the fulfilment of the partnership's object. Any restrictions provided in the partnership agreement with respect to the powers of the managers are not valid vis-à-vis third parties, even if they are published. However, the partnership agreement may authorise one or more managers to represent the limited partnership, either singly or jointly, and a clause to that effect is valid vis-à-vis third parties subject to the conditions laid down in «Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹⁷.

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

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

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

(Law of 12 July 2013)

«Art. 22-4.

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

He shall be prohibited from carrying out any act of management vis-à-vis third parties.

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

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

Do not constitute acts of management for which the limited partner is jointly and severally liable vis-à-vis third parties: the exercise of partner prerogatives, the providing of opinions or advice to the *société en commandite spéciale*, to its affiliates or to their managers, the carrying out of any control or supervisory measures, the granting of loans, guarantees or securities or the giving of any other type of assistance to the *société en commandite spéciale* or its affiliates, as well as the giving of any authorisation to the managers in the cases provided for in the partnership agreement for acts outside their powers.

The limited partner may act as a member of a management body or as agent of a manager of the *société en commandite spéciale*, even if that manager is an unlimited partner, or may execute documents on the manager's behalf under the latter's corporate signature, even acting

¹⁷ Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §4.

in the capacity of a representative of the *société en commandite spéciale*, without incurring as a result unlimited and joint and severable liability for the obligations of the limited partnership, provided the capacity of representative in which he acts is indicated. »

(Law of 12 July 2013)

«Art. 22-5.

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

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

(Law of 12 July 2013)

«Art. 22-6.

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

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

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

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

(Law of 12 July 2013)

«Art. 22-7.

The partnership interests of limited partners may, on pain of nullity, only be transferred, dismembered or pledged in accordance with the terms and in the manners provided for in the partnership agreement. In the absence of provisions in the partnership agreement, any transfer

other than a transmission in the case of death, any dismemberment and any pledge of a partnership interest of a limited partner, requires the consent of the unlimited partner(s).

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

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

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

(Law of 12 July 2013)

«Art. 22-8.

In the event of the unlimited partner's death, dissolution, legal incapacity, removal, resignation, inability to act or bankruptcy or in case the unlimited partner is in another situation affecting the rights of creditors generally, and there is no other unlimited partner and it has been provided that [in such an event] the société en commandite spéciale would continue to exist, the unlimited partner shall be replaced. Unless the partnership agreement contains specific provisions dealing with such a situation, the judge presiding the chamber of the tribunal d'arrondissement [district court] dealing with commercial matters may by its order appoint, at the request of any interested party, a provisional administrator, who may, but need not be a partner, who shall alone take all urgent and purely administrative measures, until the partners shall have resolved on the matter, which resolution the administrator shall cause to be passed within fifteen days following his appointment. The administrator shall be liable only for the performance of his mandate. Any interested party may object to the order; the objection shall be notified to the partnership, the person appointed and the person who applied for the appointment. The proceedings regarding the objection shall be heard as in urgency matters. »

(Law of 12 July 2013)

«Art. 22-9.

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

(Law of 25 August 2006)

« Section IV. - Sociétés Anonymes and Sociétés Européennes (SE)

(Public companies limited by shares and European Companies)

§ 1. On the nature and classification of sociétés anonymes and sociétés européennes (SE)»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 1, 7, 8, 9, 10, 12.1, 13, 15]

«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 8 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 8 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.

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 11.2 and 11.3]

- «(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 25 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) 2157/2001¹⁸ of 8 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 25 August 2006)

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

Art. 26.

(Law of 24 April 1983)

[2012/30/EU art. 6 and art 9 1st paragraph]

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

- 1) (Law of 25 August 2006) «there must be at least one member; »
- 2) the capital must be at least « thirty thousand nine hundred and eighty-six euros and sixty-nine cents »¹⁹; 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 25 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 10 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.»

¹⁸ The date of entry into force is 8 October 2004.

¹⁹ Implicitly modified by the Law of 1 August 2001 on euro conversion (Mém.A - 117 of 18 September 2001, p.2440; doc.parl. 4722).

(Law of 25 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.
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.»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 32.2]

«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 merger²⁰ or to the members of the administrative, management, supervisory or controlling bodies of the merging companies²¹;
- 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/EC²²;
- h) the minimum proportion of the shares or corporate units in each of the companies promoting the operation which the shareholders must contribute in order for the *société européenne* (SE) to be formed.

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

(Law of 25 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 (Law of 27 May 2016) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies

²⁰ Read: draft terms for the formation.

²¹ Read: of the companies which promote the operation.

²² This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

and the accounting and annual accounts of undertakings²³» or in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC²⁴, at least one month before the date of the general meeting called to decide on the draft terms of formation.»

(Law of 25 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/EEC²⁵.

(Law of 18 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/EEC²⁶, 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.

²³ See footnote under Article 11bis § 1.

²⁴ This directive has been abrogated and replaced by directive 2009/101/EU.

²⁵ This directive has been abrogated and replaced by directive 2011/35/EU.

²⁶ This directive has been abrogated and replaced by directive 2011/35/EU.

- (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 25 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).

Employee involvement in the *société européenne* (SE) shall be decided pursuant to the provisions adopted in implementation of Directive 2001/86 EC²⁷. 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.»

(Law of 25 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 (Law of 27 May 2016) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings²⁸» or in the form provided by the national law of each Member State adopted in implementation of Article 3 of Directive 68/151/EEC²⁹.

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

²⁷ This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

²⁸ See footnote under Article 11bis § 1.

²⁹ This directive has been abrogated and replaced by directive 2009/101/EU.

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.»

(Law of 25 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).

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

(Law of 24 April 1983)

[2012/30/EU art. 9 2nd paragraph]

«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 18 December 2009)

[2012/30/EU art. 10]

- «(2) Contributions other than cash shall, prior to the incorporation, be reported upon by a *réviseur d'entreprises agréé* [approved statutory auditor]³⁰ who shall be appointed by the founders.»

(Law of 24 April 1983)

[2012/30/EU 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 10 June 2009)

[2012/30/EU art. 11]

³⁰ The commentary to the bill of law indicates that the purpose of art. 104 of the Law of 18 December 2009 on the audit profession is to provide that all references inter alia in the Law of 1915 or in the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings to a *réviseur d'entreprises agréé* [approved statutory auditor] should be understood as also referring to a *cabinet de révision agréé* [approved audit firm].

«(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 21 April, 2004 on markets in financial instruments³¹ or money-market instruments as defined in point 19 of Article 4, paragraph 1. of that Directive³² 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 Directive³³ 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 [agr e]*³⁴ [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,

³¹ «'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; »

³² «'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.»

³³ «'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].»

³⁴ Modification resulting from Article 103 of the Law of 18 December 2009 on the audit profession.

paragraphs (2) and (3) are not applicable.

In the case of new circumstances³⁵ 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 capital on the day the decision on the increase in the capital is taken may demand a valuation by a *réviseur d'entreprises [agrée]*³⁶ [approved statutory auditor], in which case paragraphs (2) and (3) are applicable. Such shareholder(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 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*.

[2012/30/EU art. 12]

(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 [agrée]*³⁷ [approved statutory auditor] as referred to in paragraphs (2) and (3), a declaration containing the following particulars shall be published in accordance with (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings³⁸» 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;

³⁵ 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 significant 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).

³⁶ Modification resulting from Article 103 of the Law of 18 December 2009 on the audit profession.

³⁷ Modification resulting from Article 103 of the Law of 18 December 2009 on the audit profession.

³⁸ See footnote under Article 11bis § 1.

- 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 circumstances³⁹ 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.

[2012/30/EU art. 12]

(3sexies) Where a contribution other than in cash is proposed to be made without a report by a *réviseur d'entreprises [agr  ]*⁴⁰ [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 (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁴¹» 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 circumstances⁴² 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

³⁹ Same discrepancy between language versions as described in the footnote to paragraph (3ter).

⁴⁰ Modification resulting from Article 103 of the Law of 18 December 2009 on the audit profession.

⁴¹ See footnote under Article 11bis § 1.

⁴² The French and German versions of the directive coincide as they speak of «no new circumstances» («*aucune circonstance nouvelle*», «*keine neuen Umst nde*»). The English version speaks of «no new qualifying circumstances».

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.»

(Law of 24 April 1983)

[2012/30/EU art. 13]

«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 18 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 24 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 24 April 1983)

[2012/30/EU 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 24 April 1983)

[2012/30/EU art. 14]

«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 24 April 1983)

[2012/30/EU 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.»

(Law of 24 April 1983)

[2012/30/EU art. 2 and 3]

«Art. 27.

The instrument constituting the company shall indicate:

- 1) (*Law of 25 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) (*Law of 6 April, 2013*) «whether the shares are in registered, bearer, or dematerialised form and of any provision supplemental to, or derogating from, the law;»
- 9) (*Law of 18 December 2009*) «particulars of each contribution made otherwise than in kind⁴³, 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;

⁴³ This provision is certainly the result of an oversight and should read : « otherwise than in cash ».

- 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.»

(Law of 24 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 24 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 10 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 10 July 2005)*
- (6) (...) *(abrogated by the Law of 10 July 2005)*

(Law of 24 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 (Law of 27 May 2016) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁴⁴» 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.»

(Law of 24 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

⁴⁴ See footnote under Article 11bis § 1.

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 24 April 1983)

[2012/30/EU art.15]

«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 25 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 (Law of 27 May 2016) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁴⁵» at least one month before the date of the general meeting called to decide on the draft terms of conversion.

(Law of 18 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.⁴⁶
- (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 25 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.

⁴⁵ See footnote under Article 11 bis § 1.

⁴⁶ 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.

- (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 (*Law of 27 May 2016*) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁴⁷» at least one month before the date of the general meeting called to decide on the draft terms of conversion.

(*Law of 18 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.»⁴⁸
- (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.»

(*Law of 24 April 1983*)

[2012/30/EU art. 29.1 and 29.2]

«Art. 32.

- (1) Any increase of capital shall be decided upon by the general meeting at the conditions provided for amendments to the articles.⁴⁹

⁴⁷ See footnote under Article 11bis § 1.

⁴⁸ 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.

⁴⁹ This principle has been set aside for certain conversions of share capital into euro under the Law of 10 December, 1998 (as amended with effect from 1 January 2002 by the Law of 1 August 2001); Art. 1.

(1) By derogation to Articles 11, 32, 32-1, 67-1(2), 116 4°, 117 4°, 194, and 199 of the Law of 10 August 1915 concerning commercial companies, as amended, and notwithstanding any contrary provisions of the articles, *sociétés anonymes*, *sociétés en commandite par actions*, *sociétés coopératives* and *sociétés à responsabilité limitée*, the capital of which is expressed in one of the currencies of one of the member states of the European Community which have adopted the common currency may, between 1 January 1999 and 31 December 2001, by a resolution, which may be passed under private deed, of the general shareholders' meeting or, in the case of *sociétés à responsabilité limitée* having not more than twenty-five members, of those members, convert their corporate capital, their authorised capital and any other amounts set out in their articles and

- (2) (*Law of 25 August 2006*) «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.»
- (3) The general meeting may also grant such authorisation by means of an amendment to the articles.
- (4) The rights attaching to the new shares shall be defined in the articles.
- (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.»

expressed in one of the currencies of one of the member states of the European Community having adopted the common currency, into euro.

In the context of such conversion, an increase in the share capital may be carried out by incorporation of reserves, share premiums, capital gains resulting from re-evaluations or carried forward profit either for a maximum of euro 1,000 or for a maximum of 4% of the amount of the subscribed capital prior to the increase. The authorised capital may be increased within the same limits. For those companies the capital of which is represented by shares or corporate units with a par value, the par value may either be adapted to the new denomination and the new amount of the corporate capital or be removed.

(2) The general meeting, or, in the case of *sociétés à responsabilité limitée* having not more than twenty-five members, the members, may also, by a resolution passed under private deed, after the entry into force of this law authorise, 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 31 December 2001.

(3) By derogation to Articles 67-1(2), 116 4°, 117 4°, 194 and 199 of the Law of 10 August 1915 and notwithstanding any contrary provisions of the articles, 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. (Law of 1 August, 2001)

«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 30 June 2002 under private deed by the general meeting, or, in the case of *sociétés à responsabilité limitée* having not more than 25 members, by the members, to carry out an increase of the share capital until 30 June 2002 at the latest and within the limits provided in paragraph (1). »

Art. 2.

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 31 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.

Art. 3.

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 1 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.

Art. 4.

Article 9 of the Law of 10 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 10 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 10 August 1915 concerning commercial companies, as amended, the private deed recording the resolutions taken in application of Article 3 will not be published on the *Mémorial C, Recueil des Sociétés et Associations*.

(Law of 24 April 1983)

[2012/30/EU art. 31]

«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 25 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.»

[2012/30/EU art. 32]

- (3) (...) (abrogated sentence by the Law of 23 March, 2007). 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 25 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 drawn-up within one month from the end of the subscription period or within three months from the day on which that period commenced.»

(Law of 18 December 2009)

[2012/30/EU art. 31]

- «(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 (Law of 27 May 2016) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁵⁰».»

⁵⁰ See footnote under Article 11bis § 1.

(Law of 24 April 1983)

[2012/30/EU art. 30]

«Art. 32-2.

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

(Law of 24 April 1983)

[2012/30/EU art. 33.1, 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 25 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 on the (Law of 27 May 2016) *«Recueil électronique des sociétés et associations»* 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 25 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 23 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 24 April 1983*)

[2012/30/EU art. 29.4 and art. 33.6]

«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 10 July 2005*)

Art. 34.

(*abrogated by the law of 10 July 2005*)

Art. 35.

(*abrogated by the law of 10 July 2005*)

Art. 36.

(*abrogated by the law of 10 July 2005*)

§ 3. The shares and the transfer thereof

(*Law of 21 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.

(*Law of 6 April 2013*) «Shares and founders' shares are in registered, bearer or dematerialised form.»

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

(*Law of 6 April 2013*) «Shares and smaller denominations of shares shall bear a serial number, unless they are dematerialised.»

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;
- (*Law of 6 April 2013*) «transfers and the dates thereof or the conversion of shares into shares in bearer or dematerialised 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.

(*Law of 6 April 2013*) «The company must satisfy the request of a person inscribed in the register to issue a certificate relating to the shares registered under that person's name.»

Transfers shall be carried out by means of a declaration of transfer entered in the said register, dated and signed by the transferor and the transferee or by their duly authorised representatives, and in accordance with the rules on the assignment of claims laid down in article 1690 of the Civil Code. The company may accept and enter in the register a transfer on the basis of correspondence or other documents recording the agreement between the transferor and the transferee⁵¹.

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 25 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

⁵¹ Under the Law of 22 December 2006 inter alia introducing a transitory period until 31 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 was subject to certain exceptions provided by the law, be subject to the prior approval of 2/3 of the share capital given in a shareholder meeting.

provisions of 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 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 (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁵²».

(*Law of 23 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.»

(*Law of 6 April 2013*)

«The preceding paragraph is not applicable to global share certificates taking the form of global bearer certificates deposited with a securities settlement system. The number of securities⁵³ represented by these certificates must be determined or be capable of being determined.»

Art. 42.

(*Law of 28 July 2014*)

- (1) Bearer shares shall be deposited with a depositary appointed by the board of directors or the management board, as the case may be, and which meets the conditions set out in paragraph 2.
- (2) The depositary may not be a shareholder of the issuing company. Only the following professionals established in Luxembourg can be appointed as depositaries:
 - a) credit institutions;
 - b) private portfolio managers;
 - c) distributors of units in UCIs;
 - d) specialised professionals of the financial sector (PFS) approved as Family Office, corporate domiciliary agent, professional providing company

⁵² See footnote under Article 11 bis § 1.

⁵³ Read: «shares»

- incorporation and management services, registrar agent or professional depositary of financial instruments;
- e) *avocats à la Cour* registered on List I and European lawyers practising under their professional home-country titles registered on List IV of the bar roll referred to in Article 8, paragraph 3 of the amended law of 10 August 1991 on the legal profession;
 - f) notaries;
 - g) *réviseurs d'entreprises* [statutory auditors] and *réviseurs d'entreprises agréés* [approved statutory auditors];
 - h) chartered accountants.
- (3) The depositary shall maintain a register of bearer shares in Luxembourg; the register shall specify:
- a) the precise designation of each shareholder and the number of shares or fractional shares;
 - b) the deposit date;
 - c) transfers and the dates thereof or the conversion of shares into registered shares.
- Each bearer shareholder has the right to examine only the registrations which concerns him/her.
- (4) The depositary shall hold the shares deposited in accordance with paragraph 1 on behalf of the shareholder who owns them. The ownership of the bearer share shall be registered in the register. Upon written request by the bearer shareholder, a certificate recording all registrations regarding him/her shall be delivered to him/her by the depositary.
- Transfers are effective vis-à-vis third parties upon registration thereof on the register by the depositary. The depositary may for these purposes accept any document or notification recording the transfer of ownership between the transferor and the transferee.
- Unless otherwise provided in the articles, the notification of a transfer in case of death shall be validly established vis-à-vis the depositary, provided no objection has been lodged, on production of a death certificate, the registration certificate and a witness affidavit (*acte de notoriété*) passed before a *juge de paix* or a notary.
- (5) The rights attaching to bearer shares may only be exercised on deposit of the bearer share with the depositary and on registration of all particulars in the register in accordance with paragraph 3.
- (6) The depositary may not release bearer shares, except in the following cases where it must deliver the bearer shares:
- a) to its successor in its capacity as depositary, in the event of termination of its appointment;
 - b) to the company, in the event of conversion of the bearer shares into registered shares, in the event of repurchase by the company of its own shares in accordance with Articles 49-2 and 49-3 and in the event of amortisation of the capital in accordance with Article 69-1.

- (7) The liability of the depository, insofar as it derives from its obligations under paragraphs 3, 4 and 6, shall be determined according to the same rules as those applicable to the liability of directors or of the members of the management board, as the case may be. »⁵⁴

(Law of 6 April 2013)

«Art. 42bis.

Dematerialised shares are materialised by way of an inscription in a securities account in the name of the accountholder held at a settlement institution, a central account keeper, an accounts' keeper or a foreign accounts' keeper. Transfers shall be carried out by way of book entry⁵⁵.»

⁵⁴ Article 6 of the Law of 28 July 2014 regarding the immobilisation of bearer shares and units and the keeping of the register of registered shares and the register of bearer shares, published on 14th August 2014:

« (1) *Sociétés anonymes, sociétés en commandite par actions* and management companies of undertakings for collective investment set up in the form of common funds (*fonds commun de placement*) having issued bearer shares or units prior to the entry into force of this law, shall appoint a depository within six months from the entry into force of this law.

(2) Bearer shares or units issued by *sociétés anonymes, sociétés en commandite par actions* and management companies of undertakings for collective investment set up in the form of common funds (*fonds commun de placement*) having issued bearer shares or units prior to the entry into force of this law must be deposited with the appointed depository within eighteen months from the entry into force of this law.

(3) Voting rights attached to bearer shares or units which have not been immobilised within six months from the entry into force of this law shall automatically be suspended at the end of that period until their immobilisation. When this same period expires, distributions shall be deferred until the date of immobilisation, subject to the distribution rights not being time-barred, and such deferral shall not give rise to the payment of any interest.

(4) Those shares or units whose voting rights have been suspended shall not be taken into account when calculating the quorum and majority during general meetings. Holders of such shares or units shall not be admitted to these general meetings.

(5) Bearer shares or units which have not been immobilised within eighteen months from the entry into force of this law, shall be cancelled and the subscribed capital shall be reduced by a corresponding amount.

The cancellation of the shares or units shall be carried out at price obtained by dividing the amount of equity in the company, resulting from the company's latest balance sheet drawn up as at a date which may not be earlier than two months prior to the cancellation decision, by the number of shares or units of the company in issue, such price being reduced by the amount of share premium and reserves which, according to the law and the articles, may not be distributed as well as by the fees and commissions relating to the deed of capital reduction.

The funds corresponding to the shares or units so cancelled or, in the absence thereof, other assets with a value equal to the cancelled shares or units shall be deposited with the *Caisse de consignation* (Consignment Office) until such time as a person who has been able to prove his/her capacity as holder applies for their remittance.

(6) Managers or directors are punishable by a fine of 5,000 to 125,000 euros in case they knowingly:

1° fail to appoint a depository in accordance with the provisions of paragraph 1;

2° recognise rights attaching to bearer shares or units; in breach of the provisions of paragraphs 3 and 4;

3° fail to cancel non-immobilised bearer shares or units, to reduce the subscribed capital and to deposit the corresponding funds pursuant to the provisions of paragraph 5. »

⁵⁵ Certain terms used in this article are defined in Article 1 of the Law of 6 April 2013 on dematerialised securities:

- «accountholder» means « a person, a common fund or a securitisation fund in whose name a settlement institution, a central account keeper or an accounts' keeper keeps a securities account irrespective of whether such person is acting on its own account or on account of a third party»;
- «accounts' keeper» means «a person who is authorised under Luxembourg law to keep securities accounts, including domestic or international public institutions established in Luxembourg and operating in the financial sector»;
- «central account keeper» means «any person authorised by the Minister with responsibility for the CSSF as a central account keeper in accordance with the provisions of the amended Law of 5 April 1993 on the financial sector»;
- «foreign accounts' keeper» means «any person, other than [a Luxembourg accounts keeper] whose securities accounts' keeping activity is subject to foreign law»;

Art. 43.

(Law of 7 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.

(Law of 6 April 2013)

«The owners of shares or securities⁵⁶ in bearer form may, at any time, request that they be converted, at their expense, into shares or securities in registered form or, if the articles so provide, into shares or securities in dematerialised form⁵⁷. In the latter case, costs are to be borne by the person provided for in the law on dematerialised securities.⁵⁸»

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

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

The holders of dematerialised shares or securities may, at any time, request that they be converted, at their expense, into shares or securities in registered form unless the articles provide for mandatory dematerialisation of shares or securities.»

(Law of 8 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;
- 2) they must, in case of distribution of profits, confer the right to a preferential and cumulative dividend corresponding to a percentage of

- «securities account» means «an account at a settlement institution, a central account keeper or an accounts' keeper on which securities may be credited or from which securities may be debited. The issuance account at a settlement institution or a central account keeper does not constitute a securities account»;

- «settlement institution» means «a securities settlement system within the meaning of the law on payment services, designated as such by the Luxembourg Central Bank and notified to the European Commission by the Minister responsible for the financial center, and where the operator of the system is established in Luxembourg».

⁵⁶ This term is defined in Article 1 of the Law of 6 April 2013 on dematerialised securities as follows:

«securities» means «in the broadest sense:

(a) equity securities issued by joint-stock corporations governed by Luxembourg law including shares, founders' shares, subscription rights and units of common funds;

(b) debt securities governed by Luxembourg law, such as financial instruments which may be in bearer form, and instruments representing public debt.

(c) For the purposes of the present law, the following are not considered securities:

– bills of exchange

– securities which are redeemable by drawing of numbered lots

– shares issued by pension savings companies with variable capital.»

⁵⁷ This term is defined in Article 1 of the Law of 6 April 2013 on dematerialised securities as follows:

«dematerialised securities» means «securities of an issuer issued or converted exclusively by way of registration in an issuance account held at a settlement institution or a central account keeper»

⁵⁸ Article 18(1) of the Law of 6 April 2013 on dematerialised securities states that: «If the conversion of equity securities is optional, the conversion costs incurred by the issuer shall be borne by the person designated in the articles or the management regulations of the issuer. If there is no indication in the articles or the management regulations, the costs shall be borne by the issuer.»

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»⁵⁹ 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 8 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)»⁶⁰.

- (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 25 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 on the (Law of 27 May 2016) «*Recueil électronique des sociétés et associations*» and in two Luxembourg newspapers. »

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

⁵⁹ Modified by the law of 7 September, 1987.

⁶⁰ See footnote under Article 44.

(Law of 8 August 1985)

«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.»

(Law of 8 August 1985)

«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.

(Law of 24 April 1983)

[2012/30/EU art. 3]

«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 23 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 12 March 1998*)

(*Law of 24 April 1983*)

[2012/30/EU art. 20]

«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 25 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 24 April 1983*)

[2012/30/EU art. 21]

«Art. 49-2.

- (1) (*Law of 10 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 25 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 24 April 1983*)

[2012/30/EU art. 22]

«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 24 April 1983)

[2012/30/EU art. 23]

«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 24 April 1983)

[2012/30/EU art. 24]

«Art. 49-5.

- (1) In those cases where the acquisition by the company of its own shares is permitted in accordance with Articles 49-2 and 49-3, the holding of such shares shall be subject to the following conditions:
- 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 management report must indicate:
- a) the reasons for acquisitions made during the financial year;
 - b) the number and the nominal value, or in the absence of nominal value, the accounting par value, of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;
 - c) in the case of acquisition or disposal 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.»

(Law of 24 April 1983)

[2012/30/EU art. 25]

«Art. 49-6.

- (1) (Law of 10 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.]⁶¹ (Law of 27 May 2016) «This report shall be deposited at the register of commerce and companies in accordance with the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁶²» and will be published on the *Recueil électronique des sociétés et associations* in accordance with Article 11bis §3. »
 - c) The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in 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

⁶¹The sentences between square brackets have been erroneously abrogated by the Law of 27 May 2016.

⁶² See footnote under Article 11bis § 1.

in the subscribed capital, such acquisition or subscription shall be made at a fair price.»

- (2) Paragraph (1) shall not apply to transactions concluded by banks and other financial institutions in the normal course of business 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.
- (3) 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).»

(Law of 10 June 2009)

[2012/30/EU art. 26]

«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 [agrégé]*⁶³ [approved statutory auditor] shall provide a special report on the transaction to the general meeting who shall decide on that report.»

(Law of 24 April 1983)

[2012/30/EU art. 27]

«Art. 49-7.

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

(Law of 24 April 1983)

[2012/30/EU art. 43]

«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;

63 Modification resulting from Article 103 of the Law of 18 December 2009 on the audit profession.

- 4) redemption can only be made by using sums available for distribution in accordance with (*Law of 23 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 cannot be distributed to the shareholders except in the event of a reduction in the subscribed capital; the reserve may only be used to increase the subscribed capital by 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) the redemption shall be published in accordance with (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁶⁴».

(*Law of 12 March, 1998*)

[2012/30/EU art. 28]

«Art. 49bis.⁶⁵

- (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^{66, 67} 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/EEC⁶⁸.
- (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:

⁶⁴ See footnote under Article 11bis § 1.

⁶⁵ Article IV of the Law of 12 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 31 March 1998 and has entered into force on 4 April 1998.

⁶⁶ This directive has been abrogated and replaced by directive 2009/101/EU.

⁶⁷ For Luxembourg, these are *sociétés anonymes*, *sociétés en commandite par actions* and *sociétés à responsabilité limitée*.

⁶⁸ This directive has been abrogated and replaced by directive 2009/101/EU.

- 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

- 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 another company where the *société anonyme* directly holds the majority of the voting rights in a company having one of the legal forms referred to in paragraph (1) which
 - has the right to appoint or dismiss 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 and;
- b) (*Law of 25 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 25 August 2006)

«§ 4. Management and supervision of sociétés anonymes and of sociétés européennes (SE)^{69, 70}

«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 receive a salary or not.

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 43]

«Art. 51.

There must be at least three directors.⁷¹ 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 *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 *société européenne* (SE) is regulated in implementation of Directive 2001/86/EC⁷².

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.⁷³ This

⁶⁹ See Title II of Book IV of the Labour Code, Representation of staff in *sociétés anonymes*.

⁷⁰ Law of 25 July 1990 concerning the status of directors representing the State or a public legal entity in a *société anonyme* (Mém.A - 41 of 31 August, 1990, p.550; doc.parl. 3272, as amended by the Law of 25 August 2006):

«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. »

⁷¹ 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.

⁷² This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

⁷³ 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 Articles L.426-1 et seq. of the Labour Code.

provision shall apply to the *société européenne* (SE) without prejudice to the employee participation arrangements determined in implementation of Directive 2001/86/EC⁷⁴.

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 August 2006*)

«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.

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 23 November 1972*)

[2009/101/EC art. 10.2 and 10.3]

«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 25 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.

See also the Law of 25 July 1990 concerning the status of directors representing the government or a public legal entity in a *société anonyme* set out in the footnote to §4 above.

⁷⁴ See footnote under preceding paragraph.

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 (*Law of 27 May 2016*) «subject to the conditions laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁷⁵».

(*Law of 25 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 8 March 1989*)

Art. 55.

(*Abrogated by the law of 8 March 1989*)

Art. 56.

(*Abrogated by the law of 8 March 1989*)

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 23 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 minutes.»

(*Law of 25 August 2006*)

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

Art. 58.

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

⁷⁵ See footnote under Article 11bis § 4.

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 towards either the company or 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 23 November 1972)

[2009/101/EC art. 10.3]

«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 (*Law of 27 May 2016*) «under the conditions referred to in Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁷⁶».

(Law of 25 August 2006)

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

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

(Law of 23 November 1972)

[2009/101/EC art. 10.1]

«Art. 60bis.

The company shall be bound by any acts of the board of directors or the directors with authority 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

⁷⁶ See footnote under Article 11bis § 4.

not in view of the circumstances have been unaware of it, without the mere publication of the articles constituting such proof.»

(Law of 25 August 2006)

«Sub-§ 2.- The management board and the supervisory board»⁷⁷

(Law of 25 August 2006)

«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.»

(Law of 25 August 2006)

«A. The management board»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 39.4]

«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 européenne* (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.»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 40.1]

«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.»

⁷⁷ The Law of 25 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.

(Law of 25 August 2006)

«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.»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 39.2]

«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. »

(Law of 25 August 2006)

«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.»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 48.1]

«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 (*Law of 27 May 2016*) «subject to the conditions laid down in in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁷⁸».

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 by the supervisory board, such holder shall bind the company, without prejudice to damages, if any.»

(*Law of 25 August 2006*)

«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 (*Law of 27 May 2016*) «under the conditions referred to in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁷⁹».

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.

⁷⁸ See footnote under Article 11bis § 4.

⁷⁹ See footnote under Article 11bis § 4.

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 August 2006)

«Art. 60bis-9.

The company shall be bound by any acts of the management board, of the members of the management board with authority 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.»

(Law of 25 August 2006)

«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 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.»

(Law of 25 August 2006)

«B. The supervisory board»

(Law of 25 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 25 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 25 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 25 August 2006)

«Art. 60bis-14.

The provisions of articles 51, 51bis and 52 shall apply to the supervisory board⁸⁰.»

(Law of 25 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.»

⁸⁰ 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 25 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.»

(Law of 25 August 2006)

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

(Law of 25 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.»

(Law of 25 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 minutes.

- (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 ordinary business entered into under normal conditions.»

(Law of 25 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 25 August 2006)

«Sub-§ 3.- Supervision by the commissaires [supervisory auditors]»⁸¹

⁸¹ For companies which constitute « public interest entities », the provisions set out in Art. 74 of the Law of 18 December 2009 also apply, except, pursuant to Article 72(2) of the Law of 18 December 2009 on the audit profession, 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 8 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 [for a definition of these terms, see the footnote under Art. 26-1 (3bis)] 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 5 April 1993 on the financial sector, Luxembourg insurance undertakings within the meaning of Article 25, point 1, h) of the amended law of 6 December 1991 on the insurance sector, except for those undertakings and entities referred to in Article 26 point 4 of the amended Law of 6 December 1991 on the insurance sector, pension funds referred to in Article 25 point 1, hh) of the amended Law of 6 December 1991 on the insurance sector and Luxembourg reinsurance undertakings referred to in article 25 point 1, nn) of the amended Law of 6 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 18 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 r) of the Law of 10 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 [This reference should be read as a reference to Article 22 of Directive 2013/34/EU][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 20 December 2002 relating to undertakings for collective investment [to be read as also referring to Article 2 paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investments, the amended Law of 20 December 2002 having been abrogated effective 1 July 2012].

Art. 61.⁸²

The supervision of the company must be entrusted to one or more *commissaires*⁸³ [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.

(*Law of 25 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.

(*Law of 25 August 2006*)

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 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 20 December 2002 relating to undertakings for collective investment [*to be read as also referring to the Law of 17 December 2010, the amended Law of 20 December 2002 being abrogated effective 1 July 2012*];

- 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 5 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].»

⁸² 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 10 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.»

⁸³ 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.

«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.

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»⁸⁴, 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 25 August 2006)

«Sub-§ 4.- Rules common to the management bodies, the supervisory board and the *commissaires* [supervisory auditors]»

(Law of 25 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 25 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

⁸⁴ Amended by the Law of 11 August 1996 on the preparation and instruction of private cases (Mém.A - 53 of 20 August 1996, p.1660; doc.parl. 3771).

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).
- (4) Each member of the board of directors, of the management board and of the supervisory board shall be entitled to examine all information submitted to the relevant board.
- (5) 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 upon request of 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 25 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 25 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.»

§ 5. General meetings

(Law of 7 September 1987)

«Art. 67.

(1) (Law of 25 August 2006) «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.

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

- a) the present law in accordance with Council Regulation 2157/2001/EC of 8 October 2001 on the statute for a European *société européenne* (SE),
- b) the provisions of Luxembourg law adopted in implementation of Directive 2001/86/EC, to the extent that the registered office of the *société européenne* (SE) is located in the Grand-Duchy of Luxembourg⁸⁵.

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) (Law of 25 August 2006) «The articles shall contain provisions governing proceedings at general meetings and the formalities necessary for admission thereto.⁸⁶ In the absence of such provisions, appointments shall be made and

⁸⁵ This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

⁸⁶ Article 8 of the Law of 1 August 2001 on the circulation of securities and other fungible instruments, as amended, provides:

«Art. 8. (1) The investor may exercise or cause the exercise of the corporate rights attaching to securities and the rights of action resulting from the holding of securities upon presentation of a certificate issued by the relevant accounts' keeper certifying the number of securities registered in its securities account.

(2) For the purpose of participation to their general meetings, Luxembourg companies may not require the presentation of securities in bearer form, registration in the register of registered shares or a specific transfer of dematerialised securities where such securities are registered in a securities account. Evidence of the rights on the securities results in that case from a

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 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 minutes.»

(3) (*Law of 25 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 on-line 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.

certificate issued by the relevant accounts' keeper certifying the number of securities held in the securities account and, as the case may be, their blockage until a certain date. The company may, in its rules regarding the holding of shareholder meetings, provide that investors must, upon request, produce documentary evidence of the registration of the securities throughout the chain of holding of the securities.

(3) If an accounts' keeper, or as the case may be, a foreign accounts' keeper, or a third party designated by such accounts' keeper is registered in the register of registered shares of the issuer, such accounts' keeper or designated third party may, based on the instructions it receives, exercise the voting rights attaching to the securities for which it is inscribed in the register.

(4) If a third party, other than the investor, intends to participate in the vote, the issuer may, if its articles, the terms and conditions of the issue or the conditions for convening the shareholder meeting provide therefor, require the identification of the investor(s) who gave the voting instructions. Should the issuer's request not be satisfied, the *bureau* of the meeting may deprive the relevant person of the exercise of the voting right.

The issuer does not have an obligation to verify the existence or the content of the instructions given to the third party who casts a vote.»

The terms below are defined as follows by art. 2 of the Law of 1 August 2001:

«*accountholder*»: «a person on whose behalf an accounts' keeper keeps a securities account, whether such person acts on his or her behalf or on behalf of third parties»;

«*accounts' keeper*»: is defined in an identical manner in Article 1 of the Law of 2013, see footnote under art. 42bis;

«*foreign accounts' keeper*»: is defined in an identical manner in Article 1 of the Law of 2013, see footnote under art. 42bis;

«*investor*»: «the accountholder who does not act as an accounts' keeper on behalf of another person»;

«*relevant accounts' keeper*»: «designates, with respect to a securities account, the accounts' keeper or, as the case may be, the foreign accounts' keeper who keeps the securities account for the accountholder»;

«*securities account*»: «an account held by the accounts' keeper on which securities may be credited and from which securities may be debited. The issuance account held by a settlement institution or a central account keeper does not constitute a securities account».

Also, the terms «*securities*», «*dematerialised securities*» and «*issuer*» used in Article 8 of the Law of 1 August 2001 as reproduced above are not defined in the Law of 1 August 2001 but in the Law of 6 April 2013, without there being any formal reference to the latter in the Law of 2001, «*issuer*» being defined as: «any person, including a common fund, which issues securities».

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.⁸⁷
- (5) (*Law of 25 August 2006*) «The board of directors or the management board, as applicable, is entitled to adjourn a meeting, while in session, to four weeks⁸⁸. 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.»

(*Law of 7 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 members⁸⁹ and bondholders.
- (2) (*Law of 25 August 2006*) «The general meeting shall not validly deliberate unless at least one half of the capital⁹⁰ 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. (*Law of 27 May 2016*) «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 filed with the register of commerce and companies and published twice, at fifteen days interval at least

⁸⁷ See however art. 28 Law of 11 January 2008 on transparency requirements on issuers of securities, Article 11(1) and (2) of the Law of 6 April 2013 on dematerialised instruments and Article 42(5) above as well as art. 6(3) and (4) of the Law of 28 July 2014 regarding the immobilisation of bearer shares and units as set forth in the footnote under Article 42(7).

⁸⁸ See also art. 29 Law of 11 January 2008 on transparency requirements on issuers of securities.

⁸⁹ See Article 6(3) and (4) of the Law of 28 July 2014 regarding the immobilisation of bearer shares and units, as set forth in the footnote under Article 42(7).

⁹⁰ See preceding footnote.

and fifteen days before the meeting in the *Recueil électronique des sociétés et associations* 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.⁹¹ 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 25 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:

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.

⁹¹ See footnote to Article 32 (1) in case of conversion of capital into euro as well as the footnote under Article 67-1(1).

(Law of 24 April 1983)

[2012/30/EU art. 34]

«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 7 September 1987)

[2012/30/EU art. 36.1 and 36.3]

- «(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 on the (Law of 27 May 2016) «*Recueil électronique des sociétés et associations*» 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 24 April 1983)

[2012/30/EU art. 36.2]

- «(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.

[2012/30/EU art. 37.1]

- (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 24 April 1983)

[2012/30/EU art. 39]

«Art. 69-1.

- (1) The articles may provide that, by resolution of the general meeting to be published in accordance with *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings⁹²», 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 24 April 1983)

[2012/30/EU art. 41]

«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 23 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 25 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

⁹² See footnote under Article 11bis § 1.

months of the closing of the financial year and the first general meeting may be held within eighteen months following incorporation⁹³.

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.

(*Law of 27 May 2016*) «Convening notices for every general meeting shall contain the agenda and shall take the form of announcements filed with the register of commerce and companies and published twice, with a minimum interval of eight days, and eight days before the meeting, in the *Recueil électronique des sociétés et associations* 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. »

(*Law of 6 April 2013*)

«Art. 71.

The Holders of dematerialised shares or securities⁹⁴ may take part in the general meeting and exercise their rights only if they hold such dematerialised shares or securities at the latest on the fourteenth day prior to the general meeting at midnight, Luxembourg time.»

⁹³ Read : after the formation of the company.

⁹⁴ See footnote under Article 43.

(Law of 25 August 2006)

«§ 6. Inventories and balance sheets»

(Law of 25 August 2006)

«Art. 72.

Each year, (Law of 23 March 2007) «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.

(Law of 23 March 2007) « 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, (Law of 23 March 2007) « 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.»

(Law of 24 April 1983)

[2012/30/EU art. 17.1, 2, 3 et 4]

«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 articles⁹⁵.
- (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

⁹⁵ See Articles 53 and 72ter of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings set out in Annex I.

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.»

(Law of 24 April 1983)

[2012/30/EU art. 17.5]

«Art. 72-2.

(Law of 25 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 articles⁹⁶;
- 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.

(...) *(Paragraph abrogated by the Law of 23 March 2007)*

- d) *(Law of 18 December 2009)* « in their report to the board of directors or the management board, as applicable, the commissaires [supervisory auditors] or the réviseur d'entreprises agréé [approved statutory auditor] shall verify whether the above conditions have been satisfied.»

- (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 24 April 1983)

[2012/30/EU art. 17.7]

«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:

⁹⁶ See note under art. 72-1 (1).

- the exclusive object of which is to invest their funds in various transferable 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.⁹⁷ »

(*Law of 14 April, 1983*)

[2012/30/EU art. 18]

«Art. 72-4.

(*Law of 30 July 2013*)

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

(*Law of 25 August 2006*)

«Art. 73.

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

(*Law of 18 December 2009*)

- « 1° the annual accounts⁹⁸ 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;

⁹⁷ 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).

⁹⁸ See Chapter II of Title II of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

4° the report⁹⁹ of the board of directors or of the management board, as applicable, and the observations of the supervisory board;

(Law of 18 December 2009)

«5° «the report of the *commissaires* [supervisory auditors] or of the *réviseur d'entreprises agréé* [approved statutory auditor]¹⁰⁰.»

(Law of 18 December 2009)

«The annual accounts, as well as the report of the *commissaires* [supervisory auditors] or of the *réviseur d'entreprises agréé* [approved statutory auditor], the management 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.»

(Law of 25 August 2006)

«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. »

(Law of 25 August 2006)

«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 (Law of 27 May 2016) «Article 11bis.»

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. »

⁹⁹ See Article 68 and Article 68bis of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

¹⁰⁰ With respect to the report of the *réviseur d'entreprises agréé* [approved statutory auditor] see Article 69bis of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

§ 7. *Specific information to be included in documents*

(Law of 23 November 1972)

«Art. 76.

(Law of 25 August 2006)

[2009/101/EC art. 5]

«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.¹⁰¹

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 (Law of 27 May 2016) «*Recueil électronique des sociétés et associations*. »

Art. 77.

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

(Law of 25 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. »

¹⁰¹ See also art. 34 of the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant, manufacturer and certain liberal professions.

§ 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 10 July 2005)

Art. 81.

(abrogated by the Law of 10 July 2005)

Art. 82.

(abrogated by the Law of 10 July 2005)

Art. 83.

(abrogated by the Law of 10 July 2005)

(Law of 25 August 2006)

«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 *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁰²».

(...) *(Paragraph abrogated by Law of 23 March 2007)*

(Law of 6 April 2013)

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

¹⁰² See footnote under Article 11bis § 1.

The provisions of Articles 40, (...) ¹⁰³, 42bis, and 43 paragraphs 3, 4, and 5 are applicable to bonds.»

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 if consulted.

(*Law of 9 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.»

(*Law of 25 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 18 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.»

¹⁰³ The reference to Article 42 was removed by the Law of 28 July 2014 regarding the immobilisation of bearer shares and units and the keeping of the register of registered shares and the register of bearer shares.

(Law of 9 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 9 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 9 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 9 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 25 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 9 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 9 April 1987)

«Art. 94.

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

(Law of 9 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 shall 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.»

(Law of 9 April 1987)

«Art. 94-2.

(Law of 25 August 2006)

«The meeting may:

- 1) in accordance with Article 87, appoint or remove the representatives of the group;
- 2) remove the special agents referred to in Article 89;
- 3) resolve as to the conservatory measures to be taken in the common interest;
- 4) modify or waive the specific collateral granted to bondholders;
- 5) postpone one or more interest payment dates, agree to a reduction of the interest rate or 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 18 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.»

(Law of 9 April 1987)

«Art. 94-3.

(Law of 25 August 2006)

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

(2) In all other cases, the meeting may 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.»

(Law of 9 April 1987)

«Art. 94-4.

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

(Law of 9 April 1987)

«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.»

(Law of 9 April 1987)

«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 23 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 12 February 1872 on payments deposited in escrow.

The sums thus held in escrow on behalf of the bondholders may be withdrawn on the basis of proxies bearing specific names or proxies appointing the bearer, issued by the representatives of the group and countersigned by the judge presiding the chamber of the *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 9 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 23 March 2007) «*caisse de consignation*» or,

with the authorisation of the court, with an authorised credit institution established in Luxembourg.»

(Law of 9 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 9 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 23 March 2007)

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

(Law of 7 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.»

(Law of 25 August 2006)

[2012/30/EU art. 19]

«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 25 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 cannot be contacted at its legal domicile in the Grand-Duchy of

Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg.

The company concerned shall, however, be granted a period of six months by the competent court in order to regularise its 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 (*Law of 27 May 2016*) «in the conditions provided by Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁰⁴».

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 25 August 2006*)

«§ 10. *Transfer of the registered office of a société européenne (SE)* »

(*Law of 25 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. »

¹⁰⁴ See footnote under Article 11bis § 4.

(Law of 25 August 2006)

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

(Law of 25 August 2006)

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

«Art. 101-2.

- (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 August 2006)

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

«Art. 101-3.

(Law of 23 March 2007)

«The transfer proposal shall be published in accordance with (Law of 27 May 2016) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁰⁵», two months at least before the date of the general meeting called upon to decide on the transfer proposal. »

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 8.3.]

«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.»

¹⁰⁵ See footnote under Article 11bis § 1.

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 8.4.]

«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 August 2006)

[EC Regulation 2157/2001, art. 8.6.]

«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 23 March 2007) «Article 101-3.»»

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 8.7.]

«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 25 August 2006)

«Art. 101-8.

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

(Law of 25 August 2006)

«Art. 101-9.

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

(Law of 18 December 2009)

- «(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 25 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.»

(Law of 25 August 2006)

«Sub-§ 2.- *The effectiveness of the transfer of the registered office*»

(Law of 25 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 25 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 25 August 2006)

[EC Regulation 2157/2001, art. 8.16.]

«Art. 101-13.

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

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 8.13]

«Art. 101-14.

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

(Law of 25 August 2006)

[EC Regulation 2157/2001, art. 8.11.]

«Art. 101-15.

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

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

(Law of 25 August 2006)

[*EC Regulation 2157/2001, art. 8.12.*]

«Art. 101-16.

The new registration and the deletion of the old registration shall be publicised, Articles (...) ¹⁰⁶, 10 and 11bis (*Law of 27 May 2016*) «as well as the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings ¹⁰⁷» being applicable.

(Law of 25 August 2006)

[*EC Regulation 2157/2001, art. 8.15.*]

«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.»

¹⁰⁶ The reference to Article 9 was abrogated by the Law of 27 May 2016.

¹⁰⁷ See footnote under Article 11bis.

Section V. - Sociétés en commandite par actions

(Corporate Partnerships Limited By Shares)

Art. 102.

(Law of 12 July 2013)

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

(Law of 25 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 23 March 2007) «*société européenne* (SE)».»

Art. 104.

(abrogated by the Law of 12 July 2013)

(Law of 23 November 1972)

[2009/101/EC art. 5]

«Art. 105.

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

(Law of 12 July 2013)

- «1) the corporate denomination»;
- 2) the words «*société en commandite par actions*» reproduced legibly and in full;
- 3) a precise indication of the registered office;

(Law of 19 December, 2002)

- 4) «the words «*Registre de commerce et des sociétés*, Luxembourg» or the initials «R.C.S. Luxembourg» followed by the registration number.»¹⁰⁸

(Law of 23 November 1972)

«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.

¹⁰⁸ See also art. 34 of the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant, manufacturer and certain liberal professions.

Any change of the registered office shall be published on the (*Law of 27 May 2016*) «*Recueil électronique des sociétés et associations*», such publication to be arranged by the management.

The penalties provided for in Article 77 shall apply to any agent acting on behalf of the company in circumstances where these provisions are not complied with.»

(*Law of 8 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.»

Art. 107.

(*Law of 12 July 2013*)

«Management of the company is carried out by one or more managers, who may but need not be unlimited members, designated in accordance with the articles.

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

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

Unless otherwise provided in the articles, each manager may on behalf of the company take any action necessary or useful to the fulfilment of the corporate object. Any restrictions provided in the articles with respect to the powers of the managers are not valid vis-à-vis third parties, even if they are published. However, the articles may authorise one or more managers to represent the company, either singly or jointly, and a clause to that effect is valid vis-à-vis third parties subject to the conditions laid down in «Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹⁰⁹.

The company shall be bound by any acts of the manager(s), 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.

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

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

Art. 108.

(*Law of 12 July 2013*)

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

He shall be prohibited from carrying out any act of management vis-à-vis third parties.

¹⁰⁹ Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §4.

A limited partner shall be jointly and severally liable, vis-à-vis third parties, for any commitments of the company in which he participated in violation of the prohibition contained in the foregoing paragraph.

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

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

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

Art. 109.

Supervision of the company must be entrusted to at least three *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.

(Law of 12 July 2013)

«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 unlimited partners only.»

Art. 112.

(Law of 12 July 2013)

«In the event of death, dissolution, legal incapacity, removal, resignation, inability to act, bankruptcy or other situations of the unlimited partner, if there is no other one and if it has been provided that the company is to continue to exist, the vacancy shall be filled. Unless otherwise specifically provided for in the partnership agreement, the judge presiding the chamber of the *tribunal d'arrondissement* [district court] dealing with commercial matters may appoint, at the request of any interested parties, a temporary administrator, who may but need not be a partner, who shall take all urgent and purely administrative measures alone, until the resolution of the partners, which this administrator shall have passed within two weeks following his appointment. The administrator shall be liable only for the performance

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

Section VI. - Sociétés coopératives

(Co-operative Societies)

«Sub-Section 1. - On sociétés coopératives in general»¹¹⁰

§ 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 7 September 1987*)

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

¹¹⁰ Title introduced by Law of 10 June 1999.

In the former case, the duration of the company may be successively extended in accordance with the conditions 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 to the articles;»

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

(Law of 18 December 2009)

- «3° how and by whom the business of the company is to be managed and controlled and, if appropriate, the method of appointment and removal of the 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 25 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 18 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*;¹¹¹

¹¹¹ See footnote to article 32 (1) in case of conversion of capital into euro.

- 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.

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 18 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»¹¹² 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 25 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.

¹¹² Amended by the Law of 11 August, 1996 on the preparation and instruction of private law cases (Mém.A - 53 of 20 August 1996, p.1660; doc.parl. 3771).

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 (*greffe*) 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 25 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*»¹¹³.

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 19 December 2002)

«Art. 132.

The annual accounts, as defined by the law of 19 December 2002 concerning the register of commerce and companies and the accounting and annual accounts of undertakings shall be lodged within one month of their approval at the register of commerce and companies¹¹⁴.»

Art. 133.

The persons managing the company must lodge at the «register of commerce and companies»¹¹⁵ 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.

¹¹³ See also art. 34 of the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant, manufacturer and certain liberal professions.

¹¹⁴ Article 26(1) of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém.A - 149 of 31 December 2002, p.3630) provides that the annual accounts comprise the balance sheet, the profit and loss account and the notes to the accounts.

The signatories shall be liable for any incorrect information in the said lists.

(Law of 19 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».¹¹⁵

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 18 December 2009)

«Article 69 (1), (2) and (4) of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings is applicable.

The institution of the *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.

¹¹⁵ Modified by the Law of 19 December 2002 (Mém.A - 149 of 31 December 2002, p.3630; doc.parl. 4581).

¹¹⁶ Both changes result from the Law of 19 December 2002 (Mém.A – 149 of 31 December 2002, p.3630; doc.parl.4581).

(Law of 10 June 1999)

«Sub-Section 2. - Sociétés coopératives organised as sociétés anonymes

(Law of 10 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 25 August 2006)

«It shall not be subject to the provisions specifically applicable to the (Law of 23 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 10 June 1999)

«Art. 137-2.

The capital of a *société coopérative* organised as a *société anonyme* is made up of shares. All references to «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 10 June 1999)

«Art. 137-3.

Article 4, paragraph 2 does not apply to the *société coopérative* organised as a *société anonyme*.»

(Law of 10 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 *société coopérative* organised as a *société anonyme*.
 (Law of 6 April 2013) «In article 37, paragraph 2, securities or the founder shares mentioned may be in registered, bearer or dematerialised form in case of a *société coopérative* organised as a *société anonyme*.»
 (Law of 21 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 *société coopérative* organised as a *société anonyme*.
- (8) For a *société 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 *société coopérative* organised as a *société anonyme*.
- (10) Article 44(1) 1) does not apply to the *société 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 *société coopérative* organised as a *société anonyme*.
- (12) Article 46, paragraph (1), fourth indent, does not apply to the *société coopérative* organised as a *société 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 10 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 10 June 1999)

«Art. 137-6.

Section IX. - *Rights Of Action And Prescription Periods* and Section XI. - *Criminal Law Provisions* are applicable to the *société coopérative* organised as a *société anonyme*.»

(Law of 10 June 1999)

«Art. 137-7.

Section XIII. - *Company Accounts* does not apply to the *société coopérative* organised as a *société anonyme*.»¹¹⁷

(Law of 10 June 1999)

«Art. 137-8.

- (1) Section XIV. - *Mergers* applies to the *société coopérative* organised as a *société anonyme* subject to the following provisions.
- (2) A *société coopérative* organised as a *société anonyme* may not acquire by way of merger a *société anonyme* or a *société coopérative* organised as a *société anonyme* unless the shareholders or members of such other company fulfil the conditions required to become a member of the acquiring company.

¹¹⁷ Section XIII has been abrogated effective 1 January, 2005.

- (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 10 June 1999)

«Art. 137-9.

- (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 10 June 1999)

«Art. 137-10.

Section XVI. – Consolidated Accounts does not apply to the *société coopérative* organised as a *société anonyme*.»

(Law of 10th March 2014)

« Sub-Section 3. Sociétés coopératives européennes (SEC) (European Cooperative Societies) (SCE)

§ 1.- General provisions.

Sub-§ 1.- Definitions.

Art. 137-11.

For the purposes of this sub-section, « Regulation (EC) No 1435/2003 » means: Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

Sub-§ 2.- Incorporation, contribution and registered office.

[EC Regulation 1435/2003, Art. 5.3., 4.6]

Art. 137-12.

- (1) The *société coopérative européenne* (SEC) shall be formed by a special notarial deed drawn up and published in accordance with the regulations applicable to the *sociétés anonymes*.
- (2) Regarding contributions in kind, Articles 26-1 to 26-3 shall apply by analogy to the *société coopérative européenne* (SEC).

[EC Regulation 1435/2003, Art. 73.5]

Art. 137-13.

Where it is established that only the central administration (head office) is located in the Grand Duchy of Luxembourg, the *procureur d'Etat* shall without delay inform the Member State in which the registered office of the *société coopérative européenne* (SEC) is situated.

Sub-§ 3.- Investor members.

[EC Regulation 1435/2003, Art. 14.1, paragraph 2]

Art. 137-14.

The articles may provide that persons who do not expect to use or produce goods and services of the *société coopérative européenne* (SEC) may be admitted as investor (non-user) members.

§2.- Incorporation.

Sub-§ 1.- Incorporation by way of a merger.

A. Procedure.

[EC Regulation 1435/2003, Art. 22]

Art. 137-15.

The draft terms of merger shall be drawn up by the board of directors or by the management board as the case may be.

[EC Regulation 1435/2003, Art. 24]

Art. 137-16.

The draft terms of merger and the particulars referred to in Article 24 of Regulation (EC) No 1435/2003 shall be published in accordance with Article 262, paragraph (1).

B. Scrutiny of legality.

[EC Regulation 1435/2003, Art. 29]

Art. 137-17.

The scrutiny of the legality of the merger and the issue of the certificate required pursuant to Article 29 of Regulation (EC) No 1435/2003 shall be performed by the relevant notary in accordance with Article 271.

[EC Regulation 1435/2003, Art. 30]

Art. 137-18.

The scrutiny of the legality of the merger required pursuant to Article 30 of Regulation (EC) No 1435/2003 shall be performed by the relevant notary.

Sub-§ 2.- Conversion of a société coopérative into a société coopérative européenne (SEC).

[EC Regulation 1435/2003, Art. 35.3]

Art. 137-19.

The draft terms of conversion of a *société coopérative* into a *société coopérative européenne* (SEC) shall be drawn up by the management body.

[EC Regulation 1435/2003, Art.35.4]

Art. 137-20.

The draft terms of conversion shall be published in accordance with «Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹¹⁸.

[EC Regulation 1435/2003, Art. 35.5]

Art. 137-21.

The independent expert(s), referred to in Article 35, paragraph 5, of Regulation (EC) No 1435/2003, shall be one or more *réviseurs d'entreprises* [statutory auditors]¹¹⁹ appointed by the management body among the members of the *Institut des réviseurs d'entreprises*.

*Sub-§ 3.- Participation in a société coopérative européenne (SEC) by a company the central administration (head office) of which is not in the European Community*¹²⁰.

[EC Regulation 1435/2003, Art. 2.2]

Art. 137-22.

A company, the central administration (head office) of which is not in a Member State, may participate in the incorporation of a *société coopérative européenne* (SEC) 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.

§ 4.– Corporate bodies¹²¹.

Sub-§ 1.– Management.

A. Rules common to the one-tier and the two-tier systems.

Art. 137-23.

Any legal or regulatory provision concerning commercial companies and which contain a reference to the « board of directors », «director(s)» or «manager(s)» of a *société coopérative* must be understood, in the context of a *société coopérative européenne* (SEC) 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.

¹¹⁸ Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §1.

¹¹⁹ This reference should have been to the “*réviseurs d'entreprises agréés*” [approved statutory auditors].

¹²⁰ Read European Union.

¹²¹ This §4 follows §2. Bill of Law 5974 originally contained a paragraph 3 with the heading « §3. – Publication formalities » which was dropped without the numbering of the subsequent paragraphs being adjusted.

[EC Regulation 1435/2003, Art. 46]

Art. 137-24.

To the extent provided for by the articles, the members of the management, supervisory and administrative bodies may be legal entities, in which case Articles 51bis and 60bis-4 shall apply.

[EC Regulation 1435/2003, Art. 47.2]

Art. 137-25.

The *société coopérative européenne* (SEC) shall be bound by any acts of the corporate bodies with authority to represent the company, 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.

B. One-tier system.

[EC Regulation 1435/2003, Art. 42.1]

Art. 137-26.

The management body is the board of directors.

It may delegate the day-to-day management in accordance with Article 60.

Where, in a *société coopérative européenne* (SEC), 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 coopérative européenne* (SEC), require an express decision of the board of directors, such holder shall bind the company without prejudice to damages, where applicable.

[EC Regulation 1435/2003, Art. 42.2]

Art. 137-27.

The minimum number of directors is three.

C. Two-tier system.

C 1. General provisions.

[EC Regulation 1435/2003, Art. 37.4 and 39.4]

Art. 137-28.

The management body is the management board. It shall be made up of one or more member(s). The supervisory body shall be the supervisory board. It shall be made up of at least three members.

Art. 137-29.

Subject to the limitations provided by Regulation (EC) No 1435/2003, this law or the articles, the powers of the management board and of its members shall be the same as the powers of the board of directors and of the directors.

Art. 137-30.

Any report to be drawn up by the board of directors pursuant to this law, shall be drawn up by the management board. Save as provided by law or by more stringent provisions in the articles, it shall be notified to the supervisory board in a timely manner and will be subject to the same information and publication rules as those applicable to the reports of the board of directors.

[EC Regulation 1435/2003, Art. 37.1]

Art. 137-31.

The management board shall have the power to take any actions necessary or useful to realise the corporate object, with the exception of those powers reserved by law or the articles to the supervisory board or the general meeting. It may delegate the day-to-day management in accordance with Article 60bis-8. The articles shall list the categories of transactions which require an authorisation of the management board by the supervisory board.

The absence of authorisation of the supervisory board shall have no effect vis-à-vis third parties.

Where in a *société coopérative européenne* (SEC) 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 coopérative européenne* (SEC), require an authorisation of the management board by the supervisory board, such holder shall bind the company, without prejudice to damages, if any.

C2. Management board.**I. Status of the management board members.**

[EC Regulation 1435/2003, Art. 37.2]

Art. 137-32.

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.

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

II. Powers and operation.**Art. 137-33.**

Where there are several members in the management board, they shall form a collegiate body which shall deliberate in accordance with the articles.

[EC Regulation 1435/2003, Art. 47.3]

Art. 137-34.

Any limitations to the powers of the management board resulting either from the articles or a decision of the competent corporate bodies shall not be valid vis-à-vis third parties, even if they are published.

[EC Regulation 1435/2003, Art. 47.4]

Art. 137-35.

The management board shall represent the company vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant, subject to the application of Article 39 paragraph (1) of Regulation (EC) No 1435/2003. Writs served on behalf of or upon the company shall be validly served in the name of the company alone.

The articles may authorise one or more members of the management board to represent the company in any instrument or in legal proceedings, either alone or jointly. A clause in the articles to that effect is valid vis-à-vis third parties subject to the conditions laid down in «Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹²². The articles may limit such powers to represent the company. Such restrictions shall not be valid vis-à-vis third parties, even if they are published.

C 3. Supervisory board.

I. Status of the supervisory board members.

Art. 137-36.

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

II. Powers and operation.

[EC Regulation 1435/2003, Art. 39 and 40]

Art. 137-37.

- (1) The supervisory board shall form a collegiate body which shall deliberate in accordance with the articles.
- (2) 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.
- (3) The supervisory board may require the management board to provide information of any kind which it needs to exercise supervision in accordance with paragraph (2).

¹²² Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §4.

[EC Regulation 1435/2003, Art. 41]

Art. 137-38.

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 upon request of 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.

C 4. Rules common to the members of the board of directors, the management board and the supervisory board.

I. Remuneration.

Art. 137-39.

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 shall be determined by the supervisory board. The type of remuneration and the amount of fees payable to the members of the supervisory board are determined by the articles, failing which by the general meeting.

II. Liability.

[EC Regulation 1435/2003, Art. 51]

Art. 137-40.

The members of the board of directors, of the management board and 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 performance of their duties.

[EC Regulation 1435/2003, Art. 37, 42, 47 and 51]

Art. 137-41.

The members of the board of directors, of the management board and of the supervisory board shall be jointly and severally liable towards the company and any third parties for damages resulting from the violation of Regulation (EC) No 1435/2003, 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.

Sub-§ 2.– General meeting of shareholders.

A. Common provision.

[EC Regulation 1435/2003, Art. 54.2]

Art. 137-42.

The board of directors or as the case may be, the management board as well as the supervisory board and the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] appointed to carry out the statutory audit of the annual accounts and, as the case may be, of the consolidated accounts, may convene the general meeting.

B. Ordinary general meeting.

[EC Regulation 1435/2003, Art. 54.1]

Art. 137-43.

The general meeting shall be held once a year within six months of the end of the financial year. However, the first general meeting may be held within eighteen months following incorporation.

Art. 137-44.

In the two-tier system, the general meeting shall vote as to whether discharge is given to the members of the supervisory board and of the management board in accordance with Article 74.

C. Voting right.

[EC Regulation 1435/2003, Art. 59]

Art. 137-45.

- (1) The articles may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed 5 votes per member or 30 % of total voting rights, whichever is the lower.

The articles of *sociétés coopératives européennes* (SEC) involved in financial or insurance activities may provide for the number of votes to be determined by the member's participation in the cooperative activity including his/her participation in the capital of the *société coopérative européenne* (SEC). This attribution shall not exceed 5 votes per member or 20 % of total voting rights, whichever is the lower.

The articles of *the sociétés coopératives européennes* (SEC), the majority of members of which are cooperatives, may provide for the number of votes to be determined in accordance with the members' participation in the cooperative

activity including their participation in the capital of the *société coopérative européenne* (SEC) and/or by the number of members of each comprising entity.

- (2) The investor members as determined in Article 137-14 may not hold more than 25 % of total voting rights.
- (3) The articles of the *sociétés coopératives européennes* (SEC) may provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings, provided that the employees' representatives do not together control more than 15 % of total voting rights. Such rights shall cease to apply as soon as the registered office of the *société coopérative européenne* (SEC) is transferred to a Member State whose law does not provide for such participation.

D. Section or sectorial meeting.

[Regulation EC 1435/2003, Art. 63.1]

Art. 137-46.

In accordance with Article 63, paragraph (1), of Regulation (EC) No 1435/2003, the articles may provide for section or sectorial meetings.

Sub-§ 3.– Corporate liability action.

Art. 137-47.

The directors, the members of the management board and of the supervisory board shall be liable in accordance with the provisions of Article 59.¹²³

§ 5.– Transfer of the registered office.

[Regulation EC 1435/2003, Art. 7 and 12]

Art. 137-48.

The transfer proposal shall be drawn up by the board of directors or by the management board, as the case may be. Such proposal shall be published in accordance with «Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹²⁴.

[EC Regulation 1435/2003, Art. 7.3]

Art. 137-49.

The board of directors or the management board, as the case may be, shall draw up the report referred to in Article 7, paragraph (3), of Regulation (EC) 1435/2003.

¹²³ This provision appears to overlap with Articles 137-40 and 137-41.

¹²⁴ Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §1.

Art. 137-50.

Creditors of a *société coopérative européenne* (SEC) which is transferring its registered office, whose claims predate the publication of the transfer proposal pursuant to Article 137-50, may, notwithstanding any agreement to the contrary, 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.

[EC Regulation 1435/2003, Art. 7.8]

Art. 137-51.

In accordance with Article 7, paragraph (8), of Regulation (EC) No 1435/2003, the relevant 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.

[EC Regulation 1435/2003, Art. 12]

Art. 137-52.

The new registration and the deletion of the old registration shall be publicised, « Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» [as well as] Articles (...), 10 and 11bis of this law being applicable¹²⁵.

[EC Regulation 1435/2003, Art. 7.9]

Art. 137-53.

The transfer to the Grand-Duchy of Luxembourg of the registered office of a *société coopérative européenne* (SEC) shall be recorded by notarial deed.

The registration at the register of commerce and companies may not be effected until presentation of the certificate issued by the competent authority of the Member State in which the *société coopérative européenne* (SEC) previously had its registered office attesting the conclusive completion of the acts and formalities to be accomplished prior to the transfer.

¹²⁵ Amended by Article 20, the catch all Article of the Law of 27 May 2016. The words between brackets have been added by the author. See footnote under Article 11bis §1.

§ 6.– Annual accounts and consolidated accounts, and audit thereof. Specific provisions applicable to the two-tier system.

Art. 137-54.

Each year, the supervisory board shall receive from the management board all documents listed in Article 72, which shall be applicable by analogy to the *société coopérative européenne* (SEC), 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.

§ 7.– Winding up, liquidation, insolvency and cessation of payments.

[EC Regulation 1435/2003, Art. 73.2, 3 and 4]

Art. 137-55.

Article 101, paragraph (1) of this law shall apply to a *société coopérative européenne* (SEC) with its registered office in the Grand-Duchy of Luxembourg but where its central administration (head office) is not located there.

[EC Regulation 1435/2003, Art. 75]

Art. 137-56.

Regarding the principle of disinterested allocation of the net assets referred to in Article 75 of Regulation (EC) No 1435/2003, derogations may be made from such principle by way of an alternative arrangement provided for in the articles of the *société coopérative européenne* (SEC).

§ 8.– Conversion of a *société coopérative européenne* (SEC) into a *société coopérative*.

[EC Regulation 1435/2003, Art. 73.4]

Art. 137-57.

The draft terms of conversion shall be drawn up by the management body. It shall be published in accordance with «Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»¹²⁶.

[EC Regulation 1435/2003, Art. 76.5]

Art. 137-58.

The independent expert(s) referred to in Article 76, paragraph (5), of Regulation (EC) No 1435/2003 shall be one or more *réviseurs d'entreprises agréés* [approved statutory auditors]

¹²⁶ Amended by Article 20, the catch all Article of the Law of 27 May 2016. See footnote under Article 11bis §1.

appointed by the management body among the members of the *Institut des réviseurs d'entreprises*.

[EC Regulation 1435/2003, Art. 35.6]

Art. 137-59.

The general meeting of the *société coopérative européenne* (SEC) shall decide on the conversion.

§ 9.– Criminal law provisions.

Art. 137-60.

Section XI. – Criminal law provisions shall apply to the *société coopérative européenne*.

Art. 137-61.

In the two-tier system, the criminal law provisions applicable to the members of the board of directors shall apply to the members of the management board.

§ 10.– Final provisions.

Art. 137-62.

Article 76 shall apply by analogy to the *société coopérative européenne* (SEC). »

Section VII. - Associations momentanées et associations en participation

(Temporary Commercial Associations and Commercial Associations by Participation)¹²⁷

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.

¹²⁷ The Law of 12 July 2013 amended the designation of these entities in art. 2 and art. 13 to «*sociétés commerciales momentanées*» (temporary commercial companies) and «*sociétés commerciales en participation*» (commercial companies by participation) without changing their designation in this Section.

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 25 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 7 September 1987) «Where several classes of shares exist in *sociétés anonymes* and *sociétés en commandite par actions*, and the resolution of the general meeting is such as to change the respective rights thereof, the resolution must, in order to be valid, fulfil the conditions as to attendance and majority laid down in Article 67-1 with respect to each class.» (Law of 18 September 1933) «In *sociétés en nom collectif* (...) ¹²⁸ 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.» (Law of 12 July 2013) «In *sociétés en commandite simple*, unless otherwise provided in the partnership agreement, resolutions shall be validly adopted only with the consent of partners representing three quarters of partnership interests.»

(...) (2nd paragraph repealed by the law of 23 November 1972)

(Law of 18 September 1933)

«Where there are several liquidators, they shall form a committee which shall deliberate in accordance with Article 64.»

(Law of 12 July 2013)

«The liquidation of the *société en commandite spéciale* shall be carried out in the manner laid down in the partnership agreement and, in the absence thereof, pursuant to the rules applicable to the liquidation of *sociétés en commandite simple*.

Articles 1865 3°, 4° and 5° of the Civil Code shall apply neither to the *société en commandite simple* nor to the *société en commandite spéciale*.»

(Law of 25 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

¹²⁸ The reference to *sociétés en commandite simple* was removed by the Law of 12 July 2013.

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 20 June 1930)

«Art. 148bis.»

(Law of 8 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 20 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 2 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.»

(Law of 12 July 2013)

«Art. 148ter.

By way of derogation from the provisions of Article 147 and the first paragraph of Article 148, where the shareholders of a *société commerciale* vested with legal personality have unanimously decided to continue their company within a *société en commandite spéciale*, which shall take over all the assets and liabilities, the liquidators may distribute amongst the shareholders the partnership interests in the *société en commandite spéciale* without having to first reimburse the bonds or deposit in escrow the amounts required for such reimbursement, the *société en commandite spéciale* being directly liable for the performance of the obligations of the *société commerciale*, in the same way as the latter was liable, all special collateral being maintained for the benefit of the creditors.»

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 auditors¹²⁹ 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 18 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 19 December 2002 on the register of commerce and companies and the accounting 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 (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings».

Such publication must also include:

- 1° an indication of the place designated by the general meeting where the corporate books and documents are to be lodged and retained for at least five years;
- 2° an indication of the measures taken for the deposit in escrow of the sums and assets due to creditors or to members, which it has not been possible to deliver to them.

¹²⁹ 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.

Section IX. - Rights of action and prescription periods

Art. 152.

(Law of 12 July 2013)

«No court order in connection with commitments of the company ruling that members who are jointly and severally liable in a *société en nom collectif*, a *société en commandite simple*, a *société en commandite spéciale*, a *société en commandite par actions* and 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 25 August 2006)

«The managers, directors or members of the management board, as applicable, are personally obliged to execute any order given for that purpose. »

Creditors may, in accordance with Article 1166 of the Civil Code, exercise against the members or shareholders the rights of the company as regards any outstanding payments which are due by virtue of the articles, corporate resolutions or court orders.

Art. 154.

The «*Tribunal d'Arrondissement* dealing with commercial matters»¹³⁰ 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.

¹³⁰ Amended by the Law of 11 August 1996 on the preparation and instruction of private cases (Mém.A - 53 of 20 August 1996, p.1660; doc.parl. 3771).

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 25 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; »¹³¹
- (Law of 23 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.»
- (Law of 12 July 2013)
«all actions for the avoidance of a *société en commandite simple* or a *société en commandite spéciale*, based respectively on Article 16 paragraph (7) or on Article 22-1 sub-paragraph 8, from publication where the contract has been performed for at least five years, without prejudice to any damages which may be due. »

131 Pursuant to art. 10 2 paragraph of the Law of 18 December 2009 on the audit profession, professional liability actions against a *réviseur d'entreprises agréé* [approved statutory auditor] or a *cabinet de révision 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 25 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 31 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 27 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.»

(Law of 27 November 1992)

[89/666/EEC art. 1 and art. 2]

«Art. 160-2.

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 9 March 1968¹³² applies shall disclose, in accordance with (*Law of 27 May 2016*) «Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹³³», 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/EEC¹³⁴ 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/EEC¹³⁵;
 - 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/EEC¹³⁶;
 - 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.»

(Law of 27 November 1992)

[89/666/EEC art. 3 and art. 4]

«Art. 160-3.

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

¹³² This directive has been abrogated and replaced by directive 2009/101/EU.

¹³³ See footnote under Article 11bis § 1.

¹³⁴ This reference must be read as a reference to Article 3.1 of directive 2009/101/EU.

¹³⁵ This reference must be read as a reference to Article 2 point d) of the directive 2009/101/EU.

¹³⁶ This reference must be read as a reference to Article 2 points h), j) and k) of the directive 2009/101/EU.

of the Member State by which the company is governed in accordance with Directives 78/660/EEC¹³⁷, (Law of 23 March 2007) «83/349/EEC¹³⁸» and 84/253/EEC¹³⁹.

The accounting documents referred to in the preceding paragraph must be published in the following languages: French, German, English.»

(Law of 19 December 2002)

[89/666/EEC art. 5]

«Art. 160-4.

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 27 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/EEC¹⁴⁰, 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 27 November 1992)

[89/666/EEC art. 7 and art. 8]

«Art. 160-6.

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/EEC¹⁴¹ applies, shall disclose the following documents and particulars in accordance with *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁴²»:

- 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;

¹³⁷ This directive has been abrogated and replaced by directive 2013/34/EU.

¹³⁸ This directive has been abrogated and replaced by directive 2013/34/EU.

¹³⁹ The reference to directive 84/253/EEC must be read as a reference to directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.

¹⁴⁰ This reference must be read as a reference to Article 5 of the directive 2009/101/EU.

¹⁴¹ This directive has been abrogated and replaced by directive 2009/101/EU.

¹⁴² See footnote under Article 11bis § 1.

- 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 27 November 1992)

[89/666/EEC art. 9]

«Art. 160-7.

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/EEC¹⁴³ and *(Law of 23 March 2007)* «83/349/EEC¹⁴⁴», accounting documents relating to the activities of the branch shall be drawn up and disclosed in accordance with Luxembourg law. *(Law of 18 December 2009)* «Where the branch exceeds the criteria for a small company, as set out in article 35 of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the audit of the accounting documents by one or more *réviseurs d'entreprises agréés* [approved statutory auditors] is compulsory. Article 36 of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings also applies. »

¹⁴³ This directive has been abrogated and replaced by directive 2013/34/EU.

¹⁴⁴ This directive has been abrogated and replaced by directive 2013/34/EU.

(Law of 18 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 19 December 2002)

«Where these documents are not drawn up in accordance with or in a manner equivalent to directive 78/660/EEC¹⁴⁵ and *(Law of 23 March 2007)* 83/349/EEC¹⁴⁶», accounting documents relating to the activities of the branch shall be drawn up and disclosed in accordance with Luxembourg law. *(Law of 18 December 2009)* « Where the branch exceeds the criteria for a small company, as set out in article 35 of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the audit of the accounting documents by one or more *réviseurs d'entreprises agréés* [approved statutory auditors] is compulsory.» Article 36 of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings also applies. »

(Law of 27 November 1992)

[89/666/EEC art. 10]

«Art. 160-8.

Article 160-5. shall apply to letters and order forms used by the branches covered by Article 160-6.»

(Law of 27 November 1992)

«Art. 160-9.

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 27 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 27 November 1992)

«Art. 160-11.

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.»

¹⁴⁵ This directive has been abrogated and replaced by directive 2013/34/EU.

¹⁴⁶ This directive has been abrogated and replaced by directive 2013/34/EU.

Art. 161.

(abrogated by the law of 10 July 2005)

Section XI. - Criminal law provisions

Art. 162.

(Law of 11 July 1988)

«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».¹⁴⁷»

Art. 163.

(Law of 25 August 2006)

«The same penalty shall be imposed upon:

- 1° (Law of 23 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 on the (Law of 27 May 2016) «*Recueil électronique des sociétés et associations*» or lodged in accordance with (Law of 27 May 2016) «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁴⁸», 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 and 341 of this law and article 79 of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;

(Law of 8 December, 2015)

- «2bis the managers and directors who have failed to publish the report on payments to governments or the consolidated report on payments to governments in violation of the requirements of Article 340sexies of this law and Article 72septies of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings; »
- 3° 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;

¹⁴⁷ As amended pursuant to the Law of 13 June 1994 concerning penal sanctions (Mém.A - 59 of 7 July 1994, p.1096; doc.parl. 2974) and the Law of 1 August, 2001 on euro conversion (Mém.A - 117 of 18 September 2001, p.2440; doc.parl. 4722).

¹⁴⁸ See footnote under Article 11bis § 1.

- 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.

Art. 165.

(*Law of 11 July 1988*)

«Shall be subject to a jail term of one month to two years and a fine of «5,000 to 125,000 euros»¹⁴⁹, 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.»

Art. 166.

(*Law of 25 August 2006*) «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 12 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.»
- «3° (...)(*abrogated by the law of 10 July 2005*)
- 4° (*Law of 11 July 1988*) «any director contravening Article 26-4.»

¹⁴⁹ See footnote to Article 162.

Art. 167.

(Law of 11 July 1988)

«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.»

Art. 168.

(Law of 24 April 1983)

«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 12 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 24 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;»

Art. 169.

(Law of 11 July 1988)

«Shall be subject to a «criminal jail term of five to ten years» and a fine of «5,000 to 250,000 euros»¹⁵⁰ 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.»

¹⁵⁰ See footnote to Article 162.

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.

(*Law of 21 July 1992*)

«Art. 171-1.

Shall be subject to a jail term of one to five years and a fine of « 500 to 25,000 euros»¹⁵¹ or either one of these penalties, the legally appointed or de facto directors¹⁵², 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 another 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 the interests of the company, for personal purposes or for the benefit of another company or undertaking in which they were directly or indirectly interested in.»

(*Law of 28 July 2014*)

«Art. 171-2.

- (1) Managers or directors are punishable by a fine of 5,000 euros to 125,000 euros in case they knowingly:
 - 1° fail to keep a register of registered shares in accordance with Article 39;
 - 2° fail to appoint a depositary or fail to deposit the bearer shares with such depositary in accordance with the provisions of Article 42;
 - 3° acknowledge the rights attaching to bearer shares in breach of the provisions of Article 42, paragraph 5.
- (2) A depositary, or in case of a legal entity, the managers or the directors of the depositary who knowingly breach the provisions of Article 42, paragraphs 3, 4 and 6, shall be subject to a fine of 500 euros to 25,000 euros.»

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

¹⁵¹ See footnote to Article 162.

¹⁵² The French version uses the term « dirigeant » which also covers managers (gérants) and senior executives.

Procedure Code)»¹⁵³ on mitigating circumstances shall apply to the offences provided for in this law.

Art. 173.

(Law of 25 August 2006)

«Evidence of the accusations made against managers, directors and *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 8 June 2004 on the freedom of expression in the media.»

(Law of 25 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. »

¹⁵³ As amended pursuant to the Law of 13 June 1994 concerning penal sanctions (Mém.A - 59 of 7 July 1994, p.1096; doc.parl. 2974).

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 16 April 1879, is repealed as from the date of application of this law.

Art. 175.

The provisions of (*Law of 10 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.

(Law of 18 September 1933)

« **Section XII. - Sociétés à responsabilité limitée** »

(Private Limited Companies)

(Law of 18 September 1933)

«**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.»

(Law of 28 December 1992)

[2009/102/EC art. 2.]

- «(2) A *société à responsabilité limitée* may have one sole member at incorporation or when all of its corporate units come to be held by a single person (single-member company).

If all of the corporate units are held by a single person, this does not result in the dissolution of the company. Moreover, the death of the sole member does not result in the dissolution of the company.»

(Law of 18 September 1933)

«**Art. 180.**

«They may be incorporated to pursue any object whatsoever.

However, insurance, capitalisation and savings companies may not be constituted in that form.»¹⁵⁴

(Law of 7 September 1987)

«**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.»

¹⁵⁴ Neither can credit institutions, see art. 4 of the Law of 5 April 1993 on the financial sector.

(Law of 18 September 1933)

«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 28 December 1992 [2009/102/EC 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 18 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 *société 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 28 April 1988)

«Art. 182.

The corporate capital must be at least «12,394.68 euros».¹⁵⁵» (Law of 21 December, 2006)
«It shall be divided into corporate units of an equal value, with or without mention of value .»

(Law of 18 September 1933)

«Art. 183.

The incorporation of a private limited company requires that:

- 1° (...) (abrogated by the Law of 28 December 1992 [2009/102/EC 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 24 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 merely subscribe for corporate units for cash without directly or indirectly receiving any specific advantage shall be regarded as mere subscribers.»

¹⁵⁵ Implicitly modified by the Law of 1 August, 2001 on euro conversion (Mém.A - 117 of 18 September 2001, p.2440; doc.parl. 4722).

(Law of 18 September 1933)

«Art. 184.

(Law of 18 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 23 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 18 September 1933)

«Art. 185.

Without prejudice to the obligations deriving from Article II¹⁵⁶, 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.

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.»

(Law of 18 September 1933)

«Art. 186.

A *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 *sociétés à responsabilité limitée*.»¹⁵⁷

¹⁵⁶ Article II of the Law of 18 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 10 August 1915 as at 18 September 1933.

(...) (Paragraph abrogated by the law of 28 December 1992)

(Law of 23 November 1972)

[2009/101/EC art. 5]

«Art. 187.

All instruments, invoices, notices, publications, letters, order notes and other documents issued by *sociétés à responsabilité limitée* must state:

- 1) the corporate denomination of the company;
- 2) the words «*société à responsabilité limitée*» reproduced legibly and in full;
- 3) a precise indication of the registered office;
- 4) (Law of 19 December 2002) «the words «*Registre de commerce et des sociétés, Luxembourg*» or the initials «R.C.S. Luxembourg» followed by the registration number»;»

(Law of 28 April 1988)

«5) the amount of the corporate capital.»¹⁵⁸

(Law of 23 November 1972)

«Articles 76 paragraphs 2 and 3, 77 and 78 shall apply thereto.»

(Law of 18 September 1933)

«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.»

(Law of 18 September 1933)

«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

¹⁵⁷ Following the Law of 25 August 2006, this cross-reference should be understood as being to sub-paragraphs 2 and 3 of paragraph (1) of Article 25.

¹⁵⁸ See also art. 34 of the 2 September 2011 regulating the access to the professions of craftsman, merchant, manufacturer and certain liberal professions.

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.»

(Law of 18 September 1933)

«Art. 190.

Transfers of corporate units must be recorded by a notarial instrument or by a private document.»

(Law of 21 December 1994)

«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 23 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 23 November 1972)

[2009/101/EC art. 10]

«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 (*Law of 27 May 2016*) «subject to the conditions laid down in Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁵⁹».

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 18 September 1933*)

«Art. 192.

The managers shall be liable in accordance with Article 59.»

(*Law of 18 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.»

(*Law of 18 September 1933*)

«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 represented¹⁶⁰.»

(*Law of 18 September 1933*)

«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.»

¹⁵⁹ See footnote under Article 11bis § 4.

¹⁶⁰ See footnote under Article 32(1) in case of conversion of capital into euro.

(Law of 18 September 1933)

«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.»

(Law of 18 September 1933)

«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 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 18 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 18 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

capital¹⁶¹. However, in no case may the majority oblige any of the members to increase his participation in the company.»

(Law of 18 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 28 December 1992)

[2009/102/EC art. 4]

«Art. 200-1.

Articles 194, 196 and 199 are not applicable to companies with one sole member.»

(Law of 28 December 1992)

[2009/102/EC art. 4 and 5]

«Art. 200-2.

The sole member exercises the powers of the general meeting.

The decisions of the sole member which are taken in the scope of 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 18 September 1933)

«Art. 201.

An action for recovery of dividends not corresponding to profits actually earned may be taken against the members who have received them. The action for recovery shall prescribe five years after the date of distribution.»

(Law of 18 September 1933)

«Art. 202.

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*.»

¹⁶¹ See footnote under Article 32 (1) in case of conversion of capital into euro.

(Law of 31 May 1999)

« Section XII bis - Court-ordered dissolution and close-down »

(Law of 31 May 1999)

«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.¹⁶²
- (2) The application and the procedural deeds shall be served through the *greffe*. If the company cannot be contacted at its legal domicile in the Grand-Duchy of Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg.
- (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 on the (Law of 27 May 2016) «*Recueil électronique des sociétés et associations*, in accordance with the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁶³». 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.»

¹⁶² A serious violation of the Law of 31 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 31 May 1999).

¹⁶³ See footnote under Article 11bis § 1.

(Law of 31 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 business¹⁶⁴.
- (2) The application and the procedural deeds shall be served through the *greffe*. If the company cannot be contacted at its legal domicile in the Grand-Duchy of Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg. The court may in addition order publication thereof, by extract, in such foreign newspapers as it may designate.
- (3) Court decisions ordering the close-down of the establishment of a foreign company shall be published by extract on the (*Law of 27 May 2016*) «*Recueil électronique des sociétés et associations*, in accordance with the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁶⁵». 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 «one thousand two hundred and fifty to one hundred and twenty-five thousand euros»¹⁶⁶ or to one of those penalties, any person who shall be in breach of a judgement ordering a close-down pursuant to this article.¹⁶⁷ »

¹⁶⁴ A serious violation of the Law of 31 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 31 May 1999).

¹⁶⁵ See footnote under Article 11bis § 1.

¹⁶⁶ Implicitly modified by the Law of 1 August 2001 on euro conversion (Mém. A – 117 of 18 September 2001, p. 2440; doc. parl. 4722).

¹⁶⁷ See footnote under Article 203(1).

(Law of 4 May, 1984)

Section XIII. - Company accounts

(abrogated by the law of 19 December 2002)¹⁶⁸

¹⁶⁸ Effective 1 January 2005, this entire Section XIII has been abrogated pursuant to the Law of 19 December 2002. At the time, the Law of 19 December 2002 contained largely identical provisions. For a translation of those provisions, see Annex I hereto.

(Law of 7 September 1987)

« **Section XIV. - Mergers**^{169, 170} »

(Law of 7 September 1987)

[2011/35/EU art. 1]

«**Art. 257.**

(Law of 23 March 2007)

[2005/56/EC art. 4.2]

«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 10 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 20 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 Code¹⁷¹, that company shall be required to take the form of a *société anonyme*».

¹⁶⁹ The Law of 10 June 2009 inter alia on cross-border merger of limited liability companies amends a number of provisions and formalities concerning mergers. 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 1 August 2009.

¹⁷⁰ The amendments to this Section by the Law of 3 August, 2011 does not apply to merger transactions where the draft terms have been published before 15 August, 2011.

¹⁷¹ These articles are included in Section 4: «Employee participation in case of cross border merger» of Chapter VI, Title II of Book IV of the Labour Code which implements Article 16 of Directive 2005/56/EC.

(Law of 23 March 2007)

«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 7 September 1987)

[2011/35/Eu 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 7 September 1987)

[2011/35/EU art. 3]

«Art. 259.

(Law of 10 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.»

(Law of 23 March 2007)

(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 25 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 7 September 1987)

[2011/35/EU art. 4]

«Art. 260.

(Law of 23 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 25 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.»

(Law of 7 September 1987)

« Sub-Section I. - Merger by acquisition »

(Law of 7 September 1987)

[2011/35/EU art. 5][EC Regulation 2157/2001, art. 20.1]

«Art. 261.

(Law of 10 June 2009)

[2005/56/EC art. 5]

- «(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:
- a) the articles of the *société européenne* (SE) ;

- b) information on the procedures by which arrangements for employee involvement are determined in implementation of Council Directive 2001/86/EC of 8 October 2001 supplementing the Status for a European company with regard to the involvement of employees¹⁷².
- (4) In case of a cross-border merger, the common draft terms of merger shall also include:
- a) the articles of the acquiring company;
 - b) a description of the likely repercussions of the merger on employment;
 - c) where appropriate, information on the procedures by which arrangements for the involvement of employees, are determined by the implementation of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies¹⁷³;
 - d) information on the evaluation of the assets and liabilities which are transferred to the acquiring company;
 - e) dates of the merging companies' accounts used to establish the conditions of the merger.»

(Law of 7 September 1987)

[2011/35/EU art. 6] [EC Regulation 2157/2001]

«Art. 262.

(Law of 10 June 2009)

[2005/56/EC art. 6]

- «(1) The common draft terms of merger shall be published in accordance with *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁷⁴» 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 *(Law of 27 May 2016)* «by the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» have been 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/EEC of the

¹⁷² This directive has been implemented in Articles L. 441-1 et seq. of the Labour Code.

¹⁷³ See first footnote under Art. 257.

¹⁷⁴ See footnote under Article 11bis § 1.

Council of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community¹⁷⁵ 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 7 September 1987)

[2011/35/EU art. 7.1.]

«Art. 263.

(Law of 10 June 2009)

[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.»

(Law of 23 March 2007)

- «(2) In *sociétés en commandite simple* and in *sociétés coopératives*, the voting rights of members are in proportion to their share in the corporate assets and the quorum will be calculated 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.

¹⁷⁵ This reference must be read as a reference to Article 3 paragraph 3 of directive 2009/101/EU.

- (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 merger results in a modification to their respective rights, Article 68 shall be applicable. »

(*Law of 25 August 2006*)

[*EC Regulation 2157/2001, art. 23.2*]

- (6) «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/EC¹⁷⁶. 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 10 June 2009*)

[*2005/56/EC art. 9.2*]

- «(7) 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 7 September 1987*)

[*2011/35/EU art. 8*] [*2005/56/EC art. 9.3*]

«Art. 264.

(*Law of 23 March 2007*) «Except in the cases referred to in Article 263 paragraphs (2) to (4), » approval of the merger by the general meeting of the acquiring company is not necessary if the following conditions are fulfilled:

- a) (*Law of 10 June 2009*) « 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 (*Law of 23 March 2007*) «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 (*Law of 23 March 2007*) «members» of the acquiring company holding at least 5% of the shares (*Law of 23 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.»

¹⁷⁶ This directive has been implemented by Articles L. 441-1 and s. of the Labour Code.

(Law of 3 August 2011)

«For the purposes of point b) of the first paragraph, Article 267, paragraphs (2), (3) and (4) shall apply. »

(Law of 7 September 1987)

[2011/35/EU art. 9]

«Art. 265.

(Law of 3 August 2011)

[2005/56/EC art. 7]

«(1) The administrative and management bodies of each of the merging companies shall draw up a detailed written report addressed to the members explaining the common draft terms of merger and setting out the legal and economic grounds for them, in particular for the share or corporate unit exchange ratio.

That report shall also indicate any special valuation difficulties which 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.»

(2) The administrative or management bodies of each of the companies involved shall inform the general meeting of their company and the administrative or management bodies of the other companies involved so that the latter may inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft common terms of merger and the date of the general meetings which are to decide on the draft common terms of merger.

(3) However, the report referred to in paragraph (1) and the information referred to in paragraph (2) shall not be required if all the members and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed. »

(Law of 7 September 1987)

[2011/35/UE art. 10] [2005/56/EC art. 8]

«Art. 266.

(1) *(Law of 18 December 2009)* « 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. »

(*Law of 10 June 2009*) «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 companies¹⁷⁷ 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) (*Law of 3 August 2011*) «The rules laid down in paragraphs (2) to (4) of Article 26-1 shall not apply in case an expert report is drawn up on the draft common terms of merger or if the circumstances envisaged by paragraphs (2) to (4) of Article 26-1 do not exist. »
- (4) Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary verifications.»

(*Law of 10 June 2009*)

- (5) «Neither an examination of the common draft terms of merger by independent experts nor an expert report shall be required if all the members and holders of other securities conferring voting rights of each of the companies involved in the merger have so agreed.»

¹⁷⁷ The directive also allows application to the court and authorities of the Member State of the new company resulting from the merger.

(Law of 7 September 1987)

[2011/35/EU art. 11]

«Art. 267.

(Law of 10 June 2009)

«(1) Every *(Law of 23 March 2007)* «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;
- b) the annual accounts and the management reports of the merging companies for the last three financial years;
- c) *(Law of 3 August, 2011)* «where applicable, 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) *(Law of 3 August 2011)* «where applicable, the reports of the administrative or management bodies of the merging companies referred to in Article 265;»
- e) where applicable, the reports referred to in Article 266.»

(Law of 3 August 2011)

«For the purposes of point c) of the first subparagraph, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 4 of the law of 11th January 2008 on transparency requirements for issuers of securities and makes it available to members in accordance with this paragraph or if all the members and holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed. »

(2) The accounting statement provided for in paragraph (1) c) shall be drawn up using the same methods and 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 23 March 2007)* «member» upon request and free of charge.»

(Law of 3 August 2011)

«Where a member has consented to the use by the company of electronic means for conveying information, such copies may be provided by electronic mail. »

(Law of 3 August 2011)

- «(4) A company shall be exempt from the requirement to make the documents referred to in paragraph (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft common terms of merger and ending not earlier than the conclusion of that meeting, it makes them available on its website.
Paragraph (3) shall not apply if the website gives members the possibility, throughout the period referred to in the first subparagraph of this paragraph, of downloading and printing the documents referred to in paragraph (1). However, in that case the company shall make those documents available at its registered office for consultation by the members.»

(Law of 23 March 2007)

«Art. 267 bis.

- (1) A *société à responsabilité limitée*, a *société coopérative* or an economic interest grouping can only acquire another company or economic interest grouping if the 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.

(Law of 7 September 1987)

[2011/35/EU art. 13]

«Art. 268.

(Law of 3 August 2011)

- «(1) Creditors of the merging companies, whose claims predate the date of publication of the deeds recording the merger provided for by Article 273 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 they can credibly demonstrate that due to the merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company. The president of the court shall reject the application if the creditor is already in

possession of adequate safeguards or if such safeguards are unnecessary, having regard to the financial situation of the company after the merger. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt.

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

(Law of 23 March 2007)

- «(2) If the company being acquired is a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative* 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 coopérative*, of the civil company or of the economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which predate the effectiveness against third parties of the merger deed pursuant to Article 273.
- (3) If the acquiring company is a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative* 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 coopérative*, of the civil company or of the economic interest grouping will be severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which pre-date the merger. They may nevertheless be relieved of such liability by an express provision included in the draft terms of the merger and in the merger deed, which will be effective vis-à-vis third parties in accordance with Article 273. »

(Law of 7 September 1987)

[2011/35/EU 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 7 September 1987)

[2011/35/EU art. 15]

«Art. 270.

(Law of 10 June 2009)

- «(1) 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. »

(Law of 10 June 2009)

- «(3) «In the event of failure to convene the meeting provided for in the foregoing paragraph or if such a meeting refuses to accept the proposed 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 7 September 1987)

[2011/35/EU art. 16]

[2005/56/EC art. 10 and 11]

«Art. 271.

(Law of 10 June 2009)

- «(1) The minutes of the general meetings which decide upon the merger shall be drawn up in the form of a notarial 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 8 October 2001 supplementing the Status for a European company with regard to the involvement of employees¹⁷⁸ [in/to]¹⁷⁹ Article 16 of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies¹⁸⁰.

- (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.»

(Law of 7 September 1987)

[2011/35/EU art. 17]

«**Art. 272.**

The merger shall take effect when the concurring decisions of the companies involved shall have been adopted.»

(Law of 7 September 1987)

[2011/35/EU art. 18]

«**Art. 273.**

- (1) *(Law of 10 June 2009)* «The merger shall have no effect vis-à-vis third parties until after the publication in accordance with *(Law of 27 May 2016)* «the provisions of Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁸¹» of the minutes of the general meetings who decide

¹⁷⁸ This directive has been implemented in Articles L.441-1 et seq. of the Labour Code.

¹⁷⁹ Corresponds to the French text of the law as published in the *Mémorial A*. Presumably this should read: «(...) adopted in accordance with legal provisions implementing Council Directive 2001/86/EC (...) or [instead of «in/to»] Article 16 of Directive 2005/56/EC (...)».

¹⁸⁰ See first footnote under Art. 257.

¹⁸¹ See footnote under Article 11bis § 1.

on the merger for each merging company has been made or, in the absence of such a meeting, after the publication in accordance with (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» 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.»

(*Law of 25 August 2006*)

[*EC Regulation 2157/2001, art. 27*]

«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 10 June 2009*)

(*Law of 10 June 2009*)

[*2005/56/EC art. 12 and 13*]

«Art. 273ter.

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 (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁸²» 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.

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.

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.»

¹⁸² See footnote under Article 11bis § 1.

(Law of 7 September 1987)

[2011/35/EU art. 19]

«Art. 274.

(Law of 23 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 25 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 10 June 2009)

[2005/56/EC art. 14.4]

- «(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.»

(Law of 7 September 1987)

[2011/35/EU art. 21]

«Art. 275.

(Law of 10 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 7 September 1987)

[2011/35/EU art. 22]

«Art. 276.

(Law of 10 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 *(Law of 27 May 2016)* «Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁸³» ;
 - 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 *(Law of 27 May 2016)* « Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»;
 - 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).

¹⁸³ See footnote under Article 11bis § 1.

[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.»

(Law of 7 September 1987)

«Sub-Section II. - Merger by incorporation of a new company»

(Law of 7 September 1987)

[2011/35/EU 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 10 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) *(Law of 3 August 2011)* «The rules laid down in Article 26-1 (2) to (4) shall not apply to the incorporation of the new company in case an expert report is drawn up on the draft common terms of merger or if the circumstances envisaged by paragraphs (2) to (4) of Article 26-1 do not exist.»

(Law of 10 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.»

(Law of 10 June 2009)

«Sub-Section III. - Acquisition of one company by another which holds 90% or more of the shares, corporate units and securities conferring voting rights in the first company»

(Law of 7 September 1987)

[2011/35/EU art. 24]

«Art. 278.

(Law of 10 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 7 September 1987*)

[2011/35/EU art. 25]

«Art. 279.

«(1)»¹⁸⁴ (*Law of 23 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).

(...)¹⁸⁵

- 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 convened in such a manner so as to be held within one month of the request for it to be held.»

(*Law of 3 August 2011*)

«For the purpose of point b, paragraphs (2), (3) and (4) of Article 267 are applicable. »

(*Law of 10 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 7 September 1987*)

[2011/35/EU art. 26]

«Art. 280.

(*Law of 23 March 2007*)

«Articles 278 and 279 shall also be applicable to the acquisition operations where all the shares, corporate units and other securities referred to in Article 278 in the company or companies being acquired belong to the acquiring company or to persons holding such shares, corporate units and securities in their own name but on behalf of that company.»

¹⁸⁴ Introduced by the Law of 10 June 2009.

¹⁸⁵ Abrogated by the Law of 3 August 2011.

(Law of 7 September 1987)

[2011/35/EU art. 27]

«Art. 281.

(Law of 3 August 2011)

«(1) «Where a 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, 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;

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 company's registered office, the documents indicated in Article 267, paragraph (1) a), b) and where applicable in Article 267 paragraphs (1), c), d), and e).

c) Article 264 c) shall apply.

For the purpose of point b, paragraphs (2), (3) and (4) of Article 267 are applicable.

(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, the reports by an independent expert or experts and the documents necessary for verification shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.»

(Law of 7 September 1987)

[2011/35/EU art. 28]

«Art. 282.

(Law of 23 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 7 September 1987)

[2011/35/EU art. 29]

«Art. 283.

(Law of 23 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.»

(Law of 7 September 1987)

«Sub-Section IV. - Other operations assimilated to mergers»

(Law of 7 September 1987)

[2011/35/EU art. 30]

«Art. 284.

(Law of 23 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.»

(Law of 7 September 1987)

« Section XV. – Divisions¹⁸⁶ »

(Law of 7 September 1987)

[82/891/EEC art. 1]

«Art. 285.

(Law of 23 March 2007)

«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 latter's 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).»»

(Law of 7 September 1987)

[82/891/EEC art. 1]

«Art. 286.

A division shall be carried out by acquisition, by the incorporation of new companies or by a combination of the two procedures.»

(Law of 7 September 1987)

[82/891/EEC art. 2]

«Art. 287.

- (1) *(Law of 10 June 2009)* « 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

¹⁸⁶ The amendments to this Section by the Law of 3 August 2011 do not apply to divisions where the draft terms have been published before 15 August, 2011.

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.»

- (2) (*Law of 23 March 2007*) «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.»

(*Law of 7 September 1987*)

[82/891/EEC art. 21]

«Art. 288.

(*Law of 10 June 2009*)

- «(1) 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. »

(*Law of 23 March 2007*)

- «(2) 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.»

(*Law of 7 September 1987*)

«Sub-Section I. - Division by acquisition»

(*Law of 7 September 1987*)

[82/891/EEC art. 3]

«Art. 289.

(*Law of 23 March 2007*)

- (1) «The management bodies of the companies involved in the division shall draw up draft terms of division.
- (2) 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 assets¹⁸⁷ 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 7 September 1987)

[82/891/EEC art. 4]

«Art. 290.

Draft terms of division shall be published in accordance with (Law of 27 May 2016) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁸⁸» 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 7 September 1987)

[82/891/EEC art. 5.1]

«Art. 291.

(Law of 23 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

¹⁸⁷ The English version of the directive refers to: «net assets» as does the German version (*Nettoaktivvermögen*).

¹⁸⁸ See footnote under Article 11bis § 1.

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.»

- (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 7 September 1987)

[82/891/EEC art. 6]

«Art. 292.

(Law of 23 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 3 August 2011)

«For the purposes of point b) of the first paragraph, Article 295, paragraphs (2), (3) and (4) shall apply. »

(Law of 7 September 1987)

[82/891/EEC art. 7]

«Art. 293.

(Law of 23 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 *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁸⁹».
- (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 7 September 1987)

[82/891/EEC art. 8]

«Art. 294.

(Law of 23 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 18 December 2009)* «The experts must be chosen among the *réviseurs d'entreprises agréés* [approved statutory auditors].»

¹⁸⁹ See footnote under Article 11bis § 1.

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) (*Law of 3 August 2011*) «The rules laid down in paragraphs (2) to (4) of Article 26-1 shall not apply in case an expert report is drawn up on the draft terms of division or if the circumstances envisaged by paragraphs (2) to (4) of Article 26-1 do not exist.»
- (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 7 September 1987*)

[82/891/EEC art. 9]

«Art. 295.

(*Law of 23 March 2007*)

- (1) «Every member shall be entitled to inspect the following documents at the registered office, at least one month before the date of the general meeting called to decide on the draft terms of division:
- a) the draft terms of division;
 - b) the annual accounts and the management reports for the three last financial years of the companies involved in the division;
 - c) (*Law of 3 August 2011*) «where applicable, an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of division if the last annual accounts relate to a financial year which ended more than six months before that date;»
 - d) (*Law of 3 August 2011*) «where applicable, the reports of the management bodies of the companies involved in the division, referred to in Article 293, paragraph (1).»

e) (*Law of 10 June 2009*) « where applicable, the reports referred to in Article 294.»

(*Law of 3 August 2011*)

«For the purposes of point c) of the first subparagraph, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 4 of the law of 11th January 2008 on transparency requirements for issuers of securities and makes it available to shareholders in accordance with this paragraph.»

(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 3 August 2011*)

«Where a member has consented to the use by the company of electronic means for conveying information, such copies may be provided by electronic mail.»

(*Law of 3 August 2011*)

«(4) A company shall be exempt from the requirement to make the documents referred to in paragraph (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of division and ending not earlier than the conclusion of that meeting, it makes them available on its website.

Paragraph (3) shall not apply if the website gives members the possibility, throughout the period referred to in the first subparagraph of this paragraph, of downloading and printing the documents referred to in paragraph (1). However, in that case the company shall make those documents available at its registered office for consultation by the members.»

(*Law of 7 September 1987*)

[82/891/EEC art. 10]

«Art. 296.

(*Law of 10 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 23 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 subparagraphs of this paragraph.»

(Law of 7 September 1987)

[82/891/EEC art. 12.1]

«Art. 297.

(Law of 3 August 2011)

- «(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 they can credibly demonstrate that due to the division the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company. The application shall be rejected if the creditor already has adequate safeguards or if such safeguards are not necessary, 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. »

(Law of 23 March 2007)

- «(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.»

- (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 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 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 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 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).

They may however be exempted from this liability by an express provision to this effect in the draft terms of division and the deed of division which will be valid vis-à-vis third parties in accordance with Article 302. »

(Law of 7 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 7 September 1987)

[82/891/EEC art. 13]

«Art. 299.

(Law of 23 March 2007)

- «(1) The holders of securities, other than shares or corporate units, to which special rights are attached must be given rights in the 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 7 September 1987)

[82/891/EEC art. 14]

«Art. 300.

(Law of 23 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.
- (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 7 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 7 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 in accordance with (*Law of 27 May 2016*) «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁹⁰» has 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.»

¹⁹⁰ See footnote under Article 11bis § 1.

(Law of 7 September 1987)

[82/891/EEC art. 17]

«Art. 303.

(Law of 23 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.»

(Law of 7 September 1987)

[82/891/EEC art. 18]

«Art. 304.

(Law of 25 August 2006)

«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 7 September 1987)

[82/891/EEC art. 19]

«Art. 305.

(Law of 23 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 (Law of 27 May 2016) «Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁹¹»;
- 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 (Law of 27 May 2016) «Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»;
- 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.¹⁹²»

(Law of 7 September 1987)

[82/891/EEC art. 20]

«Art. 306.

(Law of 3 August 2011)

«Without prejudice to Article 292, 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

¹⁹¹ See footnote under Article 11bis § 1.

¹⁹² The directive (art. 19.1 (h)) provides that the liability of the company being divided may be limited to the share of net assets transferred to the recipient company on which account the obligations arose.

conferring the right to vote at general meetings, the approval of the division by the general meeting of the company being divided in accordance with Article 291 paragraph (1) shall not be necessary if the following conditions are fulfilled:

- a) the publication prescribed in Article 290 is made as regards each of the companies involved in the operation, at least one month before the operation takes effect between the parties;
- b) all the members of the companies involved in the operation are entitled, at least one month before the operation takes effect between the parties, to inspect at the registered office of their company the documents indicated in Article 295 paragraph (1);
- c) 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 any material change in the assets and liabilities occurring after the date of preparation of the draft terms of division.

For the purpose of point b) of the first paragraph, Article 295, paragraphs (2), (3) and (4) as well as Article 296 are applicable.»

(Law of 7 September 1987)

«Sub-Section II. - Division by the incorporation of new companies»

(Law of 7 September 1987)

[82/891/EEC art. 22]

«Art. 307.

(Law of 23 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) *(Law of 3 August 2011)* «The rules laid down in paragraphs (2) to (4) of Article 26-1 shall not apply in case an expert report is drawn up on the draft terms of division or if the by circumstances envisaged by paragraphs (2) to (4) of Article 26-1 do not exist. »
- (5) *(Law of 3 August 2011)* «The rules laid down in Articles 293, 294 and 295 paragraph (1), c), d) and e) shall not apply to the incorporation of new companies where the shares or corporate units in each of the new companies are allocated to the members of the company being divided in proportion to their rights in the capital of that company.»

(Law of 7 September 1987)

«Sub-Section III. - Other operations assimilated to division»

(Law of 7 September 1987)

[82/891/EEC art. 24]

«Art. 308.

(Law of 23 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.»

(Law of 23 March 2007)

Section XVbis. – Transfers of assets, branch of activity transfers and all assets and liabilities transfers

(Law of 23 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 23 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 23 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 means¹⁹³.»

(Law of 23 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 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

¹⁹³ Council Directive 2009/133/EC inter alia on the common system of taxation applicable to mergers and division, defines a branch of activity 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. »

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 23 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.»

(Law of 23 March 2007)

« Section XVter. – Transfers of professional assets »

(Law of 23 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 person¹⁹⁴ 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 latter's 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 23 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 23 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.

¹⁹⁴ A literal translation would be « to another legal subject.»

- (4) a) Where an asset cannot 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 cannot 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 23 March 2007)

«Art. 308bis-9.

Draft terms of transfer shall be published in accordance with *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁹⁵» 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 23 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 23 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.

¹⁹⁵ See footnote under Article 11bis § 1.

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 23 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 in accordance with *(Law of 27 May 2016)* «the provisions of Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁹⁶» has been made for each of the persons involved in the transfer.»

(Law of 23 March 2007)

«Art. 308bis-13.

- (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 immoveable 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 23 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;

¹⁹⁶ See footnote under Article 11bis § 1.

- 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 (*Law of 27 May 2016*) «Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings¹⁹⁷»;
- 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 (*Law of 27 May 2016*) « Chapter *Vbis* of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings»;
- 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.»

¹⁹⁷ See footnote under Article 11bis § 1.

(Law of 11 July 1988)

« **Section XVI. - Consolidated accounts**^{198, 199, 200, 201} »

Sub-section 1. - Conditions for the preparation of consolidated accounts »

(Law of 11 July 1988)

[2013/34/EU Art. 21 and Art. 22]

«**Art. 309.**

- (1) (Law of 10 December 2010) «Each *société anonyme, société en commandite par actions* or *société à responsabilité limitée* and (Law of 30 July 2013) «each company referred to in Article 77, paragraph 2, items 2° and 3°» of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings except for credit institutions, insurance and reinsurance companies and pension savings companies with variable capital incorporated under Luxembourg law must draw up consolidated accounts and a consolidated management report if it:»
- a) has a majority of the shareholders' or members' voting rights in another undertaking; or
 - b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is at the same time a shareholder in or member of that undertaking; or
 - c) is a shareholder in or member of an undertaking, and controls alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking. »

¹⁹⁸ Pursuant to Regulation (EC) n°1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, listed companies, for each financial year starting on or after 1 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. This option was introduced in Luxembourg by the Law of 10 December 2010 on the introduction of international accounting standards (Mémorial A – 225 of 17 December 2010; doc. parl. 5976). See also article 341bis hereafter and article 72bis of the Law of 19 December 2002 on the register of commerce and companies reproduced in Annex I.

¹⁹⁹ The Law of 10 December 2010 has amended certain provisions of this section. In accordance with article 4 of such law, undertakings have the option to disapply the Law of 10 December 2010 to their financial year which is ongoing on 21 December 2010.

²⁰⁰ In accordance with article 27 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, a Grand-ducal regulation may authorise certain undertakings to derogate from the provision of this Section.

²⁰¹ In accordance with Article IV item 4 of the Law of 18 December 2015, the provisions of that law shall for the first time apply to the consolidated accounts and the related reports of the financial year starting 1 January 2016 or during calendar 2016.

(Law of 25 August 2006)

«A *société européenne* (SE) having its registered office in the Grand-Duchy of Luxembourg shall be governed by the provisions applicable to *sociétés anonymes*.»

- (2) For the purposes of this Section, the company having the rights set out in paragraph (1) shall be referred to as the parent company. The undertakings with regard to which the rights set out above are held shall be referred to as subsidiary undertakings.»

(Law of 18 December 2015)

- «(3) Credit institutions and insurance and reinsurance companies are excluded from the scope of the present section except for Sub-Section *4bis* regarding the consolidated report on payments to governments, which shall apply to them.»

(Law of 11 July 1988)

[2013/34/EU Art. 22.3.4 and .5]

«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 11 July 1988)

[2013/34/EU Art 2.10 and Art. 22.6]

«Art. 311.

- (1) Without prejudice to the *(Law of 10 December 2010)* « Article 317», a parent company and all of its subsidiary undertakings shall be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

- (2) For the purposes of paragraph (1) 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 10 December 2010)

- «(3) Each parent company within the meaning of Article 309 which principally holds one or more subsidiary companies required to be consolidated which are credit institutions or insurance undertakings may apply the provision of Part III of the amended Law of 17 June 1992 relating to the annual accounts of credit institutions governed by Luxembourg law and the obligations regarding publication of the accounting documents of branches of credit institutions and financial institutions governed by foreign laws for the purpose of consolidation or the provisions of Part III of the amended Law of 8th December 1994 relating to the annual accounts and the consolidated accounts of insurance and re-insurance undertakings governed by Luxembourg law – the obligation regarding the drawing up and publication of the accounting documents of branches of insurance undertakings governed by foreign laws, respectively. The parent company which elects this option is exempted from drawing up consolidated accounts in accordance with Article 309.»

Art. 312.

(Abrogated by the Law of 18 December 2015)

(Law of 11 July 1988)

[2013/34/EU Art.3, 8, 9, 10 and 11 and Art. 23.2]

«Art. 313.

(Law of 18 December 2015)

- «(1) By way of derogation from Article 309 paragraph (1), a parent company shall be exempted from the obligation to draw up consolidated accounts and a consolidated management report if at the balance sheet date of the parent company, the undertakings which would have to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of at least two of the three criteria set out below:
- balance sheet total: 20 million euros
 - net turnover: 40 million euros
 - average number of full-time staff employed during the financial year: 250. »
- (2) The figures of the criteria relating to the balance sheet total and net turnover may be increased by 20%, if the set-off referred to in Article 322 paragraph (1) and the elimination referred to in Article 329 paragraph (1) items (a) and (b) are not effected.
- (3) *(Law of 18 December 2015)* «This exemption shall not apply to those companies where one of the companies to be consolidated is a company whose securities are

admitted to official trading on a regulated market²⁰² of any Member State of the European Community²⁰³ within the meaning of Article 1, point 4, of the amended Law of 13 July 2007 on markets in financial instruments. »

- (4) Article 36 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall be applicable.
- (5) The amounts indicated above may be amended by Grand-Ducal Regulation.»

(Law of 11 July 1988)

[2013/34/EU Art. 23.3 and .4]

«Art. 314.

- (1) By way of derogation from Article 309 paragraph (1), any parent company which is also a subsidiary undertaking shall be exempted from the obligation to draw up consolidated accounts and a consolidated management report if its own parent undertaking is governed by the law of a Member State of the European Community, in the following two cases:
 - a) 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.
- (2) The exemption shall be conditional upon compliance with all of the following conditions:
 - a) the exempted company and, without prejudice to the *(Law of 10 December 2010)* «Article 317», all of its subsidiary undertakings are consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State of the European Community;
 - b) aa) the consolidated accounts referred to in (a) above and the consolidated management 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;

²⁰² The MiFID Law defines «regulated market» as 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 or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of Directive 2004/39/EC.

²⁰³ This reference shall be read as a reference to the European Union.

- bb) the consolidated accounts referred to in (a) above and the consolidated management report referred to in (aa) above and the report of the (*Law of 10 December 2010*) «by the person or persons» responsible for auditing those accounts shall be published for the exempted company in the manner prescribed by (*Law of 27 May 2016*) «Article 11bis» 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 management report.»

(*Law of 10 December 2010*)

«(3) This exemption shall not apply to the companies whose securities are admitted to official trading on a regulated market²⁰⁴ of any Member State of the European Community within the meaning of Article 4, paragraph (1), item 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.»

(*Law of 11 July 1988*)

[2013/34/EU Art.23.5]

«Art. 315.

In cases not covered by Article 314 paragraph (1), any parent company which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State of the European Community, is exempted from the obligation to draw up consolidated accounts and a consolidated management report, provided that all the conditions set out in Article 314 paragraph (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own at least 10% of the subscribed capital of that undertaking, 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.»

(*Law of 11 July 1988*)

[2013/34/EU Art. 23.8]

«Art. 316.

By way of derogation from Article 309 paragraph (1), any parent company which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State of the European Community, is exempted from the obligation to draw up consolidated accounts and a consolidated management report if all of the following conditions are fulfilled:

- a) the exempted company and, without prejudice to the (*Law of 10 December 2010*) «Article 317 », all of its subsidiary undertakings are consolidated in the accounts of a larger body of undertakings;

²⁰⁴ Please see note under Article 313 for the definition of this term.

- b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated management 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.

(*Law of 30 July 2013*) «Article 314 paragraph (2), sub-paragraphs b) bb and c) and paragraph (3) as well as Article 315 shall apply.»

(*Law of 11 July 1988*)

[2013/34/EU Art. 6.1, point j) and Aart. 23.9 and .10]

«Art. 317.

- (1) An undertaking need not be included in consolidated accounts where it is (*Law of 18 December 2015*) «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 (*Law of 18 December 2015*) «material»²⁰⁵ for the purposes of Article 319 paragraph (3).»
- (...) (*Paragraph abrogated by the Law of 18 December 2015*)
- (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.»

(*Law of 18 December 2015*)

[2013/34/EU Art. 23.10]

«Art. 318.

Without prejudice to Article 51, paragraph (1), point (b) of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, and to Article 313 of this section, any parent company, including a public-interest entity within the meaning of Sub-Section 4*bis*, shall be exempted from the obligation imposed in Article 309 if:

- a) it only has subsidiary undertakings which are immaterial, both individually and collectively; or
- b) all its subsidiary undertakings can be excluded from consolidation by virtue of Article 317.»

²⁰⁵ The English version of Directive 83/349/EEC (this translation following the French version of that directive) specified: “if as a whole, they are material”. The German version of the directive is identical to the English version («*sofern sie insgesamt*»).

(Law of 11 July 1988)

« Sub-Section 2. - Manner of preparation of consolidated accounts »

(Law of 11 July 1988)

[2013/34/EU Art. 4]

«Art. 319.

- (1) Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts. These documents shall constitute a composite whole.

(Law of 10 December 2010)

« Each company referred to in Article 309 paragraph (1) may include other statements in the consolidated accounts in addition to the documents referred to in the first sub-paragraph. »

- (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 18 December 2015)

[2013/34/EU Art. 2.16]

- «(6) Where a provision of this Section refers to the term «material», this term shall mean the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the consolidated accounts of the group. The materiality of individual items shall be assessed in the context of other similar items.»

(Law of 11 July 1988)

[2013/34/EU Art. 24]

«Art. 320.

- (1) *(Law of 10 December 2010)* «Articles 28 to 34, 37 to 46 and 48 to 50 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» shall apply 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 (*Law of 10 December 2010*) «Article 34 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» can be made only at disproportionate expense.»

(*Law of 10 December 2010*)

- «(3)» (*Law of 18th December 2015*) «For the purpose of paragraphs (1) and (2), the layouts of balance sheets referred to in Articles 10 and 11 and the layouts of profit and loss accounts referred to in Article 13, paragraphs 1. and 2. of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 may also be used. In addition, companies may also apply the provisions of Article 9 paragraphs 2 and 3 of Directive 2013/34/EU concerning the subdivision, layout, nomenclature and terminology of items in the consolidated balance sheet and the consolidated profit and loss account.»

(*Law of 11 July 1988*)

[2013/34/EU Art. 24.2]

«Art. 321.

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.»

(*Law of 11 July 1988*)

[2013/34/EU Art. 24.3 points a) and e)]

«Art. 322.

- (1) The book values of shares or corporate units in the capital of the undertakings included in 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 (*Law of 10 December 2010*) «with chapter II (*Law of 30 July 2013*) «of Title II» of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.»

(*Law of 11 July 1988*)

[2013/34/EU Art. 25]

«Art. 323.

(*Law of 18 December 2015*)

- «(1) Undertakings may set off 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 the undertakings in the business combination are ultimately controlled by the same party both before and after the business combination, and that control is not transitory
- (2) Any difference arising under paragraph (1) shall be added to or deducted from consolidated reserves, as appropriate.
- (3) The application of the method described in paragraph (1), the resulting movements in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the consolidated accounts.»

(*Law of 11 July 1988*)

[2013/34/EU Art. 24.4]

«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».»

(*Law of 11 July 1988*)

[2013/34/EU Art. 24.5]

«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 11 July 1988*)

[2013/34/EU Art. 24.6]

«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 11 July 1988)

«Art. 327.

Consolidated accounts shall be drawn up in accordance with the principles provided for in Articles 328 to 331.»

(Law of 11 July 1988)

[2013/34/EU Art. 4.4 and Art. 6.1 point b)]

«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 11 July 1988)

[2013/34/EU Art. 6.1 point j) and Art. 24.7]

«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.

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 *(Law of 18 December 2015)* «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 (*Law of 18 December 2015*) «material» for the purposes of Article 319 paragraph (3).»

(*Law of 11 July 1988*)
[2013/34/EU Art. 24.8]

«Art. 330.

- (1) Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent company.
- (2) However, consolidated accounts may be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the 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) (*Law of 18 December 2015*) «Where the balance sheet date of an undertaking included in the consolidation precedes or follows 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.»

(*Law of 11 July 1988*)
[2013/34/EU Art. 24.9]

«Art. 331.

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 11 July 1988)
[2013/34/EU Art. 24.10 to .14]
«Art. 332.²⁰⁶

- (1) Assets and liabilities to be included in consolidated accounts shall be measured on a uniform basis and in accordance with (*Law of 10 December 2010*) «sections 7 and 7bis» (*Law of 30 July 2013*) «of Chapter II of Title II» of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings».
- (2)
 - a) The company which draws up consolidated accounts must apply the same measurement basis as are applied in its annual accounts. However, other measurement basis complying with the aforementioned Articles may be used in consolidated accounts.
 - b) (*Law of 30 July 2013*) «Where use is made of these derogations, that fact shall be disclosed in the notes to the consolidated accounts and the reasons given.»
- (3) (*Law of 18 December 2015*) «Where assets and liabilities included in consolidated accounts have been measured by undertakings included in the consolidation using bases differing from those used for the purposes of the consolidation, those assets and liabilities shall be re-measured in accordance with the bases used for the consolidation. Departures from this requirement shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the consolidated accounts and the reasons 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.
- (5) (*Law of 18 December 2015*) «Where assets included in consolidated accounts have been the subject of value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated.»

²⁰⁶ Grand-Ducal Regulation of 11 September, 2006 (Mém. A-167 of 15 September 2006, p. 3060):

«Art. 1 [*As regards annual accounts, see footnote under Article 65 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings set out in Annex I*].

Art.2 The undertakings referred to in Article 309 of the amended Law of 10 August 1915 on commercial companies are authorised to derogate from Articles 332, 337 and 339 of the amended Law of 10 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 27 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.»

(Law of 11 July 1988)
[2013/34/EU Art. 24.3 point c)]
«Art. 333.

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 (*Law of 18 December 2015*) «Article 59 paragraphs (1) and (2) of the amended law of 19 December 2002» on the register of commerce and companies and the accounting and annual accounts of undertakings».

(...) (Paragraph abrogated by the Law of 18 December 2015)

(Law of 11 July 1988)
[2013/34/EU Art.24.3, point f)]
«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 11 July 1988)
[2013/34/EU Art. 26]
«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.
- (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 11 July 1988)
[2013/34/EU Art. 27]
«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 the (*Law of 10 December 2010*) « Article 41 of the amended law of 19 December 2002 on the register of commerce and

companies and the accounting and annual accounts of undertakings », that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking. Article 310 shall apply.

- (2) 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 (*Law of 30 July 2013*) «in Chapter II of Title II of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings». The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time; or
 - b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in the (*Law of 10 December 2010*) « Chapter II (*Law of 30 July 2013*) «of Title II» of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings » shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time.
 - c) The consolidated balance sheet or the notes to the accounts must indicate whether (a) or (b) has been used.
 - 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 (*Law of 18 December 2015*) «not material» for the purposes of Article 319 paragraph (3).»

(*Law of 11 July 1988*)

«Art. 337.²⁰⁷

[2013/34/EU Art. 16.1 point a) and Art. 28.]

(*Law of 18 th December 2015*) «In addition to the information required under other provisions of this Section, the notes to the accounts shall disclose the following information presented in the order in which the items to which they relate are presented in the consolidated balance sheet and in the consolidated profit and loss account: »

1. (*Law of 18 December 2015*) «Accounting policies and measurement bases. »

[2013/34/EU Art. 28.2 point a)]

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) (*Law of 30 July 2013*) «The same information must be given in respect of undertakings excluded from the consolidation pursuant to Article 317 and

²⁰⁷ See footnote under Article 332.

an explanation of the reasons for the exclusion of the undertakings referred to in Article 317 must be given.»

(Law of 18 December 2015)

«c) When Article 318 is applied, the notes to the annual accounts of the exempted company must include the information provided for by Article 337, paragraph (2), letter b).»

[2013/34/EU Art. 28.2 point b)]

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.

[2013/34/EU Art. 28.2. point c)]

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.

[2013/34/EU Art. 28.2 point d)]

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 (...) ²⁰⁸ 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. *(Law of 18 December 2015)* «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.»

[2013/34/EU Art. 16.1 point g) and Art. 28.1]

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.

(2013/34/EU Art. 16.1 point d) and Art. 28.1]

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

²⁰⁸ Abrogated by Law of 10 December 2010.

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.

(Law of 10 December 2010)

[2013/34/EU Art. 17.1 point p)]

«7bis. The nature and business purpose of any arrangements that are not included in the balance sheet, and the financial impact of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the companies included in the consolidation taken as a whole. »

(Law of 10 December 2010)

[2013/34/EU Art. 17.1 point r)]

«7ter. *(Law of 18 December 2015)*«transactions which have been entered into with related parties²⁰⁹, including the amounts of such transactions, the nature of the related party relationship as well as any other information about the transactions necessary for an understanding of the financial position of the undertakings included in the consolidation. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position of the undertakings included in the consolidation.

By way of derogation from the preceding paragraph, it is possible to present in the notes to the accounts only transactions with related parties which have not been concluded under normal market conditions.

Transactions between related parties included in a consolidation which are eliminated in consolidation are not mentioned.

The term «related party»²¹⁰ has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.»

²⁰⁹ For a definition of «related party», see the note following Article 83 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings set out in Annex I hereunder. In addition, Article 344(1bis) also contains a reference to the definition of this term.

²¹⁰ For a definition of «related party», see the note following Article 83 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings set out in Annex I hereunder. In addition, Article 344(1bis) also contains a reference to the definition of this term.

[2013/34/EU Art. 18.1 point a)]

8. The consolidated net turnover as defined in the (*Law of 10 December 2010*) «Article 48 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings», broken down by categories of activity and into geographical markets insofar as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organised, these categories and markets differ substantially from one another.

[2013/34/EU Art. 17.1 point e) and Art. 28.1 point b)]

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. (...) (*Paragraph abrogated by the Law of 18 December 2015*)

[2013/34/EU Art. 17.1 point f) and Art. 28.1]

11. (*Law of 30 July 2013*)

- «a) The difference between the tax charged to the consolidated profit and loss account for the financial year and to those for earlier financial years and the amount of tax already paid or payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;
- b) Where valuation at fair value has been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the balance sheet shall show, as the case may be, deferred tax liabilities as a cumulative amount;»

(*Law of 18 December 2015*)

- «c) The deferred tax balances at the end of the financial year, and the movement in those balances during the financial year.»

[2013/34/EU Art. 28.1 point c)]

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.

[2013/34/EU Art. 28.1 point c)]

13. The amount of advances and loans granted to the members of the administrative, managerial and supervisory bodies of the parent company by the parent company

or by its subsidiary undertakings, with indications of the interest rates, main conditions and amounts repaid, if any, as well as commitments entered into on their behalf by way of guarantee of any kind. This information must be given as a total for each category.»

(Law of 18 December 2009)

[2013/34/EU Art. 18.1 point b) and Art. 28.1]

«14. (Law of 18 December 2015) «the total fees for the financial year received²¹¹ by each *réviseur d'entreprises agréé* [approved statutory auditor] or *cabinet de révision agréé* [approved audit firm] for the statutory audit of the accounts, and the total fees received by each *réviseur d'entreprises agréé* [approved statutory auditor] or *cabinet de révision agréé* [approved audit firm] for other assurance services, for tax advisory services. »²¹²

[2013/34/EU Art. 16.1 point c) and Art. 28.1]

(Law of 10 December 2010)

« 15.» (Law of 30 July 2013) «Where valuation at fair value of financial instruments has been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings :

- a) the significant assumptions underlying the valuation models and techniques used where fair values have been determined in accordance with Article 64ter, paragraph (1) item b) of that law ;
- b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as, in accordance with Article 64quater of that law, changes included in the fair value reserve ;
- c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and

²¹¹ The English version of the directive uses the term «charged» and the German version uses the term «*berechnet*» whereas the French version uses «*perçus*» which has been translated by «received».

²¹² Some terms used in this item 14) are defined as follows by the Law of 18 December 2009 on the audit profession (certain other terms which are necessary for a full understanding being also included):

«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 18 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 18 December 2009] means a reference to the authority or body(ies) responsible for the functions referred to in that article ;

«IRE» [means] the Institut des Réviseurs d'Entreprises.

«*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 18 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.»

«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.

conditions that may affect the amount, timing and certainty of future cash flows ; and

- d) a table showing movements in the fair value reserve during the financial year.»

(Law of 10 December 2010)

[2013/34/EU Art. 17.1 point c) and Art. 28.1]

«16. Where valuation at fair value of financial instruments has not been applied in accordance with Section 7bis of Chapter II (*Law of 30 July 2013*) «of Title II» of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

- a) for each class of derivative instruments ;
 - i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 64ter paragraph (1) of that law ;
 - ii) information about the extent and the nature of the instruments ; and
- b) for financial fixed assets covered by Article 64bis of that law, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 55, paragraph (1) item c) aa) of that law ;
 - i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets ;
 - ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.»

(Law of 30 July 2013)

«17. Where valuation at fair value of certain categories of assets other than financial instruments has been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings:

- a) the main assumptions underlying the valuation models and techniques used, where fair value has not been determined by reference to a market value;
- b) for each class of assets other than financial instruments, the fair value as at the date of the end of the financial year and the changes in value during the financial year;
- c) for each class of assets other than financial instruments, information on the significant terms and conditions that may affect the amount and certainty of future cash flows.»

(Law of 18 December 2015)

«18. The nature and the financial effect of material events arising after the consolidated balance sheet date which are not reflected in the consolidated profit and loss account or the consolidated balance sheet.»

(Law of 11 July 1988)

[2013/34/EU Art.28.3]

«Art. 338.

The disclosures prescribed in Article 337 paragraphs (2), (3), (4) and (5) may:

- a) take the form of a statement deposited in accordance with *(Law of 27 May 2016)* «Article 11bis»; this must be disclosed in the notes to the accounts;
- b) be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. Any such omission must be disclosed in the notes to the accounts.

(...) (Paragraph abrogated by the Law of 18 December 2015)

(Law of 11 July 1988)

«Sub-Section 3. - The consolidated management report»

(Law of 11 July 1988)

[2013/34/EU Art. 19 and Art. 29]

«Art. 339.²¹³

(Law of 10 December 2010)

«(1) The consolidated management report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face. The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated management report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.»

- (2) In respect of those undertakings, the report shall also give an indication of:
- a) (...) (*Paragraph abrogated by the Law of 18 December 2015*);
 - b) the likely future development of those undertakings taken as a whole;
 - c) the activities of those undertakings taken as a whole in the field of research and development;
 - d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent company's shares or corporate units held by that company itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. These particulars may be disclosed in the notes to the accounts.»

(Law of 10 December 2010)

«e)»(Law of 30 July 2013) «in relation to the use by such undertakings²¹⁴ of financial instruments and, where material for the assessment of their assets, liabilities, financial position and profit or loss,

- the financial risk management objectives and policies of such undertakings²¹⁵, including their policy for hedging each major type of forecasted transaction for which hedge accounting is used ; and

²¹³ See footnote under Article 332.

²¹⁴ The law follows the English version of the directive which uses the plural form, thereby referring to all companies included in the consolidation, whereas the French version is limited to referring to the company.

²¹⁵ See prior footnote.

- the exposure such undertakings to price risk, credit risk, liquidity risk and cash flow risk.»

(Law of 10 December 2010)

«f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where a company has its securities admitted to trading on a regulated market²¹⁶ within the meaning of Article 4 paragraph (1), point 14), of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. In the event that the consolidated management report and the management report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 68bis of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

If the information required by Article 68bis of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings is set out in a separate report published together with the management report in the manner prescribed by Article 68 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings the information referred to in this subparagraph shall also form part of that separate report.»

(Law of 10 December 2010)

«(3) Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole».

(Law of 10 December 2010)

«Sub-Section 3bis. – Duty and liability for drawing up and publishing the consolidated accounts and the consolidated management report»

(Law of 10 December 2010)

«Art.339bis. »

(Law of 30 July 2013)

«The members of the administrative, management and supervisory bodies of the company drawing up the consolidated accounts and the consolidated management report have collectively the duty to ensure that the consolidated accounts, the consolidated management report and, when provided separately, the corporate governance statement to be provided

²¹⁶ Please see note under Article 313 for the definition of this term.

pursuant to Article 69bis of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, are drawn up and published in accordance with the requirements of this law and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards²¹⁷. Such bodies shall act within the competences assigned to them by law. »

(Law of 11 July 1988)

«Sub-Section 4. - The auditing of consolidated accounts»

(Law of 11 July 1988)

[2013/34/EU Art. 34.1 and 2.]

«Art. 340.

(Law of 18 December 2015)

(1) «An undertaking which draws up consolidated accounts must have them audited by one or more *réviseurs d'entreprises agréés* [approved statutory auditors].»²¹⁸
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«(2) «The *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] shall:

- a) express an opinion on:
 - i) whether the consolidated management report is consistent with the consolidated accounts for the same financial year, and
 - ii) whether the consolidated management report has been prepared in accordance with the applicable statutory requirements;
- b) state whether, in the light of the knowledge and understanding of the undertaking and its environment obtained in the course of the audit, he, she or it has identified material misstatements in the consolidated management report, and in that case shall give an indication of the nature of any such misstatements.

(...) (Paragraphs abrogated by the Law of 18 December 2015)

(Law of 18 December 2015)

[2013/34/EU Art. 35]

«Art. 340bis.»

«(1) The *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or the *cabinet(s) de révision agréé(s)* [approved audit firm(s)] shall present the outcome of the statutory audit of the accounts in an audit report. This report shall be drawn

²¹⁷ These standards were adopted through Commission Regulation (EC) n° 1725 / 2003 of 29 September 2003 (O.J. L 261 of 13 October 2003).

²¹⁸ As regards certain rules on the appointment, termination and resignation of *réviseurs d'entreprises agréé* [approved statutory auditors], please refer to the footnote under Article 69 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings reproduced in Annex I.

²¹⁹ See footnote under Art. 26-1(2).

up in accordance with such international auditing standards as adopted for Luxembourg by the Commission de surveillance du secteur financier²²⁰.

- (2) The audit report shall be in writing and shall:
- a) identify the entity whose consolidated accounts are the subject of the statutory audit; specify the relevant consolidated accounts, the balance sheet date and the period covered; and identify the financial reporting framework that has been applied in their preparation;
 - b) contain a description of the scope of the statutory audit of the accounts, which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;
 - c) contain an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall clearly state the opinion of the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or *cabinet(s) de révision agréé(s)* [approved audit firm(s)] as to:
 - i) whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework; and
 - ii) where appropriate, whether the consolidated accounts comply with statutory requirements.

If the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or the *cabinet(s) de révision agréé(s)* [approved audit firm(s)] are unable to express an audit opinion, the report shall contain a disclaimer of opinion;
 - d) refer to any other matters to which the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or *cabinet(s) de révision agréé(s)* [approved audit firm(s)] draw attention by way of emphasis without qualifying the audit opinion;
 - e) include the audit opinion and the statement, each based on the work performed during the audit, referred to in Article 340, paragraph (2) of this Section;
 - f) include a statement on potential material uncertainties related to events or to circumstances that may cast significant doubt upon the entity's ability to continue as a going concern;
 - g) specify the place of establishment of the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or *cabinet(s) de révision agréé(s)* [approved audit firm(s)].
- (3) Where the statutory audit of the accounts has been carried out by several *réviseurs d'entreprises agréés* [approved statutory auditors] or *cabinets de révision agréés* [approved audit firms], they shall together agree on the outcome of the statutory audit of the accounts and present a joint report and opinion. In case of disagreement, each *réviseur d'entreprises agréé* [approved statutory auditor] or *cabinet de révision agréé* [approved audit firm] shall express its opinion in a

²²⁰ See CSSF Regulation No 13-01.

paragraph that is separate from the audit report and shall set out the reasons for the disagreement.

- (4) The audit report shall be signed and dated by the *réviseur d'entreprises agréé* [approved statutory auditor]. Where a *cabinet de révision agréé* [approved audit firm] carries out the statutory audit of the accounts, the audit report shall bear the signature of at least the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] carrying out the statutory audit of the accounts on behalf of the audit firm. Where several *réviseurs d'entreprises agréés* [approved statutory auditors] or *cabinets de révision agréés* [approved audit firms] have worked at the same time, the audit report shall be signed by all the *réviseurs d'entreprises agréés* [approved statutory auditors] or at least by the *réviseurs d'entreprises agréés* [approved statutory auditors] carrying out the statutory audit of the accounts on behalf of each *cabinet de révision agréé* [approved audit firm].
- (5) The report of the *réviseur d'entreprises agréé* [approved statutory auditor] or of the *cabinet de révision agréé* [approved audit firm] on the consolidated accounts shall comply with the requirements set out in paragraphs (1) to (4). In reporting on the consistency of the consolidated management report and the consolidated accounts as required by point (e) of paragraph (2), the *réviseur d'entreprises agréé* [approved statutory auditor] or the *cabinet de révision agréé* [approved audit firm] shall consider the consolidated accounts and the consolidated management report. Where the annual accounts of the parent undertaking are attached to the consolidated accounts, the reports by the *réviseurs d'entreprises agréés* [approved statutory auditors] or *cabinets de révision agréés* [approved audit firms] required by this Article may be combined.»

(Law of 18 December 2015)

«Sub-Section 4bis. – Consolidated report on payments to governments

[2013/34/EU Art. 41]

Art. 340ter.

For the purpose of this Sub-Section, the following definitions shall apply:

- 1) «undertaking active in the extractive industry» means an undertaking, all or part of the activities of which consist in the exploration, prospection, discovery, development, and extraction of deposits of minerals, oil, natural gas or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2²²¹;

²²¹ 05: Mining of coal and lignite; 06: Extraction of crude petroleum and natural gas, 07: Mining of metal ores, 08: Other mining and quarrying (inter alia stone, sand, clay, gypsum, chemical minerals, peat, salt).

- 2) «undertaking active in the logging of primary forests» means an undertaking with activities in primary forests as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006²²²;
- 3) «government» means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority within the meaning of Articles 309 to 311 of this Law;
- 4) «project» means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities to a government. None the less, if multiple such agreements are interconnected in a substantive manner, they shall be considered as one project;
- 5) «payment» means an amount paid, in cash or in kind, for activities as described in points 1) and 2), of the following types:
 - a) production based payment claims²²³;
 - b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
 - c) royalties;
 - d) dividends;
 - e) signature, discovery and production bonuses;
 - f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
 - g) payments for infrastructure improvements;
- 6) «large undertaking» means an undertaking organised as a *société anonyme*, *société européenne*, *société en commandite par actions*, *société à responsabilité limitée* or as one of types of companies referred to in Article 77, paragraph 2, items 2° and 3° of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, and which, on its balance sheet date, exceeds the limits of at least two of the three criteria referred to in Article 47 of the above mentioned amended Law of 19 December 2002;
- 7) «public-interest entities» means undertakings within the meaning of Article 2, point 1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings²²⁴;
- 8) «subsidiary undertaking» means an undertaking as defined in Article 309 paragraph (2) of this Law;
- 9) «parent undertaking» means an undertaking as defined in Article 309 paragraph (2) of this Law;

²²² Logging.

²²³ Translation based on German version of the directive: *Produktionszahlungsansprüche*.

²²⁴ The Law of 18 December 2009 on the audit profession contains a definition of «public-interest entities». See note preceding Article 61.

- 10) «group» means all of the undertakings included in the consolidation within the meaning of Article 319 of this Law;
- 11) «affiliated undertakings» means any two or more undertakings which are connected as described in Article 344 paragraph (1) of this Law.

[2013/34/EU Art. 44]

Art. 340quater.

- (1) Any large undertaking or any public-interest entity active in the extractive industry or the logging of primary forests must draw up a consolidated report on payments to governments in accordance with Article 340*quinquies* if that parent undertaking is under the obligation to prepare consolidated accounts.
A parent undertaking is considered to be active in the extractive industry or the logging of primary forests if any of its subsidiary undertakings is active in the extractive industry or the logging of primary forests.
The consolidated report shall only include payments resulting from extractive operations and/or operations relating to the logging of primary forests.
- (2) The obligation to draw up the consolidated report referred to in paragraph (1) shall not apply to:
 - (a) a parent undertaking of a group which on its balance sheet date does not exceed the numerical limits of at least two of the three criteria referred to in Article 313, except where one of its affiliated undertakings is a public-interest entity;
 - (b) a parent undertaking governed by the law of a Member State²²⁵ which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State.
- (3) An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to governments where at least one of the following conditions is fulfilled:
 - (a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
 - (b) extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Sub-Section 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.

The above exemptions shall apply only if they are also used for the purposes of the consolidated accounts.

²²⁵ As the Law of 1915 only applies to companies governed by Luxembourg law, the part of the sentence «governed by the law of a Member State» is redundant.

[2013/34/EU Art. 43]

Art. 340quinquies.

- (1) Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below 100,000 euros within a financial year.
- (2) The report shall disclose the following information in relation to activities as described in points (1) and (2) of Article 340ter in respect of the relevant financial year:
 - a) the total amount of payments made to each government;
 - b) the total amount per type of payment as specified in points (5), a) to g) of Article 340ter made to each government;
 - c) where those payments have been attributed to a specific project, the total amount per type of payment as specified in point (5), a) to g) of Article 340ter, made for each such project and the total amount of payments for each such project.

Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

- (3) Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.
- (4) The disclosure of the payments referred to in this Article shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of this Sub-Section.

[2013/34/EU Art. 45.1]

Art. 340sexies.

The consolidated report on payments to governments referred to in this Sub-Section shall be published on the «*Recueil électronique des sociétés et associations*»²²⁶. This publication shall be made by way of a reference to the filing at the register of commerce and companies deposited within twelve months of the end of the financial year covered by the report.

[2013/34/EU Art. 45.2]

Art. 340septies.

The members of the responsible bodies of an undertaking, acting within the competences assigned to them by law, have responsibility for ensuring that, to the best of their knowledge and ability, the consolidated report on payments to governments is drawn up and published in accordance with the requirements of this Sub-Section.

²²⁶ Amended by Article 20, the catch all Article of the Law of 27 May 2016.

[2013/34/EU Art. 46]

Art. 340octies.

Undertakings referred to in Article 340*quater* that prepare and make public a consolidated report complying with third-country reporting requirements assessed, in accordance with Article 47 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as equivalent to the requirements of this Sub-Section²²⁷ are exempt from the requirements of this Sub-Section except for the obligation to publish this report in accordance with Article 340*sexies*.

(*Law of 11 July 1988*)

«Sub-Section 5. - The publication of consolidated accounts»

(*Law of 11 July 1988*)

[2013/34/EU Art. 30]

«Art. 341.

(*Law of 18 December 2009*)

«(1) Consolidated accounts, duly approved, and the consolidated management report, together with the opinion submitted by the (*Law of 10 December 2010*) «*réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)]» entrusted with the auditing of the consolidated accounts, shall be published for the company which drew up the consolidated accounts as laid down (*Law of 27 May 2016*) by «Article 11*bis*» .»

(*Law of 30 July 2013*)

«(1bis) Consolidated accounts and the consolidated management report are drawn up in only one language. For this purpose, the parent company is free to use the German or the English language instead of the French language.»

(2) (*Law of 10 December 2010*) «Article 79 paragraph (1) sub-paragraphs 2 and 3 of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings » shall apply with respect to the consolidated management report.

(3) (*Law of 10 December 2010*) «Articles 80 and 81 of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» shall apply.

(*Law of 10 December 2010*)

«(4) Paragraph (2) shall not apply to companies whose securities are admitted to trading on a regulated market²²⁸ of a Member State of the European Community within the meaning of Article 4, paragraph (1), item 14, of directive 2004/39/EC

²²⁷ The equivalence of third-country requirements must be acknowledged by an implementing act of the European Commission.

²²⁸ For the definition of this term, see the footnote under Article 313 of the Law of 1915.

of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. »

(Law of 10 December 2010)

«Sub-Section 6 - Consolidated Accounts prepared in accordance with international accounting standards»

(Law of 10 December 2010)

[EC Regulation No 1606/2002, art. 5]

«Art. 341bis.

A company whose securities are not admitted to trading on a regulated market²²⁹ within the meaning of Article 4, paragraph (1), item 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, have the option to derogate from the provisions of Section XVI of this law and to establish their consolidated accounts in accordance with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards²³⁰.

However, in that case, the relevant companies remain subject to the provisions of Articles 309 to 316, 337 items 2. to 5., 9., 12. to 14., 338 paragraph (1), 339, 339bis, 340 and 341-1. »

(Law of 29 July 1993)

«Art. 341-1.

Consolidated accounts may, in addition to the publication in the currency or unit of account in which they are drawn up, be published in «euro²³¹» translated at the rate of exchange prevailing on the consolidated balance sheet date. That rate shall be published in the notes to the accounts²³².»

(Law of 10 December 2010)

« Sub-section 7. - Miscellaneous provisions »

(Law of 11 July 1988)

«Art. 342.²³³

- (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

²²⁹ Please see note under Article 313 for the definition of this term.

²³⁰ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

²³¹ The reference «in ECU» has been implicitly amended by Regulation (EC) No 1103/97 of 17 June 1997.

²³² This Article and Article 342 result from respectively Article 38bis and Article 39 of Directive 83/344/EEC which have not been taken over by Directive 2013/34/EU. Based on their content, it can be considered that these articles have become obsolete.

²³³ See preceding note.

in Article 309 paragraph (1), before 1 January 1988, account may be taken, for the purposes of Article 322 paragraph (1), of the book value of the shares or corporate units and the proportion of the 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) (...) (*Paragraph abrogated by the Law of 18 December 2015*)

«Art. 343.

(abrogated by the law of 10 December 2010)

(Law of 11 July 1988)

[2013/34/EU Art. 2.12 and Art. 2.3]

«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 (*Law of 30 July 2013*) «Title II of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» and for the purposes of this Section.

(Law of 10 December 2010)

- (1bis) «The term « affiliated party »²³⁴ shall have the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards²³⁵.»
- (2) Article 310 and Article 311 paragraph (2) shall apply.
- (3) Parent companies which do not have the legal form of a *société anonyme*, (*Law of 30 July 2013*) «a *société européenne* (SE) », a *société en commandite par actions*, a *société à responsabilité limitée* (*Law of 30 July 2013*) «or a company referred to in Article 77, paragraph 2, items 2° and 3° of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings» and which are therefore not required to draw up consolidated accounts and a consolidated management report shall be excluded from the application of paragraph (1).»

²³⁴ For the definition of « affiliated party » see under Article 83 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings set out in Annex I below. In addition Article 337, 7ter also contains a reference to the definition of this term.

²³⁵ These standards were adopted through Commission Regulation (EC) n° 1725 / 2003 of 29 September 2003 (O.J. L 261 of 13 October 2003).

Art. 344-1.

(abrogated by the law of 10 December 2010)

Annex I

Chapters I, II, IIbis and IV of Title II of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings^{236,237}

Title II

On accounting books and annual accounts of undertakings²³⁸

Chapter I. - On the obligation to keep accounting books and draw up and deposit annual accounts

Art. 24.²³⁹

Title II. - On commercial books, of Book I of the Commercial Code is amended as follows :

«Art. 8.

For the application of this Title, «undertakings» are

- 1° individuals who are business persons;
- 2° (*Law of 30 July 2013*) «commercial companies vested with legal personality, european economic interest groupings and economic interest groupings»;
(*Law of 12 July 2013*)
- 3° «*sociétés en commandite spéciale.*»

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 (*Law of 30 July 2013*) «title» 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.

²³⁶ In accordance with Article IV item 1. of the Law of 18 December 2015, the provisions of that law shall for the first time apply to the annual accounts and the related reports of the financial year starting on 1 January 2016 or during calendar 2016.

²³⁷ In accordance with Article 4 of the Law of 30 July 2013, undertakings may decide not to apply the provisions of that law to financial years which have not yet ended as of 5 October 2013.

²³⁸ The Law of 10 December 2010 has amended certain provisions of this Title. In accordance with Article 4 of such law, undertakings have the option to disapply the Law of 10 December 2010 to their financial year which is ongoing on 21 December 2010.

²³⁹ Article 24 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém.A - 149 of 31 December 2002, p.3630) amending Title II of Book I of the Commercial Code.

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.

(*Law of 30 July 2013*) «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, except for individual business persons referred to in Article 13, sub-paragraph 1, who are entitled to keep simplified accounting books.»

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. 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.

(*Law of 30 July 2013*) «The content of a standard chart of accounts is determined by a Grand-Ducal regulation²⁴⁰.»

Art. 13.

(*Law of 18 December 2015*)

«Individual business persons whose turnover for the last financial year, excluding value added tax, does not exceed 100,000 euros, have the option to not keep their accounting books in accordance with the requirements of Article 12, 2nd paragraph. Such an option also exists for *sociétés en nom collectif* and *sociétés en commandite simple* except for those referred to in Article 77, 2nd paragraph, items 2^o and 3^o of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. This option exists for *sociétés en commandite spéciale* regardless of their turnover.»

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

²⁴⁰ Grand-Ducal regulation of 10 June 2009 on the content and presentation of a standard chart of accounts (Mémorial A 145 of 22 June 2009, p. 1999.)

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 *société 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.

(*Law of 30 July 2013*) «Article 12 does not apply to credit institutions, insurance and reinsurance companies, or to undertakings of the financial sector which are subject to the prudential supervision of the *Commission de Surveillance du Secteur Financier* (CSSF)²⁴¹, except for support PFS referred to in sub-section 3 of section 2 of chapter 2 of part I of the amended law of 5 April 1993 on the financial sector.»

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.

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.

²⁴¹ According to Article 2(1) of the Law of 23 December 1998 establishing a Commission de Surveillance du Secteur Financier, as amended : « The CSSF is the competent authority for the prudential supervision of credit institutions, PFS within the meaning of the Law of 5 April 1993 on the financial sector, alternative investment fund managers authorised under the Law of 12 July 2013 on alternative investment fund managers, undertakings for collective investment, pension funds having the form of a SEPCAV for an ASSEP, authorised securitisation undertakings, fiduciary-representatives acting with respect to securitisation undertakings and SICARs as well as payment institutions and electronic money institutions within the meaning of the Law of 10 November 2009 on payment services. »

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.

(Law of 30 July 2013)

«Chapter II. – On the preparation of annual accounts»^{242, 243}

Section 1. - General provisions

Art. 25.

(Law of 10 December 2010)

«The present Chapter applies to the undertakings referred to in article 8 of the Commercial Code except for

- 1° individuals who are business persons, (Law of 12 July 2013) «*sociétés en commandite spéciale*» 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, referred to in articles 30 and 31 except where this law provides for a derogation therefrom.»

Art. 26.²⁴⁴

- (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.

(Law of 10 December 2010) «Undertakings may include other statements in the annual accounts in addition to the documents referred to in the first subparagraph. »

- (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.

²⁴² 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.

²⁴³ Pursuant to Regulation (EC) n°1606/2002, of the European Parliament and of the Council of 19 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). This option was introduced in Luxembourg by the Law of 10 December 2010 on the introduction of international accounting standards (Mémorial A-225 of 17 December 2010; doc. parl. 5976). See also Article 72bis hereafter and Article 341bis of the Law of 1915 with respect to consolidated accounts.

²⁴⁴ Corresponds to abrogated Article 205 of the Law of 1915, except for later amendments.

- (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.
- (6) (*Law of 18 December 2015*) «Where a provision of this Title refers to the term «material», this term shall mean the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the annual accounts of the undertaking. The materiality of individual items shall be assessed in the context of other similar items.»

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 (*Law of 30 July 2013*) «and of Chapter IV of Title II of this law as well as the provisions of section XVI» of the amended law of 10 August 1915 on Commercial Companies²⁴⁵.

(*Law of 10 December 2010*)

«A Grand-Ducal regulation may, after advice has been taken from the *Commission des normes comptables*, authorise the undertakings referred to in article 25 or certain categories thereof to derogate from the rules adopted under articles 11, 12 and 15 of the Commercial Code, the provisions of this Chapter and Chapter (*Law of 30 July 2013*) «IV of Title II of this law» and the provisions of Section XVI of the amended law of 10 August 1915 on commercial companies.»

²⁴⁵ Pursuant to Regulation (EC) n°1606/2002, of the European Parliament and of the Council of 19 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). This option was introduced in Luxembourg by the law of 10 December 2010 on the introduction of international accounting standards (Mémorial A – 225 of 17 December 2010; doc. parl. 5976). See also art. 72bis hereafter and Article 341 bis of the Law of 1915 with respect to consolidated accounts.

Section 2. - General provisions concerning the balance sheet and the profit and loss account

[2013/34/EU Art.9.1]

Art. 28.²⁴⁶

(Law of 30 July 2013)

«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».(...)(*The last two sentences were abrogated by the Law of 30 July 2013.*)

[2013/34/EU Art. 9]

Art. 29.

(Law of 18 December 2015)

(1) «In the balance sheet and in the profit and loss account, the items must be shown separately in the order indicated in the Grand-Ducal regulations enacted pursuant to Articles 34, 35 paragraph (1), 46 and 47 paragraph (1)²⁴⁷.»

(...) *(Paragraph abrogated by the Law of 30 July 2013)*

(...) *(Paragraph abrogated by the Law of 30 July 2013)*

(2²⁴⁸) 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.

(...) *(Paragraph abrogated by the Law of 30 July 2013)*

«(3²⁴⁹) *(Law of 18 December 2015)* «The presentation of amounts within the profit and loss account and the balance sheet may have regard to the substance of the relevant transaction or arrangement.»

²⁴⁶ Corresponds to abrogated Article 206 of the Law of 1915, except for later amendments.

²⁴⁷ Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

²⁴⁸ Paragraph renumbered by the Law of 30 July 2013.

²⁴⁹ Paragraph renumbered by the Law of 30 July 2013.

Art. 30.²⁵⁰

- (1) (*Law of 30 July 2013*) «By way of derogation from paragraph (1) of Article 29, investment companies shall draw up their annual accounts in accordance with the rules laid down on the basis of Article 151 (3) and (5) of the amended law of 17 December 2010 relating to undertakings for collective investment or of Article 52, paragraph (4) of the amended law of 13 February 2007 relating to specialised investment funds.

[2013/34/EU Art.2.14]

For the purpose of this article, investment companies shall be understood as companies, the exclusive object of which is to invest their funds in various transferable 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.».

- (2) (*Law of 30 July 2013*) «By way of derogation from paragraph (1) 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.»

Art. 31.²⁵¹

- (1) (*Law of 30 July 2013*) «By way of derogation from paragraph (1) of Article 29, financial holding companies may draw up their balance sheet and profit and loss account in accordance with a special layout prescribed by Grand Ducal regulation²⁵².»

[2013/34/EU Art. 2.15]

- (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.

[2013/34/EU Art.9.6]

Art. 32.²⁵³

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.

²⁵⁰ Corresponds to abrogated Article 208 of the Law of 1915, except for later amendments and is sourced from Article 5 of Directive 78/660/EEC of which paragraph 1. has not been taken over by Directive 2013/34/EU.

²⁵¹ Corresponds to abrogated Article 209 of the Law of 1915, except for later amendments and is sourced from Article 5 of Directive 78/660/EEC of which paragraph 1. has not be taken over by Directive 2013/34/EU.

²⁵² In respect of abrogated Article 209 of the Law of 1915, this is the Grand Ducal regulation of 29 June 1984.

²⁵³ Corresponds to abrogated Article 210 of the Law of 1915.

[2013/34/EU Art.6.1 point g) and 6.2]

Art. 33.²⁵⁴

(Law of 18 December 2015)

«Any set-off between asset and liability items or between income and expenditure items shall be prohibited without prejudice to the cases where there is a right of set-off pursuant to the law. In cases where a set-off has been performed between asset and liability items or between income and expenditure items, the amounts set-off shall be specified as gross amounts in the notes to the accounts.»

Section 3. - Layout of the balance sheet

[2013/34/EU Annex III]

Art. 34.²⁵⁵

(Law of 18 December 2015)

« A Grand-Ducal regulation to be made with the benefit of an opinion of the *Commission des normes comptables* shall determine the form and content of the layouts of the balance sheet²⁵⁶.

[2013/34/EU Art. 3.2 and Art. 14.1]

Art. 35.²⁵⁷

(Law of 18 December 2015)

« (1) Undertakings which on their balance sheet dates do not exceed the limits of at least two of the following three criteria:

- balance sheet total: 4.4 million euros
- Net turnover: 8.8 million euros
- average number of full-time staff employed during the financial year: 50

may draw up an abridged balance sheet, the form and content of which shall be determined by a Grand-Ducal regulation to be made with the benefit of an opinion of the *Commission des normes comptables*²⁵⁸ s

This option does however not apply to undertakings whose securities are admitted to trading on a regulated market of any Member State of the European Union within the meaning of Article 1 point 11 of the amended Law of 13 July 2007 on markets in financial instruments²⁵⁹. »

²⁵⁴ Corresponds to abrogated Article 211 of the Law of 1915, except for later amendments.

²⁵⁵ Corresponds to abrogated Article 213 of the Law of 1915, except for later amendments.

²⁵⁶ Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

²⁵⁷ Corresponds to abrogated Article 215 of the Law of 1915, except for later amendments.

²⁵⁸ Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

²⁵⁹ For the definition of this term see Article 313 of the Law of 1915.

(2) The amounts stated above may be amended by Grand Ducal regulation.»

[2013/34/EU Art. 3]

Art. 36.²⁶⁰

(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 fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.

(...) (*Paragraph abrogated by the Law of 18 December 2015*)

[2013/34/EU Art. 12]

Art. 37.²⁶¹

(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 undertakings²⁶² may be shown only under the items prescribed for that purpose.

[2013/34/EU Art. 16.1 point d)]

Art. 38.²⁶³

(*Law of 18 December 2015*)

«The total amount of any financial commitments, guarantees or contingencies that are not included in the balance sheet, and an indication of the nature and form of any *in rem* security which have been provided must be set out in the notes to the accounts. Any commitments concerning pensions and affiliated or associated undertakings shall be disclosed separately.»

²⁶⁰ Corresponds to abrogated Article 216 of the Law of 1915.

²⁶¹ Corresponds to abrogated Article 217 of the Law of 1915.

²⁶² For the definition of this term, see Article 344 (1) of the Law of 1915.

²⁶³ Corresponds to abrogated Article 218 of the Law of 1915.

Section 4. - Special provisions relating to certain balance sheet items

Art. 39.²⁶⁴

[2013/34/EU Art. 12.3]

- (1) Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.

[2013/34/EU Art. 2.4]

- (2) Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activity.

[2013/34/EU Art. 17.1. point a)]

- (3) a) (*Law of 30 July 2013*) «Movements in the various fixed asset items shall be shown in the notes to the accounts. To this end there shall be shown separately for each fixed asset item, starting with the purchase price or production cost, on one hand, additions, disposals and transfers during the financial year and, on the other, cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. Value adjustments shall be shown 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».

[2013/34/EU Art. 14.1]

- (5) Paragraph (3) a) and paragraph (4) shall not apply to the abridged balance sheet of the undertakings referred to in Article 35.

[2013/34/EU Art. 12.4]

Art. 40.²⁶⁵

Rights to immovables and other similar rights as defined by civil law must be shown under «Land and Buildings».

²⁶⁴ Corresponds to abrogated Article 219 of the Law of 1915, except for later amendments.

²⁶⁵ Corresponds to abrogated Article 220 of the Law of 1915.

[2013/34/EU Art. 2.2]

Art. 41.²⁶⁶

(*Law of 30 July 2013*)

«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 undertaking shall be presumed to constitute a participating interest where it exceeds twenty per cent.»

Art. 42.²⁶⁷

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».

[2013/34/EU Art. 2.8]

Art. 43.²⁶⁸

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.

[2013/34/EU Art. 12.12]

Art. 44.²⁶⁹

- (1) (*Law of 10 December 2010*) «Provisions 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.»
- (2) (*Law of 18 December 2015*) «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 balance sheet date 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. »
- (3) (*Law of 10 December 2010*) «Provisions may not be used to adjust the values of assets.»

Art. 45.²⁷⁰

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».

²⁶⁶ Corresponds to abrogated Article 221 of the Law of 1915, except for later amendments.

²⁶⁷ Corresponds to abrogated Article 222 of the Law of 1915 and is sourced from Article 18 of Directive 78/660/EEC which has not been taken over by Directive 2013/34/EU.

²⁶⁸ Corresponds to abrogated Article 223 of the Law of 1915.

²⁶⁹ Corresponds to abrogated Article 224 of the Law of 1915, except for later amendments.

²⁷⁰ Corresponds to abrogated Article 225 of the Law of 1915 and is sourced from Article 21 of Directive 78/660/EEC which has not been taken over by Directive 2013/34/EU.

Section 5. - Layout of the profit and loss account

Art. 46.²⁷¹

(Law of 18 December 2015)

« A Grand-Ducal regulation to be made with the benefit of an opinion of the *Commission des normes comptables* shall determine the form and content of the layouts of the profit and loss account²⁷² »

[2013/34/EU Art.3.3 and 14.2.]

Art. 47.²⁷³

(Law of 18 December 2015)

«(1) Undertakings which on their balance sheet date do not exceed the limits of at least two of three of the following criteria:

- balance sheet total: 20 million euros
- net turnover: 40 million euros
- average number of full-time staff employed during the financial year: 250,

may draw up an abridged profit and loss account, the form and content of which shall be determined by a Grand-Ducal regulation to be made with the benefit of an opinion of the *Commission des normes comptables*²⁷⁴.

This option does however not apply to undertakings whose securities are admitted to trading on a regulated market of any Member State of the European Union within the meaning of Article 1 point 11 of the amended Law of 13th July 2007 on markets in financial instruments²⁷⁵.

Article 36 shall apply. »

(2) The above amounts may be amended by Grand Ducal regulation.»

²⁷¹ Corresponds to abrogated Article 228 of the Law of 1915, except for later amendments.

²⁷² Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

²⁷³ Corresponds to abrogated Article 231 of the Law of 1915, except for later amendments.

²⁷⁴ Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

²⁷⁵ For the definition of this term, see the footnote under Article 313 of the Law of 1915.

Section 6. - Special provisions relating to certain items in the profit and loss account

[2013/34/EU Art. 2.5]

Art. 48.²⁷⁶

(Law of 18 December 2015)

«The net turnover shall comprise the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover. »

[2013/34/EU Art. 16.1 point f)]

Art. 49.²⁷⁷

(Law of 18 December 2015)

«The amount and nature of items of income or charges with an extraordinary size or impact shall be shown in the notes to the accounts.»

Art. 50.

(Abrogated by the Law of 18 th December 2015)

Section 7. - Valuation rules

Art. 51.²⁷⁸

[2013/34/EU Art. 6.1]

(1) The measurement²⁷⁹ 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) (Law of 18 December 2015) «accounting policies and measurement bases may not be modified from one financial year to another;
- c) measurement must be made on a prudent basis, and in particular
 - aa) only profits made at the balance sheet date may be included;

(Law of 10 December 2010)

«bb) account must be taken of all (Law of 18 December 2015) «liabilities» which have arisen in the course of the financial year concerned or in a previous financial year, even if such (Law of 18 December 2015) «liabilities» become apparent only between the date of the balance sheet and the date on which it is drawn up;»

²⁷⁶ Corresponds to abrogated Article 232 of the Law of 1915.

²⁷⁷ Corresponds to abrogated Article 233 of the Law of 1915.

²⁷⁸ Corresponds to abrogated Article 235 of the Law of 1915, except for later amendments.

²⁷⁹ The English version of directive 78/660/EEC used the term «valuation» and «method of valuation» which directive 2013/34/EU has replaced with «measurement» and «measurement bases». This translation uses the terminology of the latter directive.

- 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,

(Law of 18 December 2015)

- «g) requirements set out in this Chapter regarding presentation and disclosure in the notes to the accounts need not be complied with when the effect of complying with these requirements is immaterial in light of the principle of materiality²⁸⁰».

(Law of 10 December 2010)

- «(1bis) In addition to the amounts recorded pursuant to Article 51 paragraph 1, item c) bb), undertakings have the option to take into account all foreseeable *(Law of 18 December 2015)* «liabilities» and potential losses which have arisen in the financial year concerned or in a previous financial year, even if such *(Law of 18 December 2015)* «liabilities» or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.»

[2013/34/EU Art. 4.4]

- (2) *Law of 18 December 2015)* «Where in exceptional cases the application of a provision of this Law is incompatible with the obligation laid down in Article 26, paragraph (3), that provision shall be disapplied in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. The disapplication of any such provision shall be disclosed in the notes to the accounts together with an explanation of the reasons for it and of its effect on the undertaking's assets, liabilities, financial position and profit or loss.»

[2013/34/EU Art. 6.1 point i)]

Art. 52.²⁸¹

The items shown in the annual accounts shall be measured in accordance with Articles 53, 55, 56, 59 to 64, which are based on the principle of purchase price or production cost.

[2013/34/EU Art. 12.11]

Art. 53.²⁸²

- (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

²⁸⁰ See recital 17 of Directive 2013/34/EU.

²⁸¹ Corresponds to abrogated Article 236 of the Law of 1915.

²⁸² Corresponds to abrogated Article 237 of the Law of 1915.

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.
- (3) Expenses relating to the creation or extension of an undertaking, of part of an undertaking or of a branch of business, as opposed to expenses resulting from ordinary business, may be entered under «Assets» as formation expenses.

[2013/34/EU Art. 7]

Art. 54.²⁸³

(Law of 18 December 2015)

- «(1) 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, the alternative measurement basis of fixed assets at a revalued amounts.
- (2) The regulation referred to in paragraph (1) shall determine the rules for the application of the alternative measurement basis within the limits set forth in Article 7 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.»

Art. 55.²⁸⁴

[2013/34/EU Art. 6.1. point i), 12.5 and 12.6]

- (1)
 - a) Fixed assets must be measured 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) *(Law of 18 December 2015)* «Measurement at the lower of the values provided for in aa) and bb) may not continue if the reasons

²⁸³ Corresponds to abrogated Article 238 of the Law of 1915, except for later amendments.

²⁸⁴ Corresponds to abrogated Article 239 of the Law of 1915, except for later amendments.

for which the value adjustments were made have ceased to apply; this provision shall not apply to value adjustments made in respect of goodwill. »

[2013/34/EU Art. 2 point b)]

- 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.

[2013/34/EU Art. 2 point 6)]

- (2) The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

[2013/34/EU Art. 2.7]

- (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.

[2013/34/EU Art. 12.8 and Article 17.1, point a) vi)]

- (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.

Art. 56.²⁸⁵

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.

Art. 57.²⁸⁶

Investment companies within the meaning of Article 30 must value the investments in which they have invested their funds on the basis of (*Law of 10 December 2010*) «their fair value»²⁸⁷. Investment companies with variable capital are exempted from showing separately the amounts of the value adjustments mentioned in Article 56.

²⁸⁵ Corresponds to abrogated Article 240 of the Law of 1915 and is sourced from Article 18 of Directive 78/660/EEC which has not been taken over by Directive 2013/34/EU.

²⁸⁶ Corresponds to abrogated Article 241 of the Law of 1915, except for later amendments and is sourced from Article 18 of Directive 78/660/EEC which has not been taken over by Directive 2013/34/EU.

²⁸⁷ This needs to be read together with Articles 28(4) and 39 of the Law of 17 December 2010 relating to undertakings for collective investment.

Art. 58.²⁸⁸

- (1) (*Law of 30 July 2013*) «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 under the items «Shares in affiliated undertakings» and (*Law of 18 December 2015*) «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:
 - a) (*Law of 30 July 2013*) «either at its book value calculated in accordance with sections 7 or 7bis of this Chapter. 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; »
 - b) (*Law of 30 July 2013*) «or at the amount corresponding to the proportion of the capital and reserves represented by the participating interest.
The difference between that amount and the book value calculated in accordance with the valuation rules provided for by sections 7 or 7bis of this Chapter 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 (*Law of 30 July 2013*) «the undertaking» 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 (*Law of 30 July 2013*) «the undertaking» drawing up its annual

²⁸⁸ Corresponds to abrogated Article 241-1 of the Law of 1915, except for later amendments.

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) (*Law of 18 December 2015*) «The proportion of the profit or loss attributable to the participating interests referred to in paragraph (1) shall be shown in the profit and loss account as a separate item under the heading «Share in the results of the undertakings to which the equity method has been applied».»
 - 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 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 (*Law of 18 December 2015*) «immaterial» for the purposes of Article 26, paragraph (3).

[2013/34/EU Art. 12.11]

Art. 59.

(*Law of 18 December 2015*)

- «(1) Intangible assets shall be written off over the useful economic life of the intangible asset.
- (2) In exceptional cases where the useful life of goodwill and development costs cannot be reliably estimated, such assets shall be written off within a maximum period which shall not exceed 10 years. An explanation of the period over which goodwill is written off shall be provided within the notes to the accounts.
- (3) Article 53 paragraph (1) point b) shall apply to the «Costs of development» item.»

Art. 60.²⁸⁹

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.

Art. 61.²⁹⁰

[2013/34/EU Art. 6.1 point i)]

- (1) a) Current assets must be measured at purchase price or production cost, without prejudice to items b) and c) below.

[2013/34/EU Art. 12.7]

- 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.

(...) (Item abrogated by the Law of 18 December 2015

- c²⁹¹) Measurement 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.

[2013/34/EU Art. 17.1 point b)]

- d²⁹²) If current assets are the subject of exceptional²⁹³ 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.

[2013/34/EU Art.2 point 6)]

- (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.

[2013/34/EU Art. 12.9]

Art. 62.²⁹⁴

(Law of 18 December 2015) «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 method reflecting generally accepted best practice.»

²⁸⁹ Corresponds to abrogated Article 243 of the Law of 1915 and is sourced from Article 38 of Directive 78/660/EEC which has not been taken over by Directive 2013/34/EU.

²⁹⁰ Corresponds to abrogated Article 244 of the Law of 1915, except for later amendments.

²⁹¹ Item renamed by the Law of 18 December 2015.

²⁹² Item renamed by the Law of 18 December 2015.

²⁹³ Contrary to Directive 77/660/EEC (Art. 39), the word «exceptional» does no longer appear in Directive 2013/34/EU.

²⁹⁴ Corresponds to abrogated Article 245 of the Law of 1915.

[2013/34/EU Art. 12.10]

Art. 63.²⁹⁵

- (1) (Law of 30 July 2013) «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 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.

[2013/34/EU Art. 12.12]

Art. 64.

(Law of 18 th December 2015)

«At the balance sheet date, a provision shall represent the best estimate of the expenses likely to be incurred or, in the case of a liability, of the amount required to meet that liability.»

(Law of 10 December 2010)

« Section 7bis. - Rules applicable to fair value measurement »

(Law of 10 December 2010)

[2013/34/EU Art. 8.2 to .6]

«Art. 64bis.

- (1) By way of derogation from Article 52 and subject to the conditions set out in paragraphs (2) to (4) of this Article, undertakings have the option to carry out a measurement at fair value of financial instruments, including derivatives.
- (2) (Law of 30 July 2013) «Commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments for the purpose of fair value measurement, except when:
 - a) they were entered into and are maintained in order to meet the company's²⁹⁶ expected purchase, sale or usage requirements for that commodity;
 - b) they were designated for such purpose at their inception; and
 - c) they are supposed to be settled by delivery of the commodity.»
- (3) Financial instruments which are part of the liabilities may only be measured at fair value:
 - a) if they are held as part of the trading portfolio; or
 - b) if they are derivative financial instruments.
- (4) The following may not be measured at fair value:
 - a) non-derivative financial instruments held to maturity;

²⁹⁵ Corresponds to abrogated Article 246 of the Law of 1915, except for later amendments.

²⁹⁶ Presumably this would need to be read as the « undertaking's ».

- b) loans and receivables originated by the undertaking and not held for trading purposes; and
 - c) interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the undertaking, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that, according to what is generally accepted, should be accounted for differently from other financial instruments.
- (5) By way of derogation from Article 52, in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, measurement at the specific amount required under that system is permitted.
- (5bis) By way of derogation from the provisions of paragraphs (3) and (4) and in accordance with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards²⁹⁷, the measurement of financial instruments and compliance with the associated disclosure requirements provided for in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards are permitted.»

(Law of 10 December 2010)

[2013/34/EU Art. 8.7]

«Art. 64ter.

- (1) The fair value referred to in Article 64bis shall be determined by reference to:
- a) a market value, for those financial instruments for which a reliable market can readily be identified ; where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument, or
 - b) a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified; such valuation models and techniques shall ensure a reasonable approximation of the market value.
- (2) *(Law of 30 July 2013)* «Those financial instruments that cannot be measured reliably by any of the methods described in paragraph (1), shall be measured in accordance with Articles 53, 55, 56 and 59 to 64.»

²⁹⁷ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13October 2003) realised such adoption.

(Law of 10 December 2010)

[2013/34/EU Art. 8.8]

«Art. 64quater

- (1) Notwithstanding Article 51, paragraph (1), item c), where a financial instrument is measured on a fair value basis, each change in the value shall be included in the profit and loss account. However, such a change shall be included directly in an equity account, in a fair value reserve, where:
 - a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or
 - b) the change in value relates to an exchange difference arising on a monetary item that forms part of an undertaking's net investment in a foreign entity.
- (2) A change in the value on an available for sale financial asset, other than a derivative financial instrument, may be included directly in the equity account, in the fair value reserve.
- (3) The fair value reserve shall be adjusted when amounts shown therein are no longer necessary for the implementation of paragraphs (1) and (2).»

(Law of 10 December 2010)

[2013/34/EU Art. 16.1 point c)]

«Art. 64quinquies

Where financial instruments have been measured at fair value, the notes to the accounts shall disclose:

- a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 64ter, paragraph (1), item b) ;
- b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in the fair value reserve;
- c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- d) a table showing movements in the fair value reserve during the financial year.»

(Law of 10 December 2010)

[2013/34/EU Art. 8.1. point b)]

«Art. 64sexies»

(Law of 30 July 2013)

«By way of derogation from Article 52, undertakings may also measure specified categories of assets other than financial instruments at amounts determined by reference to their fair value, provided that their measurement at fair value is authorised under the international accounting standards adopted in accordance with the Regulation (EC) No

1606/2002 of the European Parliament and of the Council on the application of the international accounting standards.²⁹⁸»

(Law of 10 December 2010)

[2013/34/EU Art. 8.9]

«Art. 64septies

Notwithstanding Article 51, paragraph (1), item c), undertakings may, where an asset is measured in accordance with Article 64sexies, include the resulting change in the value in the profit and loss account.»

(Law of 30 July 2013)

«Art. 64octies

Where certain categories of assets other than financial instruments have been measured at fair value, the notes to the accounts shall disclose:

- a) the significant assumptions underlying the valuation models and techniques where fair value has not been determined by reference to a market value ;
- b) per category of assets other than financial instruments, the fair value at the balance sheet date and the changes in value which occurred during the financial year;
- c) for each class of assets other than financial instruments, information about the significant terms and conditions that may affect the amount and certainty of future cash flows.»

(Law of 30 July 2013)

«Art. 64nonies

Where measurement at fair value has been applied in accordance with Section 7bis, the provisions of Article 72ter shall apply.»

²⁹⁸ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13October 2003) realised such adoption.

Section 8. - Contents of the notes to the accounts

[2013/34/EU Art. 16, 17 and 18]

Art. 65^{299, 300}

- (1) (*Law of 18 December 2015*) «In addition to the information required under other provisions of this Chapter, the notes to the accounts shall disclose the following information presented in the order in which the items to which they relate are presented in the balance sheet and in the profit and loss account:».
 - 1° (*Law of 18 December 2015*) «accounting policies and measurement bases»;
 - 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 (*Law of 30 July 2013*) «the undertaking»'s behalf, holds at least twenty per cent of the capital, showing the proportion of the capital held, as well as the amount of 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 (*Law of 18 December 2015*) «immaterial». 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 (*Law of 30 July 2013*) «the undertaking»; the name, registered office and the legal form of each undertaking of which (*Law of 30 July 2013*) «the undertaking» is the member having unlimited liability. This information may be omitted when, for the purposes of Article 26 paragraph (3), it is (*Law of 18 December 2015*) «immaterial»;
 - 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° (*Law of 18 December 2015*) «the existence of any founders' shares, convertible bonds, warrants, options or similar securities or rights, with an indication of their number and the rights they confer»;

²⁹⁹ Corresponds to abrogated Article 248 of the Law of 1915, except for later amendments.

³⁰⁰ Grand-Ducal Regulation of 11 September 2006 (Mém. A-167 of 15 September 2006, p. 3060):

Art. 1

The undertakings referred to in Article 77, second paragraph items 1° to 3° of the Law of 19 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 27 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 332 of the Law of 10 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.

- 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 (*Law of 30 July 2013*) «the undertaking» 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 undertakings³⁰¹ must be disclosed separately;

(*Law of 10 December 2010*)

«7bis°«the nature and business purpose of the arrangements that are not included in the balance sheet and the financial impact on (*Law of 30 July 2013*) «the undertaking» of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of (*Law of 30 July 2013*) «the undertaking».

(...) (*Paragraph abrogated by the Law of 18 December 2015*)

[2013/34/EU Art. 17.1 point r)]

(*Law of 10 December 2010*)

«7ter»(*Law of 18 December 2015*) «transactions which have been entered into by the undertaking with related parties, including the amount of such transactions, the nature of the related party relationship and all other information about the transactions necessary for an understanding of the financial position of the undertaking. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.

Undertakings have the option to only disclose in the notes to the accounts the transactions entered into with related parties which have not been concluded under normal market conditions.

Transactions which have been entered into between one or more members of a group are exempted provided that the subsidiaries which are party to the transaction are wholly owned by such a member.

Undertakings which do not exceed at least two of the three limits laid down in Article 47 for two consecutive financial years are allowed to limit the disclosure of transactions with related parties to transactions entered into with:

- (i) owners holding a participating interest in the undertaking;
- (ii) undertakings in which the undertaking itself has a participating interest; and
- (iii) members of the administrative, management or supervisory bodies of the undertaking.

³⁰¹ For the meaning of the term, see Article 344 (1) of the Law of 10 August 1915 on commercial companies.

This option does however not apply to undertakings whose securities are admitted to trading on a regulated market³⁰² of any Member State of the European Union within the meaning of Article 1, item 11 of the Law of 13 July 2007 on markets in financial instruments.

‘Related party’³⁰³ has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁰⁴.»

- 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° (...) (*Item abrogated by the Law of 18 December 2015*)
- 11° (*Law of 30 July 2013*) «a) 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.
- a) This amount may also be disclosed in the balance sheet as a cumulative amount;
- b) Where valuation at fair value has been applied in accordance with section 7bis, undertakings shall show, as the case may be, deferred tax liabilities in the balance sheet as a cumulative amount.»
- (*Law of 18 December 2015*)
- «c) where a provision for deferred tax is recognised in the balance sheet, the deferred tax balances at the end of the financial year, and the movement in those balances during the financial year.»
- 12° (*Law of 25 August 2006*) «the amount of the emoluments granted in respect of the financial year to the members of (*Law of 23 March 2007*) «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 25 August 2006*) «the amount of advances and loans granted to the members of (*Law of 23 March 2007*) «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

³⁰² For the definition of this term, see the footnote under Article 313 of the Law of 1915.

³⁰³ For the definition of «related party», see the footnote following Article 83 below.

³⁰⁴ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

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.

- 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 18 December 2009)

«16° (Law of 18 December 2015) «the total fees for the financial year received³⁰⁵ by each *réviseur d'entreprises agréé* [approved statutory auditor] or the *cabinet de révision agréé* [approved audit firm] for the statutory audit of the annual accounts and, the total fees received by each *réviseur d'entreprises agréé* [approved statutory auditor] or *cabinet de révision agréé* [approved audit firm] for other assurance services, for tax advisory services and for other non-audit services. This requirement shall not apply where the undertaking is included within the consolidated accounts required to be drawn up under Article 22 of Directive 2013/34/EU³⁰⁶, provided that such information is given in the notes to the consolidated accounts³⁰⁷.. »

(Law of 10 December 2010)

«17° where valuation at fair value of financial instruments has not been applied in accordance with Section 7bis:

- a) for each class of derivative financial instruments:
 - i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 64ter paragraph (1);
 - ii) information about the extent and the nature of the instruments; and
- b) for financial fixed assets covered by Article 64bis, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35, paragraph (1), point c) aa):
 - i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;

³⁰⁵ The English version of the directive uses the term «charged» and the German version uses the term «*berechnet*» whereas the French version uses «*perçus*» which has been translated by «received».

³⁰⁶ See Article 309 of the Law of 1915.

³⁰⁷ Some of the terms used are defined in Article 1 of the Law of 18 December 2009 on the audit profession. Please refer to the footnote under Article 337 item 14 of the Law of 1915.

- ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.»

(Law of 18 December 2015)

«18° The nature and the financial effect of material events arising after the balance sheet date which are not reflected in the profit and loss account or in the balance sheet.»

(...) (Paragraph abrogated by the Law of 18 December 2015)

[2013/34/EU Art. 1 point d)]

- (2)³⁰⁸ The information provided for in paragraph (1) 12° may be omitted if it allows to identify the position³⁰⁹ of a specific member of such bodies.

[2013/34/EU Art. 16.3]

Art. 66³¹⁰

(Law of 18 December 2015)

«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), items 2° to 5°, 8°, 10³¹¹ to 12°, 14°, 15° a), 16° to 18°. However, in accordance with Article 26, paragraphs (4) and (5), the information required in Article 65 paragraph (1) item 2° may not be omitted where it is material for the purposes of the true and fair view referred to in Article 26 paragraph (3). In addition, where fair value measurement has been applied in accordance with Section 7bis, undertakings referred to in Article 35 shall not be exempted from the application of the provisions of Article 65, paragraph (1) item 11°b) and c).

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), [and]³¹² Article 53, paragraph (2).

Article 36 shall apply.»

Art. 67.³¹³

[2013/34/EU Art. 17.1 point g)]

- (1) The information prescribed in Article 65 paragraph (1) 2°:
 - a) may take the form of a statement deposited in accordance with (Law of 27 May 2016) «Article 11bis § 3 of the amended Law of 1915 on commercial companies and the provisions of Chapter Vbis of Title I of this law³¹⁴»; 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.

³⁰⁸ Paragraph renumbered by the Law of 18 December 2015.

³⁰⁹ Directive 2013/34/EU speaks of the «financial position».

³¹⁰ Corresponds to abrogated Article 249 of the Law of 1915, except for later amendments.

³¹¹ Item 10° was abrogated by the Law of 18 December 2015.

³¹² Added for ease of reading.

³¹³ Corresponds to abrogated Article 250 of the Law of 1915, except for later amendments.

³¹⁴ See footnote under Article 11bis of the Law of 1915.

The omission of such information must be disclosed in the notes to the accounts.

(Law of 18 December 2009)

[2013/34/EU Art.18.2]

«(2) Paragraph (1) b) shall also apply to the information prescribed in Article 65 paragraph (1) 8°.

(Law of 10 December 2010)

«The undertakings referred to in Article 47 shall be authorised to omit the information prescribed in Article 53 paragraph (2) and in Article 65 paragraph (1) 8°.»

(Law of 18 December 2015) «The undertakings referred to in Article 47 are also authorised to omit disclosure of the information specified in article 65 paragraph (1) item 16°.»

[2013/34/EU Art. 19]

(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.

Section 9. - Contents of the management report

[2013/34/EU Art. 19]

Art. 68.^{315,316}

(Law of 10 December 2010)

«(1) a) Companies incorporated under Luxembourg law and referred to in Article 1 of Council Directive 78/660/EEC of 25 July, 1978³¹⁷ must draw up a management report, which must at least include a fair review of the development of the company's business, its performance and its position,

³¹⁵ Corresponds to abrogated Article 251 of the Law of 1915, except for later amendments. See footnote under Article 65.

³¹⁶ See second footnote under Article 65.

³¹⁷ If this reference is to be read as a reference to Article 1.1 of Directive 2013/34/EU, 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 direct or indirect members, having otherwise unlimited liability, but in fact have limited liability by reason of these companies being of the type referred to in (i) above, or are similar types of companies in the other Member States listed in Annex I of Directive 2013/34/EU, or are companies not governed by the laws of a Member State but which have a legal form comparable to those of the companies referred to in such Annex I.

together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business.

- b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.
- c) In providing its analysis, the management report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.
- d) The undertakings³¹⁸ referred to in Article 47 are exempted from the obligation provided in paragraph (1), item b) insofar as it relates to non-financial information.

This option does however not apply to undertakings whose securities are admitted to trading on a regulated market³¹⁹ of any Member State of the European Community within the meaning of article 4 paragraph (1) item 14 of directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.»

(2) The report shall also give an indication of:

- a) (...) (*Item abrogated by the Law of 18th December 2015*);
- 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.
- e) the existence of branches of the company.
(*Law of 10 December 2010*)
- «f) in relation to the undertaking's³²⁰ use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss ;
 - the company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
 - the company's exposure to price risk, credit risk, liquidity risk and cash flow risk.»

³¹⁸ -This Article actually only applies to the *companies* referred to in paragraph (1) a) which meet the criteria set forth in Article 47.

³¹⁹ For the definition of this term, see the footnote under Article 313 of the Law of 1915.

³²⁰ This Article actually only applies to the *companies* referred to in paragraph (1) a) which meet the criteria set forth in Article 35.

- (3) (*Law of 30 July 2013*) «Undertakings³²¹» referred to in Article 35 are not obliged to prepare management 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.

(*Law of 10 December 2010*)

[2013/34/EU Art. 20]

« Art. 68bis

1. A company whose securities are admitted to trading on a regulated market³²² within the meaning of Article 4, paragraph 1, point 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments shall include a corporate governance statement in its management report.

That statement shall be included as a specific section of the management report and shall contain at least the following information :

- a) a reference to :
- i) the corporate governance code to which the company is subject, and/or
 - ii) the corporate governance code which the company may have voluntarily decided to apply, and/or
 - iii) all relevant information about the corporate governance practices applied beyond the requirements under law.

Where points i) and ii) apply, the company shall also indicate where the relevant texts are publicly available. Where point iii) applies, the company shall make its corporate governance practices publicly available ;

- b) to the extent to which a company, in accordance with national law, departs from one of the corporate governance codes referred to under points a), i) or ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points a), i) or ii), it shall explain its reasons for doing so ;
- c) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process ;
- d) the information required by Article 10, paragraph 1, points c), d), f), h) and i) of directive 2004/25/EC of the European Parliament and of the Council of

³²¹ Although the Law of 30 July 2013 replaced «Companies» by «Undertakings», this provision actually only applies to the companies referred to in paragraph (1) a).

³²² For the definition of this term, see the footnote under Article 313 of the Law of 1915.

21 April 2004 on takeover bids, where the company is subject to that Directive^{323, 324} ;

- e) unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised ;
- f) (*Law of 30 July 2013*) «the composition and operation of the administrative, management and supervisory bodies and their committees.»

2. The information required by this Article may be set out in a separate report published together with the management report in the manner set out in Article 68 or by means of a reference in the management report where such document is publicly available on the company's website. In the event of a separate report, the corporate governance statement may contain a reference to the management report where the information required in paragraph (1), point d) is made available. Article 68, paragraph (1), second subparagraph shall apply to the provisions of paragraph (1), points c) and d) of this Article.

For the remaining information, the *réviseur d'entreprises agréé* [approved statutory auditor] shall check that the corporate governance statement has been produced.

Companies which have only issued securities other than shares admitted to trading on a regulated market³²⁵, within the meaning of Article 4, paragraph (1), point 14), of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, from the application of the provisions of paragraph (1), points a), b), e) and f), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of Article 4, paragraph (1), point 15), of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.³²⁶

³²³ A Luxembourg company will be subject to this directive if its shares are admitted to trading on a regulated market of a Member State.;

³²⁴ This information consists in the following :

- c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;
- d) the holders of any securities with special control rights and a description of those rights;
- f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;
- h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;
- i) the powers of board members, and in particular the power to issue or buy back shares;

³²⁵ For the definition of this term, see the footnote under Article 313 of the Law of 1915.

³²⁶ The directive defines « multilateral trading facilities (MTF) » as « 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 the directive

Section 10. – Auditing

[2013/34/EU Art. 34.1]

Art. 69.³²⁷

- (1) a) (Law of 18 December 2009) « Companies incorporated under Luxembourg law referred to in Article 1 of Council Directive 78/660/EEC of 25 July 1978³²⁸ must have their annual accounts audited by one or more *réviseurs d'entreprises agréés* [approved statutory auditors]³²⁹ appointed by the general meeting.»
(Law of 23 July 2015) «In the companies referred to in Article L. 426-1 of the Labour Code, those persons shall be designated by the general meeting upon the proposal of the employer following the procedure provided for in Section 4 of Chapter IV of Title One of Book IV of the Labour Code³³⁰.»
(Law of 18 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.»^{331, 332, 333}
(Law of 18 December 2015)
- b) In addition, the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] shall

³²⁷ Corresponds to abrogated Article 256 of the Law of 1915, except for later amendments.

³²⁸ See the footnote under Article 68(1).

³²⁹ See the footnote under Article 26-1 (2) of the Law of 1915.

³³⁰ See Articles L.414-10° to L.414-13° of the Labour Code.

³³¹ The Law of 18 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* [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 18 December 2009. Please refer to the footnote under Article 337 item 14 of the Law of 1915.

³³² In addition, in accordance with Article 38 of the Law of 13 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.

³³³ 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 61 of the Law of 1915.

- aa) express an opinion on:
 - i) whether the management report is consistent with the annual accounts for the same financial year, and
 - ii) whether the management report has been prepared in accordance with the applicable statutory requirements;
 - bb) state whether, in the light of the knowledge and understanding of the undertaking and its environment obtained in the course of the audit, he, she or it has identified material misstatements in the management report, and shall give an indication of the nature of any such misstatements. »
- (2) The companies referred to in Article 35 shall be exempted from the obligation laid down in paragraph (1).
(*Law of 10 December 2010*)
«This exemption does however not apply to undertakings whose securities are admitted to trading on a regulated market³³⁴ of any Member State of the European Community within the meaning of article 4 paragraph (1) item 14 of directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. »
Article 36 shall apply.
- (3) (*Law of 12 July 2013*) « The institution of the *commissaires aux comptes* [supervisory auditors] provided for in Articles 61 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). »
(*Law of 12 July 2013*)
«(3bis) A *société en commandite par actions*, which causes, or is obliged to have, its annual accounts audited by a *réviseur d'entreprises agréé* [approved statutory auditor], may decide not to establish a supervisory board.»
- (4) 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.

(*Law of 10 December 2010*)
[2013/34/EU Art. 35]

« **Art. 69bis**

(*Law of 18 December 2015*)

- «(1) The *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or *cabinet(s) de révision agréé(s)* [approved audit firm(s)] shall present the outcome of the

³³⁴ For the definition of this term, see the footnote under Article 313 of the Law of 1915.

statutory audit of the accounts in an audit report. This report shall be drawn up in accordance with such international auditing standards as adopted for Luxembourg by the *Commission de surveillance du secteur financier*³³⁵.

- (2) The audit report shall be in writing and:
- a) identify the undertaking, the annual accounts of which are the subject of the statutory audit; specify the relevant annual accounts, the balance sheet date and the period covered; and identify the financial reporting framework that has been applied for their preparation;
 - b) contain a description of the scope of the statutory audit of the accounts, which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;
 - c) contain an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall clearly state the opinion of the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or the *cabinet(s) de révision agréé(s)* [approved audit firm(s)] as to:
 - i) whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework, and
 - ii) where appropriate, whether the annual accounts comply with statutory requirements.
- If the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or the *cabinet(s) de révision agréé* [approved audit firm(s)] are unable to express an audit opinion, the report shall contain a disclaimer of opinion;
- d) refer to any other matters to which the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or the *cabinet(s) de révision agréé(s)* [approved audit firm(s)] draw attention by way of emphasis without qualifying the audit opinion;
 - e) include the opinion and statement, both based on the work performed during the audit, referred to in Article 69, paragraph (1), point b) of this Law;
 - f) include a statement on potential material uncertainties related to events or to conditions that may cast significant doubt upon the undertaking's ability to continue as a going concern;
 - g) specify the place of establishment of the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] or the *cabinet(s) de révision agréé(s)* [approved audit firm(s)].
- (3) Where the statutory audit of the accounts has been carried out by several *réviseurs d'entreprises agréés* [approved statutory auditors] or *cabinets de révision agréés* [approved audit firms], they shall together agree on the outcome of the statutory audit of the accounts and present a joint report and opinion. In case of disagreement, each *réviseur d'entreprises agréé* [approved statutory auditor] or *cabinet de révision agréé* [approved audit firm] shall express its opinion in a

³³⁵ See CSSF Regulation No 13-01.

paragraph that is separate from the audit report and shall set out the reasons for the disagreement.

- (4) The audit report shall be signed and dated by the *réviseur d'entreprises agréé* [approved statutory auditor]. Where a *cabinet de révision agréé* [approved audit firm] carries out the statutory audit of the accounts, the audit report shall bear the signature of at least the *réviseur(s) d'entreprises agréé(s)* [approved statutory auditor(s)] carrying out the statutory audit of the accounts on behalf of the audit firm. Where several *réviseurs d'entreprises agréés* [approved statutory auditors] or *cabinets de révision agréés* [approved audit firms] have worked at the same time, the audit report shall be signed by all *réviseurs d'entreprises agréés* [approved statutory auditors] or at least by the *réviseurs d'entreprises agréés* [approved statutory auditors] carrying out the statutory audit of the accounts on behalf of each *cabinet de révision agréé* [approved audit firm].»

(Law of 10 December 2010)

« Section 10bis - Duty and liability for drawing up and publishing the annual accounts and the management report »

(Law of 10 December 2010)

[2013/34/EU Art. 33.1 point a)]

«Art. 69ter»

(Law of 30 July 2013)

«The members of the administrative, management and supervisory bodies of the company have collectively the duty to ensure that the annual accounts, the management report and, when provided separately, the corporate governance statement to be provided pursuant to Article 69bis are drawn up and published in accordance with the requirements of this law and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards.³³⁶Such bodies shall act within the competences assigned to them by law.»

Section 11. - Special conditions applicable to parent companies and subsidiaries

[2013/34/EU Art. 37]

Art. 70.³³⁷

- (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:

³³⁶ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

³³⁷ Corresponds to abrogated Article 256-1 of the Law of 1915, except for later amendments.

- 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) (*Law of 30 July 2013*) «the declarations referred to in b) and c) are published by the subsidiary in the form provided for by (*Law of 27 May 2016*) «Article 11bis §3 of the amended law of 10 August 1915 on commercial companies and the provisions of Chapter Vbis of Title I of this law³³⁸»; »
- e) (*Law of 30 July 2013*) «the subsidiary is included in the consolidated accounts drawn up by the parent undertaking in accordance with Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (known as the «Seventh Directive»)³³⁹ or in accordance with the international accounting standards adopted in accordance with the procedure laid out in Article 6 paragraph 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁴⁰;»
- f) the exemption referred to above is disclosed in the notes to the consolidated accounts drawn up by the parent undertaking;
- g) (*Law of 30 July 2013*) «the consolidated accounts referred to in e), the consolidated management report and the report by the person(s) responsible for auditing those accounts must be published by the subsidiary in the form provided for by (*Law of 27 May 2016*) «Article 11bis § 3 of the amended Law of 10 August 1915 on commercial companies and the provisions of Chapter Vbis of Title I of this law³⁴¹».»

[2013/34/EU Art. 39]

Art. 71.³⁴²

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) (*Law of 30 July 2013*) «the parent company draws up consolidated accounts in accordance with Council Directive 83/349/EEC³⁴³ or in accordance with the international accounting standards adopted in accordance with the procedure laid

³³⁸ See footnote under Article 11bis of the Law of 1915.

³³⁹ This directive has been abrogated and replaced by Directive 2013/34/EU.

³⁴⁰ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

³⁴¹ See footnote under Article 11bis of the Law of 1915.

³⁴² Corresponds to abrogated Article 256-2 of the Law of 1915, except for later amendments.

³⁴³ This directive has been abrogated and replaced by Directive 2013/34/EU.

out in Article 6 paragraph 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁴⁴ and is included in the consolidation;»

- 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.

[2013/34/EU Art. 38]

Art. 72.³⁴⁵

(Law of 30 July 2013)

«This Title is not applicable to those companies incorporated under Luxembourg law referred to in article 1, paragraph 1, sub-paragraphs 2 and 3 of Council Directive 78/660/EEC of 25 July 1978³⁴⁶ where:

- (1) the companies governed by Luxembourg law referred to in article 1, paragraph 1, sub-paragraph 1 of Council Directive 78/660/EEC of 25 July 1978³⁴⁷ which are members having unlimited liability in any of the companies incorporated under Luxembourg law referred to in article 1, paragraph 1 sub-paragraphs 2 and 3 of Council Directive 78/660/EEC of 25 July 1978³⁴⁸, draw up, have audited and publish, with their own accounts and in conformity with the provisions of this Title, 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/EEC³⁴⁹ or in accordance with the international accounting standards adopted in accordance with the procedure laid out in Article 6 paragraph 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁵⁰, by a company referred to in Article 1, paragraph (1), first sub-paragraph of that Directive³⁵¹ which is a member having unlimited liability and is governed by the law of another Member State of the European Union;

³⁴⁴ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

³⁴⁵ Corresponds to abrogated Article 256-3 of the Law of 1915, except for later amendments.

³⁴⁶ As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Article 1.1 b) of Directive 2013/34/EU referring to *sociétés en nom collectif* and *sociétés en commandite simple* described under item (ii) in the footnote to Article 68(1).

³⁴⁷ *Sociétés anonymes, sociétés en commandite par actions* and *sociétés à responsabilité limitée*.

³⁴⁸ As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Article 1.1 b) of Directive 2013/34/EU referring to *sociétés en nom collectif* and *sociétés en commandite simple* described under item (ii) in the footnote to Article 68(1).

³⁴⁹ As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Directive 2013/34/EU.

³⁵⁰ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

³⁵¹ These are *sociétés anonymes, sociétés en commandite par actions* and *sociétés à responsabilité limitée*. As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Article 1.1 a) of Directive 2013/34/EU

- b) these companies are included in consolidated accounts drawn up, audited and published in accordance with Directive 83/349/EEC³⁵² or in accordance with the international accounting standards adopted in accordance with the procedure laid out in Article 6 paragraph 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁵³ 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/EEC³⁵⁴ or in accordance with the international accounting standards adopted in accordance with the procedure laid out in Article 6 paragraph 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards 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.»

(Law of 30 July 2013)

«Chapter IIbis – On the preparation of annual accounts in accordance with international accounting standards»

(Law of 10 December 2010)

«Art. 72bis.

The undertakings referred to in Article 25 have the option to draw up their annual accounts in accordance with the international accounting standards adopted pursuant to the procedure provided in Article 6, paragraph (2) of Regulation (EC) N° 1606/2002 of the Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁵⁵ and are permitted, to the extent necessary therefor, to derogate from the provisions of *(Law of 30 July 2013)* « Chapter II of Title II of this law.»

In that case, the undertakings concerned remain however subject to the provisions of Article 65, paragraph (1) items 2°, 9°, 12°, 13°, 15° and 16° and Articles 68, 68bis, 69, 69bis, 69ter, 70 and 71. »

³⁵² This directive has been abrogated and replaced by Directive 2013/34/EU.

³⁵³ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

³⁵⁴ This directive has been abrogated and replaced by Directive 2013/34/EU.

³⁵⁵ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

(Law of 30 July 2013)

«Art. 72ter.

- (1) Undertakings³⁵⁶ referred to in Article 77, paragraph 2, item 1°, other than investment companies as defined in Article 30, having exercised the option set forth in Article 72bis, may not distribute or use for any other purposes:
 - a) unrealised income and gains, net of tax related thereto, shown in the profit and loss account;
 - b) unrealised income and gains, net of tax related thereto, shown in the capital and reserves which did not flow through the profit and loss account;
 - c) positive variations of capital and reserves, net of tax related thereto, recorded in the opening balance sheet of the first annual accounts drawn up in application of Chapter IIbis or where a standard was first applied to a category of assets or to an asset or a liability or to a specific instrument of capital and reserves.
- (2) The items referred to in paragraph (1) above shall be allocated to an undistributable reserve, either immediately upon their being recorded in the accounts, or subsequently upon the allocation of the results for the financial year. Such undistributable reserve may not be used for the following or similar purposes:
 - a) an increase of capital by incorporation of reserves;
 - b) an allocation to the legal reserve;
 - c) the creation of the undistributable reserve related to the acquisition of own shares;
 - d) the creation of the undistributable reserve related to the granting of financial assistance in view of the acquisition of the shares of the undertaking³⁵⁷ by a third party;
 - e) the creation of the undistributable reserve related to the issue of redeemable shares³⁵⁸;
 - f) the determination of the loss of half or three-quarters of the share capital;
 - g) the special reserve established in accordance with paragraph (8a) of the amended law of 16 October 1934 on net wealth tax.
- (3) By derogation from paragraphs (1) and (2) above, the following items shall not be considered as undistributable and may therefore be distributed or used for another purpose:
 - a) unrealised income referred to in paragraph (1) item a) related to financial instruments held as part of the trading portfolio and currency exchange-rate variations and variations in the context of a fair value hedge accounting system;

³⁵⁶ Read «companies».

³⁵⁷ Read «the company».

³⁵⁸ No such reserve is required by law as a result of the issue of redeemable shares. However Article 49-8 of the Law of 1915 requires the creation of a reserve in case of the actual redemption of redeemable shares.

- b) variations of capital and reserves referred to in paragraph (1) item c) related to reversals of provisions and value adjustments, which may not be maintained on the balance sheet as a result of the exercise of the option referred to in Article 72bis other than those calculated in order to systematically depreciate the value of assets over their period of use.
- (4) If the results for the financial year are lower than the amount of the unrealised income and gains, net of tax related thereto, referred to in paragraph (1) item a), the undistributable reserve referred to in paragraph (2) is set up, with respect to such balance, by using the distributable reserves or, in the absence thereof, by deducting them from the results carried forward.
- (5) The undistributable reserve referred to in paragraph (2) shall be adjusted for a corresponding amount in line with the realisation of the income, gains and variations referred to in paragraph (1), including through systematic amortisation, or where revaluations are cancelled due to a value adjustment.
- (6) For those cases not covered by this article, reference is made to the general principle of Article 51 paragraph (1) item c) which lays down the principle of prudence and the principle of realisation of the profits.»

(Law of 18 Decembre 2015)

«Chapter IIter. – On the report on payments to governments

[2013/34/EU Art. 41]

Art. 72^{quater}.

For the purpose of this Chapter, the following definitions shall apply:

- 1) «undertaking active in the extractive industry» means an undertaking, all or part of the activities of which consist in the exploration, prospection, discovery, development, and extraction of deposits of minerals, oil, natural gas or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2³⁵⁹;
- 2) «undertaking active in the logging of primary forests» means an undertaking with activities in primary forests as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006³⁶⁰;
- 3) «government» means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority within the meaning of Articles 309 to 311 of the Law of 10 August 1915 on commercial companies, as amended;

³⁵⁹ 05: Mining of coal and lignite; 06: Extraction of crude petroleum and natural gas, 07: Mining of metal ores, 08: Other mining and quarrying (inter alia stone, sand, clay, gypsum, chemical minerals, peat, salt).

³⁶⁰ Logging.

- 4) «project» means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities to a government. None the less, if multiple such agreements are interconnected in a substantive manner, they shall be considered as one project;
- 5) «payment» means an amount paid, in cash or in kind, for activities, as described in points 1) and 2), of the following types:
 - a) production based payment claims³⁶¹entitlements;
 - b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
 - c) royalties;
 - d) dividends;
 - e) signature, discovery and production bonuses;
 - f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
 - g) payments for infrastructure improvements.
- 6) «large undertaking» means an undertaking organised as a *société anonyme*, *société européenne*, *société en commandite par actions*, *société à responsabilité limitée* or as one of types of companies referred to in Article 77, paragraph 2, items 2° and 3° of this Law and which, on its balance sheet date, exceeds the limits of at least two of the three criteria referred to in Article 47 of this Law;
- 7) «public-interest entities» means undertakings within the meaning of Article 2, point 1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings³⁶²;
- 8) «subsidiary undertaking» means an undertaking as defined in Article 309 paragraph (2) of the Law of 10 August 1915 on commercial companies, as amended;
- 9) «parent undertaking» means an undertaking as defined in Article 309 paragraph (2) of the Law of 10 August 1915 on commercial companies, as amended.

[2013/34/EU Art. 42]

Art. 72quinquies.

- (1) Any large undertaking or any public-interest entity active in the extractive industry or the logging of primary forests must draw up and make public a report on payments to governments on an annual basis.
- (2) That obligation shall not apply to any undertaking which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:
any undertaking which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:

³⁶¹ Translation based on German version of the directive: *Produktionszahlungsansprüche*.

³⁶² The Law of 18 December 2009 on the audit profession contains a definition of «public-interest entities». See note preceding Article 61 of the Law of 1915.

- (a) the parent undertaking is subject to the laws of a Member State; and payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by that parent undertaking in accordance with Article 340*quater* of the Law of 10 August 1915 on commercial companies, as amended³⁶³.

[2013/34/EU Art. 43]

Art. 72*sexies*.

- (1) Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below 100,000 euros within a financial year.
- (2) The report shall disclose the following information in relation to activities as described in points (1) and (2) of Article 72*quater* in respect of the relevant financial year:
- a) the total amount of payments made to each government;
 - b) the total amount per type of payment as specified in points (5),a) to g) of Article 72*quater* made to each government;
 - c) where those payments have been attributed to a specific project, the total amount per type of payment as specified in points (5), a) to g) of Article 72*quater*, made for each such project and the total amount of payments for each such project.

Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

- (3) Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.
- (4) The disclosure of the payments referred to in this Article shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of this Chapter.

[2013/34/EU Art. 45.1]

Art. 72*septies*.

The report on payments to governments referred to in this Chapter shall be published on the «*Recueil électronique des sociétés et aAssociations*»³⁶⁴. This publication shall be made by way of a reference to the filing at the register of commerce and companies deposited within twelve months of the end of the financial year covered to by the report.

³⁶³ As the benefit of the exemption for the subsidiary company is not related to the fact that its parent company is established in the same country, this reference should have been to Directive 2013/34/EU and Article 44 thereof.

³⁶⁴ Amended by Article 20, the catch all Article of the Law of 27 May 2016.

[2013/34/EU Art. 45.2]

Art. 72octies.

The members of the responsible bodies of an undertaking, acting within the competences assigned to them by law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is drawn up and published in accordance with the requirements of this Chapter.

[2013/34/EU Art. 46]

Art. 72nonies.

Undertakings referred to in Article 72quinquies that prepare and make public a report complying with third-country reporting requirements assessed, in accordance with Article 47 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as equivalent to the requirements of this Chapter³⁶⁵ are exempt from the requirements of this Chapter except for the obligation to publish this report in accordance with Article 72septies.»

³⁶⁵ The equivalence of third-country requirements of non-Member States must be acknowledged by an implementing act of the European Commission.

Chapter IV. – Deposit and disclosure of annual accounts

Art. 75.

(Law of 30 July 2013)

«Undertakings referred to in Article 25 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 standard of accounts defined in article 12 paragraph 2 of the Commercial Code, within a month of their approval and at the latest seven months after the end of the calendar year, in the case of individual business persons or the financial year end, in case of legal entities.»

(Law of 30 July 2013)

«By derogation to the preceding paragraph, undertakings referred to in paragraph 5 of Article 13 of the Commercial Code as well as undertakings having exercised the option provided by Article 72bis and those undertakings who have obtained a derogation from the obligation to comply with the standard chart of accounts pursuant to Article 27, are exempted from the obligation to deposit the balance of the accounts featured in the standard chart of accounts at the register of commerce and companies.»

(Law of 30 July 2013)

«Annual accounts and the balance of the accounts featured in the standard chart of accounts are drawn up in only one language. For this purpose, undertakings are free to use the German or the English language instead of the French language. Documents which must be deposited at the same time as the annual accounts are in that case drawn up in the same language as the annual accounts.»

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.

(Law of 18 December 2015)

- «(1) The documents to be deposited in accordance with Article 75 are transmitted by the register of commerce and companies to the *Institut national de la statistique et des études économiques* (STATEC, the National Institute on statistics and economic studies), manager of the *Centrale des Biens* (Central balance sheet office), which shall ensure that they are archived, that they can be utilised and that they are stored in electronic format.
- (2) *Sociétés en commandite spéciale* shall file a financial report with the register of commerce and companies for statistical purposes. The filing process, form and content of such report shall be determined by a Grand-Ducal regulation. Such financial report is transmitted by the register of commerce and companies to the STATEC.

Art. 77.

(Law of 30 July 2013)

«A Grand-Ducal regulation shall determine the conditions of access of the public and of public administrations to the information kept at the *Institut national de la statistique et des études économiques* (the National Institute on statistics and economic studies), manager of the *Centrale des Biens* (Central balance sheet office), 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 30 July 2013) «sociétés anonymes, sociétés européennes (SE), sociétés en commandite par actions, sociétés à responsabilité limitée and sociétés coopératives but excluding savings pension companies with variable capital; »
- 2° *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 Article 1, paragraph 1 sub paragraph 1 of amended Directive 78/660/EEC of 25 July 1978³⁶⁶ 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, 1968³⁶⁷.
- 3° (Law of 30 July 2013) «the types of company referred to under item 2° where all their members having unlimited liability are themselves organised as one of the types of companies referred to under item 1° or under item 2° or in Article 1, paragraph (1) sub paragraph 1 or sub paragraph 2 of amended Directive 78/660/EEC»³⁶⁸.

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

³⁶⁶ As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Article 1.1. a) of Directive 2013/34/EU. For Luxembourg, these are *sociétés anonymes*, *sociétés en commandite par actions* and *sociétés à responsabilité limitée*.

³⁶⁷ This directive has been abrogated and replaced by Directive 2009/101/EC. For Luxembourg, these are *sociétés anonymes*, *sociétés en commandite par actions* and *sociétés à responsabilité limitée*.

³⁶⁸ As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Article 1.1 a) and b) of Directive 2013/34/EU. For Luxembourg, 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 (i) above or are similar types of companies in the other Member States listed in Annex I of Directive 2013/34/EU or are companies of a third country which have a legal form comparable to those of the companies referred to in directive 68/151/EEC of 9 March 1968 [read 2009/101/EU] (for Luxembourg, these are the companies referred to sub (i) above).

require the presentation of those documents and which have therefore full right of access to the information contained in those documents.

[2013/34/EU Art. 30.1]

«Art. 79.³⁶⁹

- (1) (*Law of 30 July 2013*) «For the undertakings referred to in Article 25 and which are organised as one of the types of companies referred to in items 1° to 3° of the second paragraph of Article 77, the annual accounts duly approved and the management report, together with the opinion drawn up by the person or persons responsible for auditing the accounts, must be published on the «*Recueil des sociétés et associations*»³⁷⁰, by way of a reference to the filing 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 (*Law of 27 May 2016*) «Article 11bis, § 3 of the amended Law of 10 August 1915 on commercial companies and the provisions of Chapter *Vbis* of Title I of this law³⁷¹».»

However, the management 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.

[2013/34/EU Art. 30.2]

- (1bis) (*Law of 30 July 2013*) «By way of derogation from paragraph (1), the undertakings referred to in Article 25 and which are organised as one of the types of 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 (*Law of 27 May 2016*) «Article 11bis, § 3 of the amended Law of 1915 on commercial companies and the provisions of Chapter *Vbis* of Title I of this law³⁷²» provided that those accounts are available to the public at the registered office, where:

- a) all their members having unlimited liability are companies referred to in Article 1 paragraph (1), sub paragraph 1 of Directive 78/660/EEC of 25 July, 1978 governed by the laws of other Member States of the European Union³⁷³ and none of those companies publishes the accounts of the company concerned with its own accounts; or where
- b) all their 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 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third

³⁶⁹ Corresponds to abrogated Article 252 of the Law of 1915, except for later amendments.

³⁷⁰ Amended by Article 20, the catch all Article of the Law of 27 May 2016.

³⁷¹ See footnote under Article 11bis of the Law of 1915.

³⁷² See footnote under Article 11bis of the Law of 1915.

³⁷³ As this directive has been abrogated and replaced by Directive 2013/34/EU, this reference should have been to Article 1.1 a) of Directive 2013/34/EU.

parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent³⁷⁴.»

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 apply³⁷⁵.

[2013/34/EU Art. 31.1]

- (2) (*Law of 30 July 2013*) «By way of derogation from paragraph (1), the undertakings referred to in Article 25 and which are organised as one of the types of companies referred to in item 1° of the second paragraph of Article 77, which do not exceed the limits of Article 35 and draw up their annual accounts in accordance with the provisions of Chapter II of Title II of this law, may publish:
- a) abridged balance sheets showing only those items referred to in Article 35, disclosing separately the claims and debts which are due and payable after more than one year in respectively items D.II under «Assets» and B. and D. under «Liabilities»³⁷⁶, but in total for all the items concerned;
 - b) abridged notes to the accounts in accordance with Article 66.

Article 36 shall apply.

In addition, such undertakings need not publish their profit and loss account as well as, as the case may be, their management report and the opinion of the person responsible for auditing the accounts.»

- (3) (*Law of 30 July 2013*) «By way of derogation from paragraph (1), the undertakings referred to in Article 25, which are organised as one of the types of companies referred to in item 1° of the second paragraph of Article 77, which do not exceed the limits of Article 47 and which draw up their annual accounts in accordance with the provisions of Chapter II of Title II of this law may publish:
- a) an abridged balance sheet drawn up in accordance with Article 34,
 - b) an abridged profit and loss account drawn up in accordance with Article 47³⁷⁷,

³⁷⁴ For Luxembourg (but also Germany, Belgium and France), the comparison would be with *société anonyme*, the *société en commandite par action* and the *société à responsabilité limitée*.

³⁷⁵ The introduction of this offence by reference to Article 163 3° of the Law of 1915 is redundant as Articles 163 2° and 166 already sanction the infringement of this Article 79. Furthermore, the reference to Article 163 3° is inappropriate as its item 3° deals with a different topic.

³⁷⁶ As Article 35 has been drastically amended, this reference should be understood as a reference to items D.II under «Assets» and C. under «Liabilities» in the abridged balance sheet in Annex II of the Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

³⁷⁷ See Annex IV of the Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A – 258 of 28 December 2015, p. 6239), set out at the end of this Annex.

- c) abridged notes to the accounts in accordance with Article 67, paragraph (2), sub paragraphs 2 and 3 and without the information required in Article 65 paragraphs (1) 5°, 6°, 10°³⁷⁸ 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 management report and the opinion of the person responsible for auditing the accounts.

Article 36 shall apply.»

(Law of 10 December 2010)

[2013/34/EU Art. 40]

«(3bis)» *(Law of 30 July 2013)* «The derogations provided by paragraphs (1), sub paragraphs 2 and 3, (1bis), (2) and (3) do not apply to undertakings whose securities are admitted to trading on a regulated market³⁷⁹ of a Member State of the European Union within the meaning of article 4 paragraph (1) item 14 of directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.»

(Law of 30 July 2013)

«(3ter) Without prejudice to the provisions related to the management report as well as to the report of the person or persons responsible for the statutory audit of the accounts, the undertakings referred to in Article 25 which are organised as one of the types of companies referred to in item 1° of Article 77, sub paragraph 2 and which draw up their annual accounts in accordance with the provisions of Chapter IIbis of Title II of this law, must publish their full annual accounts as drawn up in accordance with the international accounting standards adopted in accordance with the procedure laid out in Article 6 paragraph 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards³⁸⁰. »

(4) (...) *(Paragraph abrogated by the law of 10 December 2010.)*

[2013/34/EU Art. 32.1]

Art. 80.³⁸¹

Whenever the annual accounts and the management 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. (...) *(Paragraph abrogated by the law of 30 July 2013.)*

³⁷⁸ Item 10° was abrogated by the Law of 18 December 2015.

³⁷⁹ For the definition of this term, see the footnote under Article 313.

³⁸⁰ Commission Regulation (EC) No 1725/2003 of 29 September 2003 (O.J. L261 of 13 October 2003) realised such adoption.

³⁸¹ Corresponds to abrogated Article 253 of the Law of 1915, except for later amendments.

[2013/34/EU Art. 32.2]

Art. 81.³⁸²

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 79 paragraph (1). Where such filing has not yet been made, the fact must be disclosed.

(Law of 10 December 2010)

« The report shall not accompany this publication, but it shall be disclosed whether an unqualified, qualified or adverse audit opinion was expressed, or whether *the réviseur d'entreprise d'agrée* [approved statutory auditor] was unable to express an audit opinion. It shall also be disclosed whether the report included a reference to any matters to which the *réviseur d'entreprise d'agrée* [approved statutory auditor] drew attention by way of emphasis without qualifying the audit opinion. »

[2013/34/EU Art. 17.1 point o)]

Art. 82.³⁸³

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.

Art. 83.

(abrogated by the law of 30 July 2013)

³⁸² Corresponds to abrogated Article 254 of the Law of 1915, except for later amendments.

³⁸³ Corresponds to abrogated Article 255 of the Law of 1915.

ANNEX II

Grand-Ducal Regulation of 18 December 2015 determining the form and content of the layouts of the balance sheet and of the profit and loss account and implementing Articles 34, 35, 46 and 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings

Art. 1.

For the presentation of the balance sheet referred to in Article 34 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the undertakings concerned shall draw up their balance sheet in accordance with the layout provided in Annex I to this regulation.

Art. 2.

By way of derogation from Article 1, the undertakings referred to in Article 35 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings may draw up their balance sheet in the form of an abridged balance sheet in accordance with the layout provided in Annex II to this regulation.

Art. 3.

For the presentation of the profit and loss account referred to in Article 46 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the undertakings concerned shall draw up their profit and loss account in accordance with the layout provided in Annex III to this regulation.

Art. 4.

By way of derogation from Article 3, the undertakings referred to in Article 47 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings may draw up their profit and loss account in the form of an abridged profit and loss account in accordance with the layout provided in Annex IV to this regulation.

Art. 5.

The layouts for the presentation of the balance sheets and profit and loss accounts referred to in Articles 1 to 4 shall apply to financial information for accounting periods starting on 1 January 2016 and after that date.

Art. 6.

Our Minister for Justice shall be responsible for the implementation of this regulation which shall be published in the *Mémorial*.

Annex I

BALANCE SHEET

ASSETS

	Ref.	Current financial year	Previous financial year
A. Subscribed capital unpaid			
I. Subscribed capital non called			
II. Subscribed capital called but unpaid			
B. Formation expenses			
C. Fixed assets			
I. Intangible fixed assets			
1. Development costs			
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 and intangible fixed assets under development			
II. Tangible fixed assets			
1. Land and buildings			
2. Plant and machinery			
3. Other fixtures and fittings, tools and equipment			
4. Payments on account and intangible fixed assets under development			
III. Financial fixed assets			
1. Shares in affiliated undertakings ³⁸⁴			
2. Loans to affiliated undertakings			
3. Participating interests ³⁸⁵			
4. Loans to undertakings with which the undertaking is linked by virtue of participating interests			
5. Investments held as fixed assets			
6. Other loans			

³⁸⁴ For the meaning of this term, see Article 344(1) of the Law of 10 August 1915 on commercial companies

³⁸⁵ For the meaning of «participating interest», see Article 41 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

	Ref.	Current financial year	Previous financial year
D. Actif circulant			
I. Stocks			
1. Raw materials and consumables			
2. Work in progress			
3. Finished goods and merchandise			
4. Payments on account			
II. Debtors			
1. Receivables resulting from sales and from the provision of services			
a) becoming due and payable within one year			
b) becoming due and payable after more than one year			
2. Amounts owed by affiliated undertakings ³⁸⁶			
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 undertaking is linked by virtue of participating interests ³⁸⁷			
a) becoming due and payable within one year			
b) becoming due and payable after more than one year			
4. Other receivables			
a) becoming due and payable within one year			
b) becoming due and payable after more than one year			
III. Investments			
1. Shares in affiliated undertakings			
2. Own shares or corporate units			
3. Other investmentss			
IV. Cash at bank, cash in postal cheque accounts, cheques and cash in hand			
E. Deferred charges			
BALANCE SHEET TOTAL (ASSETS)			

³⁸⁶ For the meaning of this term, see Article 344(1) of the Law of 10 August 1915 on commercial companies.

³⁸⁷ For the meaning of «participating interest», see Article 41 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

CAPITAL, RESERVES AND LIABILITES

	Ref.	Current financial year	Previous financial year
A. Capital and reserves			
I. Subscribed capital			
II. Share premium			
III. Revaluation reserve			
IV. Reserves			
1. Legal reserve			
2. Reserve for own shares or corporate units			
3. Reserves provided for by the articles of association			
4. Other reserves, including the fair value reserve			
a) other available reserves			
b) other non available reserves			
V. Results brought forward			
VI. Results for the financial year			
VII. Interim dividends			
VIII. Capital investments subsidies			
B. Provisions			
1. Provisions for pensions and similar obligations			
2. Provisions for taxation			
3. Other provisions			

	Ref.	Current financial year	Previous financial year
C. Creditors			
1. Bonds			
a) Convertible bonds			
i) becoming due and payable within one year			
ii) becoming due and payable after more than one year			
b) Non-convertible bonds			
i) becoming due and payable within one year			
ii) 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. Amounts due to 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			
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 undertaking is linked by virtue of participating interests ³⁸⁸			
a) becoming due and payable within one year			
b) becoming due and payable after more than one year			
8. Other creditors			
a) Tax debts			
b) Social security debts			
c) Other debts			
i) becoming due and payable within one year			
ii) becoming due and payable after more than one year			
D. Deferred charges			
BALANCE SHEET TOTAL (CAPITAL, RESERVES AND LIABILITIES)			

³⁸⁸ For the meaning of «participating interest», see Article 41 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

Annex II

ABRIDGED BALANCE SHEET

ASSETS

	Ref.	Current financial year	Previous financial year
A. Subscribed capital unpaid	_____	_____	_____
I. Subscribed capital not called	_____	_____	_____
II. Subscribed capital called but unpaid	_____	_____	_____
B. Formation expenses	_____	_____	_____
C. Fixed assets	_____	_____	_____
I. Intangible fixed assets	_____	_____	_____
II. Tangible fixed assets	_____	_____	_____
III. Financial fixed assets	_____	_____	_____
D. Current assets	_____	_____	_____
I. Stocks	_____	_____	_____
II. Receivables	_____	_____	_____
a) becoming due and payable within one year	_____	_____	_____
b) becoming due and payable after more than one year	_____	_____	_____
III. Investments	_____	_____	_____
IV. Cash at bank, cash in postal cheque accounts, cheques and cash in hand	_____	_____	_____
E. Deferred charges	_____	_____	_____
BALANCE SHEET TOTAL (ASSETS)	_____	_____	_____

CAPITAL, RESERVES AND LIABILITES

	Ref.	Current financial year	Previous financial year
A. Capital and reservess			
I. Subscribed capital			
II. Share premium			
III. Revaluation reserve			
IV. Reserves			
V. Results brought forward			
VI. Resultas for the financial year			
VII. Interim dividends			
VIII. Capital investment subsidies			
B. Provisions			
C. Debts			
a) becoming due and payable within one year			
b) becoming due and payable after more than one year			
D. Deferred charges			
BALANCE SHEET TOTAL (CAPITAL RESERVES AND LIABILITES)			

Annex III

PROFIT AND LOSS ACCOUNT

	Ref.	Current financial year	Previous financial year
1. Net turnover	_____	_____	_____
2. Variation 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. a) Raw materials and consumables	_____	_____	_____
b) Other external charges	_____	_____	_____
6. Staff costs	_____	_____	_____
a) Wages and salaries	_____	_____	_____
b) Social security costs	_____	_____	_____
i) relating to pensions	_____	_____	_____
ii) other social security costs	_____	_____	_____
c) Other staff costs	_____	_____	_____
7. Value adjustments	_____	_____	_____
a) in respect of formation expenses and of tangible and intangible fixed assets	_____	_____	_____
b) in respect of current assets	_____	_____	_____
8. Other operating expenses	_____	_____	_____
	Subtotal		

	Ref.	Current financial year	Previous financial year
	Report		
9. Income from participating interests	_____	_____	_____
a) from affiliated undertakings ³⁸⁹	_____	_____	_____
b) from other participating interests ³⁹⁰	_____	_____	_____
10. Income from other investments, other securities and loans forming par of the fixed assets	_____	_____	_____
a) from affiliated undertakings	_____	_____	_____
b) other income not shown under a)	_____	_____	_____
11. Other interest receivables and other financial income	_____	_____	_____
a) from affiliated undertakings	_____	_____	_____
b) other interest and financial income	_____	_____	_____
12. Share in the results of the undertakings to which the equity method has been applied	_____	_____	_____
13. Value adjustments in respect of financial assets and investments held as current assets	_____	_____	_____
14. Interest payable and other financial expenses	_____	_____	_____
a) relating to affiliated undertakings	_____	_____	_____
b) other interests and financial expenses	_____	_____	_____
15. Tax on results	_____	_____	_____
16. Results after taxation	_____	_____	_____
17. Other taxes not shown under items 1. to 16.	_____	_____	_____
18. Results for the financial year	_____	_____	_____

³⁸⁹ For the meaning of this term, see Article 344(1) of the Law of 10 August 1915 on commercial companies.

³⁹⁰ For the meaning of «participating interest», see Article 41 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

Annex IV

ABRIGED PROFIT AND LOSS ACCOUNT

	Ref.	Current financial year	Previous financial year
1. to 5 Gross results	_____	_____	_____
6. Staff costs	_____	_____	_____
a) Wages and salaries	_____	_____	_____
b) Social security costs	_____	_____	_____
i) relating to pensions	_____	_____	_____
ii) other social security costs	_____	_____	_____
c) Other staff costs	_____	_____	_____
7. Value adjustments	_____	_____	_____
a) in respect of formation expenses and of tangible and intangible fixed assets	_____	_____	_____
b) in respect of current assets	_____	_____	_____
8. Other operating expenses	_____	_____	_____
	Subtotal		

	Ref.	Current financial year	Previous financial year
	Deferral		
9. Income from participating interests	_____	_____	_____
a) from affiliated undertakings ³⁹¹	_____	_____	_____
b) from other participating interests ³⁹²	_____	_____	_____
10. Income from other investments, other securities and loans forming part of the fixed assets	_____	_____	_____
a) from affiliated undertakings	_____	_____	_____
b) other income not shown under a)	_____	_____	_____
11. Other interest receivable and other financial income	_____	_____	_____
a) from affiliated undertakings	_____	_____	_____
b) other interest and financial income	_____	_____	_____
12. Share in the results of the undertakings to which the equity method has been applied	_____	_____	_____
13. Value adjustments in respect of financial fixed assets and investments held as current assets	_____	_____	_____
14. Interest payable and other financial expenses	_____	_____	_____
a) relating to affiliated undertakings	_____	_____	_____
b) other interests and financial expenses	_____	_____	_____
15. Tax on results	_____	_____	_____
16. Results after taxation	_____	_____	_____
17. Other taxes not shown under items 1. to 16.	_____	_____	_____
18. Results for the financial year	_____	_____	_____

³⁹¹ For the meaning of this term, see Article 344(1) of the Law of 10 August 1915 on commercial companies

³⁹² ³⁹² For the meaning of «participating interest», see Article 41 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

Note :

Definition of « related party » in accordance with IAS 24³⁹³ as referred to by Article 344 (1bis) of the Law of 10 August 1915 and Article 65(1) item 7ter^o of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings:

- « 9. The following terms are used in this Standard with the meanings specified:
A related party is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the ‘reporting entity’).
- (a) A person or a close member of that person’s family is related to a reporting entity if that person:
 - (i) has control or joint control over the reporting entity;
 - (ii) has significant influence over the reporting entity; or
 - (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.
 - (b) An entity is related to a reporting entity if any of the following conditions applies:
 - (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
 - (iii) Both entities are joint ventures of the same third party.
 - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
 - (v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
 - (vi) The entity is controlled or jointly controlled by a person identified in (a).
 - (vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).
 - (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.»

A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

³⁹³ As adopted by Regulation (EU) n° 1126/2008 of the Commission adopting certain international accounting standards, in the version resulting from Commission Regulation (EU) 2015/28 of 17 December 2014.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity and include:

- (a) that person's children and spouse or domestic partner;
 - (b) children of that person's spouse or domestic partner; and
 - (c) dependants of that person or that person's spouse or domestic partner.
- (...)

Control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

Joint control is the contractually agreed sharing of control over an economic activity.

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

Significant influence is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies. Significant influence may be gained by share ownership, statute or agreement.

Government refers to government, government agencies and similar bodies whether local, national or international.

10. A *government-related entity* is an entity that is controlled, jointly controlled or significantly influenced by a government.

11. In considering each possible related party relationship, attention is directed to the substance of the relationship and not merely the legal form.

In the context of this Standard, the following are not related parties:

- (a) two entities simply because they have a director or other member of key management personnel in common or because a member of key management personnel of one entity has significant influence over the other entity.
- (b) two ventures simply because they share joint control over a joint venture.
- (c)
 - (i) providers of finance,
 - (ii) trade unions,
 - (iii) public utilities, and
 - (iv) departments and agencies of a government that does not control, jointly control or significantly influence the reporting entity, simply by virtue of their normal dealings with an entity (even though they may affect the freedom of action of an entity or participate in its decision-making process).
- (d) a customer, supplier, franchisor, distributor or general agent with whom an entity transacts a significant volume of business, simply by virtue of the resulting economic dependence.

12. In the definition of a related party, an associate includes subsidiaries of the associate and a joint venture includes subsidiaries of the joint venture. Therefore, for example, an associate's subsidiary and the investor that has significant influence over the associate are related to each other. »

Annex II

Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies and implementing Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

[2007/36/EC Art. 1.1]

Article 1- Subject-matter and scope

- (1) This law establishes requirements in relation to the exercise of certain shareholder rights attaching to voting shares, founder shares and non-voting shares (hereafter the «shares») in relation to general meetings of a company under Luxembourg law³⁹⁴ whose shares are admitted to trading on a regulated market³⁹⁵ within the meaning of the Law of 13 July 2007 on markets in financial instruments, situated or operating within a European Union Member State (hereafter a «regulated market»).

This law is also applicable to those companies whose securities are traded on a market of a non-Member State, which is regulated, operates regularly, is recognized and open to the public, and which, by an express provision in their articles, have declared this law applicable.

- (2) This law is not applicable to:
- collective investment undertakings within the meaning of Article 2, paragraph (2) of the law of 17 December 2010 on undertakings for collective investment;
 - undertakings 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 management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions

³⁹⁴ In the Directive, the territorial scope is linked to the registered office of the relevant company is located.

³⁹⁵ Art 1. 11 of the MiFID law: «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 [as defined in Article 1.9) of the MiFID law] 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 Directive 2004/39/EC [i.e. the MiFID Directive]. In Luxembourg, these are the systems recorded in the official list of regulated markets drawn up by the [CSSF] pursuant to Article 16. the other Member States, these systems are recorded on a list compiled by the European Commission pursuant to Article 47 of Directive 2004/39/EC Directive. In third countries, these systems are authorised and/or supervised by a public authority and function regularly and in accordance with provisions equivalent to those stated in chapter 1 of [title I of the MiFID law].

equivalent to those provided under the Law of 17 December 2010 on undertakings for collective investment;

- cooperative societies.

The companies referred to in paragraph (1) will remain subject to the amended Law of 10 August 1915 on commercial companies except to the extent this law derogates therefrom.

[2014/59/EU Art. 121]

(Law of 18 December 2015)

- «(3) This law does not apply in case of use of resolution tools, powers and mechanisms provided for in Part I, Title II, Chapters III to XI of the Law of 18 December 2015 on the failure of credit institutions and of certain investment firms.»

[2007/36/EC Art. 4]

Article 2- Equal treatment of shareholders

The company shall ensure equal treatment for all shareholders who are in the same position with regard to participation in, and the exercise of voting rights in, the general meeting.

[2007/36/EC Art. 5.]

Article 3- Information prior to the general meeting

- (1) Without prejudice to Articles 10 paragraph (4) and 12 paragraph (4) of the Law of 19 May 2006 implementing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids³⁹⁶, convening notices for all general meetings shall be published at least thirty days before the meeting:
- on the «*Recueil électronique des sociétés et associations*»³⁹⁷ and in one Luxembourg newspaper; and
 - in media which may reasonably be relied upon for the effective dissemination of information to the public throughout the European

³⁹⁶ Article 10 of the takeover law provides for the «passivity» rule of the management body of the target company if that company has resolved to adhere to this rule («opt in» principle). The management body shall in this case need the prior authorization of the general meeting before any defensive action. Article 12 provides for the neutralisation of certain statutory limitations («break through» rule) for the target companies which decided to be subject to Article 12 («opt in» principle).

Article 10 (4) takeover law: «For the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in paragraphs (2) and (3), a general meeting of shareholders may be called by placing a single announcement at least two weeks before the meeting [in the *Mémorial*] [Official Gazette] [read: on the *Receuil électronique des sociétés et associations*] and in one Luxembourg newspaper. The same shall apply in the event of the postponement of the general meeting.»

Article 12 (4) takeover law: «Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs (2) and (3) nor any extraordinary rights of shareholders concerning the appointment or removal of members of the administration or management bodies provided for in the articles of association of the target company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint members of the administration or management bodies.

To that end, the offeror shall have the right to convene a general meeting of shareholders on the same terms as provided for in Article 10 paragraph (4).»

³⁹⁷ Amended by Article 20, the catch all Article of the Law of 27 May 2016.

Economic Area, and which are accessible rapidly and on a non-discriminatory basis.

If a new convening notice is necessary because of lack of the required quorum at the first convened meeting and provided that the first convening notice complied with the requirements of this sub-section and no new item has been added to the agenda, the period referred to in the first paragraph above is reduced to at least seventeen days before the meeting.

(2) The convening notices are communicated in compliance with the notice periods referred to in the first or second paragraphs of paragraph (1), to registered shareholders as well as to directors, members of the management board and members of the supervisory board, as applicable, and *réviseurs d'entreprises agréés* (approved statutory auditors). This communication is done by letter unless the addressees have individually, expressly and in writing, accepted to receive the convening notice through other means of communication, but no proof need be given that this formality has been complied with.

Where all the shares are in registered form, the company may communicate the convening notices by registered mail only, unless the addressees individually, expressly and in writing, have accepted to receive convening notices through other means of communication.

In either case the company may not charge any specific cost for issuing the convening notice in the prescribed manners.

(3) The convening notice referred to in paragraph (1) shall at least contain the following particulars:

- a) indicate precisely the date³⁹⁸ and location of the general meeting, and its proposed agenda;
- b) contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate in, and to cast their vote in, the general meeting. This includes information concerning:
 - i) the rights available to shareholders under Article 4, and where applicable, the deadline by which those rights may be exercised and the electronic address to which shareholders may address their requests. The convening notice may confine itself to stating only the deadlines by which those rights may be exercised and such electronic address, provided it contains a statement that detailed information concerning those rights is available on the Internet site of the company;
 - ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and

³⁹⁸ The English version of the directive uses «when and where the general meeting is to take place» which implies that the start time of the meeting also needs to be given.

- iii) where applicable, the procedures for participating in the meeting from a remote location, in accordance with Article 6 and to cast votes by correspondence or by electronic means in accordance with Article 10;
 - c) where applicable, statement of the record date as defined in Article 5, and the manner in which shareholders have to register, and a statement that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;
 - d) indication of the postal and electronic addresses where, and how, the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph (4) may be obtained;
 - e) indication of the address of the Internet site on which the information referred to in paragraph (4) are available.
- (4) For a continuous period beginning on the day of publication of the convening notice of the general meeting and including the day of the general meeting, the company shall make available to its shareholders on its Internet site at least the following information:
- a) the convening notice referred to in paragraph (1);
 - b) the total number of shares and voting rights at the date of the notice including separate totals for each class of shares where the company's capital is divided into two or more classes of shares;
 - c) the documents to be submitted to the general meeting;
 - d) a draft resolution or, where no resolution is proposed to be adopted, a comment from the board of directors or the management board, as appropriate, for each item on the proposed agenda of the general meeting. Moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them;
 - e) where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

Where the forms referred to in point e) cannot be made available on the Internet site for technical reasons, the company shall indicate on its Internet site how the forms can be obtained on paper. In this case the company shall be required to send the forms by postal services and free of charge to every shareholder who so requests.

Where, pursuant to Articles 10 paragraph (4), or 12 paragraph (4) of the Law of 19 May, 2006 implementing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids³⁹⁹, the convening notice of the general meeting is issued later than on the thirtieth day before the meeting, the period specified in this paragraph shall be shortened accordingly.

³⁹⁹ See footnote under article 3.

[2007/36/EC Art. 6]

Article 4- Right to put items on the agenda of the general meeting and to table draft resolutions

- (1) One or more shareholders holding together at least 5% of the share capital of a company:
 - a) have the right to put items on the agenda of the general meeting; and
 - b) have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.
- (2) The requests referred to in paragraph (1) must be in writing and sent to the company by postal services or electronic means to the address provided in the convening notice published pursuant to Article 3. They are accompanied by a justification or a draft resolution to be adopted in the general meeting. They indicate the postal or electronic address at which the company may acknowledge receipt of these requests.
- (3) The requests referred to in paragraph (1) must be received by the company not later than on the twenty-second day prior to the date of the general meeting. The company shall acknowledge receipt of requests referred to in paragraph (1) within forty-eight hours from receipt.
- (4) The company publishes, in accordance with Article 3, a revised agenda not later than on the fifteenth day prior to the date of the general meeting.

[2007/36/EC Art. 7.1, 7.2 and 7.4]

Article 5- Requirements for participation and voting in the general meeting

- (1) The rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting.

The rights of a shareholder to sell or otherwise transfer his shares during the period between the record date, as defined in paragraph (2), and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.
- (2) The rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on the fourteenth day prior to the general meeting at midnight (Luxembourg time) (defined as the «record date»).
- (3) Not later than on the record date, the shareholder indicates to the company his intention to participate in the general meeting. The company determines the manner in which this declaration is made.

For each shareholder who indicates his intention to participate in the general meeting, the company records his name or corporate denomination and address or registered office, the number of shares held by him on the record date and a description of the documents establishing the holding of shares on that date.

- (4) Proof of the qualification as shareholder may be subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

[2007/36/EC Art. 8]

Article 6- Participation in the general meeting by electronic means

- (1) The articles of incorporation may provide that any shareholder may participate in the general meeting in any form of participation by electronic means offered by the company which among other allow any or all of the following forms of participation:
- a) real-time transmission of the general meeting;
 - b) real-time two-way communication enabling shareholders to address the general meeting from a remote location;
 - c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

Shareholders who participate in this manner at the general meeting shall be deemed present at the location of the general meeting for the purpose of quorum and majority requirements.

- (2) The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of electronic communications, and only to the extent that they are proportionate to achieving those objectives.

[2007/36/EC Art. 9]

Article 7- Right to ask questions

- (1) Every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders subject to the measures which it may take to ensure the identification of shareholders, the good order of general meetings and their preparation, and the protection of confidentiality and its business interests.
- The company may provide one overall answer to questions having the same content. Where the relevant information is available on its Internet site in a question and answer format, the company shall be deemed to have answered to the questions asked by referring to its site.
- (2) Without prejudice to the application of paragraph (1) during the general meeting, the articles of incorporation may provide that shareholders have the possibility, as from the publication of the convening notice, to ask questions in writing concerning items on the agenda, which will be answered during the general meeting. These questions may be addressed to the company by electronic means at the address provided in the notice of the general meeting. The articles of incorporation determine the deadline by which questions must be received by the company.

Shareholders who intend to make use of the possibility offered by the articles of incorporation in accordance with the preceding paragraph, establish their shareholder qualification as shareholder in accordance with Article 5.

[2007/36/EC Art. 10]

Article 8- Proxy voting

- (1) Every shareholder shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled. Any provision in the articles of incorporation restricting the eligibility of persons to be appointed as proxy holders shall be ineffective.
- (2) A shareholder may only appoint one person to act for him as a proxy holder in relation to any one general meeting.
By way of derogation to the preceding paragraph:
 - a) if a shareholder has shares of a company held in more than one securities account, he may appoint a separate proxy holder as regards shares held in each securities account in relation to any one general meeting;
 - b) the person qualifying as a shareholder but who acts in the course of a business on behalf of other natural or legal persons, may give a proxy to each of these other natural or legal persons or to a third person designated by them.
- (3) In case of potential conflicts of interest between the appointing shareholder and his proxy holder:
 - a) the proxy holder shall disclose certain specified facts which may be relevant for the shareholder in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;
 - b) the proxy holder is only permitted to exercise voting rights on behalf of the shareholder on the condition that he has received specific voting instructions for each resolution on which the proxy holder has cast a vote on behalf of the shareholder;
 - c) the transfer of the proxy to another person is not permitted without prejudice to the possibility for the proxy holder which is a legal person to exercise the powers conferred upon it through any member of its administrative or management body or any of its employees.
A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:
 - i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;
 - ii) is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point i);
 - iii) is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in i);

- (iv) has a family relationship with a natural person referred to in points (i) to (iii).
- (4) The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.
He shall keep a record of the voting instructions for a minimum period of one year from the date where the last carried out voting instructions, and shall on request confirm that the voting instructions have been carried out.
- (5) A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Where a proxy holder holds proxies from several shareholders, he may cast votes for a certain shareholder differently from votes cast for another shareholder.

[2007/36/EC Art. 11]

Article 9- Formalities for proxy holder appointment and notification

The appointment of a proxy holder by a shareholder shall be made in writing. The notification to the company of the appointment by a shareholder shall also be made in writing by postal services or by electronic means to the postal or electronic address referred to in the convening notice published in accordance with Article 3.

Beyond this requirement of a document in writing, the appointment of a proxy holder, the notification of the appointment to the company and the issuance of voting instructions, if any, to the proxy holder may be made subject only to such formal requirements as are necessary to ensure the identification of the shareholder and of the proxy holder, or to ensure the possibility of verifying the content of voting instructions, respectively, and only to the extent that they are proportionate to achieving those objectives.

The provisions of this Article shall apply mutadis mutandis for the revocation of the appointment of a proxy holder.

[2007/36/EC Art. 12]

Article 10- Voting from a remote location

- (1) The articles of incorporation may permit every shareholder to vote from a remote location in advance of the general meeting, by correspondence or by electronic means, using a form made available by the company.
Where the company permits voting from a remote location, it must be able to verify the qualification and the identity of the shareholder. The means by which the qualification as shareholder and the identity of the person intending to vote from a remote location are verified and ensured, are provided in the articles of incorporation.
- (2) The form for voting from a remote location shall include at least the following information:
 - i) the name or corporate denomination of the shareholder, his address or registered office;
 - ii) the number of votes the shareholder intends to cast in the general meeting as well as the direction of his votes or his abstention;
 - iii) the form of the shares held;

- iv) the agenda of the meeting, including the draft resolutions;
 - v) the period within which the form for voting from a remote location must be received by the company;
 - vi) the shareholder's signature, where applicable, under the form of an electronic signature which meets the conditions laid down in Articles 1322-1 and 1322-2 of the Civil code⁴⁰⁰.
- (3) Forms in which no vote is expressed or which do not indicate an abstention are void. In case of modification, during the meeting, of a draft resolution on which a vote was cast from a remote location such vote will be considered void.
- (4) Article 5 applies in case the company permits voting from a remote location. For the calculation of the quorum, account shall be taken only of those forms received by the company prior the general meeting within the deadlines provided in the articles of incorporation.

[2007/36/EC Art 14.1 and 14.2]

Article 11- Voting results

- (1) The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.
- The articles of incorporation may provide that where no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.
- (2) Within fifteen days following the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph (1).

[2014/59/EU Art. 121]

(Law of 18 December 2015)

«Article 11bis. Specific provision

The general meeting may, by a majority of two-thirds of the votes validly cast, in order to decide on a capital increase, either resolve to amend the articles of incorporation so as to provided that a general meeting is, by way of derogation from Article 3, paragraph (1), convened at shorter notice, or directly convene a general meeting at shorter notice provided that in both cases there is a period of 10 days between the convening notice and the date of the general meeting, the conditions of Article 59-43 or of Article 59-45 of the amended Law of 5 April 1993 on the financial sector are met, and that the capital increase is necessary to avoid

⁴⁰⁰ Article 1322-1 : The signature required to perfect a deed delivered under private seal identifies the person who executes such signature and represents his approval to the content of the deed.

It may be by hand or in an electronic form.

An electronic signature consists in a number of data inseparably linked to the deed, ensuring its integrity and meeting the conditions laid down in the first paragraph of this Article.

Article 1322-2: The electronic deed under private seal constitutes an original when it contains reliable safeguards to maintain its integrity from the moment it was created for the first time in its final form.

the initiation of a resolution proceeding in the conditions laid down in Articles 33 and 34 of the Law of 18 December 2015 on the failure of credit institutions and of certain investment firms.

For the purposes of paragraph 1, Article 4 paragraphs (3) and (4) and Article paragraph (2) shall not apply.»

Article 12- Transitional provision

This law shall enter into force the 1st day of the 2nd month following its publication on the *Mémorial*⁴⁰¹.

This law is not applicable to general meetings convened prior to its entry into force. In case of more than one convening notice, or in case one notice was published on different dates, it is only the date of the first notice or the first date of publication which will be taken into account.

This law does not apply to general meetings which have been postponed in application of Article 67 paragraph (5) of the amended Law of 10 August 1915 on commercial companies, or which have been reconvened for lack of quorum, where the relevant general meetings have been convened prior to its entry into force.

Article 13- Abbreviated title

This law may be referred to in abbreviated form as «Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies».

Doc. parl. 6128; sess. ord. 2009-2010 et 2010-2011; Dir. 2007/36/UE

⁴⁰¹ The law was published on 27 May 2011.

ANNEX III

Title IX of the Civil Code⁴⁰² « On Companies »⁴⁰³

Chapter I. – General provisions

(Law of 28 December 1992)

«Art. 1832.

A company may be incorporated by two or more persons who agree to contribute something to a common endeavour with a view to sharing the benefits which may result therefrom or, in the cases provided for by law, through the act of will of a person who allocates assets to the conduct of a specific activity. »⁴⁰⁴

Art. 1833.

A company must have a lawful purpose and be contracted for the common interest of the parties. Every member must contribute cash, other assets or his industry.

Art. 1834.

All companies must be drawn up in writing, in case their object has a value in excess of «3.75 euros»⁴⁰⁵.

Testimonial evidence is not admissible against and beyond the content of the constitutive instrument, nor with respect to what may be alleged to have been said before, at the time of and since this instrument, even in case of an amount or value of less than «3.75 euros»⁴⁰⁵

Chapter II. – Of the various sorts of companies

Art. 1835.

Companies are universal or special.

⁴⁰² Decreed on 8 March 1804, entered into force on 18 March 1804.

⁴⁰³ Title amended by the Law of 28 December 1992 amending the Law of 10 August 1915 on commercial companies and introducing the single-shareholder *société à responsabilité limitée* (Mém. A – 106 of 30 December 1992, p.3141; parl. doc. 3637).

⁴⁰⁴ Cf. the amended Law of 10 August 1915: «Art. 3. Companies the object of which is civil 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 Appendix, 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. The rule laid down in paragraphs 3 to 6 inclusive of Article 181 shall apply to them. [...]»

⁴⁰⁵ Amount amended by Article 48 of the Law of 1 August 2001 on euro conversion of 1 January 2002 and amending certain legislative provisions (Mém. A - 117 of 18 September 2001, p. 2440; parl. doc. 4722).

Section I. – Of universal companies

Art. 1836.

Universal companies are of two kinds: the *société de tous biens présents* (the company of all current assets) and the *société universelle de gains* (the universal company of profits).

Art. 1837.

The *société de tous biens présents* is the company by which the parties put in common all movable and immovable property which they currently possess and the profits they may make from the same.

The parties may also include in it any other kind of profits; however assets which may devolve to them by way of succession, donation or bequest, do not enter into such company but for enjoyment only; any stipulation aiming at including the property of such assets therein is prohibited, except between spouses, and then only in accordance with the rules applicable to them.

Art. 1838.

The *société universelle de gains* contains everything which the parties will acquire in any capacity through their industry as long as the company lasts: movable assets possessed by each member at the time of the contract are also included; however their personal immovable property is included only for enjoyment.

Art. 1839.

A common universal company agreement drawn up without any other explanation only creates the *société universelle de gains*.

Art. 1840.

A universal company may only take place between persons respectively capable of conveying to each other or of receiving from each other, and who are not prohibited from favouring each other at the expense of other persons.

Section II. – Of special companies

Art. 1841.

Special companies are those which only apply to certain specified things, to their usage, or to the profits to be derived therefrom.

Art. 1842.

The contract by which various persons associate together, either for a specified undertaking, or for the exercise of a trade or profession, is likewise a special company.

Chapter III. – Of the obligations of the members towards each other and towards third parties

Section I. – Of the obligations of members towards each other

Art. 1843.

A company shall begin at the moment the contract is made, if it does not specify another time.

Art. 1844.

If there is no agreement on the duration of the company, it shall be deemed to be contracted for the whole time of life of the members without prejudice to what is said in Article 1869: or, in the case of a matter with a limited duration, for the whole time such matter is to last.

Art. 1845.

Each member owes the company everything he promised to contribute to it.

Where this contribution consists in a specific property and the company is evicted from the same, the member is accountable to the company in the same manner as a seller is answerable to a purchaser.

Art. 1846.

The member who had to contribute a sum of money to the company and who failed to do so, by operation of law and without any request having been made, owes interest on such amount as from the day it was to be paid.

The same applies to amounts he took from the funds of the company, as from the day he took them therefrom for his own benefit.

The foregoing being without prejudice to greater damages, where applicable.

Art. 1847.

Members who committed to contribute their industry to the company, shall account to it for all the profits they made by the kind of industry which is the object of the company.

Art. 1848.

Where one of the members is, for his own particular account, creditor of a sum due and payable by a person who likewise owes a sum due and payable to the company, what he receives from this debtor must be applied to the discharge of the claim of the company and his personal claim in the proportion of both claims, even if by his receipt he applied the whole amount to his claim; however if he stated in his receipt that the application is entirely to the payment of the claim of the company, such provision shall be effective.

Art. 1849.

Where one of the members has received his full share of the claim in common, and where the debtor has since become insolvent, such member shall be bound to return what he received to the common estate, even if he had specifically granted discharge “for his share”.

Art. 1850.

Every member shall be liable towards the company for the damages caused to it by his fault, without the possibility to offset these damages with profits his industry may have produced in other affairs.

Art. 1851.

If the objects, only the enjoyment of which has been contributed to the company, are specific and ascertained property which are not liable to be consumed by being used, they are at the risk of the member who is the owner.

If these objects are liable to be consumed, if they deteriorate whilst being kept, if they were intended to be sold, or if they were contributed to the company according to an estimated value ascertained by an inventory, they are at the risk of the company.

If the object has been appraised, the member can only reclaim the amount resulting from its appraisal.

Art. 1852.

A member has a claim against the company, not only for the amounts he has disbursed for the Company's benefit, but likewise for the obligations entered into by him in good faith for the business of the company and for the risks inseparably connected to his management.

Art. 1853.

If the constitutive instrument does not determine the share of each member in the profits or losses, the share of each member shall be in proportion of what he has contributed to the equity of the company.

As regards the member who contributed his industry only, his share in the profits or in the losses is settled as if what he contributed was equal to that of the member who contributed the least.

Art. 1854.

If the members agreed to refer to one of them or to a third party for the regulation of their respective share, such regulation may not be challenged unless it is obviously unequitable.

No claim shall be accepted in this respect, if three months have elapsed since the party claiming to be adversely affected became aware of the regulation, or if he has commenced performance of such regulation.

Art. 1855.

The agreement which would allocate all the profits to one of the members is null and void.

The same shall apply to any provision which would exempt from any contribution to the losses the amounts or property contributed to the equity of the company by one or more

members.

Art. 1856.

The member in charge of management pursuant to a special clause in the corporate contract may take, notwithstanding objection by the other members, all actions which depend upon his management, provided that it be without fraud.

This power cannot be revoked without a lawful cause for as long as the company lasts; however if it was only granted by an instrument subsequent to the corporate contract, it may be revoked like a simple mandate.

Art. 1857.

Where several members are in charge of management without their duties being determined, or in the absence of a provision stating that one member cannot act without the other, each of them may separately perform all acts of management.

Art. 1858.

If it has been provided that one of the managers shall not do anything without the other, one alone cannot act in the absence of the other manager, even if the latter is for the time being unable to participate in any acts of management, until there is a new agreement between the members.

Art. 1859.

In the absence of special provisions on management, the following rules shall be followed:

- 1° The members shall be deemed to have given each other the power to manage on behalf of the other member(s). What each member does is valid even for the share of his partners without him having received their consent; except for the right of his partners, or one of them, to challenge the transaction before it is concluded.
- 2° Each member may use the assets which belong to the company, provided that he employs them for the uses for which they are intended, and that he does not use them against the interest of the company, or in such a way as to prevent his partners from using them in accordance with their rights.
- 3° Each member has the right to cause his partners to contribute with him to the expenses which are necessary for the preservation of the assets of the company.
- 4° None of the members may make innovations to the immovable property appertaining to the company without the consent of the other members, even if he claims that they would be beneficial to the company.

Art. 1860.

A member who is not a manager may neither dispose of nor commit assets, including movable assets, appertaining to the company.

Art. 1861.

Each member may, without the consent of his partners, enter into a partnership with a third party with respect to the share he has in the company; he may not, without such consent, make

this third party a member of the company, even if he was in charge of its management.

Section II. – Of the obligations of members as regards third parties

Art. 1862.

In companies other than commercial companies, members are not jointly liable for the debts of the company, and none of the members may create obligations for the other members if they have not granted him the power to do so.

Art. 1863.

The members shall be liable to the creditor with whom they have contracted, each for an equal amount and equal share, even if the share of one of them in the company was smaller, unless the relevant deed specifically limited the obligation of such member on the basis of such share.

Art. 1864.

A stipulation that the obligation is contracted on behalf of the company shall only bind the contracting member and not the other members, unless they had given him power to do so, or unless the matter turned out to be to the benefit of the company.

Chapter IV. – Of the different manners in which the company ends

Art. 1865.

A company shall end:

- 1° upon expiration of the period for which it was entered into;
- 2° upon the extinction of the object, or the completion of the matter;
- 3° upon the natural death of one of the members;
- 4° upon (...) ⁴⁰⁶ one of them being subject to a restraint or being insolvent;
- 5° upon the intention expressed by one or more members to no longer be associated in the company.

Art. 1866.

The extension of the duration of a company with limited duration may only be evidenced by an instrument in writing passed in the same form as the corporate contract.

Art. 1867.

Where one of the members promised to contribute the ownership of an asset to the common estate, the loss of such asset before its contribution results in the dissolution of the company with respect to all members.

The company shall also in any event be dissolved in case of loss of the asset, where only its

⁴⁰⁶ This article originally featured also «civil death» as a cause of dissolution. Civil death was abolished by Article 18 of the Constitution introduced by an amendment to the Constitution on 27 November 1856.

enjoyment had been contributed to the common estate, and where ownership had remained with the member.

However, the company shall not be dissolved by the loss of the object whose ownership has already been contributed to the company.

Art. 1868.

In case it had been provided that in the event of death of one of the members, the company should continue with his heir, or only between the surviving members, such provision shall be followed; in the latter case, the heir of the deceased shall only be entitled to a share in the company according to the situation of the company at the time of death, and shall only participate in subsequent rights which are a necessary consequence of what has been done before the death of the member to whom he succeeds.

Art. 1869.

The dissolution of the company by the will of one of the parties shall only apply to companies whose duration is unlimited, and shall occur by a renunciation notified to all the members, provided such renunciation is made in good faith and not untimely.

Art. 1870.

A renunciation is not made in good faith where the member renounces in order to appropriate the profit which the members had intended to derive in common.

It is made untimely where things are no longer whole, and where it is important for the company that its dissolution be postponed.

Art. 1871.

The dissolution of companies with a fixed duration may only be applied for by one of the members before the agreed expiration date for just cause, such as where another member fails in its obligations, or where a constant disability makes him unable to deal with the matters of the Company, or in other similar cases, whose legitimacy and seriousness are to be left to the appreciation of the court.

Art. 1872.

Rules regarding the partition of inheritances, the manner of such a partition, and the obligations resulting from the same between heirs, apply to partitions between members.

Provision relating to commercial companies

Art. 1873.

The provisions of the present title shall apply to commercial companies only with respect to those items which are not contrary to the laws and usages of commerce.

ANNEX IV

Criminal Code excerpts– Legal entities

Book I, Chapter II-1.- Penalties applicable to legal entities⁴⁰⁷

Art. 34.

Where a crime or felony is committed on behalf and in the interest of a legal entity by one of its corporate bodies or by one or more of its legally appointed or de facto directors⁴⁰⁸, the legal entity may be declared criminally liable and incur the penalties provided for by Articles 35 to 38.

The criminal liability of legal entities does not exclude that of the individuals who are the perpetrators or accomplices of the same offences.

The above paragraphs shall not apply to the State or to municipalities.

Art. 35.

Penalties for crimes or felonies incurred by legal entities are:

- 1) fines, under the conditions and pursuant to the terms provided for by Article 36;
- 2) special confiscation;
- 3) exclusion from participation in public procurement;
- 4) dissolution, under the conditions and in the manner provided for by Article 38.

Art. 36.

Fines applicable to legal entities in respect of a crime or felony are of at least 500 euros.

In respect of crimes, the maximum amount of the fine applicable to legal entities is 750,000 euros.

In respect of felonies, the maximum amount of the fine applicable to legal entities is equal to twice the amount provided for by the law punishing the offence with respect to individuals. Where no fine is provided for individuals by the law punishing the offence, the maximum amount of the fine applicable to legal entities may not exceed twice the sum obtained by multiplying the maximum penalty of imprisonment provided, expressed in days, by the amount taken into consideration with respect to coercive detention.

Art. 37.

The maximum rate of the fine incurred pursuant to Article 36 is increased fivefold where the criminal liability of the legal entity is incurred for one of the following offences:

- crimes and felonies against State security
- acts of terrorism and acts of financing terrorism

⁴⁰⁷ As introduced by the Law of 3 March 2010 (Mém. A - 36 of 11 March 2010, p. 614) and supplemented by the Law of 21 December 2012 (Mém. A - 296 of 31 December 2012, p. 4698).

⁴⁰⁸ The French version uses the term «*dirigeant*» which also covers managers (*gérants*) and possibly senior executives.

- violation of the laws on prohibited weapons in relation with a criminal association or a criminal organisation
- human trafficking and procuring
- drug trafficking in relation with a criminal association or a criminal organisation
- laundering and receiving of stolen goods
- extortion, unlawful taking of interest, active and passive corruption, private corruption
- facilitation of unauthorised entry and residence in relation with a criminal association or a criminal organisation
- illegal employment of illegal residents who are third-country nationals in relation with a criminal association or a criminal organisation.

Art. 38.

Dissolution may be ordered where the legal entity was intentionally created or, in the case of a crime or felony which for individuals carries a penalty of imprisonment of three years or more, intentionally diverted from its purpose in order to commit the relevant offences.

No dissolution may be applied to public law entities incurring liability.

The decision ordering the dissolution of a legal entity shall contain the referral of the entities to the court having jurisdiction to proceed to its liquidation.

Art. 39.

Where a legal entity incurs a penalty for a felony other than a fine, such penalty may be ordered alone as primary penalty.

Art. 40.

Where a felony carries a penalty of imprisonment against individuals pursuant to the law punishing the offence, the special confiscation defined by Article 31 may be ordered as primary penalty against the legal entity, even where it is not provided for by the specific law applied.

The provision of the above paragraph shall not apply in the matter of press offences.

Art. 41 to 43.

(Abrogated by the law of 13 June 1994).

Chapter IX.- Mitigating circumstances

Art. 75-1.

The assessment of mitigating circumstances with respect to a legal entity shall be made based on the criminal penalties incurred by the individual for the actions liable to result in a criminal liability of the legal entity.

Annex V

List of laws and regulations amending the Law of 1915

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
L 10.8.1915	concernant les sociétés commerciales	N° 90, p. 925	
L 13.4.1922	portant modification de l'art.67, dernier alinéa, de L 10.8.1915 sur le régime des sociétés commerciales	N° 24, p. 349	
L 15.1.1927	portant modification de l'art.67, alinéa 4, de L 10.8.1915 sur le régime des sociétés commerciales	N° 3, p. 17	
L 20.6.1930	portant modification de certaines dispositions de L 10.8.1915 concernant le régime des sociétés commerciales	N° 31, p. 617	
L 18.9.1933	ayant pour objet d'instituer la société à responsabilité limitée et d'apporter certains changements au régime légal et fiscal des sociétés commerciales et civiles	N° 48, p. 749 (rect.) N° 53, p. 805	
L 2.4.1948	portant modification de l'art.148bis de L 10.8.1915 concernant les sociétés commerciales	N° 22, p. 498	
L 23.11.1972	portant adaptation de L 10.8.1915 sur le régime des sociétés commerciales telle qu'elle a été modifiée dans la suite, à la Directive 68/151 du Conseil des Communautés Européennes du 9.3.1968	N° 72, p. 1586	1496
L 6.5.1974	instituant des comités mixtes dans les entreprises du secteur privé et organisant la représentation des salariés dans les sociétés anonymes	N° 35, p. 620	1689
L 16.5.1975	modifiant l'art.45, n°1, et l'art. 161, alinéa 2, de L 10.8.1915 concernant les sociétés commerciales	N° 29, p. 652	1767
L 19.5.1978	complétant la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 32, p. 589	2104
L 24.4.1983	portant modification de la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 35, p. 864	2474

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
Rgd 11.5.1983	portant institution de la liste des experts visés à l'article 26/1(2) de L 24.4.1983 portant modification de la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 35, p. 876	
Rgd 9.1.1984	portant modification du rgd 11.5.1983 portant institution de la liste des experts visés à l'art.26/1(2) de L 24.4.1983 portant modification de la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 4, p. 45	
L 18.4.1984	relative à la délégation et à la déchéance de l'autorité parentale et à la tutelle aux prestations sociales	N° 51, p. 766	2557
L 4.5.1984	portant modification de la loi du 10.8.1915 concernant les sociétés commerciales	N° 40, p. 586 (rect.) N° 115, p. 2421	2657
L 28.6.1984	portant organisation de la profession de réviseur d'entreprises	N° 81, p. 1346	2734
Rgd 30.1.1985	portant modification des montants prévus aux art. 215 et 231 de la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 7, p. 74	
L 8.8.1985	portant modification de la loi du 10.8.1915 concernant les sociétés commerciales	N° 49, p. 931	2890
L 25.8.1986	portant modification: 1) des art. 117, 120 et 124 de la loi modifiée du 10.8.1915 concernant les sociétés commerciales 2) des art. 10, 13, 14, 17 et 20 de l'arrêté Grand-Ducal du 17 septembre 1945 sur l'organisation des associations agricoles	N° 65, p. 1826	2984
L 9.4.1987	concernant la représentation des obligataires	N° 29, p. 415	2942
L 7.9.1987	portant modification de la loi du 10.8.1915 concernant les sociétés commerciales	N° 77, p. 1792	2897
L 28.4.1988	relative aux sociétés à responsabilité limitée modifiant la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 24, p. 516	2960
L 11.7.1988	relative à l'établissement des comptes consolidés	N° 45, p. 872	3154
L 8.3.1989	portant modification de la loi modifiée du 10.8.1915 concernant les sociétés	N° 14, p. 176	3112

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	commerciales		
L 21.7.1992	portant adaptation de la réglementation concernant les faillites et nouvelle définition des actes de commerce et créant l'infraction d'abus de biens sociaux	N° 58, p. 1898	3381
Rgd 25.11.1992	portant modification des montants prévus aux art. 215 et 231 de la loi modifiée du 10.8.1915 concernant les sociétés commerciales	N° 92, p. 2573	
L 27.11.1992	portant adaptation de la loi modifiée du 10.8.1915 concernant le régime des sociétés commerciales à la onzième Directive du Conseil des Communautés Européennes du 21.12.1989 concernant la publication des succursales créées dans un Etat-membre par certaines formes de sociétés relevant du droit d'un autre Etat-membre	N° 95, p. 2625	3579
L 28.12.1992	modifiant la loi modifiée du 10.8.1915 concernant les sociétés commerciales à l'effet d'introduire la société à responsabilité limitée unipersonnelle	N° 106, p. 3141	3637
L 29.7.1993	portant adaptation de la loi modifiée du 10.8.1915 concernant les sociétés commerciales à la Directive 90/604/CEE du Conseil des Communautés Européennes du 8.11.1990 modifiant la Directive 78/660/CEE sur les comptes annuels et la Directive 83/349/CEE sur les comptes consolidés en ce qui concerne les dérogations en faveur des petites et moyennes sociétés ainsi que la publication des comptes en écus	N° 67, p. 1191	3707
L 2.12.1993	portant adaptation de la loi modifiée du 10.8.1915 concernant les sociétés commerciales à la Directive 90/605/CEE du Conseil des Communautés Européennes du 8.11.1990, modifiant les Directives 78/660/CEE et 83/349/CEE concernant respectivement les comptes annuels et les	N° 94, p. 1739	3781

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	comptes consolidés en ce qui concerne leur champ d'application et portant modification de certaines autres dispositions de la loi modifiée du 10.8.1915		
L 13.6.1994	relative au régime des peines	N° 59, p. 1096	2974
L 8.12.1994	relative: 1) aux comptes annuels et comptes consolidés des entreprises d'assurances et de réassurances de droit luxembourgeois 2) aux obligations en matière d'établissement et de publicité des documents comptables des succursales d'entreprises d'assurances de droit étranger	N° 118, p. 2782	3887
L 21.12.1994	modifiant certaines dispositions légales relatives au transfert des créances et au gage	N° 124, p. 3066	2564
Rgd 23.12.1994	modifiant le règlement Grand-Ducal du 9.1.1961 relatif aux 3 recueils du Mémorial	N° 116, p. 2735	
L 11.8.1996	sur la mise en état en matière de procédure civile contentieuse et portant introduction et modification de certaines dispositions du code de procédure civile ainsi que d'autres dispositions légales	N° 53, p. 1660	3771
L 12.3.1998	portant transposition de la Directive 92/101/CEE du Conseil du 23 novembre 1992 modifiant la Directive 77/91/CEE concernant la constitution de la <i>société anonyme</i> ainsi que le maintien et les modifications de son capital, et portant modification de la loi modifiée du 10 août 1915 concernant les sociétés commerciales	N° 24, p. 356	4156
L 10.12.1998	relative - à la conversion par les sociétés commerciales de leur capital en euros et modifiant la loi du 10 août 1915 concernant les sociétés commerciales telle que modifiée - aux différences résultant de l'application des règles d'arrondi	N° 105, p. 2516	4456
L 31.5.1999	régissant la domiciliation des sociétés et	N° 77, p. 1681	4328

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	<ul style="list-style-type: none"> - modifiant et complétant certaines dispositions de la loi modifiée du 10 août 1915 concernant les sociétés commerciales; - modifiant et complétant certaines dispositions de la loi modifiée du 23 décembre 1909 portant création d'un registre de commerce et des sociétés ; - 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; - complétant la loi du 12 juillet 1977 relative aux sociétés de participations financières (holding companies); - modifiant et complétant certaines dispositions de la loi modifiée du 5 avril 1993 relative au secteur financier; - complétant la loi modifiée du 6 décembre 1991 sur le secteur des assurances 		
L 10.6.1999	modifiant la loi modifiée du 10 août 1915 concernant les sociétés commerciales par l'introduction des sociétés coopératives organisées comme des sociétés anonymes	N° 69, p. 1469	4463A
Rgd 22.12.2000	portant modification des montants prévus aux articles 215, 231 et 313 de la loi modifiée du 10 août 1915 concernant les sociétés commerciales	N° 141, p. 3292	
L 1.8.2001	relative au basculement en euro le 1er janvier 2002 et modifiant certaines dispositions législatives	N° 117, p. 2440	4722/10
L 19.12.2002	concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales.	N° 149, p. 3630	4581
L 10.7.2005	relative aux prospectus pour valeurs mobilières.	N° 98, p. 1726	5444
L 25.8.2006	concernant la <i>société européenne</i> (SE), la <i>société anonyme</i> à directoire et conseil de	N° 152, p. 2684	5352

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	surveillance et la <i>société anonyme</i> unipersonnelle		
L 21.12.2006	portant modification de la loi modifiée du 10 août 1915 concernant les sociétés commerciales	N° 228, p. 4070	5562
L 23.3.2007	modifiant 1. la loi modifiée du 10 août 1915 concernant les sociétés commerciales, 2. la loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales, et 3. la loi du 25 août 2006 concernant la <i>société européenne</i> (SE), la <i>société anonyme</i> à directoire et conseil de surveillance et la <i>société anonyme</i> Unipersonnelle	N° 46, p. 816	4992
L 23.3.2007	portant modification des articles 271, 273bis, et 276 de la loi modifiée du 10 août 1915 concernant les sociétés commerciales	N° 46, p. 826	5658
L. 20.4.2009	sur le dépôt par voie électronique auprès du registre de commerce et des sociétés modifiant - le titre I de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises, - et la loi modifiée du 10 août 1915 concernant les sociétés commerciales	N° 80, p. 945	5716
L. 10.6.2009	relative aux fusions transfrontalières de sociétés de capitaux, à la simplification des modalités de constitution des sociétés anonymes et de maintien et de modification de leur capital, portant transposition – de la directive 2005/56/CE du Parlement européen et du Conseil du 26 octobre 2005 sur les fusions transfrontalières des sociétés de capitaux; – de la directive 2006/68/CE du Parlement européen et du Conseil du 6 septembre 2006	N° 151, p. 2268	5829

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	<p>modifiant la directive 77/91/CEE du Conseil en ce qui concerne la constitution de la <i>société anonyme</i> ainsi que le maintien et les modifications de son capital;</p> <ul style="list-style-type: none"> – de la directive 2007/63/CE du Parlement européen et du Conseil du 13 novembre 2007 modifiant les directives 78/855/CEE et 82/891/CEE du Conseil pour ce qui est de l'exigence d'un rapport d'expert indépendant à réaliser à l'occasion des fusions ou des scissions des sociétés anonymes, ainsi que modification – de la loi modifiée du 10 août 1915 concernant les sociétés commerciales, et – du Code du travail. 		
L. 18.12.2009	<p>relative à la profession de l'audit et:</p> <ul style="list-style-type: none"> – portant transposition de la directive 2006/43/CE du Parlement européen et du Conseil du 17 mai 2006 concernant les contrôles légaux des comptes annuels et des comptes consolidés et modifiant les directives 78/660/CEE et 83/349/CEE du Conseil, et abrogeant la directive 84/253/CEE du Conseil, – portant organisation de la profession de l'audit, – modifiant certaines autres dispositions légales, et – portant abrogation de la loi modifiée du 28 juin 1984 portant organisation de la profession de réviseur d'entreprises 	N° 22, p. 295	5872
L. 10.12.2010	<p>relative à l'introduction des normes comptables internationales pour les entreprises modifiant</p> <ol style="list-style-type: none"> 1. la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises; 2. la loi modifiée du 10 août 1915 concernant 	N°225, p. 3633	5976

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	les sociétés commerciales; 3. l'article 13 du Code de commerce		
L 3.8.2011	portant modification de la loi modifiée du 10 août 1915 concernant les sociétés commerciales et portant transposition de la directive 2009/109/CE du Parlement européen et du Conseil du 16 septembre 2009 modifiant les directives 77/91/CEE, 78/855/CEE et 82/891/CEE du Conseil ainsi que la directive 2005/56/CE en ce qui concerne les obligations en matière de rapports et de documentation en cas de fusions ou de scissions	N°175, p. 2970	6227
L 6.4.2013	Loi du 6 avril 2013 relative aux titres dématérialisés et portant modification de: <ul style="list-style-type: none"> - la loi modifiée du 5 avril 1993 relative au secteur financier; - la loi modifiée du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier; - la loi modifiée du 10 août 1915 concernant les sociétés commerciales; - la loi modifiée du 3 septembre 1996 concernant la dépossession involontaire de titres au porteur; - la loi modifiée du 1er août 2001 concernant la circulation des titres et d'autres instruments fongibles; - la loi modifiée du 20 décembre 2002 concernant les organismes de placement collectif; - la loi du 17 décembre 2010 concernant les organismes de placement collectif; - la loi modifiée du 13 février 2007 relative aux fonds d'investissement spécialisés; - la loi modifiée du 22 mars 2004 relative à la titrisation 	N°71, p. 889	6327
L 12.7.2013	relative aux gestionnaires de fonds d'investissement alternatifs <ul style="list-style-type: none"> - portant transposition de la directive 	N°119, p. 1855	6471

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	<p>2011/61/UE du Parlement européen et du Conseil du 8 juin 2011 sur les gestionnaires de fonds d'investissement alternatifs et modifiant les directives 2003/41/CE et 2009/65/CE ainsi que les règlements (CE) n° 1060/2009 et (UE) n° 1095/2010 ;</p> <ul style="list-style-type: none"> - portant modification : - de la loi du 17 décembre 2010 concernant les organismes de placement collectif; - de la loi du 13 février 2007 relative aux fonds d'investissement spécialisés; - de la loi du 15 juin 2004 relative à la société d'investissement en capital à risque (SICAR); - de la loi du 13 juillet 2005 relative aux institutions de retraite professionnelle sous forme de société d'épargne-pension à capital variable (sepcav) et d'association d'épargne-pension (assep); - de la loi du 13 juillet 2005 concernant les activités et la surveillance des institutions de retraite professionnelle; - de la loi du 5 avril relative au secteur financier; - de la loi du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme; - de la loi du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier; - de la loi du 10 août 1915 concernant les sociétés commerciales; - de la loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises; - du Code de commerce; - de la loi du 4 décembre 1967 concernant l'impôt sur le revenu; - de la loi du 1er décembre 1936 concernant l'impôt commercial; 		

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	<ul style="list-style-type: none"> - de la loi d'adaptation fiscale du 16 octobre 1934; - de la loi du 16 octobre 1934 sur l'évaluation des biens et valeurs; - de la loi du 12 février 1979 concernant la taxe sur la valeur ajoutée 		
L 30.7.2013	<p>portant réforme de la Commission des normes comptables et modification de diverses dispositions relatives à la comptabilité et aux comptes annuels des entreprises ainsi qu'aux comptes consolidés de certaines formes de sociétés et modifiant:</p> <p>(1) le titre II du livre 1er du code de commerce (2) le titre II de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises</p> <p>(3) la section XVI de la loi modifiée du 10 août 1915 concernant les sociétés commerciales</p>	N°177, p.3383	6376
L 10.3.2014	modifiant la loi modifiée du 10 août 1915 concernant les sociétés commerciales en vue de mettre en œuvre le règlement (CE) no 1435/2003 du Conseil du 22 juillet 2003 relatif au statut de la société coopérative européenne (SEC).	N°39, p.481	5974
L.28.7.2014	relative à l'immobilisation des actions et parts au porteur et à la tenue du registre des actions nominatives et du registre des actions au porteur et portant modification 1) de la loi modifiée du 10 août 1915 concernant les sociétés commerciales et 2) de la loi modifiée du 5 août 2005 sur les contrats de garantie financière	N°161, p. 2483	6625
L 18.12.2015	modifiant, en vue de la transposition de la directive 2013/34/UE du Parlement européen et du Conseil du 26 juin 2013 relative aux états financiers annuels, aux états financiers	N°258, p.6227	6718

Law or Grand-Ducal Regulation	Heading	<i>Mémorial A</i>	Parliamentary Documents
	<p>consolidés et aux rapports y afférents de certaines formes d'entreprises : 1) la loi modifiée du 10 août 1915 concernant les sociétés commerciales</p> <p>2) le titre II de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises ;</p> <p>3) le titre II du livre Ier du Code de commerce</p>		
L 27.05.2016	Loi du 27 mai 2016 portant réforme du régime de publication légale relatif aux sociétés et associations	N°94, p. 1729	6624

Annex VI

List of articles of the Law of 1915 which have been amended by subsequent legislation

Article	modified by
1	
2	L 18/9/1933; L 31/5/1999; L 25/8/2006; L 21/12/2006; L 12/7/2013
3	L 18/9/1933; L 7/9/1987; L 25/8/2006; L 23/3/2007
4	L 18/9/1933; L 23/11/1972; L 12/7/2013
5	L 12/4/2013
6	L 12/4/2013
7	
8	L 18/9/1933; L 23/11/1972; L 20/4/2009; L 27/5/2016
9	L 18/9/1933; L 23/11/1972; L 8/8/1985; L 2/12/1993; Rgd. 23/12/1994; L 19/12/2002; L 20/4/2009; abrogated by L 27/5/2016
10	L 23/11/1972; L 24/4/1983; Rgd. 23/12/1994; L 1/8/2001; L 19/12/2002; L 27/5/2016
11	L 18/9/1933; L 23/11/1972
11 bis	L 23/11/1972; Rgd. 23/12/1994; L 31/5/1999; L 25/8/2006; L 12/7/2013; L 28/7/2014; L 27/5/2016
12	L 23/11/1972; L 25/8/2006
12 bis	L 23/11/1972
12 ter	L 23/11/1972; L 24/4/1983
12 quater	L 23/11/1972; L 12/7/2013; L 27/5/2016
12 quinquies	L 23/11/1972
12 sexies	L 23/11/1972
13	L 12/4/2013
14	
15	
16	L 12/7/2013
17	L 12/7/2013; L 27/5/2016
18	L 12/7/2013
19	L 12/7/2013
20	L 12/7/2013
21	L 12/7/2013
22	L 11/8/1996; L 12/7/2013
22-1	L 12/7/2013
22-2	L 12/7/2013

22-3	L 12/7/2013; L 27/5/2016
22-4	L 12/7/2013
22-5	L 12/7/2013
22-6	L 12/7/2013
22-7	L 12/7/2013
22-8	L 12/7/2013
22-9	L 12/7/2013
23	L 25/8/2006
24	
25	L 25/8/2006
26	L 24/4/1983; L 1/8/2001; L 25/8/2006; L 10/6/2009
26bis	L 25/8/2006
26ter	L 25/8/2006
26quater	L 25/8/2006
26quinquies	L 25/8/2006; L 27/5/2016
26sexies	L 25/8/2006; L 18/12/2009
26septies	L 25/8/2006
26octies	L 25/8/2006; L 27/5/2016
26nonies	L 25/8/2006
26-1	L 24/4/1983; L 28/6/1984; L 10/6/2009; L 18/12/2009; L 27/5/2016
26-2	L 24/4/1983; L 8/3/1989; L 25/8/2006; L 18/12/2009
26-3	L 24/4/1983
26-4	L 24/4/1983
26-5	L 24/4/1983
27	L 24/4/1983; L 25/8/2006; L 18/12/2009; L 6/4/2013
28	L 23/11/1972; L 24/4/1983
29	L 24/4/1983; L 10/7/2005
30	L 24/4/1983; L 27/5/2016
31	L 24/4/1983
31-1	L 24/4/1983
31-2	L 25/8/2006, L 18/12/2009; L 27/5/2016
31-3	L 25/8/2006; L 23/3/2007; L 18/12/2009
32	L 23/11/1972; L 24/4/1983; L 25/8/2006
32-1	L 24/4/1983; L 8/3/1989; L 25/8/2006; L 23/3/2007; L 18/12/2009; L 27/5/2016
32-2	L 24/4/1983
32-3	L 24/4/1983; L 25/8/2006; L 23/3/2007; L 27/5/2016
32-4	L 24/4/1983
33	L 23/11/1972; abrogated by L 10/7/2005
34	L 23/11/1972; abrogated by L 10/7/2005
35	Abrogated by L 10/7/2005
36	L 18/9/1933; abrogated by L 10/7/2005

37	L 8/8/1985; L 1/8/2001; L 21/12/2006; L 6/4/2013
38	
39	L 6/4/2013
40	L 6/4/2013
41	L 20/6/1930; L 23/11/1972; L 25/8/2006; L 6/4/2013; L 27/5/2016
42	L 28/7/2014
42bis	L 6/4/2013
43	L 7/9/1987; L 6/4/2013
44	L 24/4/1983; L 8/8/1985; L 7/9/1987
45	L 16/5/1975; L 24/4/1983; L 8/8/1985; L 7/9/1987; L 25/8/2006; L 27/5/2016
46	L 24/4/1983; L 8/8/1985
47	L 24/4/1983; L 8/8/1985
48	L 24/4/1983; L 23/3/2007
49	
49-1	L 24/4/1983; L 25/8/2006
49-2	L 24/4/1983; L 25/8/2006; L 10/6/2009
49-3	L 24/4/1983
49-4	L 24/4/1983
49-5	L 24/4/1983
49-6	L 24/4/1983; L 10/6/2009; L 27/5/2016
49-6bis	L 10/6/2009
49-7	L 24/4/1983
49-8	L 24/4/1983; L 23/3/2007; L 27/5/2016
49bis	L 12/3/1998; L 25/8/2006
50	
51	L 8/3/1989; L 25/8/2006
51bis	L 25/8/2006
52	
53	L 23/11/1972; L 25/8/2006; L 27/5/2016
54	Abrogated by L 8/3/1989
55	Abrogated by L 8/3/1989
56	Abrogated by L 8/3/1989
57	L 25/8/2006; L 23/3/2007
58	
59	
60	L 23/11/1972; L 25/8/2006; L 27/5/2016
60bis	L 23/11/1972
60bis-1	L 25/8/2006
60bis-2	L 25/8/2006
60bis-3	L 25/8/2006
60bis-4	L 25/8/2006

60bis-5	L 25/8/2006
60bis-6	L 25/8/2006
60bis-7	L 25/8/2006; L 27/5/2016
60bis-8	L 25/8/2006; L 27/5/2016
60bis-9	L 25/8/2006
60bis-10	L 25/8/2006
60bis-11	L 25/8/2006
60bis-12	L 25/8/2006
60bis-13	L 25/8/2006
60bis-14	L 25/8/2006
60bis-15	L 25/8/2006
60bis-16	L 25/8/2006
60bis-17	L 25/8/2006
60bis-18	L 25/8/2006
60bis-19	L 25/8/2006
61	L 25/8/2006
62	L 11/8/1996; L 25/8/2006
63	L 25/8/2006
64	L 25/8/2006
64bis	L 25/8/2006
65	
66	L 8/3/1989; L 25/8/2006
67	L 13/4/1922; L 22/7/1927; L 24/4/1983; L 7/9/1987; L 25/8/2006; L 23/3/2007
67-1	L 7/9/1987 ; L 25/8/2006; L 27/5/2016
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69	L 24/4/1983; L 7/9/1987; L 27/5/2016
69-1	L 24/4/1983; L 27/5/2016
69-2	L 24/4/1983; L 23/3/2007
70	L 25/8/2006; L 27/5/2016
71	L 20/6/1930; L 24/4/1983; L 7/9/1987; L 6/4/2013
72	L 25/8/2006; L 23/3/2007
72-1	L 24/4/1983
72-2	L 24/4/1983; L 8/3/1989; L 25/8/2006; L 23/3/2007; L 18/12/2009
72-3	L 24/4/1983
72-4	L 24/4/1983; L 30/7/2013
73	L 25/8/2006; L 18/12/2009
74	L 20/6/1930; L 7/9/1987; L 25/8/2006
75	L 19/12/2002; L 25/8/2006; L 27/5/2016
76	L 23/11/1972; Rgd. 23/12/1994; L 19/12/2002; L 25/8/2006; L 27/5/2016
77	
78	L 25/8/2006

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80	L 23/11/1972; abrogated by L 10/7/2005
81	L 23/11/1972; abrogated by L 10/7/2005
82	Abrogated L 10/7/2005
83	L 18/9/1933; abrogated by L 10/7/2005
84	L 20/6/1930; L 23/11/1972; L 10/7/2005; L 25/8/2006; L 23/3/2007; L 6/4/2013, L 28/7/2014; L 27/5/2016
85	
86	L 9/4/1987
87	L 9/4/1987; L 25/8/2006; L 18/12/2009
88	L 9/4/1987
89	L 9/4/1987
90	L 9/4/1987
91	L 9/4/1987
92	L 9/4/1987; L 25/8/2006
93	L 9/4/1987
94	L 9/4/1987
94-1	L 9/4/1987
94-2	L 9/4/1987; L 25/8/2006; L 18/12/2009
94-3	L 9/4/1987; L 25/8/2006
94-4	L 9/4/1987
94-5	L 9/4/1987
94-6	L 9/4/1987; L 23/3/2007
94-7	L 9/4/1987; L 23/3/2007
94-8	L 9/4/1987
95	L 9/4/1987
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97	
98	
99	L 7/9/1987
100	L 24/4/1983; L 7/9/1987; L 25/8/2006
101	L 24/4/1983; L 25/8/2006, L 27/5/2016
101-1	L 25/8/2006
101-2	L 25/8/2006
101-3	L 25/8/2006; L 23/3/2007; L 27/5/2016
101-4	L 25/8/2006
101-5	L 25/8/2006
101-6	L 25/8/2006; L 23/3/2007
101-7	L 25/8/2006
101-8	L 25/8/2006
101-9	L 25/8/2006; L 18/12/2009
101-10	L 25/8/2006

101-11	L 25/8/2006
101-12	L 25/8/2006
101-13	L 25/8/2006
101-14	L 25/8/2006
101-15	L 25/8/2006
101-16	L 25/8/2006; L 27/5/2016
101-17	L 25/8/2006
102	L 12/4/2013
103	L 7/9/1987; L 25/8/2006; L 23/3/2007
104	Abrogated by L 12/7/2013
105	L 23/11/1972; Rgd. 23/12/1994; L 19/12/2002; L 12/7/2013; L 27/5/2016
106	L 8/3/1989
107	L 23/11/1972; L 12/7/2013; L 27/5/2016
108	L 12/7/2013
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111	L 12/7/2013
112	L 12/7/2013
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116	L 7/9/1987; L 18/12/2009
117	L 25/8/1986; L 18/12/2009
118	L 11/8/1996; L 18/12/2009
119	
120	L 25/8/1986
121	
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124	L 25/8/1986
125	
126	
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128	L 18/9/1933
129	
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132	L 11/8/1996; L 19/12/2002
133	L 19/12/2002
134	L 11/8/1996; L 19/12/2002
135	L 19/12/2002

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137	L 18/12/2009
137-1	L 10/6/1999; L 25/8/2006; L 23/3/2007
137-2	L 10/6/1999
137-3	L 10/6/1999
137-4	L 10/6/1999; L 21/12/2006; L 6/4/2013
137-5	L 10/6/1999
137-6	L 10/6/1999
137-7	L 10/6/1999
137-8	L 10/6/1999
137-9	L 10/6/1999
137-10	L 10/6/1999
137-11	L 10/3/2014
137-12	L 10/3/2014
137-13	L 10/3/2014
137-14	L 10/3/2014
137-15	L 10/3/2014
137-16	L 10/3/2014
137-17	L 10/3/2014
137-18	L 10/3/2014
137-19	L 10/3/2014
137-20	L 10/3/2014; L 27/5/2016
137-21	L 10/3/2014
137-22	L 10/3/2014
137-23	L 10/3/2014
137-24	L 10/3/2014
137-25	L 10/3/2014
137-26	L 10/3/2014
137-27	L 10/3/2014
137-28	L 10/3/2014
137-29	L 10/3/2014
137-30	L 10/3/2014
137-31	L 10/3/2014
137-32	L 10/3/2014
137-33	L 10/3/2014
137-34	L 10/3/2014
137-35	L 10/3/2014; L 27/5/2016
137-36	L 10/3/2014
137-37	L 10/3/2014
137-38	L 10/3/2014
137-39	L 10/3/2014
137-40	L 10/3/2014

137-41	L 10/3/2014
137-42	L 10/3/2014
137-43	L 10/3/2014
137-44	L 10/3/2014
137-45	L 10/3/2014
137-46	L 10/3/2014
137-47	L 10/3/2014
137-48	L 10/3/2014; L 27/5/2016
137-49	L 10/3/2014
137-50	L 10/3/2014
137-51	L 10/3/2014
137-52	L 10/3/2014; L 27/5/2016
137-53	L 10/3/2014
137-54	L 10/3/2014
137-55	L 10/3/2014
137-56	L 10/3/2014
137-57	L 10/3/2014; L 27/5/2016
137-58	L 10/3/2014
137-59	L 10/3/2014
137-60	L 10/3/2014
137-61	L 10/3/2014
137-62	L 10/3/2014
138	
139	
140	
141	L 25/8/2006
142	L 18/9/1933; L 23/11/1972; L 8/3/1989; L 12/7/2013
143	L 25/8/2006
144	
145	
146	
147	
148	
148 bis	L 20/6/1930; L 2/4/1948; L 8/8/1985
148 ter	L 12/7/2013
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150	
151	L 31/5/1999; L 18/12/2009; L 27/5/2016
152	L 12/7/2013
153	L 25/8/2006
154	L 11/8/1996
155	

156	
157	L 23/11/1972; L 25/8/2006; L 12/7/2013
158	
159	L 31/5/1999; L 25/8/2006
160	
160-1	L 27/11/1992
160-2	L 27/11/1992; L 27/5/2016
160-3	L 27/11/1992; L 23/3/2007
160-4	L 27/11/1992; L 19/12/2002
160-5	L 27/11/1992
160-6	L 27/11/1992; L 27/5/2016
160-7	L 27/11/1992; L 19/12/2002; L 23/3/2007; L 18/12/2009
160-8	L 27/11/1992
160-9	L 27/11/1992
160-10	L 27/11/1992
160-11	L 27/11/1992
161	L 23/11/1972; L 16/5/1975; abrogated by L 10/7/2005
162	L 11/7/1988; L13/6/1994; L1/8/2001
163	L 18/9/1933; L 23/11/1972; L 24/4/1983; L 4/5/1984; L 11/7/1988;L 8/3/1989; L 27/11/1992; L 28/12/1992; L 19/12/2002 (effective 1/1/2005); L 10/7/2005; L 25/8/2006; L 23/3/2007; L 18/12/2015; L 27/5/2016
164	
165	L 11/7/1988; L 13/6/1994; L 1/8/2001
166	L 23/11/1972; L 24/4/1983; L 4/5/1984; L 11/7/1988; L 2/12/1993; L 13/6/1994; L 1/8/2001; L 10/7/2005; L 25/8/2006
167	L 24/4/1983; L 11/7/1988
168	L 24/4/1983; L 12/3/1998
169	L 11/7/1988; L 13/6/1994; L 1/8/2001
170	
171	
171-1	L 21/7/1992; L 13/6/1994; L 1/8/2001
171-2	L 28/7/2014
172	
173	L 25/8/2006
173bis	L 25/8/2006
174	L 13/6/1994
175	L 10/7/2005
176	
177	
178	
179	L 18/9/1933; L 28/12/1992

180	L 18/9/1933
180-1	L 7/9/1987
181	L 18/9/1933; L 18/4/1984; L 28/12/1992
182	L 18/9/1933; L 28/4/1988; L 10/12/1998; L 1/8/2001; L 21/12/2006
183	L 18/9/1933; L 24/4/1983; L 28/12/1992
184	L 18/9/1933; L 23/11/1972; L 28/4/1988; L 18/12/2009
185	L 18/9/1933
186	L 18/9/1933; L 28/12/1992
187	L 18/9/1933; L 23/11/1972; L 28/4/1988; L 19/12/2002
188	L 18/9/1933
189	L 18/9/1933
190	L 18/9/1933; L 28/12/1992; L 21/12/1994; L 27/5/2016
191	L 18/9/1933; L 23/11/1972; L 27/5/2016
191bis	L 23/11/1972
192	L 18/9/1933
193	L 18/9/1933
194	L 18/9/1933
195	L 18/9/1933
196	L 18/9/1933
197	L 18/9/1933
198	L 18/9/1933
199	L 18/9/1933
200	L 18/9/1933
200-1	L 28/12/1992
200-2	L 28/12/1992
201	L 18/9/1933
202	L 18/9/1933
203	L 19/5/1978; 31/5/1999; L 27/5/2016
203-1	L 31/5/1999; L 27/5/2016
204	L 4/5/1988; L 2/12/1993; L 19/12/2002 (abrogated effective 1/1/2005); L 25/8/2006
205	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
206	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
207	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
208	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
209	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
210	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
211	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
212	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
213	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
214	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
215	L 4/5/1984; Rgd 22/12/2000; L 19/12/2002 (abrogated effective 1/1/2005)



216	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
217	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
218	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
219	L 4/5/1984; L 29/7/1993; L 19/12/2002 (abrogated effective 1/1/2005)
220	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
221	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
222	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
223	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
224	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
225	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
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229	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
230	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
231	L 4/5/1984; Rgd 22/12/2000; L 19/12/2002 (abrogated effective 1/1/2005)
232	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
233	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
234	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
235	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
236	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
237	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
238	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
239	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
240	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
241	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
241-1	L 11/7/1984; L 19/12/2002 (abrogated effective 1/1/2005)
242	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
243	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
244	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
245	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
246	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
247	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
248	L 4/5/1984; L 11/7/1988; L 29/7/1993; L 2/12/1993; L 19/12/2002 (abrogated effective 1/1/2005); L 25/8/2006
249	L 4/5/1984; L 29/7/1993; L 19/12/2002 (abrogated effective 1/1/2005)
250	L 4/5/1984; L 11/7/1988; L 19/12/2002 (abrogated effective 1/1/2005)
251	L 4/5/1984; L 27/11/1992; L 29/7/1993 ; L 19/12/2002 (abrogated effective 1/1/2005)
252	L 4/5/1984; L 29/7/1993; L 2/12/1993; L 19/12/2002 (abrogated effective 1/1/2005)
253	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)

254	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
255	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
255-1	L 29/7/1993; L 19/12/2002 (abrogated effective 1/1/2005)
256	L 4/5/1984; L 8/3/1989; L 11/8/1996; L 19/12/2002 (abrogated effective 1/1/2005)
256-1	L 4/5/1988; L 19/12/2002 (abrogated effective 1/1/2005)
256-2	L 11/7/1988; L 19/12/2002 (abrogated effective 1/1/2005)
256-3	L 2/12/1993; L 19/12/2002 (abrogated effective 1/1/2005)
256 bis	L 4/5/1984; L 19/12/2002 (abrogated effective 1/1/2005)
256 ter	L 4/5/1984; L 11/7/1988; L 19/12/2002 (abrogated effective 1/1/2005)
257	L 7/9/1987; L 23/3/2007; L 10/6/2009
258	L 7/9/1987
259	L 7/9/1987; L 25/8/2006; L 23/3/2007; L 10/6/2009
260	L 7/9/1987; L 25/8/2006; L 23/3/2007
261	L 7/9/1987; L 25/8/2006; L 10/6/2009
262	L 7/9/1987; L 25/8/2006; L 10/6/2009; L 27/5/2016
263	L 7/9/1987; L 25/8/2006; L 23/3/2007; L 10/6/2009
264	L 7/9/1987; L 23/3/2007; L 10/6/2009; L 3/8/2011
265	L 7/9/1987; L 23/3/2007; L 10/6/2009; L 3/8/2011
266	L 7/9/1987; L 25/8/2006; L 23/3/2007; L 10/6/2009; L 18/12/2009; L 3/8/2011
267	L 7/9/1987; L 23/3/2007; L 10/6/2009; L 3/8/2011
267bis	L 23/3/2007
268	L 7/9/1987; L 23/3/2007; L 3/8/2011
269	L 7/9/1987
270	L 7/9/1987; L 23/3/2007; L 10/6/2009
271	L 7/9/1987; L 25/8/2006; L 23/3/2007; L 10/6/2009
272	L 7/9/1987
273	L 7/9/1987; L 10/06/2009; L 27/5/2016
273bis	L 25/8/2006; ; L 23/3/2007; L 10/06/2009
273ter	L 10/6/2009
274	L 7/9/1987; L 25/8/2006; L 23/3/2007; L 10/6/2009
275	L 7/9/1987; L 25/8/2006; L 10/6/2009
276	L 7/9/1987; L 25/8/2006; L 23/3/2007; L 10/6/2009; L 27/5/2016
277	L 7/9/1987; L 10/6/2009; L 3/8/2011
278	L 7/9/1987; L 25/8/2006; L 10/6/2009
279	L 7/9/1987; L 23/3/2007; L 10/6/2009; L 3/8/2011
280	L 7/9/1987; L 23/3/2007
281	L 7/9/1987; L 23/3/2007; L 10/6/2009; L 3/8/2011
282	L 7/9/1987; L 23/3/2007
283	L 7/9/1987; L 23/3/2007
284	L 7/9/1987; L 23/3/2007

285	L 7/9/1987; L 23/3/2007
286	L 7/9/1987
287	L 7/9/1987; L 23/3/2007; L 10/6/2009
288	L 7/9/1987; L 23/3/2007; L 10/6/2009
289	L 7/9/1987; L 23/3/2007
290	L 7/9/1987; L 27/5/2016
291	L 7/9/1987; L 23/3/2007
292	L 7/9/1987; L 23/3/2007; L 3/8/2011
293	L 7/9/1987; L 23/3/2007; L 27/5/2016
294	L 7/9/1987; L 23/3/2007; L 18/12/2009; L 3/8/2011
295	L 7/9/1987; L 23/3/2007; L 10/6/2009; L 3/8/2011
296	L 7/9/1987; L 23/3/2007; L 10/6/2009
296bis	L 23/3/2007
297	L 7/9/1987; L 23/3/2007; L 3/8/2011
298	L 7/9/1987
299	L 7/9/1987; L 23/3/2007
300	L 7/9/1987; L 23/3/2007
301	L 7/9/1987
302	L 7/9/1987; L 27/5/2016
303	L 7/9/1987; L 23/3/2007
304	L 7/9/1987; L 25/8/2006
305	L 7/9/1987; L 23/3/2007; L 27/5/2016
306	L 7/9/1987; L 23/3/2007; L 3/8/2011
307	L 7/9/1987; L 23/3/2007; L 3/8/2011
308	L 7/9/1987; L 23/3/2007
308bis-1	L 23/3/2007
308bis-2	L 23/3/2007
308bis-3	L 23/3/2007
308bis-4	L 23/3/2007
308bis-5	L 23/3/2007
308bis-6	L 23/3/2007
308bis-7	L 23/3/2007
308bis-8	L 23/3/2007
308bis-9	L 23/3/2007; L 27/5/2016
308bis-10	L 23/3/2007
308bis-11	L 23/3/2007
308bis-12	L 23/3/2007; L 27/5/2016
308bis-13	L 23/3/2007
308bis-14	L 23/3/2007; L 27/5/2016
309	L 11/7/1988; L 2/12/1993; L 25/8/2006; L 10/12/2010; L 30/4/2013; L 18/12/2015
310	L 11/7/1988

309	L 11/7/1988; L 25/8/2006
310	L 11/7/1988
311	L 11/7/1988; L 10/12/2010
312	L 11/7/1988; L 10/12/2010; abrogated by L 18/12/2015
313	L 11/7/1988; Rgd 22/12/2000; L 10/12/2010; L 18/12/2015
314	L 11/7/1988; L 10/12/2010; L 27/5/2016
315	L 11/7/1988
316	L 11/7/1988; L 10/12/2010; L 30/7/2013
317	L 11/7/1988; L 10/12/2010; L 30/7/2013; L 18/12/2015
318	L 11/7/1988; abrogated by L 10/12/2010; reintroduced by L 18/12/2015
319	L 11/7/1988; L 10/12/2010; L 18/12/2015
320	L 11/7/1988; L 10/12/2010; L 30/7/2013; L 18/12/2015
321	L 11/7/1988
322	L 11/7/1988; L 10/12/2010; L 30/7/2013
323	L 11/7/1988; L 18/12/2015
324	L 11/7/1988
325	L 11/7/1988
326	L 11/7/1988
327	L 11/7/1988
328	L 11/7/1988
329	L 11/7/1988; L 18/12/2015
330	L 11/7/1988; L 18/12/2015
331	L 11/7/1988
332	L 11/7/1988; L 10/12/2010; L 30/7/2013; L 18/12/2015
333	L 11/7/1988; L 10/12/2010; L 18/12/2015
334	L 11/7/1988
335	L 11/7/1988
336	L 11/7/1988; L 10/12/2010; L 30/7/2013; L 18/12/2015
337	L 11/7/1988; L 18/12/2009; L 10/12/2010; L 30/7/2013; L 18/12/2015
338	L 11/7/1988; L 18/12/2015; L 27/5/2016
339	L 11/7/1988; L 10/12/2010; L 30/4/2013; L 18/12/2015
339bis	L 10/12/2010; L 30/7/2013
340	L 11/7/1988; L 18/12/2009; L 10/12/2010; L 18/12/2015
340bis	L 18/12/2015
340ter	L 18/12/2015
340quater	L 18/12/2015
340quinquies	L 18/12/2015
340sexies	L 18/12/2015; L 27/5/2016
340septies	L 18/12/2015
340octies	L 18/12/2015
341	L 11/7/1988; L 19/12/2002; L 18/12/2009; L 10/12/2010; L 30/4/2013; L 27/5/2016

341bis	L 10/12/2010
341-1	L 29/7/1993
342	L 11/7/1988 ; L 30/4/2013; L 18/12/2015
343	L 11/7/1988; L 8/12/1994; abrogated by L 10/12/2010
344	L 11/7/1988; L 10/12/2010; L 30/4/2013
344-1	L 11/7/1988; abrogated by L 10/12/2010



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