

Übersetzung durch Ute Reusch.

Translation provided by Ute Reusch.

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## **Act on Limited Liability Companies**

### **(Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG)**

Limited Liability Companies Act, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 9 of the Act of 22 February 2023 (Federal Law Gazette 2023 I No. 51)

#### **Division 1**

##### **Formation of company**

##### **Section 1**

###### **Purpose; number of founders**

Limited liability companies may be formed by one person or several persons in accordance with the provisions of this Act for any purpose permitted by law.

##### **Section 2**

###### **Form of articles of association**

(1) Articles of association require notarial form. They must be signed by all the shareholders.  
(1a) A company may be formed under a simplified procedure if it has no more than three shareholders and one director. The Model Protocol provided in Annex 1 must be used to form a limited liability company under the simplified procedure. No further provisions which derogate from the law may be laid down. The Model Protocol also serves as the list of shareholders. In all other respects, the provisions of this Act concerning the articles of association apply accordingly to the Model Protocol.

(2) The articles of association may be signed by authorised representatives only on the basis of a power of attorney established or authenticated by a notary. Notarial recording of the power of attorney may also be effected via video link in accordance with sections 16a to 16e of the Notarial Recording Act (*Beurkundungsgesetz*).

(3) Notarial recording of the articles of association may also be effected via video link in accordance with sections 16a to 16e of the Notarial Recording Act, unless precluded by other formal requirements; obligations relating to the transfer of shares to the company may be included in the articles of associations. If the notarial recording is effected via video link, then, in derogation from subsection (1) sentence 2, the qualified electronic signatures of the directors participating in the notarial recording via video link are sufficient to effect signature. Other declarations of intent which do not require notarial recording may be effected via video link in accordance with sections 16a to 16e of the Notarial Recording Act; they must be included in the electronic record made as required by sentence 1. Sentence 3 applies accordingly to resolutions passed by unanimous vote. A company may also be formed via video link under the simplified procedure as referred to in subsection (1a) or using the Model

Protocols provided in Annex 2. Subsection (1a) sentences 3 to 5 applies accordingly when using the Model Protocols provided in Annex 2.

### **Section 3**

#### **Content of articles of association**

(1) The articles of association must stipulate the following:

1. the company's business name and the place of its registered office,
2. the purpose of the enterprise,
3. the amount of the share capital,
4. the number and nominal values of the shares to which each shareholder subscribes against payment of the capital contribution into the share capital ('original capital share').

(2) If the enterprise is to be formed for a specific term or if other obligations vis-à-vis the company are to be imposed on the shareholders in addition to payment of a capital contribution, these provisions must also be included in the articles of association.

### **Section 4**

#### **Business name**

The business name must include the designation '*Gesellschaft mit beschränkter Haftung*' (Limited Liability Company) or a readily comprehensible abbreviation of this designation even if it is continued in accordance with section 22 of the Commercial Code (*Handelsgesetzbuch*) or other statutory provisions. If the company exclusively and directly pursues tax-privileged purposes under sections 51 to 68 of the Fiscal Code (*Abgabenordnung*), the abbreviation '*gGmbH*' may be used.

### **Section 4a**

#### **Registered office**

The place of the company's registered office is that place in Germany as specified in the articles of association.

### **Section 5**

#### **Share capital; share**

- (1) The company's share capital must amount to no less than 25,000 euros.
- (2) The nominal value of each share must be a full euro amount. A shareholder may subscribe to several shares upon formation of the company.
- (3) The amount of the nominal values of the individual shares may be variously determined. The sum total of the nominal values of all the shares must equal the amount of the share capital.
- (4) If contributions in kind are to be made, the object of the contribution in kind and the nominal value of the share to which the contribution in kind refers must be specified in the articles of association. The shareholders are required to set forth in a report on company formation on the basis of contributions in kind the material circumstances which establish the appropriateness of the payments for contributions in kind and, where an enterprise is transferred to the company, to state the annual results of the two previous financial years.

### **Section 5a**

#### **Entrepreneurial company**

(1) The business name of a company formed with a share capital which falls short of the minimum share capital as referred to in section 5 (1) must, in derogation from section 4, bear the designation '*Unternehmergeellschaft (haftungsbeschränkt)*' (Entrepreneurial Company (Limited Liability)), or '*UG (haftungsbeschränkt)*' for short.

(2) In derogation from section 7 (2), the application to register the company may not be filed until the full amount of the share capital has been deposited. Contributions in kind are not possible.

(3) The balance sheet in the annual financial statements to be prepared in accordance with sections 242 and 264 of the Commercial Code must include statutory reserves comprising one quarter of the annual surplus minus any losses carried forward from the previous year. The reserves may be used only

1. for the purposes set out in section 57c;
2. to compensate for an annual deficit, insofar as it is not covered by profits carried forward from the previous year;
3. to compensate for losses carried forward from the previous year, insofar as they are not covered by an annual surplus.

(4) In derogation from section 49 (3), a meeting of shareholders must be convened without delay where there is a threat of illiquidity.

(5) If the company increases its share capital so that it then equals or exceeds the amount of the minimum share capital as referred to in section 5 (1), then subsections (1) to (4) no longer apply; the business name as referred to in subsection (1) may be retained.

## **Section 6**

### **Directors**

(1) The company must have one or more directors.

(2) Only a natural person of full legal capacity may be a director. Anyone who

1. as a person under custodianship is fully or partially subject to a reservation of consent (section 1825 of the Civil Code (*Bürgerliches Gesetzbuch*)) in the management of their assets,
2. on the basis of a court judgment or an enforceable decision issued by an administrative authority is not permitted to exercise a profession, a branch of a profession, a trade or a branch of a trade, insofar as the purpose of the enterprise fully or partially corresponds to the subject of the prohibition,
3. has been convicted for one or more wilfully committed criminal offences
  - a) of failing to file a request to open insolvency proceedings ('delay in filing for insolvency'),
  - b) referred to in sections 283 to 283d of the Criminal Code (*Strafgesetzbuch*) ('offences in the state of insolvency'),
  - c) for making false statements in accordance with section 82 of this Act or section 399 of the Stock Corporation Act (*Aktiengesetz*),
  - d) for false presentation as referred to in section 400 of the Stock Corporation Act, section 331 of the Commercial Code, section 346 of the Transformation Act (*Umwandlungsgesetz*) or section 17 of the Disclosure Act (*Publizitätsgesetz*), or
  - e) to a term of imprisonment of no less than one year in accordance with sections 263 to 264a or sections 265b to 266a of the Criminal Code

may not be appointed as director; this debarment applies for a period of five years after the judgment becomes final, which period excludes the period in which the offender was detained in an institution upon an official order.

Sentence 2 no. 2 applies accordingly where the person is subject to a comparable ban in another Member State of the European Union or another Contracting Party of the Agreement

on the European Economic Area. Sentence 2 no. 3 applies accordingly in the event of a conviction abroad for an offence comparable to those referred to in sentence 2 no. 3.

(3) Shareholders or other persons may be appointed as directors. The appointment is made either in the articles of association or in accordance with the provisions of Division 3.

(4) If the articles of association provide that all the shareholders are to be entitled to form the management, only those persons are deemed to be appointed as directors who are part of the company when this provision is laid down.

(5) Shareholders who intentionally or gross negligently leave a person who may not act as director to manage the company's business are held jointly and severally liable to the company for that damage which arises on account of the fact that this person violates the obligations which he or she is under vis-à-vis the company.

### **Section 7**

#### **Registration of company**

(1) An application to enter the company in the Commercial Register must be filed with that court in whose district the company has its registered office.

(2) The application for registration may be made only after one quarter of the nominal value of each share has been deposited, unless contributions in kind have been agreed. In total, at least as much of the share capital must have been deposited so that the total amount of the contributions in cash paid in, plus the total nominal capital of the shares for which contributions in kind are to be paid, equals half of the minimum share capital as per section 5 (1).

(3) The contributions in kind are to be effected to the company, before the application for entry in the Commercial Register is filed, in such a manner that they are finally at the free disposal of the directors.

### **Section 8**

#### **Content of application for registration**

(1) The following must be enclosed with the application for registration:

1. the articles of association and, in the case referred to in section 2 (2), the powers of attorney of those representatives who have signed the articles of association, or a certified copy of these documents,

2. the directors' legitimization, unless their appointment has been laid down in the articles of association,

3. a list of shareholders which meets the requirements of section 40 and which has been signed by those applying for registration or bears the qualified electronic signatures of those applying for registration,

4. in the case referred to in section 5 (4), the agreements on which the determinations are based or which were concluded in respect of their execution, and the report on company formation on the basis of contributions in kind,

5. if contributions in kind have been agreed, the documents certifying that the value of the contributions in kind equals the nominal value of the shares subscribed to thereby.

6. (repealed)

(2) The application for registration must include the assurance that the payments against the shares referred to in section 7 (2) and (3) have been effected and that the object of the payments is finally at the free disposal of the directors. Where there are considerable doubts as to the veracity of the assurance, the court may require submission of proof such as, in particular, the production of deposit slips issued by a financial institution or payment service provider established in the European Union.

(3) The directors must give their assurance in the application for registration that there are no circumstances which preclude their appointment in accordance with section 6 (2) sentence 2 nos. 2 and 3 and sentences 3 and 4 and that they have been instructed about their unlimited duty to disclose information to the court. The instruction as referred to in section 53 (2) of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*) may be given in writing; it may also be given by a notary or a notary appointed abroad, by a representative of a comparable legal advisory profession or a consular official.

(4) The application for registration must also indicate the following:

1. a domestic business address,
2. the nature and extent of the directors' powers of representation.

(5) Section 12 (2) of the Commercial Code applies accordingly to the submission of documents in accordance with this Act.

## **Section 9**

### **Over-valuation of contributions in kind**

(1) If, at the point in time at which the application for entry of the company in the Commercial Register is filed, the value of a contribution in kind does not equal the nominal value of the share subscribed to thereby, the shareholder is to pay a contribution in cash in the amount of the shortfall. Other claims remain unaffected.

(2) The company's claim under subsection (1) sentence 1 becomes statute-barred 10 years after the company is entered in the Commercial Register.

## **Section 9a**

### **Claims for compensation on part of company**

(1) Where false statements are made for the purpose of forming the company, the shareholders and directors of the company, as joint and several debtors, are to make the payments which have not been made, to compensate for remuneration which has not been included in the expenses for formation, and to pay compensation for any other damage arising.

(2) Where the company suffers damage owing to an intentional or grossly negligent act by shareholders on account of capital contributions or expenses for formation, the shareholders are all liable to compensate that damage as joint and several debtors.

(3) Shareholders or directors are exempted from these obligations if they were neither aware of the facts establishing the obligation to pay compensation nor needed to be aware thereof when applying the due care of a prudent businessperson.

(4) In addition to the shareholders, those persons for whose account the shareholders have subscribed to shares are also responsible in the same manner. They cannot rely on their own ignorance on account of such circumstances of which a shareholder acting for their account was aware or of which he or she needed to be aware when applying the due care of a prudent businessperson.

## **Section 9b**

### **Waiver of claims for compensation**

(1) The company's waiver of claims for compensation under section 9a or the company's settlement in regard to such claims is ineffective insofar as the compensation is necessary to satisfy the company's creditors. This does not apply where the person liable to pay compensation is insolvent and reaches a settlement with his or her creditors to avert the insolvency proceedings or if the liability to pay compensation has been regulated in an insolvency plan.

(2) The company's claims for compensation under section 9a become statute-barred after five years. The period of limitation begins to run upon the company being entered in the Commercial Register or, if the act creating the liability to pay compensation was committed at a later point in time, upon performance of that act.

### **Section 9c**

#### **Refusal to register company**

(1) If the company has not been properly formed and registered, the court is to refuse to make the entry in the Commercial Register. This also applies where contributions in kind have been over-valued to a not insignificant degree.

(2) The court may refuse to make the entry in accordance with subsection (1) only on account of a defective or void provision or in the absence of a provision in the articles of association insofar as that provision, its absence or its nullity

1. concerns facts or legal relations which must be specified in the articles of association in accordance with section 3 (1) or on account of other mandatory statutory provisions, or which must be entered in the Commercial Register or must be publicly noticed by the court,
2. violate provisions which exclusively or predominantly exist to protect the company's creditors or which are otherwise in the public interest, or
3. result in the articles of association becoming null and void.

### **Section 10**

#### **Content of entry**

(1) The company's business name and the place of its registered office, a domestic business address, the purpose of the enterprise, the amount of the share capital, the date of the conclusion of the articles of association and the names of the directors must be stated when the entry is made in the Commercial Register. The nature of the directors' powers of representation must also be entered.

(2) If the articles of association contain provisions on the term of the company or on the authorised capital, these determinations must also be included in the entry. If a person authorised to take receipt of declarations of intent and deliveries to the company is registered for entry in the Commercial Register with a domestic address, this information must also be entered; this authorisation continues to apply vis-à-vis third parties until such time as it is deleted from the Commercial Register and the deletion has been made known, unless the lack of authorisation was known to the third party.

(3) (repealed)

### **Section 11**

#### **Legal status prior to entry**

(1) A limited liability company does not exist as such until the company has been entered in the Commercial Register at the place of its registered office.

(2) Where acts are performed in the company's name before the entry is made, the persons acting are personally as well as jointly and severally liable.

### **Section 12**

#### **Company announcements**

Wherever the law or the articles of association provide that matters concerning the company are to be announced, such announcement is effected by publication in the Federal Gazette ('company's designated publication'). The articles of association may designate further public gazettes or electronic information media as the company's designated publications.

### **Division 2**

#### **Legal relations of company and shareholders**

### **Section 13**

#### **Legal person; commercial company**

(1) A limited liability company as such has independent rights and obligations; it may acquire ownership of and other rights in real property, and may sue and be sued in court.



(2) The company assets alone serve to discharge the company's obligations vis-à-vis its creditors.

(3) The company is deemed to be a commercial company within the meaning of the Commercial Code.

#### **Section 14**

##### **Obligation to pay capital contribution**

A capital contribution is to be paid for each share. The amount of the capital contribution to be paid is determined on the basis of the nominal value of the share as stipulated in the articles of association upon the formation of the company. In the event of a capital increase, the amount of the capital contribution to be paid is determined on the basis of the nominal value of the share as set out in the declaration of subscription.

#### **Section 15**

##### **Transfer of shares**

(1) Shares are alienable and inheritable.

(2) Where shareholders purchase further shares in addition to their original share, these remain legally independent.

(3) An agreement concluded in notarial form is required for the transfer of shares by shareholders.

(4) An agreement establishing a shareholder's obligation to transfer a share likewise requires notarial form. However, an agreement concluded without such notarial form becomes valid once the transfer agreement is concluded pursuant to subsection (3).

(5) The articles of association may stipulate that the transfer of shares be made dependent on further conditions, in particular the company's consent.

#### **Section 16**

##### **Legal status following change in shareholders or extent of participation; purchase from non-authorised persons**

(1) In the event of a change in the person of a shareholder or the extent of that person's participation, the owner, in relation to the company, of a share is deemed to be only whoever has been included as such in the list of shareholders entered in the Commercial Register (section 40). A legal act performed by the transferee in relation to the company is deemed effective from the outset if the list is entered in the Commercial Register without delay after performance of the legal act.

(2) The transferee as well as the transferor are held liable in respect of obligations to pay capital contributions which are overdue at the point in time from which the transferee is deemed, in relation to the company, to be the owner of the share pursuant to subsection (1) sentence 1.

(3) The transferee may effectively acquire a share or a right in a share from a non-authorised person by legal transaction if the transferor has been named as the owner of the share in the list of shareholders entered in the Commercial Register. This does not apply if, at the time of the purchase, the list was incorrect in respect of the share for no more than three years and the incorrectness cannot be attributed to the person entitled. Further, a purchase in good faith cannot be made if the transferee is aware of the lack of authorisation or is unaware of the lack of authorisation as a consequence of gross negligence or if an objection to the list has been entered. The objection is entered on the basis of an interim order or on the basis of the approval of that person against whose authorisation the objection has been raised. A threat to the right of the person raising the objection need not be substantiated.

#### **Section 17**

**(repealed)**

#### **Section 18**

##### **Joint ownership of share**

- (1) If several joint owners are entitled to one undivided share, they may exercise the rights arising from that share only jointly.
- (2) They are jointly and severally liable vis-à-vis the company for the payments to be effected against the share.
- (3) Legal acts which the company must perform vis-à-vis the owner of the share are, insofar as there is no joint representative for the joint owners, also effective if they are only performed vis-à-vis one of the joint owners. This provision applies to several inheritors of a shareholder only in relation to legal acts performed after one month has elapsed since devolution of the inheritance.

### **Section 19** **Payment of capital contributions**

- (1) Payment of capital contributions in respect of the shares is to be made in proportion to the contributions in cash.
- (2) Shareholders cannot be exempted from the obligation to pay capital contributions. A payment may be offset against the company's claim only in the form of a claim arising from the transfer of assets whose crediting against the obligation to pay capital contributions has been agreed in accordance with section 5 (4) sentence 1. No right of retention may be asserted against the object of a contribution in kind on the basis of claims which do not refer to the object.
- (3) Shareholders can be exempted from the obligation to pay capital contributions on the basis of a capital reduction at most in the amount of that contribution by which the share capital has been reduced.
- (4) If, upon economic consideration and on the basis of an agreement reached in connection with the taking over of a contribution in cash, a contribution in cash made by a shareholder is to be regarded either fully or partly as a contribution in kind ('hidden contribution in kind'), this does not exempt the shareholder from the obligation to pay a capital contribution. However, the agreements concerning the contribution in kind and the legal acts performed to execute them are not ineffective. The value of the asset at the point in time at which the company files the application for entry in the Commercial Register or the point in time of its assignment to the company, if this is a later point in time, is credited against the shareholder's continuing obligation to pay a contribution in cash. The crediting is not effected before the company is entered in the Commercial Register. The burden of proof regarding the intrinsic value of the assets is on the shareholder.
- (5) If a payment to the shareholder has been agreed prior to the capital contribution which corresponds, in economic terms, to a repayment of the capital contribution and this is not to be regarded as a hidden contribution in kind within the meaning of subsection (4), this exempts the shareholder from the obligation to pay a capital contribution only if the payment is covered by the full right of return which is due at any time or can fall due on account of termination without notice by the company. Reference to such payment or the agreement to make such payment is to be included in the application for registration made in accordance with section 8.
- (6) The company's claim to payment of the contributions becomes statute-barred 10 years after the claim arises. Where insolvency proceedings are opened against the company's assets, the period of limitation does not end until six months have elapsed since the insolvency proceedings were opened.

### **Section 20** **Default interest**

A shareholder who does not pay the amount called in on the original capital share as and when it is due is obligated to pay default interest by operation of law.

### **Section 21** **Forfeiture**



- (1) In the event of delayed payment, the defaulting shareholder may be issued with a renewed request to make the payment within a specified grace period under penalty of exclusion along with the share for which the payment is to be made. The request is made by registered letter. The grace period must be no less than one month.
- (2) After fruitless expiry of this period the defaulting shareholder is to be declared to have forfeited his or her share and any partial payments made to the company. The declaration is made by registered letter.
- (3) A shareholder who has been excluded remains liable for any loss the company incurs on account of the defaulted amount or the amounts of the original capital share called in against the share at a later point in time.

## **Section 22**

### **Liability of legal predecessors**

- (1) The last and each previous legal predecessor of an excluded shareholder who is deemed to be the owner, in relation to the company, of the share is also held liable for any unfulfilled obligation to pay capital contributions on the part of an excluded shareholder.
- (2) An earlier legal predecessor is held liable only insofar as the payment cannot be redeemed from the legal successor; this is to be assumed to be the case until the opposite is proved if the latter has not made the payment by the end of one month after the request for payment is sent to him or her and notification thereof has been sent to the legal predecessor.
- (3) The legal predecessor's liability is limited to payments called in within a period of five years on the basis of the obligation to pay capital contributions. The period begins to run on that day from which the legal successor is to be regarded as the owner of the share in the company.
- (4) The legal predecessor acquires the excluded shareholder's share against payment of the outstanding amount.

## **Section 23**

### **Auction of share**

If payment of the outstanding amount cannot be collected from any legal predecessors, the company may have the share sold by way of public auction. Any other form of sale is permissible only with the consent of the excluded shareholder.

## **Section 24**

### **Raising shortfalls**

Where an original capital share can neither be collected from the person liable to pay it nor covered by the sale of the share, the remaining shareholders are to raise the shortfall in proportion to their shares. Amounts which cannot be collected from individual shareholders are distributed in the aforementioned proportion amongst the remaining shareholders.

## **Section 25**

### **Mandatory provisions**

Shareholders cannot be exempted from the legal consequences set out in sections 21 to 24.

## **Section 26**

### **Obligation to pay additional contributions**

- (1) The articles of association may determine that, in addition to the nominal values of the shares, shareholders may also take decisions to call in additional payments ('additional contributions').
- (2) Additional contributions are to be paid in proportion to the shares.
- (3) The articles of association may restrict the obligation to pay an additional contribution to a certain amount to be determined in proportion to the shares.

## **Section 27**

### **Unlimited obligation to pay additional contributions**

(1) If the obligation to pay an additional contribution is not limited to a specified amount, each shareholder, if he or she has paid the capital share in full, has the right to be exempted from payment of the additional contribution called in on the share by making the share available to the company within one month after the call to make the payment in order to satisfy the request to pay the additional contribution. Likewise, if shareholders have neither availed themselves of the above-mentioned power nor made the payment within the aforementioned period, the company may declare by registered letter that it regards the share to be at the company's disposal.

(2) The company is to have the share sold at public auction within one month after the shareholder's or the company's declaration has been made. Any other form of sale is permissible only with the shareholder's consent. The shareholder is entitled to any profits remaining after the costs of sale and the outstanding additional contribution have been covered.

(3) If the company cannot be satisfied by the sale, the share falls to the company. The company is authorised to sell the share for its own account.

(4) The articles of association may restrict the application of the foregoing provisions to cases where the additional payments called in on the share exceed a specific amount.

## **Section 28**

### **Limited obligation to pay additional contributions**

(1) If the obligation to pay an additional contribution is limited to a specific amount and the articles of association do not provide otherwise, then, in the event of delayed payment of additional contributions, the provisions of sections 21 to 23 in respect of the payment of capital shares apply accordingly. The same also applies in the case referred to in section 27

(4) in the case of an unlimited obligation to pay additional contributions if the additional contributions do not exceed the amount set out in the articles of association.

(2) The articles of association may stipulate that a request for payment of additional contributions to which the provisions of sections 21 to 23 apply is permissible even before payment of the capital shares has been fully collected.

## **Section 29**

### **Appropriation of earnings**

(1) Shareholders have a claim to the annual surplus plus any profit carried forward and minus any losses carried forward insofar as the resulting amount is not excluded from distribution amongst the shareholders by law or the articles of association, by decision in accordance with subsection (2) or as additional expenses on the basis of the decision concerning the appropriation of earnings. If the balance sheet is prepared taking account of the partial appropriation of the earnings or if reserves are released, then, in derogation from sentence 1, shareholders have a claim to the net earnings shown in the balance sheet.

(2) Unless the articles of association provide otherwise, the shareholders may allot the amounts to retained earnings or carry them forward as profit on the basis of a resolution to appropriate earnings.

(3) The profit is distributed in proportion to the shares. The articles of association may stipulate another criterion for distribution.

(4) Notwithstanding subsections (1) and (2) and deviating agreements regarding profit distribution in accordance with subsection (3) sentence 2, the directors may, with the consent of the supervisory board or the shareholders, allocate to other retained earnings the capital share of those appreciations in value of fixed and current assets. The amount of these reserves must be entered separately in the balance sheet; it may also be stated in the annex.

## **Section 30**

### **Capital maintenance**

(1) Those assets which the company requires to maintain its share capital may not be paid out to the shareholders. Sentence 1 does not apply to payments made upon the existence of

a control or profit transfer agreement (section 291 of the Stock Corporation Act) or to payments which are covered by a full claim to counterperformance or restitution against a shareholder. Sentence 1 also does not apply to the repayment of a shareholder loan and payments against claims arising from legal acts which correspond economically to a shareholder loan.

(2) If they are not needed to cover a loss in share capital, any paid in additional contributions may be repaid to the shareholders. The repayment may not be made before three months have elapsed since the decision to make the repayment was made known in accordance with section 12. In the case referred to in section 28 (2), repayment of additional contributions is inadmissible before the share capital has been deposited in full. Repaid additional contributions are deemed not to have been collected.

### **Section 31**

#### **Reimbursement of prohibited repayments**

(1) Payments which have been made in contravention of the provisions of section 30 must be reimbursed to the company.

(2) If the recipient was acting in good faith, reimbursement may only be requested insofar as it is necessary to satisfy the company's creditors.

(3) If the reimbursement cannot be collected from the recipient, the remaining shareholders are liable, in proportion to their shares, for the amount to be reimbursed, insofar as it is necessary to satisfy the company's creditors. Amounts which cannot be collected from individual shareholders are distributed across the remaining shareholders in the same proportion referred to in the above.

(4) Those obligated to make payments on the basis of the above provisions cannot be released from these obligations.

(5) The company's claims in the cases referred to in subsection (1) become statute-barred after 10 years and in the cases referred to in subsection (3) after five years. The period of limitation begins to run at the end of that day on which the payment whose reimbursement is being claimed is made. Section 19 (6) sentence 2 applies accordingly in the cases referred to in subsection (1).

(6) As regards the reimbursement of a payment made in the cases referred to in subsection (3), the directors who are at fault for the payment made are jointly and severally liable to pay compensation to the shareholders. The provisions of section 43 (1) and (4) apply accordingly.

### **Section 32**

#### **Repayment of profit**

If the condition of section 31 (1) is not met, the shareholders are on no account obligated to repay amounts which they obtained as profit shares in good faith.

#### **Section 32a (repealed)**

#### **Section 32b (repealed)**

### **Section 33**

#### **Purchase of own shares**

(1) The company may not purchase or take in pledge own shares for which capital contributions have not yet been paid in full.

(2) The company may purchase own shares for which capital contributions have been paid in full only if at the time of the purchase it could form reserves in the amount of the expenditures for the purchase without reducing the share capital or reserves to be formed in accordance with the articles of association and which may not be used to make payments to the shareholders. The company may take such shares in pledge only if the total amount of the claims secured on account of taking own shares in pledge or, if the value of the shares

taken in pledge is lower, this amount is not greater than the assets available over and above the share capital. An infringement of sentences 1 and 2 does not render ineffective the acquisition of or taking of the shares in pledge; however, the legal obligation in respect of a prohibited acquisition or prohibited acceptance of own shares in pledge is null and void.

(3) The purchase of own shares is, further, admissible to compensate shareholders in accordance with section 29 (1), section 125 sentence 1 in conjunction with section 29 (1), section 207 (1), section 313 (1), section 327 in conjunction with section 313 (1), and section 340 (1) of the Transformation Act, if the purchase is made within six months after the effective date of the transformation or after the court decision becomes final and at the point in time of the purchase the company was able to form reserves in the amount of the expenditure for the purchase without reducing the share capital or reserves to be formed in accordance with the articles of association and which may not be used to make payments to the shareholders.

#### **Section 34** **Collection of shares**

(1) Shares may be collected by the company only insofar as this is permissible in accordance with the articles of association.

(2) Collection is made without the consent of the person entitled to the share only if the preconditions therefor were determined in the articles of association before the point in time at which the person entitled purchased the share.

(3) The provision of section 30 (1) remains unaffected.

### **Division 3** **Representation and management**

#### **Section 35** **Representation of company**

(1) The company is represented in and out of court by the directors. If a company has no director, the company is represented by the shareholders whenever declarations of intent are made or documents are served on it.

(2) Where several directors have been appointed, they are only all jointly entitled to represent the company, unless otherwise provided in the articles of association. Where a declaration of intent is to be made to the company, it is sufficient for it to be made to one representative of the company in accordance with subsection (1). Declarations of intent may be made to and documents addressed to the company may be served on the representatives of the company referred to in subsection (1) under the address entered in the Commercial Register. Notwithstanding this, the declarations may also be made to and documents may also be served under the registered address to persons authorised in accordance with section 10 (2) sentence 2.

(3) Where all the company's shares are held by one shareholder or, in addition, by the company and that shareholder is at the same time the sole director, section 181 of the Civil Code applies to that shareholder's legal transactions with the company. Legal transactions between the shareholder and the company which that shareholder represents are, even if he or she is not the sole director, to be documented without delay following their performance.

#### **Section 35a** **Required particulars in business letters**

(1) All business letters, regardless of their form, which are addressed to a specific recipient must indicate the company's legal form and registered office, the court of registration at the place of the company's registered office and the number under which the company has been entered in the Commercial Register, the directors and, if the company has established a supervisory board and the supervisory board has a chairperson, the chairperson of the supervisory board together with his or her family name and at least one given name written out in full. Where information is supplied regarding the company's capital, the share capital

as well as, if all the capital contributions to be made in cash have not yet been made, the overall amount of the outstanding capital contributions must in any case be stated.

(2) The particulars referred to in subsection (1) sentence 1 are not needed in notifications or reports issued in connection with an existing business relationship and for which forms are generally used in which only the required particular needs to be entered in an individual case.

(3) Order forms are deemed to be business letters within the meaning of subsection (1). Subsection (2) does not apply to them.

(4) All business letters and order forms used by a branch office of a limited liability company with a registered office abroad must include the register in which the branch office is recorded and the number of the register entry; in all other cases, the provisions of subsections (1) to (3) apply to particulars regarding the main office and the branch office insofar as foreign legislation does not require any deviations therefrom. If the foreign company is in liquidation, this fact and all the liquidators are also to be indicated.

### **Section 36**

#### **Targets and deadlines in respect of equal participation of women and men**

The directors of a company which is subject to co-determination set targets regarding the proportion of women in the two management levels below the directors. The targets must define the intended share of women on each management level and must, where this is quoted in percentages, correspond to full numbers of persons. If the directors set the target for the share of women on one of the management levels at zero, they are required to provide clear and comprehensible grounds for this decision. The grounds must state in detail the considerations on which the decision was based. If the proportion of women is less than 30 per cent when the targets are set, the targets may no longer fall below the previously achieved proportion of women. At the same time, deadlines are to be set by which these targets are to be achieved. The deadlines may not exceed five years in each case.

### **Section 37**

#### **Restrictions on power of representation**

(1) The directors are obligated vis-à-vis the company to observe those restrictions which have been set out in the articles of association as regards the extent of their power to represent the company or, unless otherwise provided therein, by resolutions passed by the shareholders.

(2) A restriction of the directors' power to represent the company has no legal effect in respect of third persons. This in particular applies to those cases in which the representation is restricted to certain business or types of business only or only under certain circumstances or for a certain period of time or in specific places, or where the consent of the shareholders or a company organ is required for the conduct of specific business.

### **Section 38**

#### **Revocation of appointment**

(1) A director's appointment may be revoked at any time without prejudice to claims for compensation resulting from existing agreements.

(2) The articles of association may restrict the permissibility of the revocation to cases in which there are important grounds therefor. Serious breach of duty or the incapacity for proper management are deemed to be such grounds.

(3) Directors are entitled to request revocation of their appointment if they are temporarily unable to carry out the duties associated with their appointment owing to pregnancy, taking parental leave, caring for a family member or illness and there is at least one other appointed director. Where directors avail themselves of this right, their appointment

1. must be revoked and an assurance given that they will be re-appointed after the expiry of the periods of protection under section 3 (1) and (2) of the Act on the Protection of Working Mothers (*Mutterschutzgesetz*),

2. must be revoked, in the case of their taking parental leave, caring for a family member or illness, and an assurance given in accordance with the individual director's request for their re-appointment after a period of no more than three months; revocation of the appointment may be dispensed with if there is an important reason therefor.

In the cases referred to in sentence 2 no. 2, a director's appointment may be revoked, upon that director's request, for a period of no more than 12 months. Section 77a (2) does not apply during the period referred to in sentence 2 or 3 if the participation requirement would be complied with without such revocation.

## **Section 39**

### **Registration of directors**

- (1) An application for entry in the Commercial Register is to be made for each change in the person of one of the directors and the termination of a director's power of representation.
- (2) The application must include the original copies or publicly certified copies of the documents concerning the appointment of directors or concerning the termination of their powers of representation.
- (3) New directors are required to give their assurance in the application that there are no circumstances which pose an obstacle to their appointment in accordance with section 6 (2) sentence 2 nos. 2 and 3 and sentences 3 and 4 and that they have been instructed about their unlimited duty to disclose information to the court. Section 8 (3) sentence 2 applies.
- (4) (repealed)

## **Section 40**

### **List of shareholders, authorisation to issue statutory instruments**

- (1) Once each change in the person of a shareholder or the extent of his or her participation becomes effective, the directors are, without delay, to submit to the Commercial Register a list of shareholders signed by them or bearing their qualified electronic signature and indicating the family name, given name, date of birth and place of residence of those shareholders as well as the nominal values and the consecutive numbers of each of the shares to which the shareholders have subscribed and also indicating the relevant percentage interest in the share capital conferred by the nominal value of each respective share. Where a shareholder is a legal person or partnership with legal capacity, the list must include the business name or name, registered office and, where provided for by law, the relevant court of registration and number of the entry in the register. A civil-law partnership may only be included in the list and changes may only be made to its entry if it has been entered in the Companies Register. Where a shareholder holds more than one share, the list of shareholders is to separately indicate the shareholder's total interest in the share capital as a percentage. The directors are to effect changes to the list by notification and furnishing proof.
- (2) Where a notary has been involved in making the changes referred to in subsection (1) sentence 1, the notary is required, without delay upon the changes becoming effective and without regard to any later grounds for them becoming ineffective, to sign the list instead of the directors or to add his or her qualified electronic signature thereto, to submit the list to the Commercial Register and send a copy of the amended list to the company. The list must be furnished together with notarial certification that the amended entries correspond to the changes in which the notary was involved and that the remaining entries correspond to the content of the last list which was included in the Commercial Register.
- (3) Directors who infringe a duty incumbent upon them under subsection (1) are held jointly and severally liable for the resulting damage vis-à-vis those directors whose participation has changed and the company's creditors.
- (4) The Federal Ministry of Justice and Consumer Protection is authorised to make provision, by statutory instrument requiring the approval of the Bundesrat, concerning the content and form of the list of shareholders.



(5) The *Land* governments are authorised to determine, by statutory instrument, that certain information contained in the list of shareholders must be submitted to the Commercial Register in a structured, machine-readable form, unless the Federal Ministry of Justice and Consumer Protection issues corresponding provisions pursuant to section 387 (2) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*). The *Land* governments may transfer this authorisation by statutory instrument to the *Land* departments of justice.

#### **Section 41**

##### **Book-keeping**

The directors are obligated to ensure proper book-keeping for the company.

#### **Section 42**

##### **Balance sheet**

(1) The balance sheet in the annual financial statements to be prepared in accordance with sections 242 and 264 of the Commercial Code must indicate the share capital as subscribed capital.

(2) The company's right to collect additional contributions from the shareholders is to be included in the asset side of the balance sheet to the extent that the collection has already been completed and the shareholders have no right to exemption from payment of additional contributions by making reference to the share. The additional payment to be collected is to be entered separately on the asset side under receivables and is to be designated 'additional contributions called in' if payment is anticipated. An amount corresponding to the asset side is to be entered separately on the liabilities side and designated 'capital reserves'.

(3) Loans, receivables and payables vis-à-vis the shareholders are generally to be entered separately in each case or stated in the annex; if they are accounted for under other entries, a note is to be made thereof.

#### **Section 42a**

##### **Presentation of annual financial statements and management report**

(1) The directors are required to present the annual financial statements and the management report to the shareholders without delay after their preparation for approval of the annual financial statements. If the annual financial statements are to be audited by an auditor, the directors must present them together with the management report and the auditor's audit report without delay after receipt of the audit report. If the company has a supervisory board, its report on the result of its audit is likewise to be presented without delay.

(2) The shareholders are required to take a decision concerning the approval of the annual financial statements and the appropriation of earnings at the latest within the first eight months or, if their company is classed as a small company (section 267 (1) of the Commercial Code), within the first 11 months of the financial year. The articles of association may not extend the time limit. The provisions applicable to the preparation of the annual financial statements apply to their approval.

(3) Where an auditor has audited the annual financial statements, he or she must, upon the request of one of the shareholders, take part in the negotiations on the approval of the annual financial statements.

(4) If the company is obligated to prepare consolidated financial statements and a consolidated management report, subsections (1) to (3) apply accordingly. The same applies in respect of separate financial statements in accordance with section 325 (2a) of the Commercial Code if the shareholders have taken the decision to disclose separate financial statements.

#### **Section 43**

##### **Directors' liability**

- (1) The directors are required to conduct the company's affairs with the due care of a prudent businessperson.
- (2) Directors who breach the duties incumbent upon them are jointly and severally liable to the company for any damage arising.
- (3) In particular, they are liable to compensate where payments have been made in contravention of section 30 from those company assets which are required to maintain the share capital or the company's own shares have been purchased in contravention of the provisions of section 33. The provisions of section 9b (1) apply accordingly to a claim for compensation. Where compensation has to be paid to satisfy the company's creditors, the directors' obligation is not abrogated on account of the fact that they acted in compliance with a resolution passed by the shareholders.
- (4) Claims based on the aforementioned provisions become statute-barred after five years.

#### **Section 43a**

##### **Granting of credit from company assets**

The directors, other legal representatives, persons vested with the general commercial power of representation or persons vested with the commercial power of attorney for the entire business establishment may not be granted a credit from the company assets which are required to maintain the level of share capital. A credit granted in breach of sentence 1 is to be repaid immediately and without regard to any agreements to the contrary.

#### **Section 44**

##### **Deputies to directors**

Provisions applicable to directors also apply to their deputies.

#### **Section 45**

##### **Rights of shareholders**

- (1) The rights which shareholders are accorded in the company's affairs, in particular in regard to the management of its business and in the performance thereof, are determined in accordance with the articles of association, unless precluded by statutory provision.
- (2) For want of any specific provisions in the articles of association, the provisions of sections 46 to 51 apply.

#### **Section 46**

##### **Duties of shareholders**

The following are subject to the shareholders' disposition:

1. the approval of the annual financial statements and the appropriation of earnings;
- 1a. decisions concerning the disclosure of separate financial statements in accordance with international accounting standards (section 325 (2a) of the Commercial Code) and concerning the approval of the financial statements prepared by the directors;
- 1b. the approval of consolidated financial statements prepared by the directors;
2. the calling in of capital contributions;
3. the repayment of additional contributions;
4. the division of, grouping and collection of shares;
5. the appointment and dismissal of the directors, as well as their discharge;
6. the regulation of audits and oversight of the management;
7. the appointment of those vested with the general commercial power of representation and those vested with the commercial power of attorney for the entire business establishment;

8. the assertion of claims for compensation to which the company is entitled as a result of formation or management vis-à-vis directors or shareholders, as well as the representation of the company in proceedings being conducted against the directors.

#### **Section 47** **Voting**

- (1) The determinations in respect of the company's affairs which are subject to the shareholders' disposition are made by passing a resolution with a majority of the votes cast.
- (2) Each euro of a share grants the holder one vote.
- (3) Powers of attorney must be made in text form in order to be valid.
- (4) Shareholders who are to be discharged or exempted from an obligation by resolution have no voting right in this connection nor may they exercise that voting right for another. The same applies to a resolution concerning the performance of a legal transaction or the initiation or termination of a lawsuit against a shareholder.

#### **Section 48** **Meeting of shareholders**

- (1) Shareholder resolutions are passed in a meeting. Meetings may also be held by telephone or via video link if all the shareholders declare their consent thereto in text form.
- (2) No meeting need be held if the shareholders all declare their consent to the disposition in question in text form or by submitting their votes in writing.
- (3) Where all the company's shares are held by one shareholder or, in addition, by the company, that shareholder is required to document this in writing and sign the document without delay after the resolution is passed.

#### **Section 49** **Convocation of meeting**

- (1) The meeting of shareholders is convened by the directors.
- (2) Apart from any cases expressly laid down, it is convened where it appears necessary in the company's interest.
- (3) The meeting must, in particular, be convened without delay if it is clear from the annual financial statements or the balance sheet prepared in the course of the financial year that half of the share capital has been lost.

#### **Section 50** **Minority rights**

- (1) Shareholders whose shares together make up at least one tenth of the share capital are entitled to request that the meeting be convened, stating the purpose and the grounds therefor.
- (2) In the same manner, the shareholders have the right to request that matters on which decisions are to be taken in the meeting be made known.
- (3) If the request is not complied with or there is no person to whom the request can be directed, the shareholders referred to in subsection (1) may themselves convene the meeting or make the announcement by giving notification of the matter to be addressed. The meeting decides whether the company is to carry the costs arising.

#### **Section 51** **Form of convocation**

- (1) The meeting is convened by invitation sent to the shareholders by registered letter. The invitation is to be sent at least one week in advance.
- (2) The purpose of the meeting is, as a rule, always to be made known upon convocation.
- (3) If the meeting has not been properly convened, resolutions may be passed only if all the shareholders are present.
- (4) The same applies in respect of resolutions concerning matters which have not been announced at least three days prior to the meeting in the manner prescribed for the convocation of meetings.

## **Section 51a**

### **Right to information and right of inspection**

(1) Upon request, the directors are required to provide, without delay, each shareholder with information on the company's affairs and to allow them to inspect the books and company documents.

(2) The directors may refuse to provide information or permit inspection if there is a concern that the shareholder may make use thereof for non-company purposes and thereby put the company or an associated company at a not insignificant disadvantage. Refusal requires a resolution of the shareholders.

(3) These provisions may not be derogated from by the articles of association.

## **Section 51b**

### **Court decision on right to information and right of inspection**

Section 132 (1), (3) and (4) of the Stock Corporation Act applies accordingly to a court decision concerning the right to information and the right of inspection. Each shareholder who has not been given the requested information or who has not been permitted to inspect the files as requested is authorised to file an application.

## **Section 52**

### **Supervisory board**

(1) If the articles of association stipulate that a supervisory board is to be appointed, section 90 (3), (4), (5) sentences 1 and 2, section 95 sentence 1, section 100 (1) and (2) no. 2 and (5), section 101 (1) sentence 1, section 103 (1) sentences 1 and 2, section 105, section 107 (3) sentences 2 and 3 and (4), sections 110 to 114 and section 116 of the Stock Corporation Act, in conjunction with section 93 (1) and (2) sentences 1 and 2 of the Stock Corporation Act, section 124 (3) sentence 2, sections 170, 171, 394 and 395 of the Stock Corporation Act apply accordingly, unless otherwise provided in the articles of association.

(2) Where a supervisory board is to be appointed in accordance with the One-Third Participation Act (*Drittelbeteiligungsgesetz*), the meeting of shareholders sets targets regarding the proportion of women on the supervisory board and the proportion of women directors, unless it has delegated this task to the supervisory board. Where a supervisory board is to be appointed in accordance with the Co-determination Act (*Mitbestimmungsgesetz*), the Act on Co-determination in the Coal, Iron and Steel Industry (*Montan-Mitbestimmungsgesetz*) or the Supplementary Co-determination Act (*Mitbestimmungsergänzungsgesetz*), the supervisory board sets targets regarding the proportion of women on the supervisory board and the proportion of women directors. The targets must define the intended share of women in each body and must, where these are quoted in percentages, correspond to full numbers of persons. Where the target set for the supervisory board or in respect of the directors is zero, clear and comprehensible grounds are to be provided for this decision. The grounds must state in detail the considerations on which the decision was based. If the proportion of women is less than 30 per cent when the targets are set, the targets may no longer fall below the previously achieved proportion of women. At the same time, deadlines are to be set by which these targets are to be achieved. The deadlines may not exceed five years in each case.

(3) If the members of the supervisory board are appointed before the company is entered in the Commercial Register, section 37 (4) no. 3 and no. 3a of the Stock Corporation Act applies accordingly. Whenever there is a change in the members of the supervisory board, the directors are required to submit, without delay, to the Commercial Register a list of the members of the supervisory board indicating their family name, given name, profession and place of residence; in accordance with section 10 of the Commercial Code, the court is to give notice that the list has been submitted to the Commercial Register.

(4) Claims for compensation against the members of the supervisory board on account of a violation of their obligations become statute-barred after five years.

**Division 4**  
**Amendments to articles of association**

**Section 53**  
**Form of amendment to articles of association**

- (1) Any amendment to the articles of association requires a shareholders' resolution.
- (2) The resolution requires a majority of three quarters of the votes cast. The articles of association may set out additional requirements.
- (3) The resolution must be recorded by a notary. If the resolution is passed unanimously, section 2 (3) sentences 1, 3 and 4 apply accordingly.
- (4) A resolution to increase those obligations which the shareholders are bound to under the articles of association may be passed only with the consent of all the involved shareholders.

- Section 54**  
**Application for registration and entry of amendment to articles of association**
- (1) Any amendment to the articles of association is to be entered in the Commercial Register. The application must include the full text of the articles of association; a notary must certify that the amended provisions in the articles of association correspond to the resolution to amend the articles of association and that the unamended provisions correspond to the last complete text of the articles of association which was submitted to the Commercial Register.
  - (2) Unless the change concerns the information referred to in section 10, reference to the documents submitted to the court concerning the amendment suffices when entering the amendment.
  - (3) The amendment is without legal effect until it has been entered in the Commercial Register at the place of the company's registered office.

- Section 55**  
**Increase in share capital**
- (1) Where a resolution is passed to increase the share capital, a declaration by the person subscribing to the share which has been recorded and authenticated by a notary is required for each share in the increased capital subscribed to. The recording or authentication of the declaration by a notary may also be effected by video link in accordance with sections 16a to 16e and 40a of the Notarial Recording Act.
  - (2) Previous shareholders or other persons who have declared that they are joining the company by making the subscription may be permitted by the company to subscribe to a share. In the latter case, the document referred to in subsection (1) must indicate the nominal value of the share as well as other obligations which the person joining the company is to be under in accordance with the articles of association.
  - (3) Where a shareholder who is already a member of the company subscribes to a share in the increased capital, that shareholder acquires an additional share.
  - (4) The provisions of section 5 (2) and (3) concerning the nominal values of the shares and the provisions of section 19 (6) concerning the statute of limitations regarding the company's claim for payment of the capital contribution also apply in respect of shares in the increased capital subscribed to.

- Section 55a**  
**Authorised capital**
- (1) The articles of association may authorise the directors for a maximum of five years after entry of the company in the Commercial Register to increase the share capital up to a specified nominal value ('authorised capital') by issuing new shares against payment of a capital contribution. The nominal value of the authorised capital may not exceed one half of the share capital available at the time of the authorisation.
  - (2) The authorisation may also be issued by amending the articles of association for a maximum of five years after its entry in the Commercial Register.

(3) Shares may be issued against contributions in kind (section 56) only if provision is made therefor in the authorisation.

### **Section 56**

#### **Capital increase with contributions in kind**

(1) Where contributions in kind are to be made, their object and the nominal value of the share to which the contribution in kind refers must be specified in the resolution to increase the share capital. The determination is to be included in the declaration made by the subscriber referred to in section 55 (1).

(2) Sections 9 and 19 (2) sentence 2 and (4) apply accordingly.

### **Section 56a**

#### **Payments towards new share capital**

Section 7 (2) sentence 1 and (3) and section 19 (5) apply accordingly to the payment of capital contributions towards the new share capital.

### **Section 57**

#### **Application to register increase**

(1) The resolution to increase the share capital is to be registered for entry in the Commercial Register after the increased capital has been covered by means of the subscription to shares.

(2) The application to register the increase in the share capital must include an assurance that the capital contributions towards the new share capital have been effected in accordance with section 7 (2) sentence 1 and (3) and that the object of the obligations is finally at the free disposal of the directors. Section 8 (2) sentence 2 applies accordingly.

(3) The application must include the following:

1. the declarations referred to in section 55 (1) or a certified copy thereof;
2. a list of those persons who have subscribed to the new shares which has been signed by the persons filing the application or which bears the qualified electronic signatures of the persons filing the application; the list must indicate the nominal values of the shares to which each person has subscribed;
3. in the case of a capital increase with contributions in kind, the agreements on which the determinations referred to in section 56 are based or which were concluded to execute them.

(4) Sections 9a (1) and (3) and 9b apply accordingly to the responsibilities of those directors who have registered the capital increase for entry in the Commercial Register.

### **Section 57a**

#### **Refusal to make entry**

Section 9c (1) applies accordingly to the court's refusal to make the entry.

### **Section 57b**

**(repealed)**

### **Section 57c**

#### **Capital increase from company funds**

(1) The share capital may be increased by transforming reserves into share capital ('capital increase from company funds').

(2) A resolution to increase the share capital may be passed only after approval of the annual financial statements for the last complete financial year before the resolution to increase the capital is passed ('last annual financial statements') and a resolution has been passed regarding the appropriation of earnings.

(3) The resolution to increase the share capital is to be based on a balance sheet.



(4) In addition to sections 53 and 54 concerning amendments to the articles of association, sections 57d to 57o also apply.

#### **Section 57d**

##### **Entry of capital reserves and retained earnings**

- (1) The capital reserves and retained earnings which are to be transformed into share capital must be accounted for in the last annual balance sheet and, if the resolution is based on another balance sheet, also in that balance sheet, as 'capital reserves' or 'retained earnings' or in the last resolution to appropriate the profit for the year as a transfer to these reserves.
- (2) The reserves may not be transformed if the balance sheet on which they are based reports a loss, including a loss carried forward.
- (3) Other retained earnings which are intended to serve a specific purpose may be transformed only insofar as this is consistent with their intended purpose.

#### **Section 57e**

##### **Taking last annual balance sheet as basis; audit**

- (1) The resolution may be based on the last annual balance sheet if the annual balance sheet has been audited and the auditors have added their unlimited audit opinion to the approved annual balance sheet and if its reference date is at most eight months prior to the filing of the application for entry of the resolution in the Commercial Register.
- (2) In the case of companies which are not large companies within the meaning of section 267 (3) of the Commercial Code, the audit may also be performed by certified accountants; the auditors must be elected by the meeting of shareholders.

#### **Section 57f**

##### **Requirements of balance sheet**

- (1) If the resolution is not based on the last annual balance sheet, the balance sheet must fulfil the provisions on the structure of an annual balance sheet and on the valuation rates in the annual balance sheet. The reference date for the balance sheet may not be more than eight months before the application for entry of the resolution in the Commercial Register is filed.
- (2) Before a resolution to increase the share capital is passed, the balance sheet is to be examined by one or more auditors in regard to whether it meets the requirements of subsection (1). If, following the auditors' conclusive result, no objections are to be raised, the auditors are required to certify this by adding their audit opinion. No resolution to increase the share capital may be adopted without such certification by the auditors.
- (3) The auditors are elected by the shareholders; if no other auditors are elected, those auditors are deemed to have been elected who were elected by the shareholders or appointed by the court to audit the last annual financial statements. Furthermore, where the specifics of the audit assignment do not provide otherwise, section 318 (1) sentence 2, section 319 (1) to (4), section 319b (1), section 320 (1) sentence 2 and (2), and sections 321 and 323 of the Commercial Code and, in the case of companies which are public-interest entities within the meaning of section 316a sentence 2 of the Commercial Code, also Article 5 of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC Text with EEA relevance (OJ L 158, 27.5.2014, p. 77; L 170, 11.6.2014, p. 66) apply. In the case of companies which are not large companies within the meaning of section 267 (3) of the Commercial Code, certified accountants may also be appointed as auditors.

#### **Section 57g**

##### **Advance notice of annual financial statements**

The provisions set out in the articles of association concerning advance notification of the annual financial statements to the shareholders apply accordingly to the cases referred to in section 57f.

## **Section 57h**

### **Types of capital increase**

- (1) Subject to section 57l (2), a capital increase may be effected by creating new shares or by increasing the nominal value of the shares. The new shares and the shares whose nominal value is increased must be made out in a full euro amount.
- (2) The resolution to increase the share capital must state the type of capital increase. If the capital increase is to be effected by increasing the nominal value of the shares, the increase is to be determined so that no amounts are allotted to any shares whose nominal value is being increased which cannot be covered by increasing the nominal value of the share.

## **Section 57i**

### **Registration and entry of resolution to increase share capital**

- (1) The application to enter the resolution to increase the share capital in the Commercial Register must include the balance sheet on which the capital increase is based, to which the auditors' audit opinion has been added, and in the cases referred to in section 57f also the last annual balance sheet, unless it has already been submitted in accordance with section 325 (1) of the Commercial Code. The persons filing the application are required to declare to the court of registration that, to their knowledge, no reduction in assets has occurred between the reference date of the balance sheet on which the increase is based and the day on which the application for entry is filed which would preclude the capital increase if it had been passed on the day on which the application was filed.
- (2) The court of registration may enter the resolution only if the balance sheet on which the capital increase is based was prepared no more than eight months before the application is filed and a declaration in accordance with subsection (1) sentence 2 has been made.
- (3) The court is not obligated to examine whether the balance sheet fulfils statutory requirements.
- (4) When entering the resolution, an indication is to be given that the capital increase is being made from company funds.

## **Section 57j**

### **Allocation of shares**

The new shares are available to the shareholders in proportion to their existing shares. Any contrary resolution passed by the shareholders is null and void.

## **Section 57k**

### **Partial rights; exercise of rights**

- (1) If the capital increase leads to only part of a new share being allotted to a share, this partial right is independently alienable and inheritable.
- (2) The rights arising from a new share, including the right to issuance of a certificate on the new share, may be exercised only if partial rights which together amount to a full share are held by a single shareholder or if several entitled persons whose partial rights together amount to a full share jointly exercise their rights (section 18).

## **Section 57l**

### **Participation in increase in share capital**

- (1) Own shares participate in the increase in the share capital.
- (2) Partially paid in shares participate in the increase in the share capital in accordance with their nominal value. In such cases the capital increase may only be effected by increasing the nominal value of the shares. If fully paid in shares exist alongside partially paid in shares, then in their case the capital increase may be effected by increasing the nominal value of the shares and by creating new shares. The shares whose nominal value is increased may be issued in any full euro amount.

## **Section 57m**

### **Relation between rights; relationships to third parties**

- (1) The relation between the rights associated with the shares is not affected by the capital increase.
- (2) Where individual rights of shares which have been partially paid in, in particular any profit sharing or voting rights, are determined by the capital contribution paid per share, these rights are accorded to the shareholders up until the outstanding capital contributions have been paid only in the amount of the capital contributions which have been paid in plus the percentage of the increase in the share capital added to the nominal value of the share capital. If further payments are made, these rights increase accordingly.
- (3) The economic content of the contractual relationships between the company and third parties which are dependent on the company's distribution of profits, the nominal value or the value of their shares or share capital or which are dependent in another way on the previous capital and earnings ratios are not affected by the capital increase.

#### **Section 57n**

##### **Profit share of new shares**

- (1) Unless otherwise provided, the new shares participate in the profit accruing across the entire financial year in which the resolution to increase the share capital was passed.
- (2) The resolution to increase the share capital may stipulate that the new shares already participate in the profit accruing across the last complete financial year before the capital increase resolution was passed. In such cases, the increase in the share capital is to be decided, in derogation from section 57c (2), before a decision is taken regarding the appropriation of earnings for the last complete financial year before the resolution was passed. The resolution to appropriate earnings for the last complete financial year before the capital increase resolution was passed does not become effective until the share capital has been increased. The resolution to increase the share capital and the resolution to appropriate earnings for the last complete financial year before the capital increase resolution was passed is null and void if the capital increase resolution is not entered in the Commercial Register within three months after it is passed; this period is suspended whilst an action for avoidance or annulment is pending.

#### **Section 57o**

##### **Purchase costs**

The purchase costs of the shares acquired before the increase in the share capital and of the new shares allotted to them are deemed to be the amounts resulting for the individual shares if the purchase costs of the shares acquired before the increase in the share capital are distributed across them and the new shares allotted to them in the same proportion as the nominal values. The increase in shares is not to be accounted for as receipts.

#### **Section 58**

##### **Reduction in share capital**

- (1) A reduction in the share capital may be effected only if the following provisions are observed:
1. the directors must give notification of the resolution to reduce the share capital in the company's designated publications; in this notification they must also ask the company's creditors to contact the company; the creditors indicated in the company's trading books or who are known in another way are to be asked by separate notification to register;
  2. those creditors who contact the company and do not give their consent to the reduction are to be satisfied or indemnified in respect of the claims asserted;
  3. the application to enter the resolution to reduce the share capital in the Commercial Register is not made until one year has elapsed since that day on which the creditors were asked to contact the company via the company's designated publications;

4. the notification of the resolution must be enclosed with the application; the directors must also give the assurance that those creditors who contacted the company and who have not given their consent to the reduction in the share capital have been satisfied or indemnified.

(2) The provision of section 5 (1) concerning the minimum amount of the share capital remains unaffected. If the reduction is effected for the purpose of repaying capital contributions or for the purpose of remitting those capital contributions which have been deposited, the remaining nominal values of the shares may not fall below the amount designated in section 5 (2) and (3).

#### **Section 58a** **Simplified capital reduction**

(1) Any reduction in the share capital which serves to compensate for depreciations in value or to cover other losses may be effected as a simplified capital reduction.

(2) Simplified capital reduction is permissible only after that part of the capital reserves and retained earnings which together exceeds 10 per cent of the share capital remaining after the reduction has already been released. It is not permissible whilst there is any profit carryforward.

(3) The nominal values of the shares are to be adapted to the reduced share capital in the resolution on simplified capital reduction. The shares must be issued in a full euro amount.

(4) The share capital may be reduced below the minimum nominal value referred to in section 5 (1) if that amount is achieved again by means of a capital increase on which a decision is taken at the same time as the decision on the capital reduction and for which no contributions in kind are determined. The resolutions are null and void if they have not been entered in the Commercial Register within three months after being passed. This period is suspended whilst an action for avoidance or annulment is pending. The resolutions are, as a rule, only to be jointly entered in the Commercial Register.

(5) Sections 58b to 58f apply in addition to sections 53 and 54 concerning amendments to the articles of association.

#### **Section 58b** **Amounts from release of reserves and capital reduction**

(1) Amounts deriving from the release of capital reserves or retained earnings and from the capital reduction may be used only to compensate for depreciations in value and other losses.

(2) In addition, the derived amounts may be allocated to the capital reserves insofar as they do not exceed 10 per cent of the share capital. Share capital is deemed to be the nominal value resulting from the reduction, but at least the minimum nominal value permissible in accordance with section 5 (1).

(3) The amount which has been allocated to the capital reserves on the basis of subsection (2) may be used before the end of the fifth financial year which begins after the capital reduction resolution is passed only

1. to compensate for an annual shortfall, insofar as it is not covered by profit carried forward from the previous year and it cannot be compensated by releasing retained earnings;

2. to compensate for losses carried forward from the previous year, insofar as they are not covered by an annual surplus and cannot be compensated by releasing retained earnings;

3. to increase capital from company funds.

#### **Section 58c** **Non-occurrence of assumed losses**

If it transpires, when preparing the annual balance sheet for the financial year in which the capital reduction resolution was passed or for one of the two subsequent financial years, that depreciations in value and other losses did not occur or were not compensated for in the amount assumed upon the passing of the resolution, then the difference is to be allocated to the capital reserves. Section 58b (3) applies analogously to an amount allocated to the capital reserves in accordance with sentence 1.

#### **Section 58d** **Distribution of profits**

- (1) Profits may be distributed before the end of the fifth financial year which begins after the capital reduction resolution is passed only if the capital reserves and retained earnings together amount to 10 per cent of the share capital. Share capital is deemed to be the nominal value resulting from the reduction in capital, but at least the minimum nominal value permissible in accordance with section 5 (1).
- (2) Payment of a share in the profits of more than four per cent is permissible only for a financial year which begins later than two years after the capital reduction resolution is passed. This does not apply if those creditors whose claims were established before entry of the resolution was made known are satisfied or indemnified, insofar as they contacted the company in that regard within six months after publication of the annual financial statements on the basis of which a decision on the distribution of profits was taken. Those creditors need not be satisfied who, in the event of insolvency proceedings being opened, have a right to preferential satisfaction from a state-supervised covering fund created in accordance with a statutory provision for their protection. The creditors' attention is to be drawn to such satisfaction or indemnification in a separate declaration which is to be forwarded electronically to the agency responsible for keeping the Business Register together with the annual financial statements for inclusion in the Business Register.

#### **Section 58e** **Capital reduction resolution**

- (1) The annual financial statements for the last complete financial year before the capital reduction resolution was passed may indicate the share capital as well as capital reserves and retained earnings in the amount in which they are to exist after the capital reduction. This does not apply if the annual financial statements are approved in a manner other than by a resolution of the shareholders.
- (2) The resolution to approve the annual financial statements is, as a rule, to be passed at the same time as the capital reduction resolution.
- (3) The resolutions are null and void if the capital reduction resolution has not been entered in the Commercial Register within three months after being passed. This period is suspended whilst an action for avoidance or annulment is pending.
- (4) The annual financial statements may not be disclosed in accordance with section 325 of the Commercial Code until the capital reduction resolution has been entered in the Commercial Register.

#### **Section 58f** **Capital reduction with simultaneous increase in share capital**

- (1) If, in the case referred to in section 58e, a resolution is passed to increase the share capital at the same time as a decision is taken on capital reduction, account may also be taken in the annual financial statements of the effected capital increase. The resolution is permissible only if the new shares are subscribed to, no contributions in kind are determined and if payment of each of the new shares which must be effected in accordance with section 56a is effected at the filing of the application to enter the capital increase. Proof of subscription and payment must be furnished to that notary who records the resolution to increase the share capital.
- (2) The resolutions are all null and void if the resolutions on capital reduction and capital increase have not been entered in the Commercial Register within three months after being

passed. This period is suspended whilst an action for avoidance or annulment is pending. The resolutions are, as a rule, to be entered jointly in the Commercial Register.

(3) The annual financial statements may not be disclosed in accordance with section 325 of the Commercial Code until the resolutions on capital reduction and capital increase have been entered in the Commercial Register.

## **Section 59 (repealed)**

### **Division 5 Dissolution and nullity of company**

## **Section 60 Grounds for winding up company**

(1) Limited liability companies are wound up

1. upon expiry of the period specified in the articles of association;
2. by resolution of the shareholders; unless otherwise provided in the articles of association, such a resolution requires a majority of three quarters of the votes cast;
3. by court judgment or by a decision of the administrative court or administrative authority in the cases referred to in sections 61 and 62;
4. upon the opening of insolvency proceedings; if the proceedings are terminated upon the application of a debtor or the proceedings are set aside after confirmation of an insolvency plan which provides for the continuance of the company, the shareholders may pass a resolution to continue the company;
5. upon the decision to refuse to open insolvency proceedings for insufficiency of assets becoming final;
6. upon an order issued by the court of registration establishing that the articles of association are defective in accordance with section 399 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction becoming final;
7. upon the company being deleted from the Commercial Register owing to lack of funds under section 394 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction.

(2) The articles of association may stipulate other grounds for winding up the company.

## **Section 61 Dissolution by court judgment**

(1) A company may be wound up by court judgment if it becomes impossible to achieve the company's purpose or if there are other important grounds for winding up the company which are rooted in the company's circumstances.

(2) The action to obtain judicial dissolution is to be brought against the company. It may be brought only by shareholders whose shares together amount to at least one tenth of the share capital.

(3) That regional court in whose district the company has its registered office has exclusive jurisdiction in respect of such an action.

## **Section 62 Dissolution by administrative authority**

(1) Where a company endangers the public good on account of the shareholders passing illegal resolutions or knowingly permitting the directors to carry out illegal acts, it may be wound up without a claim to compensation thereby arising.



(2) The procedure and the competent authorities are determined by the provisions applicable to contentious administrative matters.

**Section 63  
(repealed)**

**Section 64  
(repealed)**

**Section 65**

**Registration and entry of dissolution**

(1) The dissolution of the company is to be registered for entry in the Commercial Register. This does not apply in cases in which insolvency proceedings are opened or the opening of insolvency proceedings is refused or when a court establishes that the articles of association are defective. In such cases, the court is to enter the dissolution and the grounds therefor ex officio. In the event of the company being deleted from the Commercial Register (section 60 (1) no. 7), the entry regarding the dissolution is not made.

(2) The liquidators are to announce the dissolution in the company's designated publications. The announcement must include a request that the company's creditors contact the company.

**Section 66  
Liquidators**

(1) Where a company is wound up, then, except in the event of insolvency proceedings being opened against the company, it falls to the directors to liquidate the company, unless this task is assigned to other persons in the articles of association or by a resolution passed by the shareholders.

(2) Upon the application of shareholders whose shares together amount to at least one tenth of the share capital, the liquidators may be appointed by the court for important reasons.

(3) The liquidators may be dismissed by the court under the same conditions as apply to their appointment. Liquidators who are not appointed by the court may also be dismissed by a resolution passed by the shareholders before the end of the period for which they were appointed.

(4) Section 6 (2) sentences 2 to 4 applies accordingly when selecting the liquidators.

(5) If the company has been dissolved by deletion from the Commercial Register for lack of funds, the company is liquidated only if it transpires after the deletion that there are assets which need to be distributed. The liquidators are to be appointed by the court upon the application of a party concerned.

**Section 67  
Registration of liquidators**

(1) The first liquidators and their powers of representation are to be registered for entry in the Commercial Register by the directors, and each change in the person of one of the liquidators and each change in their power of representation is to be registered by the liquidators for entry in the Commercial Register.

(2) The application must include the documents concerning the appointment of the liquidators or the change in the person of one of the liquidators in the original or publicly certified copies thereof.

(3) The liquidators are to give their assurance in the application that no circumstances exist which preclude their appointment in accordance with section 66 (4), in conjunction with section 6 (2) sentence 2 nos. 2 and 3 and sentences 3 and 4, and that they have been instructed about their unlimited duty to disclose information to the court. Section 8 (3) sentence 2 applies.

(4) The court makes the entry regarding the appointment or dismissal of the liquidators ex officio.

(5) (repealed)

## **Section 68**

### **Signature of liquidators**

- (1) The liquidators are required to make their declarations of intent and to sign for the company in the manner determined upon their appointment. Unless otherwise provided, the declaration and the signature must be made by all the liquidators.
- (2) Signatures are made in such a manner that the liquidators affix their signature to the business name, which must from then on be designated as a company in liquidation.

## **Section 69**

### **Legal relations of company and shareholders**

- (1) Notwithstanding the company's dissolution, until such time as its liquidation is completed the provisions of Division 2 and Division 3 apply in regard to the legal relations of the company and of the shareholders, unless the provisions of this Division and the nature of the liquidation require otherwise.
- (2) The place of jurisdiction which the company had at the time of its dissolution remains the same until such time as the distribution of its assets has been completed.

## **Section 70**

### **Duties of liquidators**

The liquidators are required to complete the company's ongoing business, to fulfil the obligations of the dissolved company, to collect its receivables and to turn the company's assets into money; they are required to represent the company in and out of court. The liquidators may also enter into new business transactions in order to complete pending transactions.

## **Section 71**

### **Opening balance; rights and duties**

- (1) The liquidators are required to prepare a balance sheet ('opening balance') at the start of the liquidation and a report explaining the opening balance as well as to prepare annual financial statements and a management report at the end of each year.
- (2) The shareholders pass a resolution to approve the opening balance and the annual financial statements as well as to discharge the liquidators. The provisions concerning the annual financial statements apply accordingly to the opening balance and to the explanatory report. However, assets are to be treated as current assets insofar as their sale is planned within a foreseeable period or these assets are no longer used for business operations; the same applies to the annual financial statements.
- (3) The court may grant exemption from the need for an auditor to audit the annual financial statements and the management report if the company's circumstances are so straightforward that an audit does not appear to be necessary in the creditors' and shareholders' interests. An appeal against this decision is permissible.
- (4) In all other cases, the liquidators have the rights and duties of directors resulting from sections 37, 41, 43 (1), (2) and (4), and 49 (1) and (2) and from section 15b of the Insolvency Code (*Insolvenzordnung*).
- (5) Business letters must indicate that the company is in liquidation; in all other cases, section 35a applies accordingly.

## **Section 72**

### **Distribution of assets**

The company's assets are distributed amongst the shareholders in the same proportion as their shares. The articles of association may stipulate that another ratio applies to the distribution.

## **Section 73**

### **Twelve-month ban**

- (1) The distribution may not be effected before the company's debts have been discharged or indemnified and not until the end of one year from that day on which the creditors were

requested, via the company's designated publications, to contact the company (section 65 (2)).

(2) If a known creditor does not contact the company, the amount owed is to be deposited for the creditor if such authorisation to deposit the amount exists. If it is not possible to adjust a liability at that time or a liability is contested, the assets may be distributed only if the creditor has been granted a security.

(3) Liquidators who contravene these provisions are obligated to jointly and severally compensate for the distributed amounts. The provisions set forth in section 43 (3) and (4) apply accordingly to any claim for compensation.

#### **Section 74** **End of liquidation**

(1) Once the liquidation has been completed and the final accounts have been prepared, the liquidators are required to apply for completion of the liquidation to be entered in the Commercial Register. The company is to be deleted from the Commercial Register.

(2) After liquidation has been completed, the company's books and documents are to be deposited for safe-keeping with one of the shareholders or with a third party for a period of 10 years. If the articles of association make no provision or the shareholders pass no resolution in this regard, the shareholder or the third party is appointed by the court.

(3) Shareholders and their legal successors are entitled to inspect the books and company documents. The company's creditors may be authorised by the court to inspect the books and company documents.

#### **Section 75** **Proceedings for annulment**

(1) If the articles of association do not make provision concerning the amount of the share capital or the company's object, or if the provisions set out in the articles of association concerning the company's object are null and void, each shareholder, each director and, if a supervisory board has been appointed, each member of the supervisory board may apply, by way of legal action, for the company to be declared null and void.

(2) The provisions of sections 246 to 248 of the Stock Corporation Act apply accordingly.

#### **Section 76** **Remedying of defects by resolution passed by shareholders**

A defect which affects the provisions concerning the company's object may be remedied by way of a resolution of the shareholders passed by unanimous vote.

#### **Section 77** **Effect of annulment**

(1) If the annulment of a company has been entered in the Commercial Register, the provisions applicable to the winding up of a company apply accordingly to the winding up of its affairs.

(2) The effectiveness of legal transactions with third parties effected in the name of the company is not affected by the annulment.

(3) The shareholders are required to make the promised payments insofar as this is necessary in the fulfilment of liabilities which they have assumed.

### **Division 6** **Special provisions applicable to companies in which Federation holds stake**

#### **Section 77a**

##### **Appointment to organs of companies in which Federation holds majority stake**

(1) 'Limited liability companies in which the Federation holds a majority stake' means limited liability companies with a registered office in Germany

1. the majority of whose shares are held by the Federation or

2. which are large corporations (section 267 (3) of the Commercial Code) and the majority of whose shares are held by companies the majority of whose shares are, in turn, held by the Federation or
3. which generally employ more than 500 people and the majority of whose shares are held by companies the majority of whose shares are, in turn,
  - a) held by the Federation or
  - b) held by companies in respect of which ownership of shares continues in the same manner up to companies the majority of whose shares are held by the Federation.

No account is taken of shares which are held via a special federal fund. Federally owned public-law institutions engaging in a commercial activity are equal to the Federation.

(2) Where a limited liability company in which the Federation holds a majority stake has more than two directors, at least one director must be a woman and at least one director must be a man. The appointment of a director which violates the participation requirement is null and void. Where the participation requirement under sentence 1 applies, there is no obligation to set targets in respect of the management.

(3) Regardless of whether the Co-determination Act, the Act on Co-determination in the Coal, Iron and Steel Industry or the Supplementary Co-determination Act applies, section 96 (2) of the Stock Corporation Act applies accordingly in respect of the composition of the supervisory board of a limited liability company in which the Federation holds a majority stake. There is thus no obligation to set targets.

(4) The *Länder* may, by way of *Land* legislation, extend the requirements under subsections (2) and (3) to cover limited liability companies in which, applying subsection (1) accordingly, a *Land* has a majority stake. In such cases, the statutory regulations and electoral regulations on codetermination in companies in which the Federation holds a majority stake apply accordingly to companies in which a *Land* holds a majority stake.

## **Division 7**

### **Regulatory, criminal and regulatory fines provisions**

#### **Section 78**

##### **Persons obligated to effect registration**

The applications for entry in the Commercial Register provided for under this Act are to be effected by the directors or liquidators, and the applications provided for under section 7 (1), section 57 (1), section 57i (1) and section 58 (1) no. 3 are to be effected by all the directors jointly.

#### **Section 79**

##### **Penalty payments**

(1) Directors or liquidators who do not comply with sections 35a and 71 (5) are to be required to do so by the court of registration by means of the imposition of a penalty payment; section 14 of the Commercial Code remains unaffected. Each individual penalty payment may not exceed 5,000 euros.

(2) With due regard for the applications for entry in the Commercial Register referred to in sections 7, 54, 57 (1) and 58 (1) no. 3, a penalty payment is not to be imposed in accordance with section 14 of the Commercial Code insofar as this refers to the application for entry of the company's registered office in the Commercial Register.

#### **Section 80**

##### **(repealed)**

#### **Section 81**

##### **(repealed)**

**Section 82**  
**False representation**

(1) Whoever makes false statements

1. in their capacity as shareholder or director for the purpose of making an entry concerning the company in respect of the subscription to shares, the payment of capital contributions, the use of amounts paid in, special benefits, expenses for formation and contributions in kind,
2. in their capacity as shareholder in the report on company formation on the basis of contributions in kind,
3. in their capacity as director for the purpose of entering an increase in the share capital by subscribing to or entering new capital or by means of contributions in kind,
4. in their capacity as director in the declaration as prescribed in section 57i (1) sentence 2, or
5. in their capacity as director of a limited liability company or as manager of a foreign legal entity in the assurance to be made in accordance with section 8 (3) sentence 1 or section 39 (3) sentence 1, or in their capacity as liquidator in the assurance to be made in accordance with section 67 (3) sentence 1,

incurs a penalty of imprisonment for a term of no more than three years or a fine.

(2) Whoever,

1. in their capacity as director, for the purpose of reducing the share capital, makes a false assurance on the satisfaction or indemnification of the company's creditors or
2. in their capacity as director, liquidator, member of the supervisory board or similar organ in a public notification falsely represents or conceals the company's assets if the act is not a criminal offence under section 331 no. 1 or no. 1a of the Commercial Code

is liable under the same terms.

**Section 83**  
**(repealed)**

**Section 84**

**Breach of duty to give notification of losses**

(1) Whoever, in their capacity as director, fails to notify the shareholders of a loss in the amount of half of the share capital incurs a penalty of imprisonment for a term of no more than three years or a fine.

(2) Where the offender acts negligently, he or she incurs a penalty of imprisonment for a term of no more than one year or a fine.

**Section 85**

**Breach of confidentiality**

(1) Whoever without authority discloses a company secret, in particular a business or trade secret, which has become known to them in their capacity as director, member of the supervisory board or liquidator incurs a penalty of imprisonment for a term of no more than one year or a fine.

(2) Where the offender acts against payment or with the intent to enrich himself or herself or another or to harm another, he or she incurs a penalty of imprisonment for a term of no more than two years or a fine. Whoever without authority makes use of a secret of the type referred to in subsection (1), in particular a business or trade secret, which has become known to them under the conditions of subsection (1) is liable under the same terms.

(3) The act is prosecuted only upon application by the company. Where a director or liquidator has committed the act, the supervisory board and, if there is no supervisory board, special representatives appointed by the shareholders are authorised to make such application. Where a member of the supervisory board has committed the act, the directors or liquidators are authorised to make such application.

## **Section 86**

### **Breach of duties in respect of statutory audits**

Whoever, in their capacity as member of a supervisory board or member of an audit committee of a company which is a public-interest entity within the meaning of section 316a sentence 2 no. 1 or no. 2 of the Commercial Code,

1. carries out one of the acts referred to in section 87 (1), (2) or (3) and receives a pecuniary advantage therefor or allows such a pecuniary advantage to be promised to him or her, or
  2. persistently repeats one of the acts referred to in section 87 (1), (2) or (3)
- incurs a penalty of imprisonment for a term of no more than one year or a fine.

## **Section 87**

### **Regulatory fines provisions**

(1) Whoever, in their capacity as member of a supervisory board or member of an audit committee of a company which is a public-interest entity within the meaning of section 316a sentence 2 no. 1 or no. 2 of the Commercial Code,

1. does not monitor the independence of the statutory auditor or of the audit firm in accordance with the provisions of Article 4 (3) subparagraph (2) of Article 5 (4) subparagraph (1) sentence 1 or of Article 6 (2) of Regulation EU No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EU (OJ L 158, 27.5.2014, p. 77, L 170, 11.6.2014, p. 66) or
2. makes a recommendation regarding the appointment of a statutory auditor or of an audit firm which does not comply with the requirements under Article 16 (2) subparagraph (2) or subparagraph (3) of Regulation (EU) No 537/2014 or was not preceded by a selection procedure in accordance with Article 16 (3) subparagraph (1) of Regulation (EU) No 537/2014

is deemed to have committed a regulatory offence.

(2) Whoever, in their capacity as member of a supervisory board which has not appointed an audit committee, submits a proposal to the shareholders of a company which is a public-interest entity within the meaning of section 316a sentence 2 no. 1 or no. 2 of the Commercial Code regarding the appointment of a statutory auditor or of an audit firm and which does not comply with the requirements under Article 16 (5) subparagraph (1) of Regulation (EU) No 537/2014 is deemed to have committed a regulatory offence.

(3) Whoever, in their capacity as member of a supervisory board which has appointed an audit committee, submits a proposal to the shareholders of one of the companies referred to in subsection (2) regarding the appointment of a statutory auditor or of an audit firm and which does not comply with the requirements under Article 16 (5) subparagraph (1) or subparagraph (2) sentence 1 or sentence 2 of Regulation (EU) No 537/2014 is deemed to have committed a regulatory offence.

(4) A fine of no more than 500,000 euros may be imposed for a regulatory offence.

(5) The administrative authority within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*) is, in the case of a company which is a public-interest entity within the meaning of section 316a sentence 2 no. 2 of the Commercial Code, the Federal Financial Supervisory Authority, in all other cases the Federal Office of Justice.



## Section 88

### Notifications to audit oversight body

(1) The administrative authority competent in accordance with section 87 (5) transmits to the audit oversight body at the Federal Office of Economics and Export Control all regulatory fines decisions as referred to in section 87 (1) to (3).

(2) In criminal proceedings whose subject matter is an offence as referred to in section 86, the public prosecution office, in the event of public charges being preferred, transmits to the audit oversight body the decision which concludes the proceedings. If the decision has been appealed, the decision is to be transmitted together with a reference to which kind of appeal was filed.

### Annex 1 (to section 2 (1a))

(Publication source: Federal Law Gazette I 2008, p. 2044–2045)

#### a) Model Protocol for the Formation of a Single-Member Company

Document Register No. ....

On this day, the .....

the following person appeared [via video link]<sup>5)</sup> before me, .....

notary with offices in ..... :

Mr/Mrs/Ms<sup>1)</sup>

.....<sup>2)</sup>

1. In accordance with section 2 (1a) of the Limited Liability Companies Act, the person appearing before me hereby founds a company with limited liability [via video link]<sup>5)</sup> under the company name  
.....  
with registered office in .....
2. The object of the company is .....
3. The company's share capital amounts to € .....  
(in words: ..... euros), which is to be subscribed to in full by Mr/Mrs/Ms<sup>1)</sup> ..... (Share No. 1).  
The capital contribution is to be made in money, without delay in the full amount/50 per cent immediately and the remainder as soon as the meeting of shareholders passes a resolution to call in the amount.<sup>3)</sup>
4. Mr/Mrs/Ms<sup>4)</sup> .....  
.....  
date of birth: ....., place of residence: .....  
....., is hereby appointed director of the company.  
The director is exempted from the restrictions set out in section 181 of the Civil Code.

5. The company carries the costs associated with its foundation up to a total of €300, but at most up to the amount of its share capital. Costs over and above that amount are carried by the shareholder.
6. The shareholder receives a copy of this document, the company and the court of registration receive certified photocopies (in electronic form) and the Tax Office (Office for Corporations) receives a simple copy.
7. The notary in particular pointed out the following to the person appearing:  
.....

NB

- 1) Delete as appropriate. Delete 'Mr/Mrs/Ms' in the case of legal persons.
- 2) In addition to the name of the shareholder and information regarding the notarised establishment of their identity, where applicable, the matrimonial property regime, the spouse's consent and information regarding any possible representation are to be included.
- 3) Delete as appropriate. In the case of an entrepreneurial company (*Unternehmergesellschaft*), the second alternative must be deleted.
- 4) Delete as appropriate.
- 5) Delete '[via video link]' in the case of in-person recording.

b) Model Protocol  
for the Formation of a Multi-Member Company with up to Three Shareholders

Document Register No. ....

On this day, the .....  
the following persons appeared [via video link]<sup>5)</sup> before me, .....  
notary with offices in ..... :

Mr/Mrs/Ms<sup>1)</sup>

.....  
.....<sup>2)</sup>

Mr/Mrs/Ms<sup>1)</sup>

.....  
.....<sup>2)</sup>

Mr/Mrs/Ms<sup>1)</sup>

.....  
.....<sup>2)</sup>

1. In accordance with section 2 (1a) of the Limited Liability Companies Act, the persons appearing before me hereby found a company with limited liability [via video link]<sup>5)</sup> under the company name  
.....  
with registered office in .....
2. The object of the company is .....
3. The company's share capital amounts to € .....  
(in words: ..... euros), which is to be subscribed to as follows:  
Mr/Mrs/Ms<sup>1)</sup> ..... subscribes to a share with a

- nominal value in the amount of € .....  
(in words: ..... euros) (Share No. 1),  
Mr/Mrs/Ms<sup>1)</sup> ..... subscribes to a share with a  
nominal value in the amount of € .....  
(in words: ..... euros) (Share No. 2),  
Mr/Mrs/Ms<sup>1)</sup> ..... subscribes to a share with a  
nominal value in the amount of € .....  
(in words: ..... euros) (Share No. 3).  
The capital contributions are to be made in money, without delay in the full  
amount/50 per cent immediately and the remainder as soon as the meeting of  
shareholders passes a resolution to call in the amount.<sup>3)</sup>
4. Mr/Mrs/Ms<sup>4)</sup> .....  
.....,  
date of birth: ....., place of residence: .....  
....., is hereby appointed director of the company.  
The director is exempted from the restrictions set out in section 181 of the Civil  
Code.
5. The company carries the costs associated with its foundation up to a total of €300,  
but at most up to the amount of its share capital. Costs over and above that  
amount are carried by the shareholders in proportion to the nominal values of their  
shares.
6. Each shareholder receives a copy of this document, the company and the court of  
registration receive certified photocopies (in electronic form) and the Tax Office  
(Office for Corporations) receives a simple copy.
7. The notary in particular pointed out the following to the persons appearing:  
.....

**NB**

- 1) Delete as appropriate. Delete 'Mr/Mrs/Ms' in the case of legal persons.  
2) In addition to the name of the shareholder and information regarding the notarised  
establishment of their identity, where applicable, the matrimonial property regime, the  
spouse's consent and information regarding any possible representation are to be included.  
3) Delete as appropriate. In the case of an entrepreneurial company  
(*Unternehmergeellschaft*) the second alternative must be deleted.  
4) Delete as appropriate.  
5) Delete '[via video link]' in the case of in-person recording.

**Annex 2  
(to section 2 (3))**

(Publication source: Federal Law Gazette I 2021, p. 3364–3366)

a) Model Protocol  
for the Formation of a Single-Member Company via Video Link

Document Register No. ....

On this day, the .....  
the following person appeared via video link before me, .....  
notary with offices in ..... :

Mr/Mrs/Ms<sup>1)</sup>

.....  
.....<sup>2)</sup>

1. In accordance with section 2 (3) of the Limited Liability Companies Act, the person appearing before me hereby, by way of notarial recording via video link under section 16aff. of the Notarial Recording Act, founds a company with limited liability under the company name .....  
.....  
with registered office in .....
2. The object of the company is .....
3. The company's share capital amounts to € .....  
(in words: ..... euros), which is to be subscribed to in full by Mr/Mrs/Ms<sup>1)</sup> ..... (Share No. 1).  
The capital contribution is to be made in money, without delay in the full amount/50 per cent immediately and the remainder as soon as the meeting of shareholders passes a resolution to call in the amount.<sup>3)</sup>
4. The following is hereby appointed as director/are hereby appointed as directors<sup>4)</sup> of the company:  
  
Mr/Mrs/Ms<sup>4)</sup> .....  
date of birth: ....., place of residence: .....  
.....  
Mr/Mrs/Ms<sup>4)</sup> .....  
date of birth: ....., place of residence: .....  
.....<sup>5)</sup>  
The director is/The directors are<sup>4)</sup> exempted from the restrictions set out in section 181 of the Civil Code. Where only one director is appointed, he or she is the company's sole representative. Where several directors are appointed, the company is represented jointly by two directors or by one director jointly with a person vested with general commercial power of representation (*Prokurist*).
5. The company carries the costs associated with its foundation up to a total of €600, but at most up to the amount of its share capital. Costs over and above that amount are carried by the shareholder.
6. The shareholder receives a copy of this document, the company and the court of registration receive certified photocopies (in electronic form) and the Tax Office (Office for Corporations) receives a simple copy.
7. The notary in particular pointed out the following to the person appearing:  
.....

NB

1) Delete as appropriate. Delete 'Mr/Mrs/Ms' in the case of legal persons.

- 2) In addition to the name of the shareholder and information regarding the notarised establishment of their identity, where applicable the matrimonial property regime, the spouse's consent and information regarding any possible representation are to be included.  
3) Delete as appropriate. In the case of an entrepreneurial company (*Unternehmergesellschaft*), the second alternative must be deleted.  
4) Delete as appropriate.  
5) Further directors may be added.

b) Model Protocol  
for the Formation of a Multi-Member Company via Video Link

Document Register No. ....

On this day, the .....  
the following persons appeared via video link before me, .....  
notary with offices in .....

Mr/Mrs/Ms<sup>1)</sup> .....<sup>2)</sup>  
Mr/Mrs/Ms<sup>1)</sup> .....<sup>2)</sup>  
Mr/Mrs/Ms<sup>1)</sup> .....<sup>2)</sup>

1. In accordance with section 2 (3) of the Limited Liability Companies Act, the persons appearing before me hereby, by way of notarial recording of the articles of association via video link under section 16aff. of the Notarial Recording Act, found a company with limited liability under the company name .....  
with registered office in .....
2. The object of the company is .....
3. The company's share capital amounts to € .....  
(in words: ..... euros), which is to be subscribed to as follows:  
Mr/Mrs/Ms<sup>3)</sup> ..... subscribes to a share with a nominal value in the amount of € .....  
(in words: ..... euros) (Share No. 1),  
Mr/Mrs/Ms<sup>3)</sup> ..... subscribes to a share with a nominal value in the amount of € .....  
(in words: ..... euros) (Share No. 2),  
Mr/Mrs/Ms<sup>3)</sup> ..... subscribes to a share with a nominal value in the amount of € .....  
(in words: ..... euros) (Share No. 3).  
The capital contributions are to be made in money, without delay in the full amount/50 per cent immediately and the remainder as soon as the meeting of shareholders passes a resolution to call in the amount.<sup>4)</sup>
4. The following is hereby appointed as director/are hereby appointed as directors<sup>3)</sup> of the company:  
Mr/Mrs/Ms<sup>3)</sup> .....

date of birth: ....., place of residence: .....  
.....,

Mr/Mrs/Ms<sup>3)</sup> .....,  
date of birth: ....., place of residence: .....  
.....<sup>5)</sup>

The director is/The directors are<sup>3)</sup> exempted from the restrictions set out in section 181 of the Civil Code. Where only one director is appointed, he or she is the company's sole representative. Where several directors are appointed, the company is represented jointly by two directors or by one director jointly with a person vested with general commercial power of representation (*Prokurist*).

5. The company carries the costs associated with its foundation up to a total of €600, but at most up to the amount of its share capital. Costs over and above that amount are carried by the shareholders in proportion to the nominal values of their shares.
6. Each shareholder receives a copy of this document, the company and the court of registration receive certified photocopies (in electronic form) and the Tax Office (Office for Corporations) receives a simple copy.
7. The notary in particular pointed out the following to the persons appearing:  
.....

NB

- 1) Delete as appropriate. Delete 'Mr/Mrs/Ms' in the case of legal persons.
- 2) In addition to the name of the shareholder and information regarding the notarised establishment of their identity, where applicable the matrimonial property regime, the spouse's consent and information regarding any possible representation are to be included.
- 3) Delete as appropriate.
- 4) Delete as appropriate. In the case of an entrepreneurial company (*Unternehmergesellschaft*) the second alternative must be deleted.
- 5) Further directors may be added.