

Ministerio de Justicia



**ROYAL LEGISLATIVE DECREE 1/2010, OF 2 JULY,  
APPROVING THE CONSOLIDATED TEXT OF THE  
CORPORATE ENTERPRISES ACT**

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**ROYAL LEGISLATIVE DECREE 1/2010, OF 2  
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OF THE CORPORATE ENTERPRISES ACT**

**REAL DECRETO LEGISLATIVO 1/2010, DE 2 DE JULIO  
POR EL QUE SE APRUEBA EL TEXTO REFUNDIDO DE  
LA LEY DE SOCIEDADES DE CAPITAL**

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## **ROYAL LEGISLATIVE DECREE 1/2010, OF 2 JULY, APPROVING THE CONSOLIDATED TEXT OF THE CORPORATE ENTERPRISES ACT**

### **PREAMBLE**

I

This royal legislative decree stems from the authorization set out in the seventh final provision of Act 3/2009 of 3 April on structural changes in companies, enabling the Government to proceed, within twelve months, to consolidate the legislation listed in that provision in a single text, under the title “Ley de Sociedades de Capital” (Corporate Enterprises Act). This marks the end of the traditional separate regulation of the forms or types of corporate bodies designated by that generic term, which now, with its inclusion in the title of the act, attains definitional status.

The division of the legal provisions for joint stock (“sociedades anónimas”) and limited liability (“sociedades de responsabilidad limitada”) companies into two distinct laws was less a result of any intention to legislate outside the Commercial Code than of the length of the regulations. Indeed, the volume of these legal systems ruled out their inclusion in the 1885 Commercial Code, which contained only a few articles on joint stock companies and none at all on limited liability companies, which did not exist at that time. That explains why the Acts of 1951 and 1953 (the first of which exhibited considerable technical perfection for the time when it was enacted) were enacted as separate legal texts, and this separation has remained a feature of Spanish corporate legislation ever since. Instead of regulating all types of corporate enterprises in a single act, lawmakers have addressed their regulation successively and independently.

This duality or even plurality of “containers” (Act 19/1989 of 25 July, provided that the new regulations on limited partnerships were to be included in the Code, while Act 26/2003 of 17 July added a new title, Title X, to the Securities Exchange Act (“Ley del Mercado de Valores”), on listed joint stock companies) would not have raised any material problems if the “contents” had been sufficiently well coordinated. Although lawmakers have sought to achieve such coordination, either by (not always accurate) regulatory repetition or by resorting to cross-references, the result has not been fully satisfactory. The major reforms implemented at the end of the last century (aforementioned Act 19/1989 of 25 July and Act 2/1995 of 23 March) failed to eliminate all the instances of such lack of coordination, imperfections or loopholes, for which doctrine and case law have put forward legal solutions whose divergence is unwarranted.



Hence Spanish Parliament deemed it necessary to instruct the Government to consolidate the legislation governing corporate enterprises, bringing together in a single text the contents of the two aforementioned acts, as well, importantly, as the part of the Securities Exchange Act that regulates the most purely corporate-related aspects of joint stock companies whose securities are traded on an official secondary market. The consolidated text also includes the articles of the Commercial Code that address limited partnerships, a derivative corporate device that is barely used in practice. A single body of law must contain all the general regulations governing corporate enterprises, the only exception being as derived from the act on structural changes per se (where adjustment to enhance suitability was constrained), whose contents, referring to all types of companies, including “associations of persons”, could not be included in the consolidated text without generating inconsistencies. This task is extraordinarily important, insofar as the vast majority of the companies founded and operating in Spain are either limited liability or joint stock companies; yet it is also a task that poses a fair number of difficulties.

## II

Parliament defined both the method for and the scope of the task entrusted to the Executive: the sole legal text ensuing from the exercise was to be the result of the regularization, clarification and harmonization of the many legal texts mentioned above. The new version was not to be a mere juxtaposition of articles, but would entail assuming the complexity involved in achieving the aforementioned threefold objective that underlies the respective legal decision, adopted in the public interest. In drafting the consolidated text, the Government has not limited its action to reproducing the legislation that had to be consolidated, but instead has had to engage in intricate redrafting to scrupulously perform the task entrusted to it.

To regularize means to adjust, regulate or arrange in an orderly manner. In some instances, the attainment of such regularization called for modifying certain systematic features, while at the same time endeavouring to mitigate the imperfections of the regulatory provisions. Naturally, the consolidated text contains the texts consolidated in their entirety. None of the parts that time may have rendered obsolete has been removed; nor have the solutions arbitrated by law been modified, even where practice has questioned their efficiency or the cost of their implementation; nor does the act include rules that have not yet been enacted into law, anticipating foreseeable solutions. Yet if a consolidated text were published without such imperative regularization, it would betray the terms of the instructions to ensure the aptness of the new text.

Together with regularization, ensuring suitability or aptness calls for clarifying, i.e., as far as possible, removing any doubts of interpretation raised by the legal texts, and determining the exact scope of the regulations. On the odd occasion, the very routine used leads to this result; more often than not, however, the wording of provisions needs to be clarified by removing phrases that hinder comprehension, modifying poorly constructed formulas or adding elements that are essential to make it intelligible. Rather than reforming the legal texts, then, the consolidation elucidates the meaning of their provisions, perfecting the whole with no need to replace any of its parts.

In a word, the harmonization mandate entails removing inconsistencies in legal terms, unifying and updating the terminology and, above all, doing away with the discrepancies derived from the previous legislative process. In this respect, the consolidated text has, to a very significant extent, generalized or extended regulatory solutions originally established for only one type of corporate enterprise, avoiding not only cross-references, but also having to resort to reasoning in pursuit of identical intention. Harmonization was particularly necessary in connection with determining the powers of the annual general meeting and, above all, the dissolution and liquidation of corporate enterprises, because the fairly outdated chapter IX of the Spanish Joint Stock Companies Act ("Ley de sociedades anónimas") contrasted with the far more modern chapter X of the Limited Liability Companies Act ("Ley de sociedades de responsabilidad limitada"), which was taken as the basis for the consolidated version.

### III

That threefold criterion can lead to positive results in a legislative system such as Spain's in which limited liability companies (the device clearly preferred by the business community) have traditionally been conceived more as simplified and flexible joint stock companies than as partnerships in which the shareholders enjoy the benefit of liability protection from the debts incurred in the company's name. In Spain, limited liability companies are not a joint stock company "on the outside" and a partnership "on the inside". Despite the syncretism of the legal system governing limited liability companies, which combines elements from very different legislative models, the predominant feature of the system is that these organizations are bound by the framework common to all corporate enterprises, with a relatively rigid corporate structure. The success in Spanish business practice of that option, traditionally envisaged by legislative policy, evinces the sound judgment of lawmakers in 1953 and 1995, given the very few instances in which private autonomy has opted for a personalized approach within the rigid confines defined by mandatory rules and overarching principles.

This substantial unity between different forms of corporate enterprises is even more visible, if possible, in the approach adopted in the consolidated text, which has refrained from resorting to a possible division between "general" and "specific" part". Instead, the text is structured on a subject-by-subject basis, generalizing where appropriate, without prejudice to including provisions specifically applicable to a given type of corporation, when they really and actually exist, in each chapter or section, or even in each article. That notwithstanding, the reader will perceive that the need to observe the limits of the adjustment raises questions around the reason for having different solutions for different corporate devices.

### IV

Theoretically speaking, the distinction between joint stock companies and limited liability companies hinges on a twofold characteristic: while the former are naturally open organizations, limited liability companies are essentially closed; while the former are enterprises with a rigid system for defending share capital, an established asset retention value and, therefore, guarantees for the company's creditors, the latter sometimes replace those defence mechanisms (at times more formal than effective)



with liability systems, whereby the governing legislation is more flexible. While forecasts about the future of share capital as a technique for protecting third party interests (an issue that can only be addressed properly within the supranational framework of the European Union) are not in order here, it is interesting to note that this conflict between open and closed enterprises is not absolute, because in actual fact, the by-laws of the vast majority of Spanish joint stock companies (with the obvious exception of listed companies) contain clauses limiting the free transferability of shares. The underlying legal model is out of step with reality, a circumstance that Spanish lawmakers have taken into account and that had to be taken into consideration when drafting the consolidated text. This situation has generated a de facto overlapping of corporate forms, for to meet the same needs (i.e., needs specific to closed companies), individuals can choose between two different corporate forms, designed with differing requisites and obligations, although the reason for that duality is not always clearly visible. Consequently, the question about what kind of relationship ought to exist in the future between the two main types of corporate enterprises remains unanswered, as does the question about whether the move from one to another must conform to the requirements established for conversion or whether it ought to be facilitated through more flexible and simpler techniques. The essential distinction would appear to lie in whether companies are listed or otherwise, rather than in the narrow consideration of corporate form. The key role that listed companies play on capital markets calls for public intervention in business activity, firstly to protect investors and secondly to ensure the stability, efficiency and sound operation of financial markets.

In this respect, the regulation of listed companies is systematized both in this consolidated text, which covers eminently corporate economic aspects, and in Securities Exchange Act 24/1988 of 28 July, which regulates the financial dimension of these types of companies, under the umbrella of the principle of transparency so as to ensure sound market operation and investor protection.

## V

Be it said, and stressed, that the consolidated text was drafted as a clearly provisional solution, the aim being for it to be superseded in the short term, thereby constituting just one more rung on the ladder to the perfection of Law. There are two grounds for this assertion. On the one hand, it is safe to say that in the immediate future lawmakers will be forced to introduce significant reforms in this domain, revising some traditional legal solutions, expanding directors' fiduciary duties, formulating more detailed regulations for listed companies and creating substantive law for corporate groups, which to date has been confined to the system of consolidated accounts and a number of episodic rules scattered throughout the articles of the act. On the other, the general goal is for the whole body of law on companies, including the law applicable to partnerships, to form a single body of law, doing away with the persistent legislative plurality that this consolidated text has managed to reduce but not eliminate. In this respect, it will be up to the Government to assess the work performed by the General Codification Committee in connection with the formulation of a Company Code, or even a new Commercial Code geared to meeting the requirements of market unity, and decide when and how such an ambitious reform is conducted.

By virtue whereof, acting on the proposal of the Minister of Justice and the Minister of Economy and Finance, in accordance with the State Council and further to deliberation by the Council of Ministers at its 2 July 2010 meeting, I hereby order:

Sole article. Approval of the consolidated text of the Corporate Enterprises Act.

The consolidated text of the Corporate Enterprises Act, which includes the contents of Book II, Title I, Chapter 4 of the 1885 Commercial Code on limited liability companies; Royal Legislative Decree 1564/1989 of 22 December, approving the consolidated text of the Joint Stock Companies Act; Limited liability company Act 2/1995 of 23 March; and the contents of Title X of Securities Exchange Act 24/1988 of 28 July on listed joint stock companies, is hereby approved.

Single repealing provision. Repeal of regulations.

The following provisions are hereby repealed:

1. Book II, Title I, Chapter 4 (articles 151 to 157) of the 1885 Commercial Code on limited liability companies.
2. Royal Legislative Decree 1564/1989 of 22 December, approving the consolidated text of the Joint Stock Companies Act.
3. Limited Liability Companies Act 2/1995 of 23 March.
4. Title X (Articles 111 to 117) of Securities Exchange Act 24/1988 of 28 July on listed companies, with the exception of Article 114, paragraphs 2 and 3, and Articles 116 and 116 bis.

Final provision one. Competence.

The consolidated text of the Corporate Enterprises Act is issued under the State's exclusive competence in the area of commercial law, pursuant to the provisions of Article 149.1.6 of the Spanish Constitution.

Final provision two. Ministry of Justice authorization.

The Minister of Justice is hereby authorized to amend the Mercantile Registry Regulations, approved by Royal Decree 1784/1996 of 19 July, exclusively to replace the numbers of the articles in each text containing the provisions repealed, with the respective numbers in the consolidated text of the Corporate Enterprises Act.

Final provision three. Entry into force.

This royal legislative decree and the consolidated text approved hereunder shall enter into force on 1 September 2010, except for Article 515, which shall not be effective until 1 July 2011.

Madrid, 2 July 2011

JUAN CARLOS R.

First Deputy Prime Minister and Minister attached to the Prime Minister

MS MARÍA TERESA FERNÁNDEZ DE LA VEGA SANZ

# **CONSOLIDATED TEXT OF THE CORPORATE ENTERPRISES ACT**

## **TITLE I General provisions**

### **CHAPTER I Corporate enterprises**

#### **Article 1. Corporate enterprises.**

- 1.** Corporate enterprises are understood to mean limited liability companies, joint stock companies and limited partnerships.
- 2.** The capital in limited liability companies, which shall be divided into stakes, shall comprise the contributions made by all partners, who shall not be held personally liable for company debt.
- 3.** The capital in joint stock companies, which shall be divided into shares, shall comprise the contributions made by all shareholders, who shall not be held personally liable for company debt.
- 4.** The capital in limited partnerships, which shall be divided into shares, shall comprise the contributions made by all partners, at least one of whom, as the general partner, shall be held personally liable for company debt.

#### **Article 2. Commercial nature.**

Corporate enterprises, irrespective of their corporate purpose, shall be commercial organisations.

#### **Article 3. Legal system.**

- 1.** In any matters not governed by specifically applicable legal provisions, corporate enterprises shall be subject to the provisions hereunder.
- 2.** Limited partnerships shall be governed by regulations specifically applicable to such bodies and, in any matters not governed therein, by the provisions set forth hereunder for joint stock companies.

#### **Article 4. Minimum capital.**

- 1.** In limited liability companies the capital shall be at least three thousand euros and denominated in that currency.

**2.** The terms of the preceding paragraph notwithstanding, limited liability companies may be formed with less than the legal minimum capital subject to the provisions of the following article.

**3.** In joint stock companies the share capital shall be at least sixty thousand euros and denominated in that currency.

**Article 4 bis. Sequential formation companies.**

**1.** Until such time as the minimum capital established in paragraph one, Article 4, is reached, limited liability companies shall be subject to the rules governing sequential formation listed below.

a) An amount at least equal to 20 per cent of the year's profits must be allocated to the legal reserve, with no limitation whatsoever.

b) Dividends may only be distributed among the shareholders after compliance with the requirements laid down by law or the by-laws and only if the company's net equity is not, or as a result of the distribution would not be, under 60 per cent of the minimum legal capital.

c) The yearly sum of the consideration paid to shareholders and directors for performing their duties during those years may not be in excess of 20 per cent of the net equity for the respective year, without prejudice to the remuneration due them as company employees or for professional services commissioned therefrom by the company.

**2.** In the event of voluntary or mandatory liquidation, if the company's equity is insufficient to cover its obligations, its shareholders and directors shall be severally liable for the minimum capital established by law.

**3.** No material proof of the monetary contributions made by shareholders founding a sequential formation company shall be required. The founders and any other parties acquiring shares at the time of formation shall be severally liable to the company and its creditors for the existence of such contributions.

**Article 5. Prohibition on capital under the legal minimum.**

**1.** No deeds of incorporation shall be authorised for corporate enterprises whose total capital is below the legally established minimum, nor shall amendment instruments rendering company capital below such amount be permitted, except in compliance with a specific legal provision.

**2.** In sequential formation limited liability companies, the provisions of Articles 4 and 4 bis shall apply.



## CHAPTER II

### Name, nationality and registered office

#### Section one. Name

##### **Article 6. Specification of the type of corporate body.**

1. The names of limited liability companies shall include the words Sociedad de Responsabilidad Limitada or Sociedad Limitada or their respective abbreviations, "S.R.L." or "S.L.".
2. The names of joint stock companies shall include the words Sociedad Anónima or the abbreviation "S.A."
3. Limited partnerships may use a corporate name bearing the names of all, some or one of their general partners, or any other name, provided it includes the words Sociedad Comanditaria por Acciones or the abbreviation "S. Com. por A."

##### **Article 7. Prohibition of identical names.**

1. Corporate enterprises may not use a name that is identical to the name of an existing company.
2. Subsequent regulations may establish requirements regarding the composition of corporate names.

#### Section two. Nationality

##### **Article 8. Nationality**

All corporate enterprises with registered offices on Spanish soil, irrespective of the place of formation, shall be Spanish and subject to this act.

#### Section three. Registered office

##### **Article 9. Registered office**

1. Corporate enterprises shall establish their registered office at the place on Spanish soil where their actual administrative and management activities, or their main business establishment or operation, are located.
2. Corporate enterprises whose main business establishment or operation is on Spanish soil shall have a registered office in Spain.

##### **Article 10. Discrepancy between registered office and actual headquarters**

In the event of discrepancies between the registered office entered in the Mercantile Registry and the office as defined in the previous article, third parties may consider either to be the valid address.

##### **Article 11. Branches**

1. Corporate enterprises may open branches at any location in Spain or abroad.
2. Unless otherwise set forth in the by-laws, the governing body shall be vested with the power to create, close or transfer branches.

## Section 4. Website

### **Article 11 bis. Company website**

- 1.** Corporate enterprises may establish corporate websites. Such sites shall be mandatory for listed companies.
- 2.** The creation of a corporate website must be approved by the company's general meeting. The creation of the website must be explicitly included on the respective agenda. The decision to amend, eliminate or relocate the corporate website may be adopted by the governing body unless otherwise provided in the by-laws.
- 3.** The decision to create the website shall be entered on the company's page in its respective Mercantile Registry and published in the Official Journal of the Mercantile Registry.

The decision to amend, relocate or eliminate the website shall be entered on the company's page in its respective Mercantile Registry and published in the Official Journal of the Mercantile Registry, and carried on the website amended, relocated or eliminated for 30 days after uploading.

The announcements concerning companies' websites shall be published in the Official Journal of the Mercantile Registry cost-free.

Information uploaded by the company onto its website shall not be legally effective until the site is announced in the Official Journal of the Mercantile Registry.

Company by-laws may include a requirement whereby all partners or shareholders must be notified of such decisions individually before they are entered on the company's page in the Mercantile Registry.

### **Article 11 ter. Information published on the website.**

- 1.** The company shall guarantee the security of its website, the authenticity of the documents published thereon and cost-free access thereto and ensure that their content can be downloaded and printed.
- 2.** The burden of proof respecting document uploading on a company website and the date thereof shall lie with the company.
- 3.** The directors shall be obliged to maintain the information published on the website for the term required by law, and they and the company shall be jointly and severally liable to its partners or shareholders, creditors, employees and third parties for any damages attributable to the temporary interruption of access to the site, except where accidental or due to force majeure. Directors' assurance shall suffice as evidence that the information uploaded onto the site has been carried for the term required by law, although such assertions may be challenged by stakeholders wielding any manner of evidence allowed by law.
- 4.** If website access is interrupted for more than two consecutive or four alternating days, the general assembly convened to discuss the matter referred to in the document published on the site may not be held unless the total number of days during which it was effectively carried was greater than or equal to the term required by law. Where the



law requires companies to carry information on their websites after the general meeting is held, in the event of interruption, carriage must be extended for the same number of days as it was interrupted.

**Article 11 quater. Electronic notices.**

Notices between the company and its partners or shareholders, including any attached documents, requests or information, may be served via electronic media providing the partner or shareholder consents thereto. The company shall provide a function on the corporate website able to indisputably establish the date of receipt of correspondence as well as the content of the electronic messages exchanged by the company and its partners or shareholders.

**CHAPTER III**  
**Single member companies**

**Section one. Single member companies**

**Article 12. Types of single member corporate enterprises.**

A single member limited liability or joint stock company is understood to be:

- a) A company formed by a sole partner or shareholder, whether an individual or body corporate.
- b) A company formed by two or more partners or shareholders when ownership of all stakes or shares is transferred to a sole party. Stakes or shares owned by single member companies are deemed to be owned by their sole partner or shareholder.

**Article 13. Public record of single member status**

**1.** The establishment of a single member company, the assumption of such status as a result of the take-up of all stakes or shares by only one partner or shareholder, the loss of such status or a change in the identity of the single partner or shareholder as a result of the transfer of some or all of the stakes or shares shall be recorded in a public instrument entered in the Mercantile Registry. The entry shall necessarily state the identity of the sole partner or shareholder.

**2.** Whilst a company maintains its single member status, it shall expressly record such status in all documentation, correspondence, purchase orders and invoices, as well as in all announcements that must be made pursuant to the existing legislation or the company by-laws.

**Article 14. Consequences of single member status**

**1.** Should single member status fail to be entered with the Mercantile Registry within six months of the acquisition thereof, the sole partner or shareholder shall be held personally, unlimitedly and jointly and severally liable for any company debt incurred while such situation persists.

**2.** Once single member company status is registered, the sole partner or shareholder shall not be held accountable for debts incurred subsequent to registration.

## Section two. Provisions governing single member companies

### **Article 15. Single member decisions**

- 1.** In single member companies, the sole partner or shareholder shall be vested with the powers reserved to general meetings.
- 2.** Decisions made by a sole partner or shareholder shall be recorded in the minutes over his/her or his/her agent's signature, and may be implemented and formalised by the partner or shareholder him/herself or by company directors.

### **Article 16. Agreements concluded by and between the sole partner or shareholder and the single member company**

- 1.** Agreements concluded between the sole partner or shareholder and the company must be recorded in writing or in the documentary format legally required according to the nature thereof, and shall be transcribed into a company ledger that shall be legalised pursuant to regulations governing company books of minutes. The annual report shall contain explicit and individual reference to such agreements, indicating the nature, terms and conditions thereof.
- 2.** In the event of insolvency proceedings against the sole partner or shareholder or the company, any of the agreements referred to in the preceding paragraph that have not been transcribed into the company ledger and are not referenced in the annual report or have been mentioned in a report that has not been filed as required by law shall not be binding on the estate.
- 3.** For two years after the date of formalisation of the agreements mentioned in the first paragraph of this article, the sole partner or shareholder shall be held liable by the company for any gains earned either directly or indirectly to the detriment thereof as a result of such agreements.

### **Article 17. Special provisions for publicly owned single member companies.**

The provisions set forth in Article 13, paragraph two, Article 14 and Article 16, paragraphs two and three, shall not apply to single member companies that are limited liability or joint stock companies whose capital is owned by the State, the Autonomous Communities or municipal corporations, or bodies or institutions under the aegis thereof.

## CHAPTER IV

### Corporate groups

### **Article 18. Corporate groups.**

For the purposes of this act, a corporate group shall be deemed to exist in the presence of any of the situations set forth in Article 42 of the Commercial Code, the predominant company being the company that directly or indirectly exercises or could exercise control over the other/s.

## **TITLE II**

### **Formation of corporate enterprises**

#### **CHAPTER I**

##### **General provisions**

**Article 19.** *Company formation.*

- 1.** Corporate enterprises are formed under an agreement concluded by and between two or more parties or, in the case of single member companies, under a unilateral instrument.
- 2.** Joint stock companies may, in addition, be formed successively through public share offerings.

**Article 20.** *Public instrument and registration.*

The formation of corporate enterprises must be recorded in a public instrument, which shall be registered in the Mercantile Registry.

#### **CHAPTER II**

##### **Deed of incorporation**

**Article 21.** *Formalisation of deed of incorporation.*

The deed of incorporation of corporate enterprises must be signed by all founding partners or shareholders, whether individual or corporate, who must assume all of the stakes or shares therein.

**Article 22.** *Deed of incorporation: contents*

- 1.** The deed of incorporation of any corporate enterprise shall include at least:
  - a) The identity of the partner/s or shareholder/s
  - b) The determination to form a corporate enterprise, specifying the type of body corporate
  - c) The contributions made or, in the case of joint stock companies, committed to by each partner or shareholder, as well as the numbers of the stakes or shares attributed thereto as consideration
  - d) The company by-laws
  - e) The identity of the person or persons initially entrusted with company management and representation.

**2.** In the event of limited liability companies, the deed of incorporation shall determine the specific arrangements to be adopted for company management, if the by-laws envisage several options.

**3.** In the event of joint stock companies, the deed of incorporation shall also state the full amount of the start-up expenses, at least as estimated, including both outlays and costs anticipated up to and including registration.

**Article 23. By-laws.**

The by-laws governing corporate enterprises shall contain the following items:

- a) Company name
- b) Corporate purpose, specifying the activities included thereunder
- c) Registered office
- d) Capital and the stakes or shares into which it is divided, specifying their par value and consecutive numbering. In sequential formation limited liability companies, when the capital is less than the one provided in Article 4, the by-laws shall explicitly state that the company is subject to the rules in place for such concerns. Mercantile registrars shall record *ex officio* the aforementioned circumstance in the confirmation note of any document concerning the company that may be registered as well as in any of the certificates which may be issued.

In limited liability companies, mention shall be made of the number of stakes into which the capital is divided, their par value and consecutive numbering and, where such stakes are not equal, the rights granted thereby to their holders and the proportion of the capital owned.

In joint stock companies, mention shall be made of the share class and series, as appropriate, specifying: the portion of the par value outstanding, payment method and deadline, and whether the shares are represented by certificates or book entries. Where share certificates are issued, they shall specify whether they represent registered or bearer shares and whether the issue of multiple share certificates is envisaged

e) The governance arrangements, the number of directors or at least the minimum and maximum number thereof, as well as their term of office and the remuneration scheme, as appropriate.

In limited partnerships, the identity of the general partners shall also be provided.

f) The manner in which the company's authorised administrative bodies conduct their discussions and adopt their decisions.

**Article 24. Operational start-up.**

**1.** Unless otherwise indicated in the by-laws, company operations shall begin on the date of formalisation of the deed of incorporation.

**2.** Company by-laws may not establish a start-up date prior to the date of formation, except in the event of conversions.

**Article 25. Duration.**

Unless otherwise indicated in the by-laws, companies shall be formed for an indefinite duration.

**Article 26. Financial year.**

In the absence of specific provisions in this regard, the company's financial year shall be understood to end on the thirty-first of December of each year.

**Article 27. Privileges for the founders of joint stock companies.**

**1.** The by-laws of joint stock companies may reserve special rights of a financial nature to founders and promoters. The overall value of such rights, irrespective of the nature thereof, may not exceed ten per cent of the net book earnings after accounting for the legal reserve, nor may they be in place for longer than ten years. The by-laws must specify a system for compensation in the event of early expiry of special rights.

**2.** These rights may be laid down in registered non-share certificates. The transfer of the same shall be restricted in the by-laws.

**Article 28. Independence of intent.**

The deed of incorporation and by-laws may also include any agreements or terms that the founding partners or shareholders deem suitable, provided they are neither unlawful nor breach the principles of the type of company involved.

**Article 29. Reserved agreements.**

Inter-partner or inter-shareholder agreements not included in the by-laws shall not be effective in respect of the company.

**Article 30. Founder liability.**

**1.** The founders shall be held jointly and severally liable by the company, its partners or shareholders and third parties for the inclusion in the deed of incorporation of the items required by law, for the accuracy of any statements made therein and the due investment of the funds paid to cover start-up expenses.

**2.** Founder liability shall extend to any persons in whose stead or on whose behalf they may act.

## CHAPTER III

### Registration in the Mercantile Registry

#### Section one. Registration

**Article 31. Legal capacity to register documents.**

Founding partners or shareholders and directors shall be vested with the necessary powers to submit the deed of incorporation to the Mercantile Registry and, as appropriate, the Property and Moveable Estate Registries, as well as to apply for or proceed to settlement and pay the respective taxes and expenses.

**Article 32. Legal obligation to submit documents for registration.**

**1.** The founding partners or shareholders and directors must submit the deed of incorporation for entry in the Mercantile Registry within two months of the date of formalisation thereof and shall be held jointly and severally liable for any damages caused by failure to comply with this obligation.

**2.** The deed of incorporation and all other company-related matters may be registered upon substantiation of the payment of all the respective taxes, or of application for such payment.

**Article 33. Consequences of registration.**

Upon registration, the company shall acquire the legal status attendant upon the type of company chosen.

**Article 34. Non-transferability of stakes and shares prior to registration.**

Until the company or, as appropriate, the decision to increase capital, is registered in the Mercantile Registry, no stakes or shares may be delivered or transferred.

**Article 35. Public disclosure**

Once the company has been registered in the Mercantile Registry, the mercantile registrar shall forward the data relating to the deed of incorporation according to the regulation, electronically and at no extra cost, to the Official Journal of the Mercantile Registry for publication.

**Section two. Companies in the process of formation**

**Article 36. Actors' liability.**

Whosoever may perform acts or conclude agreements on behalf of the company prior to registration thereof in the Mercantile Registry shall be held jointly and severally liable for any consequences of such acts and agreements, except where the effectiveness thereof is contingent upon and subsequent to registration and, as appropriate, subsequently assumed by the company.

**Article 37. Liability of companies in the process of formation.**

**1.** Companies in the process of formation shall be held liable with any assets they may possess for acts performed or agreements concluded that are: requisite to company registration, attributable to their directors within the scope of the pre-registration powers vested therein, or stipulated in specific mandates issued by persons appointed to this end by all the partners or shareholders.

**2.** The partners or shareholders shall be held personally liable to the extent of the contribution committed thereby.

**3.** Unless otherwise indicated in the by-laws, if the company start-up date coincides with the formalisation of the deed of incorporation, the directors shall be understood to be empowered to engage fully in any business related to the corporate purpose, performing any acts and concluding any agreements accordingly.



**Article 38. Liability of registered companies.**

1. Once registered, companies shall be liable for all the acts and agreements referred to in the preceding article, as well as any for it may perform or conclude within three months of registration.
2. In both cases, partners or shareholders, directors and representatives shall be released from the joint and several liability described in the two preceding articles.
3. If the sum of company equity and the expenses necessarily incurred in its registration is lower than company capital, the partners shall be obliged to defray the difference.

**Section three. Companies in irregular situations**

**Article 39. Companies in irregular situations.**

1. Once the intention to refrain from registering a company has been confirmed and, in any event, when no application for registration is filed within one year of the date of formalisation of the deed, it shall be governed by the rules for general partnerships or, as appropriate, non-mercantile organisations, if the company in the process of formation has undertaken or continued operations.
2. In the event of subsequent registration, the provisions of paragraph two of the preceding article shall not apply.

**Article 40. Partners' or shareholders' rights to file for company dissolution.**

Any partner or shareholder of companies in an irregular situation may bring proceedings for dissolution thereof in the commercial court with jurisdiction in the place where the company's registered office is located and, subsequent to liquidation of the company equity, demand his/her share, which shall be paid, whenever possible, by refund of any contributions made.

**CHAPTER IV**

**Successive formation of joint stock companies**

**Article 41. Scope.**

The rules laid down hereunder shall apply when, prior to the formalisation of the deed of incorporation of a joint stock company, a public share offering is announced in whatsoever media or via financial brokers.

**Article 42. Formation programme.**

1. In publicly subscribed companies, the promoters shall inform the National Securities Market Commission of the proposed issue and prepare the formation programme containing all information deemed appropriate, and necessarily the following items:
  - a) The first and last names, nationality and address of all promoters.
  - b) The literal text of the by-laws that will govern the company, as appropriate.

- c) The deadline and other conditions for subscribing shares and the financial institution or institutions where payment therefor is to be made; the programme must also explicitly specify whether the promoters are vested with powers to extend the subscription period where necessary.
- d) Where non-cash contributions are envisaged on one or several occasions, the nature and value thereof, the time or times when they are to be made and the names of the persons or companies making the contribution; in any event, subscribers shall be advised of the location where the memorandum and technical appraisal of non-cash contributions are available for perusal as provided hereunder.
- e) The Mercantile Registry where the formation programme and share issue prospectus are custodied.
- f) The criteria whereby shares are to be proportionally distributed in the event of oversubscription, or the possible formation of the company for the sum of the subscriptions raised, whether higher or lower than announced in the formation programme.

**2.** The formation programme shall conclude with a summary of its contents.

**Article 43. Programme submission for custody.**

**1.** Prior to publicising the planned company in any way whatsoever, the promoters must furnish the National Securities Market Commission with a full copy of the formation programme, together with a technical report on the feasibility of the planned company and the documents describing the characteristics of the shares to be issued and the associated subscribers' rights. The promoters shall also furnish an issue prospectus, whose contents shall be compliant with all securities market regulations in effect.

The programme must be signed by all the company promoters, whose signatures shall be authenticated by a notary public. The prospectus must also be signed by the financial intermediaries, if any, entrusted with placing and underwriting the issue.

**2.** The promoters must likewise submit a printed copy of the formation programme and the prospectus to the Mercantile Registry, together with a certificate substantiating deposit thereof with the National Securities Market Commission.

The availability of the aforementioned documents for perusal at both the National Securities Market Commission and the Mercantile Registry itself, together with a summary of their contents, shall be announced in the Official Journal of the Mercantile Registry.

**3.** All publicity regarding the planned company shall specify the offices of the National Securities Market Commission and Mercantile Registry where the formation programme and issue prospectus are custodied, as well as the financial institutions mentioned in point c) of paragraph one of the preceding article, where copies of the issue prospectus can be obtained by anyone wishing to subscribe shares.

**Article 44. Share subscription and payment.**

- 1.** Share subscription, which may not modify the terms of either the formation programme or the issue prospectus, must be made within the term as stipulated or extended, as appropriate, subsequent to payment of at least twenty-five per cent of the par value of each share. Such payments must be deposited in an account in the company's name at the financial institution or institutions so designated. Non-cash contributions, as appropriate, shall be made as stipulated in the formation programme.
- 2.** Within one month as of the subscription deadline, the promoters shall formalise the final list of subscribers before a notary public, specifying the par value, number, class and series (in the event of several) of shares owned by each, as well as the financial institution or institutions where the total subscriber outlays are deposited. All of the foregoing shall be duly substantiated upon submission to the notary public for legalisation.

**Article 45. Non-drawability of contributions.**

Contributions may not be drawn until the company is registered with the Mercantile Registry, except to defray registration-related notary public, registry and tax costs.

**Article 46. Subscription form.**

- 1.** Share subscriptions shall be recorded in a document explicitly containing the words "subscription form", issued in duplicate and containing at least the following items:
  - a) Name of the future company and reference to the National Securities Market Commission and the Mercantile Registry where the formation programme and prospectus are custodied, as well as to the issue of the Official Journal of the Mercantile Registry containing the summary thereof.
  - b) Subscriber's first and last or company name, nationality and address.
  - c) Number of shares subscribed, par value of each, class and series, where there are several.
  - d) The amount paid up against the par value.
  - e) The subscriber's explicit acceptance of the contents of the formation programme.
  - f) The identity of the financial institution, if any, where subscriptions are certified and the amounts specified in the subscription form are deposited.
  - g) Date and subscriber's signature.
- 2.** One copy of the subscription form shall be kept by the promoters while the second, bearing the signature of at least one of the promoters or of the financial institution authorised thereby to accept subscriptions, shall be delivered to the subscriber.

**Article 47. Notice of the incorporation meeting.**

- 1.** Within no more than six months of the date of deposit of the formation programme and prospectus with the Mercantile Registry, the promoters shall convene all subscribers to the incorporation meeting by registered letter addressed to each at least fifteen days in advance of such meeting. The items to be discussed in particular are:



- a) Approval of actions taken to date by the promoters.
  - b) Approval of the by-laws.
  - c) Approval of the non-cash contribution valuations, as appropriate.
  - d) Approval of any specific rights reserved to promoters.
  - e) Appointment of persons in charge of company management.
  - f) Appointment of the person or persons entrusted with formalising the company's deed of incorporation.
2. The agenda for the meeting must contain at least all the above mentioned items. In addition, the meeting announcement must be published in the Official Journal of the Mercantile Registry.

**Article 48. *Incorporation meeting.***

1. The meeting shall be chaired by the promoter appearing as first signatory of the formation programme or, in his/ her absence, by the person elected by the remaining promoters. The acting secretary shall be a subscriber chosen by the attendees.
2. The meeting may only be validly held if attended in person or by proxy by a quorum consisting of subscribers accounting for at least half of the subscribed capital. Attendance and voting requirements shall be governed by the provisions laid down hereunder.
3. A list of subscribers present at the meeting shall be drawn up as established hereunder prior to discussing the agenda.

**Article 49. *Adoption of decisions.***

1. Subscribers' voting rights shall be proportional to their respective contributions.
2. Decisions shall be adopted when approved by at least one-fourth of the subscribers attending the meeting, representing at least one-fourth of the subscribed capital.

Where proposals involve the approval of non-cash contributions or the reservation of special rights for promoters, the parties concerned may not vote. In either case, a majority of the remaining votes shall suffice to adopt decisions.

3. The formation programme may not be amended except as unanimously approved by all attending subscribers.

**Article 50. *Minutes of incorporation meeting.***

The terms and conditions of the incorporation meeting, the decisions reached and objections raised thereby shall be recorded in minutes signed by the subscriber acting as secretary to the meeting and countersigned by the chairman.

**Article 51. *Deed and registration with the Mercantile Registry.***

1. In the month following the date of the meeting, the persons appointed to this end shall formalise the company's deed of incorporation, subject to the decisions adopted by the meeting and all other substantiating documentation.

**2.** The appointees shall be vested with sufficient powers to submit the deed to the Mercantile, Property and Moveable Estate Registries, and to apply for or proceed to settle and pay the respective taxes and expenses.

**3.** The deed shall be submitted for registration with the Mercantile Registry serving the place where the company's registered office is located within two months of formalisation thereof.

**Article 52. Liability of the parties formalising the deed.**

In the event of delay in the formalisation of the deed of incorporation or its submission to the Mercantile Registry, the persons referred to in the preceding article shall be held jointly and severally liable for any damages incurred.

**Article 53. Obligations prior to registration.**

**1.** The promoters shall be held jointly liable for any obligations with third parties assumed on the occasion of company formation.

**2.** Once registered, the company shall assume all obligations lawfully undertaken by the promoters and shall reimburse them for any expenses defrayed, provided their involvement is approved by the incorporation meeting and the expenses deemed to be necessary.

**3.** The promoters may not demand such liability of mere subscribers, except in the event of negligence or fraud.

**Article 54. Promoters' liability**

The promoters shall be held jointly and severally liable by the company and third parties for: the accuracy and veracity of the subscription lists to be submitted to the incorporation meeting; the initial outlays established in the formation programme and appropriate investment thereof; the veracity of the statements contained in the programme and prospectus; and the existence and effective surrender to the company of the non-cash contributions.

**Article 55. Consequences of non-registration**

In any event, if the deed of incorporation is not registered within one year of the date of the deposit of the formation programme and prospectus in the Mercantile Registry, the subscribers may demand reimbursement of the contributions laid out plus any earnings accrued thereon.

## CHAPTER V

### Nullity

#### **Article 56. Causes for nullity**

**1.** Once the company has been registered, it may only be declared null and void on the following grounds:

- a) Non-concurrence during the formalisation of company formation by at least two founding partners or shareholders, where there are several, or by the founding partner or shareholder in single member companies.
- b) Incapacity of all founding partners or shareholders.
- c) Failure to include partners' or shareholders' contributions in the deed of incorporation.
- d) Failure to include the company name in the deed of incorporation.
- e) Failure to include the corporate purpose in the by-laws, or the inclusion of a purpose that is unlawful or incompatible with law and order.
- f) Failure to include the amount of the share capital in the by-laws.
- g) In limited liability companies, failure to pay up the capital in full; and in joint stock companies, failure to lay out the legal minimum.

**2.** Companies may not be declared to be non-existent, null and void or extinct for reasons other than mentioned in the preceding paragraph.

#### **Article 57. Consequences of declaration of nullity**

**1.** A ruling declaring the nullity of a company shall constitute the first step in liquidation proceedings, which shall be conducted pursuant to the procedure laid down hereunder for dissolution.

**2.** Nullity shall not affect the validity of any obligations or debt owed by or to the company, and both shall be subject to the liquidation proceedings.

**3.** When a limited liability company is declared null and void due to the failure to pay up the capital in full, the partners shall be bound to furnish the amount outstanding. In joint stock companies declared null and void and required to honour the obligations undertaken by the company with third parties, the shareholders shall be required to pay up any sums outstanding.

## **TITLE III** **Capital contributions**

### **CHAPTER I** **Capital contributions**

#### **Section one. General provisions**

##### ***Article 58. Nature of contributions.***

- 1.** Contributions to corporate enterprises may comprise only goods or rights liable to economic appraisal.
- 2.** Work performed or services rendered shall under no circumstances comprise contributions to company capital.

##### ***Article 59. Validity of contributions.***

- 1.** Stakes created or shares issued but not backed by a valid contribution to company equity shall be null and void.
- 2.** No stakes may be created or shares issued for a sum lower than their par value.

##### ***Article 60. Ownership status of contributions.***

Unless explicitly stipulated otherwise, all contributions shall be understood to be held as possessions.

#### **Section two. Cash and non-cash contributions**

##### ***Sub-section 1. Cash contributions***

##### ***Article 61. Cash contributions.***

- 1.** Cash contributions shall be denominated in euros.
- 2.** If the contribution is made in any other currency, its equivalent value in euros shall be calculated as stipulated by law.

##### ***Article 62. Substantiation of contributions***

- 1.** Cash contributions must be substantiated before the notary public legalising the deed of incorporation or instrument on capital increase, or in joint stock companies, the instruments formalised on the occasion of successive payments. Such substantiation, which shall consist of a document certifying the deposit of the respective funds in the company's favour at a financial institution, shall be attached by the notary public to the deed or instrument.

Otherwise, contributions shall be presented to the notary public for deposit in the company's favour.

**2.** The aforementioned certificate of payment shall expire two months after the date of issue.

**3.** Up to and including the expiry date, return of the certificate to the financial institution in question shall be requisite to cancellation of the deposit by the party concerned.

#### ***Sub-section 2. Non-cash contributions***

##### ***Article 63. Non-cash contributions.***

Non-cash contributions must be described in the deed of incorporation or instrument on capital increase, including registry data as appropriate, the value thereof in euros and the numbers of the shares or stakes attributed thereto.

##### ***Article 64. Contribution of real or movable property.***

In the event the contribution should consist of real or movable property or of rights attached thereto, the contributor shall be bound to surrender and disencumber the asset constituting the object of the contribution pursuant to the provisions of the Civil Code on bills of sale. The rules laid down in the Commercial Code on transfer of risk in such transactions shall likewise be applicable.

##### ***Article 65. Contribution of loans.***

If the contribution consists of lender's rights, the contributor shall be held liable for the legitimacy thereof and the debtor's solvency.

##### ***Article 66. Contribution of a company.***

**1.** Companies or business concerns constituting contributions must be disencumbered as a whole by contributors, if the flaw or encumbrance involved affects the whole or any component thereof essential for normal company operation.

**2.** They shall likewise proceed to individually disencumber any company components that are vital to its equity value.

### **CHAPTER II**

#### **Valuation of non-cash contributions in joint stock companies**

##### ***Article 67. Expert report.***

**1.** Non-cash contributions, irrespective of the nature thereof, made on the occasion of joint stock company formation or capital increases subsequent thereto shall constitute the object of a report prepared by one or several independent professionals. Such experts must be duly qualified and appointed to this end pursuant to the applicable regulations by the mercantile registrar serving the place where the company's registered office is located.



**2.** The report shall contain a description of the contribution, registry data as appropriate, the valuation of the contribution and whether it concurs with the par value and, if applicable, the value of the issue premium of the shares issued in exchange therefor.

**3.** The value attributed to the contribution in the deed of incorporation shall not be higher than the value estimated by the experts.

**Article 68. Expert liability.**

**1.** Experts shall be held liable by the company, its shareholders and creditors for any damages resulting from the valuation but shall be exonerated therefrom if they can provide evidence of having acted with due diligence and pursuant to the standards associated with the task entrusted thereto.

**2.** The right to file claims in this regard shall lapse after four years of the date of the report.

**Article 69. Non-requirement of report.**

An expert report shall not be necessary in the instances described below.

a) When the non-cash contribution consists of money market instruments or movable assets listed on an official secondary market or any other regulated market. Such assets shall be valued at the average weighted trading price on one or various regulated markets during the quarter immediately preceding the date of actual contribution, in accordance with the certification issued by the governing body of the official secondary or regulated market in question.

If such price has been impacted by exceptional circumstances that may have significantly modified the value of the assets on the actual date of contribution, the company directors shall lodge a request for the appointment of an independent expert to prepare a report.

b) When the contribution consists of assets other than mentioned in the preceding paragraph, whose fair value was determined within six months prior to the date of the actual contribution by an independent professional with the necessary expertise not appointed by the parties concerned, in accordance with generally accepted rules and principles for the valuation of such assets.

If new circumstances ensue that might significantly alter the fair value of the assets on the date of contribution, the company directors must lodge a request for the appointment of an independent expert to prepare a report.

If the directors fail to appoint an expert where bound to do so, any shareholder or shareholders representing at least five per cent of the share capital may ask the Mercantile Registry serving the place where the registered office is located to appoint an expert, at the company's expense, to value the assets involved.

That request may be lodged up to the date of the actual contribution, provided the shareholders concerned continue to represent at least five per cent of the company's share capital at the time the request is made.

c) When on the occasion of the formation of a new company via merger or spin-off, a report has been drafted by an independent expert on the proposed merger or spin-off.

- d) When the share capital is increased to issue new shares or stakes to the partners or shareholders of the company taken over or spun off subsequent to the formulation of an independent expert report on the proposed merger or spin-off.
- e) When the share capital is increased to issue new shares to the shareholders of the company that is the object of a takeover bid.

**Article 70. Directors' substitute report.**

In the absence of a report on non-cash contributions prepared by experts appointed by the Mercantile Registry, the company directors shall draft a report containing the following information:

- a) Description of the contribution.
- b) Value of the contribution, the source of the valuation and, as appropriate, the valuation method used.  
If the contribution comprises money market instruments or movable assets listed on an official secondary or a regulated market, the certification issued by the respective governing body shall be attached thereto.
- c) A statement specifying whether the appraised value is at least equal to the par value of and, as appropriate, any issue premium for, the total number of shares issued in exchange.
- d) A statement indicating that no new circumstances have arisen that might affect the initial valuation.

**Article 71. Public record of reports.**

- 1.** An authenticated copy of the expert's or, as appropriate, the directors' report, must be deposited with the Mercantile Registry within one month of the actual date of contribution.
- 2.** The expert's or, as appropriate, the directors' report, shall be attached as an annex to the company's deed of incorporation or instrument on capital increase.

**Article 72. Onerous acquisitions.**

- 1.** The onerous acquisition by a joint stock company of assets worth ten per cent or more of its share capital must be approved by the general meeting of shareholders if made at any time between the date of formalisation of its deed of incorporation or of its conversion to such corporate status and two years after its registration in the Mercantile Registry.
- 2.** A report prepared by the directors justifying the acquisition must be made available to the shareholders with the notice of the meeting, along with the report on the valuation of non-cash contributions referred to in the present chapter. The provisions of the preceding article shall apply.
- 3.** The provisions of the preceding paragraphs shall not apply to acquisitions required for ordinary company operations or operations conducted on an official secondary market or through public auction.



## CHAPTER III

### Liability for non-cash contributions

#### **Section one. Liability in limited liability companies**

**Article 73. Joint and several liability.**

**1.** The founders, the shareholders at the time a capital increase is approved and anyone acquiring a holding paid in the form of a non-cash contribution, shall be held jointly and severally liable to the company and company creditors for such contributions and the value attributed thereto in the respective instrument.

Founder liability shall extend to the persons on whose behalf they may have acted.

**2.** If a contribution is made in exchange for a capital increase, shareholders recording their objection to the decision or to the valuation of the contribution in the minutes shall be exempt from such liability.

**3.** In the event of a capital increase charged to non-cash contributions, in addition to the persons mentioned in paragraph one above, the directors shall also be held jointly and severally liable for any difference between the valuation provided and the true value of the contributions.

**Article 74. Legal capacity to bring action for liability.**

**1.** Action for liability shall be brought by company directors or liquidators. No prior company decision is required to bring such action.

**2.** Action for liability may also be brought by any partner or shareholder voting against the decision, provided he/she holds at least five per cent of the capital, or by any creditor in the event of company insolvency.

**Article 75. Limitation of action.**

The liability to the company and company creditors referred to in this section shall lapse five years after the date when the contribution was made.

**Article 76. Exclusion from legal liability.**

Partners whose non-cash contributions undergo expert valuation in accordance with the provisions for joint stock companies shall be excluded from the joint and several liability referred to in the preceding articles.

#### **Section two. Liability in joint stock companies**

**Article 77. Joint and several liability.**

The founders shall be held jointly and severally liable by the company, its shareholders and third parties for the material existence of company contributions to the share capital and the valuation of non-cash contributions.

Founder liability shall extend to the persons on whose behalf they may act.

## CHAPTER IV

### Capital outlays

#### Section one. General rules

##### **Article 78.** *Payment of par value of company shares.*

The stakes into which the capital of limited liability companies is divided shall be fully subscribed and the par value fully paid by the partners by the date of formalisation of the company's deed of incorporation or instrument on capital increase.

##### **Article 79.** *Minimum outlay against share par value.*

The shares into which the share capital of joint stock companies is divided shall be fully subscribed by the shareholders and at least one-fourth of the par value of each share shall be paid up by the date of formalisation of the company's deed of incorporation or instrument on capital increase.

##### **Article 80.** *Deferred non-cash contributions.*

- 1.** In the event of partial payment of subscribed shares in joint stock companies, the instrument must specify whether the future payments shall be made in cash or as non-cash contributions. In the latter case, the nature, value and content of such contributions, as well as the means and procedure of payment, shall be determined in the instrument, which shall also contain explicit mention of the payment deadlines.
- 2.** The deadline for payment of non-cash contributions shall not extend beyond five years of the date of company formation or its decision to increase its capital.
- 3.** The expert's or, as appropriate, the directors' report shall be attached as an appendix to the instrument in which the deferred payments are recorded.

#### Section two. Payments outstanding

##### **Article 81.** *Payments outstanding.*

In joint stock companies, shareholders must pay the portion of outstanding capital into the company in the manner and within the deadline stipulated in the by-laws.

Notice of the sums payable shall be served upon the shareholders concerned or an announcement to that effect shall be published in the Official Journal of the Mercantile Registry. Notices or announcements must be issued at least one month in advance of the payment deadline.

##### **Article 82.** *Shareholders in arrears.*

Shareholders shall be in arrears at any time after the deadline specified in the by-laws or established by company directors for payment of the capital outstanding, as laid down in the preceding article.



**Article 83. Consequences of arrears in contribution payments.**

1. Shareholders in arrears of payment of sums outstanding may not vote. The value of the respective shares shall be deducted from the share capital when calculating a quorum.
2. Shareholders in arrears shall also be deprived of their right to dividends as well as their pre-emptive right to subscribe new shares or convertible bonds.

After paying the sums owed, together with the interest accruing, shareholders may demand payment of any unexpired dividends, but not pre-emptive rights if the deadline for their exercise has lapsed.

**Article 84. Company claim for payment.**

1. When shareholders are in arrears, depending on the circumstances and nature of the contribution outstanding, the company may demand payment, including any legal interest accruing and damages incurred by reason of the arrears, or convey share ownership for and at the risk of the shareholders in arrears.
2. When shares must be sold, the sale shall be substantiated either by a member of the official secondary market on which the shares are traded or by a notary public, and, as appropriate, shall entail the replacement of the original share certificate by a duplicate thereof.
3. If no sale materialises, the shares shall be redeemed and the share capital reduced accordingly, and any sums laid out shall be retained by the company.

**Article 85. Liability in the transfer of non-paid up shares.**

1. Transferees of shares not paid up, together with any previous transferors designated at the discretion of the company's directors, shall be held jointly and severally liable for the payment of the sums outstanding.
2. Transferor liability shall be effective for three years from the date of the respective transfer. Any covenants that run counter to the joint and several liability stipulated herein shall be null and void.
3. Transferees who pay up may claim the full amount paid from subsequent transferees.

## CHAPTER V

### Ancillary commitments

**Article 86. Inclusion in the by-laws.**

1. The by-laws of corporate enterprises may include stipulations on ancillary commitments in addition to contributions, describing the specific content thereof and establishing whether they are to be provided cost-free or remunerated, as well as any penalty clauses for non-compliance.
2. Under no circumstances shall ancillary commitments form part of the capital.



**3.** The by-laws may make such commitments mandatory for all or some of the partners or shareholders, or the ownership of one or several specific stakes or shares contingent upon provision thereof.

**Article 87.** *Remunerated ancillary commitments.*

**1.** Where ancillary commitments are to be remunerated, the by-laws shall determine the sums to be received by the shareholders concerned.

**2.** The amount of the remuneration shall under no circumstances exceed the value of support furnished.

**Article 88.** *Transfer of shares subject to ancillary commitments.*

**1.** The voluntary inter vivos transfer of stakes or shares owned by a partner or shareholder who is personally bound by ancillary commitments, as well as the transfer of specific stakes or shares so conditioned, shall be subject to company authorisation.

**2.** Unless otherwise indicated in the by-laws, in limited liability companies such authorisation shall be granted by the general meeting, and in joint stock companies by the directors.

In any event, if the company fails to reply to a request for authorisation within two months of the date thereof, authorisation shall be deemed to be granted.

**Article 89.** *Modification of ancillary commitments.*

**1.** Ancillary commitments shall be created, amended and, as appropriate, extinguished in advance in accordance with the provisions on amendment of the by-laws and shall also require the individual consent of the parties so bound.

**2.** Unless otherwise established in the by-laws, stake or shareholder status shall not be forfeited as a result of the involuntary failure to honour ancillary commitments.

## **TITLE IV**

### **Stakes and shares**

#### **CHAPTER I**

##### **General provisions**

###### **Article 90. Stakes and shares.**

Stakes in limited liability companies and shares in joint stock companies constitute aliquot, indivisible and cumulative parts of the capital.

###### **Article 91. Stake and shareholder status.**

Each and every stake or share shall grant to its lawful owner stake or shareholder status and with it the rights acknowledged in this act and in the by-laws.

###### **Article 92. Shares as transferable securities.**

**1.** Shares may be represented by certificates of title or book entries. In both instances they shall be regarded to be transferable securities.

**2.** Stakes in limited liability companies may not be represented by certificates or book entries, nor be called shares, and under no circumstances shall be regarded to be securities.

#### **CHAPTER II**

##### **Partners' and shareholders' rights**

###### **Section one. Partners' and shareholders' rights**

###### **Article 93. Partners' and shareholders' rights.**

Pursuant to the terms of this act, subject to the exceptions provided for hereunder, partners or shareholders shall be entitled to the following rights:

- a) To take part in the distribution of company earnings and in the equity resulting from liquidation.
- b) To acquire new stakes or subscribe new shares or convertible bonds under preferred conditions.
- c) To attend and vote at general meetings and challenge company agreements.
- d) To be duly informed.

**Article 94. Diversity of rights.**

**1.** The rights attributed to partners or shareholders by stakes and shares shall be the same, subject to the exceptions provided for in the act.

Stakes and shares may afford different rights to their holders. Shares associated with the same rights form part of the same class. When a class is divided into several series, all shares in any given series shall have the same par value.

**2.** The creation of stakes and issue of shares attributing privileges over ordinary stakes and shares shall be subject to the procedures laid down to amend the by-laws.

**Article 95. Privilege in the distribution of company earnings.**

**1.** When the privilege consists of a preference dividend, the profit for the financial year in question may not be distributed among other stakes or shares until the preference dividend for such year has been paid.

**2.** Unless otherwise indicated in the by-laws, the company shall be bound to approve the distribution of such dividend whenever distributable earnings are forthcoming.

**3.** The by-laws shall establish the consequences of failure to pay preference dividends in whole or in part, determine whether unpaid dividends are cumulative, and define the rights of the holders of such stakes or shares vis-à-vis the dividends payable to other stake or shareholders.

**Article 96. Prohibitions in matters of privilege.**

**1.** The creation of stakes or the issue of shares entitled to collect interest shall not be valid, irrespective of the manner in which it is determined.

**2.** The issue of shares that may either directly or indirectly alter the proportionality between par value and voting or pre-emptive rights shall not be allowed.

**3.** The creation of stakes that either directly or indirectly alter the proportionality between par value and pre-emptive rights shall not be allowed.

**Article 97. Equal treatment.**

All partners or shareholders whose relationship with the company are identical shall be treated equally thereby.

## **Section two. Non-voting stakes and shares**

**Article 98. Creation or issue.**

Limited liability companies may create non-voting stakes up to a par value of less than half of the capital and joint stock companies may issue non-voting shares up to a par value of under half of the paid up share capital.

**Article 99. Preference dividend.**

- 1.** Holders of non-voting stakes or shares shall be entitled to receive the minimum yearly dividend, whether fixed or variable, established in the by-laws. Once the minimum dividend has been approved, the holders of non-voting stakes or shares shall be entitled to the same dividend as paid for ordinary stakes or shares.
- 2.** Where distributable profits are earned, the company shall be bound to approve the distribution of the abovementioned minimum dividend.
- 3.** Where distributable profits are not earned or are insufficient for distribution, the portion of the unpaid minimum dividend must be paid within the following five financial years. Until such minimum dividend is paid up, the non-voting stocks and shares shall be entitled to this right under the same terms and conditions as ordinary shares and maintain their financial privileges.

**Article 100. Privilege in the event of capital reduction to reflect losses.**

- 1.** Non-voting stakes or shares shall be unaffected by capital reductions to reflect losses, irrespective of the terms thereof, unless the reduction exceeds the par value of the remaining stakes or shares. If, as a result of the reduction, the par value of the non-voting stakes or shares exceeds half of the capital in limited liability companies or of the paid up shares in joint stock companies, such proportion must be re-established within no more than two years. Otherwise, the company shall be dissolved.
- 2.** If all ordinary stakes or shares are redeemed as a result of a capital reduction, non-voting stocks or shares shall be entitled to such right until the legally established proportion between non-voting and ordinary stakes or shares is re-established.

**Article 101. Liquidation privileges.**

In the event of company liquidation, non-voting stakes shall entitle their holders to reimbursement of the value thereof prior to distribution of any amount to the remaining stakeholders. In joint stock companies the scope of this privilege is the amount paid up in non-voting shares.

**Article 102. Other rights.**

- 1.** Non-voting stakes and shares shall entitle their holders to the other rights of ordinary shares, except as provided in previous articles.
- 2.** Non-voting shares may not be grouped together for the purposes of appointment of members of the Board of Directors by proportional representation. The par value of such shares shall not be taken into account for the intents and purposes of the exercise of that right by the remaining shareholders.
- 3.** Non-voting stakes shall be subject to the provisions in the by-laws and additional legislation on transfer and pre-emptive rights.

**Article 103. Detrimental amendment of by-laws.**

Any amendment to the by-laws that directly or indirectly encroaches on the rights of non-voting stakes or shares shall be subject to the consent of the majority of the non-voting stakes or shares affected thereby.

**CHAPTER III**

**Stakeholders' ledger and the transfer of stakes in limited liability companies**

**Section one. Stakeholders' ledger**

**Article 104. Stakeholders' ledger.**

**1.** Limited liability companies shall keep a stakeholders' ledger containing records of the original stakes and subsequent voluntary or obligatory stake transfers, as well as the creation of rights ad rem or other encumbrances thereon.

**2.** Only the parties entered in such ledger shall be acknowledged by the company to be partners.

**3.** Each entry shall indicate the identity and address of the holder of the stake or of the right or lien thereon.

**4.** The contents of the ledger may only be rectified by the company if no objection is raised by the parties concerned of the intention to proceed to such rectification within one month of service of notice to that effect by a reliable method.

Partners' personal data may be modified at their request, until which time no such modification shall have any effect on the company.

**Article 105. Examination and certification.**

**1.** Any partner may examine the stakeholders' ledger, which shall be kept and custodied by the governing body.

**2.** Stakeholders and the holders of rights ad rem or of encumbrances on stakes shall be entitled to obtain a certificate of the stakes, rights or encumbrances recorded in their names.

**Section two. Transfer of stakes**

**Article 106. Record of transfers.**

**1.** Stake transfers, as well as the creation of pledges thereon, shall be recorded in a public document.

The creation of rights ad rem other than those referred to in the preceding paragraph on stakes must be recorded in a public instrument.

**2.** The buyer of stakes may exercise partnership rights in respect of the company as soon as the latter is aware of the transfer or creation of the encumbrance.

**Article 107. Voluntary inter vivos transfers.**

**1.** Unless otherwise indicated in the by-laws, voluntary inter vivos transfers of stakes may be freely transacted among partners or in favour of partners' spouses, ascendants or descendants or companies belonging to the same group as the transferor. In all other cases, transfers shall be subject to the rules and limitations established in the by-laws or, wanting that, in this act.

**2.** Where not regulated in the by-laws, voluntary inter vivos transfers of stakes shall be governed by the rules set out below.

a) Any partner wishing to transfer his/her stake or stakes must inform the directors in writing, specifying the number and characteristics of the stakes involved, the identity of the transferee and other terms and conditions of transfer.

b) The transfer shall be subject to company authorisation, granted under a decision of the annual general meeting adopted by ordinary majority vote as established by law, provided the item is included on the agenda.

c) The company may only withhold its consent if it serves a notarised notice upon the transferor, specifying the identity of one or several partners or third parties interested in acquiring all the stakes for sale. No notice need be served upon the transferor if he/she attended the annual general meeting where such arrangements were approved. Partners attending the general meeting shall have purchase priority. If several attendees express an interest in the stakes in question, they shall be distributed among them all in proportion to their existing stakes in the company capital.

If one or several partners or third party purchasers of all the shares cannot be identified, the general meeting may decide that the company itself should acquire the shares that are not acquired by any partner or third party accepted by the meeting, pursuant to the provisions of Article 140.

d) The price of the stakes, the payment method and other terms and conditions of the transaction shall be as agreed to by the transferor and disclosed to the company. If the payment of all or part of the price is deferred in the proposed transfer, payment of the amount deferred must be guaranteed by a financial institution prior to the purchase of the stakes.

If the proposed transfer is free of charge or involves some onerous formula other than purchase, the purchase price shall be covenanted by the parties or, in the absence of agreement, consist of the fair value of the stakes on the day the company was notified of the intention to sell. Fair value shall be understood to be the value determined by an auditor other than the company's auditor, appointed for this purpose by the company's directors.

In the event of contributions to joint stock companies or limited partnerships, the fair value of the shares shall be as stated in a report prepared by an independent expert appointed by the mercantile registrar.

The public instrument on transfer must be formalised within one month of the date of disclosure by the company of the identity of the purchasing party or parties.

e) The partner may transfer the stakes under the terms and conditions contained in the notice initially served upon the company if, three months after such notice, the company fails to furnish the identity of the purchasing party or parties.

f) The by-laws may not vest the auditor of the company's accounts with responsibility for establishing the value of stakes for the intents and purposes of transfer thereof.

**Article 108. By-laws: clauses prohibited.**

**1.** Clauses in the by-laws allowing voluntary inter vivos transfer of stakes to be transacted virtually freely shall be null and void.

**2.** Clauses in the by-laws by which the partner offering all or part of his stakes is bound to transfer a number other than offered shall be null and void.

**3.** Clauses forbidding the inter vivos voluntary transfer of stakes shall only be valid if the by-laws acknowledge partners' right to exit the company at any time. The inclusion of such clauses in the company by-laws shall be subject to the consent of all partners.

**4.** Notwithstanding the provisions of the foregoing paragraph, the by-laws may prevent the voluntary inter vivos transfer of stakes or the exercise of exit rights for no longer than five years from the date of company formation, or in respect of stakes resulting from a capital increase, five years from the date of formalisation of the respective public instrument.

**Article 109. Mandatory transfer.**

**1.** The seizure of stakes in the company on the occasion of proceedings for collection must be immediately reported to the company by the judge or authority ordering such attachment, identifying the lienor and the stakes subject to lien. The company shall record the seizure in the stakeholders' ledger and immediately forward a copy of the notice received to all partners.

**2.** Approval of the sale and the award of the stakes subject to lien shall remain outstanding after the auction or, in any other mandatory alienation arrangements provided by law, prior to the adjudication. The judge or administrative authority shall forward a literal transcript of the auction or adjudication to the company, along with the adjudication requested by the creditor. The company shall send copies of such transcripts to all partners within five days of receipt thereof.

**3.** The decision on the sale or award of the stakes to the creditor shall be final one month after the company receives the abovementioned transcripts. Before the decision is final, the partners or, lacking that if and only if the by-laws establish a right of pre-emption in its name, the company, may be subrogated to the rights of the awardee or creditor, providing they or it explicitly accept all the terms of the auction and full appropriation of the sum involved or, as appropriate, of the adjudication to the creditor and all expenses incurred. If several partners undertake subrogation, the stakes shall be distributed in proportion to the holding of each in company capital.



**Article 110. Transfers mortis causa.**

1. Acquisition of a stake through hereditary succession confers partnership status on the inheritor or legatee.
2. Notwithstanding the foregoing, the by-laws may grant the surviving partners or, in the absence thereof, the company, the right to purchase the deceased partner's stakes at their fair value on the date of the partner's death, cash down. The valuation shall be as specified in this act for the terms governing partner exit and the right of purchase must be exercised no more than three months after the date the company is notified of the bequest.

**Article 111. General provisions on transfers.**

The transfer of stakes shall be governed by the provisions in effect at the time when the stakeholder notifies the company of his/her intention in that respect, as appropriate, on the date of the stakeholder's death or of court or administrative adjudication.

**Article 112. Nullity of transfers involving violation of the law or the by-laws.**

Any transfers of stakes that do not comply with legal provisions or, as appropriate, company by-laws, shall be null and void in respect of the company.

## CHAPTER IV

### Proof of share ownership and share transfers

#### Section one. Proof of share ownership

##### *Sub-section 1. Share certificates*

**Article 113. Share certificates.**

1. Shares represented by certificates may be registered or bearer shares. They shall necessarily be registered until the amount thereof is fully paid up if transferability is subject to restrictions or the shares to ancillary commitments, or where special provisions so stipulate.
2. When shares must be represented by certificates, the shareholder shall be entitled to receive the certificates pertaining thereto, cost-free.

**Article 114. Share certificates.**

1. Irrespective of their class, share certificates shall be numbered consecutively and issued in chequebook form. They may cover one or more shares of the same series and shall contain at least the following information:
  - a) The company's name and address, Mercantile Registry entry details and tax identification number.
  - b) Par value of the share, its number and series and, in the event of preference shares, the special rights they may carry.
  - c) Specification of registered or bearer status.
  - d) Restrictions to free transferability, if any.

- e) The amount paid up or statement to the effect that the share has been fully paid up.
- f) Ancillary commitments, where any are attached thereto.
- g) The signature of one or several directors, which may be reproduced mechanically in such case a notarised instrument shall be issued attesting to the identity between the signatures reproduced automatically and the signatures affixed to the respective record in the presence of the notary public; such instrument must be deposited with the Mercantile Registry before the certificates are released.

**2.** Certificates for non-voting shares shall clearly specify such circumstance.

**Article 115. Provisional receipts.**

- 1.** Provisional receipts for shares shall necessarily carry the shareholder's name.
- 2.** The stipulations on provisional receipts laid down in Articles 114, 116 and 122 must be observed whenever applicable.

**Article 116. Ledger of registered shares.**

- 1.** Registered shares shall be entered in a ledger kept by the company, which shall record subsequent share transfers, including the name, surname, company name, nationality and address of subsequent holders, as well as the creation of rights ad rem and any other encumbrances thereon.
- 2.** The company shall only acknowledge shareholder status to parties entered in the aforementioned ledger.
- 3.** Any shareholder who wishes to do so may examine the ledger of registered shares.
- 4.** The company may only rectify entries that prove to be false or inaccurate, subject, moreover, to notifying the parties concerned of its intention to do so and to the absence of any objection on their part within thirty days following notification.
- 5.** Until such time as the certificates for registered shares are printed and delivered, shareholders shall be entitled to receive written substantiation of their shareholdings.

**Article 117. Replacement of share certificates.**

- 1.** Whenever the replacement of share or any other type of certificates issued by the company is in order, the company may cancel any certificates not submitted for exchange within the deadline laid down in the Official Journal of the Mercantile Registry and in one of the daily newspapers most widely circulated in the province where the company's registered office is located. The deadline in question may not be less than one month after publication of the respective announcement.
- 2.** The cancelled certificates shall be replaced by others whose issue shall likewise be announced in the Official Journal of the Mercantile Registry and in the newspaper that carried the initial announcement.

Registered shares shall be delivered or forwarded to the person whose name appears thereon or his/her successors, subject to substantiation of their right of succession.



Shares whose certificate holder cannot be located and bearer shares shall be custodied in the name of whoever substantiates ownership thereof.

**3.** Three years after the date of custody, the certificates issued to replace the ones cancelled may be sold by the company for the account and risk of the parties concerned through a member of the stock exchange, in the event of listed shares, or otherwise in the presence of a notary public.

The net proceeds from the sale of the shares shall be deposited at the Bank of Spain or the Spanish Government Depository (Caja General de Depósitos) for withdrawal by the parties concerned.

#### ***Sub-section 2. Book entries***

##### ***Article 118. Proof by book entries.***

**1.** Shares represented in the form of book entries shall be governed by the provisions of the securities market regulations.

**2.** This type of proof of share ownership may also be used where shares must necessarily be registered pursuant to the provisions of Article 113.

Under these arrangements, book entries must contain a notation specifying that shares are not fully paid up or are subject to ancillary commitments, as appropriate.

**3.** Organisations which, pursuant to securities market regulations, must keep proof of their securities in the form of book entries are bound to provide the issuing company with the details needed to identify their shareholders.

##### ***Article 119. Modification of book entries.***

Any modification of the characteristics of shares represented by book entries shall be made public, after formalisation as provided in this act and in the securities markets regulations, by entry in the Official Journal of the Mercantile Registry and announcement in one of the daily newspapers most widely circulated in the province where the company's registered office is located.

### **Section two. Share transfers**

##### ***Article 120. Share transfers.***

**1.** Before share certificates are printed and delivered, share transfers shall be conducted in accordance with the rules on loans and the transfer of other intangible rights.

The directors shall enter the transfer of registered shares in the ledger of registered shares immediately upon confirmation of the transfer.

**2.** After share certificates are printed and delivered, bearer shares shall be subject to the provisions of Article 545 of the Commercial Code.

Registered shares may also be transferred by endorsement, in which case and insofar as they are compatible with the nature of share certificates, Articles 15, 16, 19 and 20 of the Act on Negotiable Instruments shall apply. Transfers shall be substantiated by

displaying the certificate to the company. After confirming the validity of the chain of endorsements, the directors shall enter the transfers in the ledger of registered shares.

**Article 121. Creation of limited rights ad rem on shares.**

**1.** Limited rights ad rem shall be created on shares in accordance with the provisions of common law.

**2.** Rights ad rem may be created on registered shares by endorsement, in conjunction with a secured value, or right of usufruct clause or equivalent condition, depending on the case.

Entries shall be made in the ledger of registered shares pursuant to the provisions on transfers in the preceding article.

If the certificates for the shares constituting the object of their rights are not yet printed and delivered, the secured creditor and the usufructuary shall be entitled to obtain from the company a certificate of entry in the ledger of registered shares.

**Article 122. Shareholder credentials.**

After the share certificates are printed and delivered, display thereof or, as appropriate, of the certificate proving custody thereof by an authorised institution, shall be required to exercise shareholder's rights. For registered shares, certificates need only be displayed to obtain the respective entry in the ledger of registered shares.

**Article 123. Restrictions on free transfer of shares.**

**1.** Restrictions on or requisites for the free transfer of shares shall only be valid when applied to registered shares and explicitly stipulated in the by-laws.

When limitations are established by amendment to the by-laws, shareholders who are affected but voted against such amendment shall not be subject thereto for three months from the publication of the decision in the Official Journal of the Mercantile Registry.

**2.** Clauses in the by-laws that render shares non-transferable in practice shall be null and void.

**3.** Share transferability may only be subject to prior company authorisation if the by-laws list the reasons for withholding such authorisation.

Unless otherwise provided in the by-laws, it shall be incumbent upon company directors to grant or deny authorisation.

In any event, if the company fails to reply to a request for authorisation within two months of the date of submission, the authorisation shall be regarded to have been granted.

**Article 124. Transfers mortis causa.**

**1.** Restrictions in the by-laws on share transfers shall only be applicable to acquisitions on the occasion of death when explicitly stipulated in the by-laws themselves.



**2.** In the event of the foregoing, entry in the ledger of registered shares may only be denied if the company provides the heir with a buyer or offer to purchase the shares itself at their fair value on the date of application for entry in the ledger, pursuant to the provisions on the purchase of the company's own shares in Article 146.

Fair value shall be understood to be the value determined by an auditor other than the company's auditor, appointed for this purpose by the company's directors at the behest of any party concerned.

#### **Article 125. Mandatory transfers.**

The provisions of the preceding article shall apply when the shares are acquired as a result of court or administrative foreclosure proceedings.

### **CHAPTER V**

#### **Co-ownership and ad rem rights on stakes or shares**

#### **Article 126. Joint ownership of stakes or shares.**

In the event of joint ownership of one or several stakes or shares, the joint owners, who shall appoint one person to exercise their joint rights, shall be held jointly and severally liable for all obligations arising therefrom. The same rule shall be applied to all other instances of co-ownership of rights on stakes or shares.

#### **Article 127. Usufruct over stakes or shares.**

**1.** In the event of usufruct over stakes or shares, shareholder status is vested in the owner, although the usufructuary shall be entitled to receive the dividends approved by the company for the duration of the usufruct. Unless otherwise indicated in the by-laws, the exercise of all other shareholder rights is incumbent upon the owner.

The usufructuary is bound to enable the owner to exercise such rights.

**2.** The relations between usufructuaries and owners shall be governed by the provisions of the instrument establishing the usufruct or, wanting that, the provisions of this act and, subsidiarily, the provisions of the Civil Code.

#### **Article 128. Rules for termination of usufruct.**

**1.** When the usufruct expires, the usufructuary may demand the increase in the value of stakes or shares forthcoming during the usufruct as a result of including company earnings in any of the reserves on its balance sheet, irrespective of the nature or denomination thereof.

**2.** If the company is dissolved while the usufruct is in effect, the usufructuary may demand from the owner a portion of the final equity equal to the increase in the value of the stakes or shares subject to usufruct as provided in the preceding paragraph. The usufruct shall extend to the rest of the liquidation dividend.

**3.** Should the parties fail to reach an agreement on the amount to be paid in the cases envisaged in the two preceding paragraphs, the sum due shall be determined, at the

behest of either party and the expense of both, by an auditor other than the company's auditor, who shall be appointed to this end by the Mercantile Registry.

4. The instrument establishing the usufruct over shares may contain liquidation provisions other than laid down hereunder.

**Article 129. *Usufruct and pre-emptive rights.***

1. In company capital increases, if the owner fails to exercise or alienate the pre-emptive rights of acquisition or subscription ten days before the established deadline, the usufructuary shall be legally entitled to proceed to sell such rights or acquire or subscribe the stakes or shares.

2. If the rights to acquire or subscribe stakes or shares are alienated either by the owner or the usufructuary, the usufruct shall extend to the sum ensuing from such alienation.

3. If the new stakes are acquired or new shares subscribed either by the owner or the usufructuary, the usufruct shall extend to the stakes or shares that could have been paid up with the total theoretical value of the rights used for acquisition or subscription. The remaining stakes acquired or shares subscribed shall be owned absolutely by the party paying the amount due thereon.

4. If company capital is increased against profits or reserves generated during the usufruct, the new stakes or shares shall belong to the owner but subject to the usufruct.

5. The instrument granting the usufruct over stakes may establish rules other than laid down in the foregoing paragraphs.

6. In joint stock companies, the usufructuary shall be entitled to the above rights over bonds convertible into company stocks.

**Article 130. *Usufruct over non-paid up shares.***

1. When the usufruct applies to shares that are not fully paid up, the owner shall be the party bound to pay the amount outstanding to the company. Once payment is made, the owner may demand interest at the legal rate from the usufructuary on the amount invested, up to the sum of the earnings.

2. If the obligation to complete payment on the shares is outstanding five days before the established deadline, payment may be made by the usufructuary, without prejudice to the owner's obligation to do so upon expiry of the usufruct.

**Article 131. *Payment of compensation.***

The amounts outstanding by virtue of Article 128 may be settled either in cash or in the form of stakes or shares of the same class as subject to usufruct. The value shall be computed in accordance with the company's most recently approved balance sheet.

When the usufruct involves shares, the same rules shall apply to the sums payable pursuant to Articles 129 and 130. When the usufruct involves stakes, the sums payable to the usufructuary by the owner under Article 129 shall be paid in cash.

**Article 132. Pledge of stakes or shares.**

1. Unless otherwise indicated in the by-laws, if stakes or shares are pledged, partner's or shareholder's rights shall be exercised by the owner.

The secured creditor shall be bound to enable the owner to exercise such rights.

2. If the stakes pledged are attached, the rules laid down in Article 109 on mandatory transfer shall apply.

3. In joint stock companies, if owners fail to comply with their obligation to pay in the sums outstanding, the secured creditor may assume this obligation or proceed to attach the pledged shares.

**Article 133. Seizure of stakes or shares.**

If stakes or shares are seized, the provisions contained in the preceding article shall apply, insofar as they are compatible with the specific regulations on seizure.

## CHAPTER VI

### Transactions involving the company's own stakes or shares

#### Section one. Original acquisition

**Article 134. Prohibition.**

Under no circumstance may corporate enterprises acquire or subscribe their own stakes or shares or any created or issued by the parent company.

**Article 135. Original acquisition by limited liability companies.**

Original acquisitions of their own stakes or parent company stakes or shares by limited liability companies shall be null and void.

**Article 136. Original acquisition by joint stock companies.**

1. Shares subscribed in violation of the prohibition contained in Article 134 shall be owned by the subscribing joint stock company.

2. In the event of subscription of the company's own shares, the founding partners or shareholders or promoters and, in the event of a capital increase, the directors, shall be jointly and severally liable to pay for the shares involved.

3. Where parent company stakes or shares are taken or subscribed, the directors of the purchasing and parent companies shall be jointly and severally liable to pay for the stakes or shares in question.

**Article 137. Acquisition through intermediaries.**

1. Where stakes or shares are acquired through intermediaries, the founders and, as appropriate, the directors shall be jointly and severally liable for the respective payment.

2. The promoters of joint stock companies shall likewise be liable.

**Article 138. Exemption from liability.**

Parties proving that they are not at fault shall be exempt from the liability defined in the preceding two articles.

**Article 139. Consequences of infringement.**

**1.** Stakes and shares acquired by joint stock companies in breach of the provisions of Article 134 must be alienated within one year of the date of first purchase.

**2.** If alienation is not forthcoming by the aforementioned deadline, the directors shall immediately proceed to convene a general meeting to agree on the redemption of treasury stakes or shares and the concomitant reduction in share capital.

**3.** If the company fails to reduce the share capital within two months of the end of the alienation deadline, any party concerned may ask the Clerk of the Commercial Court or Mercantile Registrar with jurisdiction in the place where the registered office is located to reduce the company capital. If the meeting decides not to reduce the company's share capital or where such reduction cannot be attained, the directors shall be bound to apply for the same through the competent Court or Mercantile Registry.

The proceedings before the clerk of the court shall be performed in compliance with the provisions of the Law on Voluntary Jurisdiction. The application to the registrar shall be processed in agreement with the provisions of Companies Register regulations.

The favourable or unfavourable decision shall be open to challenge before the commercial court judge.

**4.** The stakes and shares in the parent company shall be alienated at the behest of the interested party, by the clerk of the commercial court or the registrar of companies, in accordance with the procedure for such in the Law on Voluntary Jurisdiction and the Companies Register regulations.

## Section two. Derivative acquisition

### **Sub-section 1. Derivative acquisition by limited liability companies**

**Article 140. Derivative acquisitions allowed.**

**1.** Limited liability companies may only purchase their own stakes or parent company stakes or shares under the following circumstances:

a) When they form part of an estate acquired as a whole or are acquired at no cost, or as a result of a court award in payment of a debt held by the company against the owner thereof.

b) When the company's own stakes are acquired through a capital reduction decision adopted by the general meeting.

c) When the company's own stakes are acquired under the circumstances established in Article 109.3.



d) When the acquisition is authorised by the general meeting, charged to profits or reserves freely available for distribution and involves the stakes of a partner who has exited or been excluded from the company; stakes acquired as a result of the application of transfer restrictions; or stakes transferred mortis causa.

**2.** Acquisitions made outside the preceding circumstances shall be null and void.

**Article 141. Amortisation or alienation.**

**1.** Stakes in their own capital acquired by limited liability companies must be amortised or alienated, abiding in this case by the stipulations on transfers set out in the laws and by-laws, within three years. The stakes may not be alienated at a price under their fair value, determined in accordance with the provisions on partner exit laid down hereunder. Where acquisition involves no return of contributions to the partners, the company must provision an amount equal to the par value of the stakes redeemed. The use of such sum shall be restricted for five years from the date of publication of the reduction in the Official Journal of the Mercantile Registry, unless all company debt assumed prior to the date on which the reduction became effective in respect of third parties is repaid in full before the aforementioned five-year period lapses.

**2.** If the shares were not alienated within the aforementioned deadline, the company must immediately agree their amortisation and capital reduction. If the company fails to take these measures, any interested party may request their adoption through the clerk of commercial court or the registrar of companies in the company's registered area. Directors of the purchasing company shall be bound to request the adoption of these measures when, through whatever circumstances, no corresponding agreement on amortisation and capital reduction can be made.

The proceedings before the Clerk of the Commercial Court shall comply with the procedures of voluntary jurisdiction. The application before the mercantile registrar shall be processed according to the provisions of the Mercantile Registry regulation.

The favourable or unfavourable decision may be challenged before the commercial court judge.

**3.** Stakes or shares in the parent company must be alienated within one year of the purchase date. Until that time, the provisions of Article 148 shall apply.

**Article 142. Stakes and parent company stakes or shares.**

**1.** Whilst in the possession of the purchasing company, all rights pertaining to treasury stakes and parent company stakes or shares shall be suspended.

**2.** The net equity on the balance sheet shall include a reserve account for the amount of the stakes or shares purchased, booked under assets, which must be maintained until the stakes or shares are alienated.

**Article 143. Transactions forbidden to limited liability companies.**

**1.** Limited liability companies may not accept their own stakes or stakes or shares created or issued by any company belonging to their group by way of a pledge or any other form of security.

**2.** Limited liability companies may not advance funds, grant loans or provide financial assistance for the acquisition of their own shares or stakes created or shares issued by any company belonging to their group.

***Sub-section 2. Derivative acquisitions by joint stock companies***

**Article 144. Unrestricted acquisition.**

Joint stock companies may acquire their own shares, or the shares or stocks of their parent company, in any of the following cases:

- a) When a company's own shares are acquired in implementation of a capital reduction agreement reached by the company's general meeting.
- b) When the shares or stocks are part of an estate acquired in whole.
- c) When fully paid up stakes or shares are acquired at no cost.
- d) When fully paid up stakes or shares are acquired as a result of a court adjudication in settlement of a company loan held against the owner.

**Article 145. Mandatory alienation.**

**1.** Stakes and shares acquired in accordance with the provisions of paragraphs b) and c) of the preceding article must be alienated within three years of the date of acquisition, unless they are redeemed prior to that date by a reduction in share capital. Shares already owned by the purchasing company and its subsidiaries or the parent company and its subsidiaries, as appropriate, need not be alienated if they account for no more than twenty per cent of the share capital.

**2.** Should alienation not materialise within the period referred to in the preceding paragraph, the provisions of paragraphs 2 and 3 of Article 139 shall apply.

**Article 146. Conditioned derivative acquisitions.**

**1.** Joint stock companies may also acquire their own shares and stakes created or shares issued by their parent company, providing conditions set out below are met.

- a) The acquisition is authorised by the general meeting, which shall establish the terms of the purchase, the maximum number of stakes or shares to be purchased, the minimum and maximum price in onerous acquisitions, and the term of the authorisation, which shall not exceed five years.

When the object of the acquisition consists of parent company stakes or shares, purchase must also be authorised by that company's general meeting.

When the object of the acquisition consists of shares that are to be directly awarded to company employees or directors, or when purchase is the result of the exercise of employee or director options, the decision adopted by the general meeting must specify that authorisation is granted for that purpose.

- b) The acquisition, including the shares purchased previously and held at the time of the acquisition by the company or persons acting on their own behalf but in its stead, shall not reduce equity to below the sum of the share capital plus the restricted reserves established by law or the by-laws.



To this end, equity shall be deemed to be the amount classified as such pursuant to the criteria applied in preparing the financial statements, less the profits attributed directly thereto, plus any share capital subscribed but not called and the par value of and issue premiums for the subscribed share capital booked as liabilities.

2. The par value of the shares directly or indirectly acquired by the company, taken together with any shares already owned by it and its subsidiaries and, as appropriate, the parent company and its subsidiaries, shall not exceed twenty per cent of the total.
3. The directors must take special care to ensure that the conditions set forth in this article are met at the time of the acquisition.
4. Company acquisition of its own shares when only partly paid up or subject to ancillary commitments, shall be null and void, unless the acquisition is cost-free.

#### **Article 147. Consequences of infringement.**

Where derivative acquisitions are made by joint stock companies in breach of the provisions of the preceding article, Article 139 shall apply.

#### **Article 148. Treasury shares and parent company stakes or shares.**

The rules set out below shall apply to the acquisition by a company of its own or its parent company's stakes or shares.

- a) Voting rights and all other political rights attached to treasury shares and parent company stakes or shares shall be suspended.  
Financial rights inherent in treasury shares, with the exception of the cost-free award of new shares, shall be allocated in proportion to all remaining shares.
- b) Treasury shares shall be counted in the share capital for the intents and purposes of calculating the quorum for the general meeting and defining the majority for the adoption of decisions.
- c) Company equity shall include a restricted reserve equal to the sum of parent company stakes or shares booked under assets. This reserve shall be maintained until such stakes or shares are alienated.
- d) The acquiring company's and, as appropriate, its parent company's, management report shall make reference to at least the items set out below.
  - 1st. Reasons for any acquisitions or alienations undertaken during the financial year.
  - 2nd. Number and par value of the stakes or shares acquired and alienated during the year and the proportion of the share capital represented thereby.
  - 3rd. Consideration paid for the stakes or shares, if any.
  - 4th. Number and par value of the total sum of stakes and shares acquired and held in the company's or intermediary's portfolio and the proportion of share capital represented thereby.

### Section three. Acceptance as security and financial assistance in joint stock companies

**Article 149.** Acceptance of own shares and parent company stakes and shares as security.

**1.** Joint stock companies may only accept their own shares, or the stakes or shares created or issued by the parent company, as collateral or any other type of security within the limits and under the terms applicable to acquisition thereof.

**2.** The provisions of the preceding paragraph shall not apply to transactions constituting the ordinary business of banks and other financial institutions. Such transactions must, however, meet the requirement specified in item c) of the preceding article.9

**3.** The provisions of the preceding article shall be applicable, as far as compatible, to stakes and shares held as collateral or any other type of security.

**Article 150.** Financial assistance for the acquisition of own shares or parent company stakes or shares.

**1.** Joint stock companies may not advance funds, grant loans or provide any type of financial assistance for the third party acquisition of its shares or its parent company's stakes or shares.

**2.** The prohibition established in the foregoing paragraph shall not apply to transactions enabling company employees to acquire company shares or stakes or shares in any other company belonging to the same group.

**3.** The prohibition established in paragraph one above shall not apply to bank and other financial institution transactions conducted within the scope of their ordinary business in pursuit of their corporate purpose, whose cost is booked against the company's freely disposable assets.

The company must establish a reserve on its balance sheet equal to the amount of any loans booked as assets.

### Section four. Cross shareholdings

**Article 151.** Cross shareholdings.

Cross shareholdings may not exceed ten per cent of the total capital of the companies involved. This prohibition shall extend to indirect holdings constituted through subsidiaries.

**Article 152.** Consequences of infringement.

**1.** Where the provisions of the preceding article are violated, the company that first receives the notice referred to in Article 155 shall be bound to reduce its holding in the other company to ten per cent of such company's capital. If the companies receive such notice simultaneously, both shall be bound to reduce their holdings in the other, unless they agree to a reduction by only one of them.

**2.** The reduction referred to in the preceding paragraph must be effected within one year of the date of the notice. Voting rights pertaining to any holdings in excess of the



ten per cent ceiling shall be suspended in the interim. When shares acquired under any of the circumstances described in Article 144, the reduction must be effected within three years.

**3.** Failure to reduce holdings as provided in the preceding paragraphs shall prompt a court order mandating the sale of surplus shares where requested by the party concerned and the suspension of all rights pertaining to the noncompliant company's holdings in the other company.

**Article 153. Cross-shareholding reserve.**

The equity of the company bound to reduce its holding shall include a reserve equal to the amount of the cross-shareholdings which exceed by ten per cent the capital and are booked under assets.

**Article 154. Exclusion from the cross shareholding provisions.**

The provisions set forth in the three preceding articles shall not apply to cross shareholdings between a subsidiary and its parent company.

**Article 155. Notice.**

**1.** Companies which, either directly or through a subsidiary, own over ten per cent of another company's capital must inform the investee company thereof immediately. In the interim, all rights attached to such holding shall be suspended.

Such notice must be served for each subsequent acquisition exceeding five per cent of the capital.

**2.** The notices stipulated in the preceding paragraph shall be mentioned in the notes to both companies' financial statements.

**Section five. Provisions applying to both limited liability and joint stock companies**

**Article 156. Intermediaries.**

Agreements between the company and another party whereby such party is bound or entitled to conduct operations forbidden to the company, in the party's own name but on behalf of the company, shall be null and void. Any transactions by and between an intermediary and third parties shall be understood to be performed on the intermediary's own behalf and shall have no effect whatsoever on the company.

Transactions concluded by an intermediary, when not forbidden to the company, and any treasury or parent company stakes or shares involved in such transactions, shall be subject to the provisions set forth hereunder.

**Article 157. Penalties.**

**1.** Failure to meet the obligations or breach of the prohibitions established in the present chapter shall be deemed to constitute a violation.

**2.** The aforementioned violations shall be penalised by fines of up to the par value of the stakes taken or shares subscribed, acquired or accepted as security by the

company or acquired by a third party with financial assistance provided by the company or, as appropriate, stakes or shares neither alienated nor redeemed. Failure to fulfil the alienation or amortisation obligations shall be regarded to be a separate violation.

The amount of the fine shall be determined depending on the type of infringement and extent of the damage incurred by the company, its shareholders and third parties.

**3.** The directors of the company committing acts in breach of the foregoing provisions or, as appropriate, the parent company directors inducing such acts, shall be held liable for the violation. Directors shall be understood to include not only board members, but also all managers or persons who may act on behalf of the company in such transactions. Liability shall be attributed in accordance with the criteria laid down in Articles 225, 226, 236 and 237.

**4.** The breaches and penalties contained in this article shall lapse after three years, counted as provided in Article 132 of Act 30/1992 of 26 November on Public Administration and Common Administrative Procedures.

**5.** Breaches committed by limited liability companies shall be penalised following a preliminary hearing at the Ministry of the Economy and Finance, at which the parties concerned shall be heard, in accordance with the regulations governing proceedings for the exercise of disciplinary authority.

**6.** Competence to institute, conduct and rule on disciplinary proceedings involving joint stock companies in connection with the provisions hereunder shall be vested in the National Securities Market Commission. Where the directors of financial institutions or insurance companies or organisations forming part of a group of financial institutions subject to supervision by the Bank of Spain or the Directorate General of Insurance are involved in disciplinary proceedings, such supervisory authorities shall be notified by the National Securities Market Commission of the proceedings under way and shall report thereon before a ruling is passed.

**Article 158. Application to foreign companies.**

The provisions in this article on transactions involving parent company stakes or shares shall apply even where the company performing such transactions is not Spanish.

## **TITLE V**

### **Annual general meeting**

#### **CHAPTER I**

##### **Annual general meeting**

###### **Article 159. Annual general meeting.**

The partners or shareholders, assembled in an annual general meeting, shall adopt decisions on the matters whose competence is reserved to the general meeting by majority vote as defined by law or in the by-laws.

All partners or shareholders, including any dissenting and any not attending the meeting, are bound by general meeting decisions.

#### **CHAPTER II**

##### **Powers reserved to the general meeting**

###### **Article 160. Powers reserved to the general meeting.**

The general meeting is vested with the power to discuss and decide on the following matters:

- a) Approval of the financial statements, the distribution of earnings and the approval of corporate governance.
- b) Appointment and dismissal of directors, liquidators and, where necessary, auditors, and the institution of liability action against any of these persons.
- c) Amendment of the by-laws.
- d) Capital increase and reduction.
- e) Removal or limitation of the pre-emptive rights to take stakes or subscribe shares.
- f) Acquisition, disposal or transfer to another company, of any essential assets. Assets are considered essential when the sum of the transaction exceeds twenty-five percent of the share value shown in the latest approved balance sheet.
- g) Conversion, merger, spin-off or global assignment of assets and liabilities and change of registered office address abroad.
- h) Company dissolution.
- i) Approval of the final liquidation balance sheet.
- j) Any other matters provided by law or the by-laws.



**Article 161. General meeting intervention in management affairs.**

Unless specified otherwise in the by-laws, in limited liability companies the general meeting may issue instructions to the governing body or make the adoption of decisions by the governing body regarding certain management affairs contingent upon its authorisation, subject to the provisions of article 234.

**Article 162. Loans and security for partners and directors.**

1. In limited liability companies, the general meeting may, on a case-by-case basis, advance funds, grant loans or furnish security or financial assistance in favour of its partners and directors.
2. No general meeting decision shall be required to perform the aforementioned actions in favour of another group company.

### **CHAPTER III**

#### **Types of annual general meetings**

**Article 163. Types of annual general meetings.**

The annual general meetings of corporate enterprises may be ordinary or extraordinary.

**Article 164. Ordinary general meetings.**

1. The ordinary general meeting must be duly convened and meet within the six first months of each financial year to approve corporate governance in and the financial statements for the preceding financial year, as appropriate in both cases, and determine the distribution of earnings.

2. Ordinary general meetings shall be valid even when convened or held after the six-month deadline.

**Article 165. Extraordinary general meetings.**

Any stake- or shareholders' meeting not held as provided in the preceding article shall be regarded to be an extraordinary general meeting.

### **CHAPTER IV**

#### **Convening meetings**

**Article 166. Power to convene meetings.**

The annual general meeting shall be convened by company directors or liquidators, as appropriate.

**Article 167. Obligation to convene meetings.**

The directors shall convene a general meeting whenever they deem it in the company interest to do so and, in any event, on the dates or within the terms established by law and the by-laws.

**Article 168. Minority request to convene a meeting.**

The directors must convene a general meeting when so requested by one or several partners or shareholders representing at least five per cent of the capital, who must specify the matters to be addressed in the request.

In this case, the general meeting must be convened in time to be held within two months of the date on which the directors receive the notarised request to that effect, and the agenda must include the matters specified therein.

**Article 169. Meetings convened by the court.**

If the ordinary general meeting or any others provided in the by-laws are not convened within the term stipulated by law or the by-laws, they may be convened, at the behest of any partner, by the judge of the commercial court with jurisdiction where the registered office is located, who shall hear the directors before passing a ruling.

If the directors fail to respond in time to a minority request to convene a general meeting, the meeting may be convened by the judge of the commercial court with jurisdiction in the place where the registered office is located, who shall hear the directors before passing a ruling.

**Article 170. Regulations for court convening of meetings.**

1. The clerk of the commercial court shall proceed to convene the general meeting in accordance with the provisions of the voluntary jurisdiction legislation.
2. The registrar of companies shall proceed to convene the general meeting within one month of the application having been filed, indicating the place, day, time and agenda of the meeting and shall nominate the chairperson and secretary of said meeting.
3. There shall be no recourse to appeal any resolution through which a meeting was convened.
4. Expenses incurred when convening meetings through the court shall be borne by the company.

**Article 171. Special circumstances for convening meetings.**

In the event of the death or dismissal of the sole director, of all the joint and several directors, of one of the joint directors, or of the majority of the members of the board of directors, and in the absence of substitutes, any partner or shareholder shall be entitled to ask the judge of the commercial court with jurisdiction in the place where the registered office is located to convene a general meeting to appoint a new director or directors.

Any of the directors still in office may also call a general meeting for that sole purpose.

**Article 172. Supplementary notice of meeting.**

1. In joint stock companies, shareholders representing at least five per cent of the share capital may request the publication of a supplementary notice of a general meeting which shall include one or more additional agenda items. This right must be

exercised by service of notification by a reliable method, providing it is received at the registered office within five days of the date of publication of the initial notice.

**2.** The supplementary notice must be published at least fifteen days before the date of the meeting.

Failure to publish the supplementary notice within the deadline established by law shall be grounds for the cancellation of the meeting.

**Article 173. Form of the notice.**

**1.** The general meeting shall be convened by an announcement published on the company's website, if created, registered and publicly announced as stipulated in Article 11 bis. When the company has no website or if the site has not yet been duly registered and publicly announced, the meeting shall be convened by announcement in the Official Journal of the Mercantile Registry and in one of the daily newspapers most widely circulated in the province where the registered office is located.

**2.** In lieu of the procedures laid down in the preceding paragraph, the by-laws may provide for convening general meetings by any written, individually addressed notice forwarded in a manner that guarantees receipt by all the partners or shareholders at the addresses designated thereby for that purpose or at the addresses listed in the company's files. The by-laws may further stipulate that partners or shareholders living abroad need be convened individually only if the address designated thereby for notifications is on Spanish soil.

**3.** The by-laws may envisage mechanisms for public disclosure other than provided for by law and require the company to establish an automatic system to alert partners or shareholders to the publication of meeting notices on the company's website.

**Article 174. Contents of the meeting notice.**

Notices of meetings shall specify the company name, date and time of the meeting, and contain the agenda with a list of the items to be discussed and the name of the person or persons convening the meeting

**Article 175. Place.**

Unless specified otherwise in the by-laws, the general meeting shall be held in the municipal district where the company has its registered office. If no meeting place is specified, the meeting shall be understood to be convened at the registered office.

**Article 176. Advance notice.**

In joint stock companies, general meetings must be convened at least one month in advance of the date they are to be held, and fifteen days in advance in limited liability companies, without prejudice to the provisions on supplementary notices.

Where partners or shareholders are convened individually, advance notice shall be calculated from the date on which it was sent to the last partner or shareholder.

**Article 177. Second call**

1. Notices of the general meetings of joint stock companies may also specify the date of the second call, if necessary.
2. At least twenty-four hours must elapse between the first and second call.
3. If a duly convened general meeting, regardless of type, is not held on the first call, and no date for the second is specified in the notice thereof, the second call must be announced, subject to the same public notice-related requirements as the first, within fifteen days of the date of the meeting not held and at least ten days prior to the date of the second call.

**CHAPTER V**  
**Universal shareholders' meeting****Article 178. Universal shareholders' meeting.**

1. The general meeting shall be deemed validly constituted to discuss any matter, with no need for advance notice, when all the capital is present or represented and the attendees unanimously consent to hold the meeting.
2. Universal shareholders' meetings may be held anywhere on Spanish soil or abroad.

**CHAPTER VI**  
**Attendance, representation and voting****Article 179. Right of attendance.**

1. In limited liability companies, all partners are entitled to attend the general meeting. The by-laws may not make attendance at general meetings contingent upon ownership of a minimum number of stakes.
2. In joint stock companies, the by-laws may subject eligibility to attend the general meeting to ownership of a minimum number of shares, irrespective of class or series. Under no circumstances, however, may the number required be greater than one-thousandth of the share capital.
3. In joint stock companies, the by-laws may subject shareholders' right to attend the general meeting to advance proof of their eligibility. Nonetheless, under no circumstances may the by-laws restrict that right for holders of registered shares or shares represented by book entries that have been entered in the ledgers five days in advance of the date of the meeting, nor for holders of bearer shares who, likewise five days in advance, deposit their shares or the certificate substantiating their deposit in an authorised institution, in the manner specified in the by-laws. If the by-laws contain no provisions in this regard, the shares or certificate may be deposited at the registered office. The document substantiating fulfilment of these requirements shall be nominative and shall be accepted by the company as effective proof of the holder's legitimate rights.

**Article 180. Directors' mandatory attendance.**

Company directors must attend general meetings.

**Article 181. Authorisation to attend.**

**1.** The by-laws may authorise or require the attendance of directors, managers, technicians and others involved in the proper handling of company affairs.

**2.** The person chairing the general meeting may authorise anyone else he/she deems appropriate to attend the meeting, although the meeting may revoke such authorisation.

**3.** The provisions of the preceding paragraph shall apply to limited liability companies except as their by-laws provide otherwise.

**Article 182. Virtual attendance.**

If joint stock company by-laws allow remote attendance at general meetings by electronic methods that duly guarantee the shareholder's identity, the notice of the meeting shall describe the time frame, ways and means provided by the directors to allow shareholders to exercise such rights and ensure the meeting is conducted in an orderly fashion. Specifically, the directors may require the shareholders attending the meeting via electronic means pursuant to this act to send the opinions and proposals they plan to raise to the company prior to the meeting date. Replies to shareholders exercising their right to information during the meeting shall be forwarded in writing within seven days after the general meeting.

**Article 183. Voluntary representation at the general meetings of limited liability companies.**

**1.** Partners may only be represented at general meetings by their spouses, ascendants or descendants, another partner or by a person holding a general power of attorney by virtue of a public document vesting him/her with powers to administer all the assets that the principal owns on Spanish soil.

Representation by other persons may be authorised in the by-laws.

**2.** Proxies must be given in writing. If not recorded in a public document, they must be issued specifically for the general meeting in question.

**3.** Proxies shall cover all the stakes owned by the principal.

**Article 184. Voluntary representation at general meetings of joint stock companies.**

**1.** Any shareholder entitled to attend may be represented at the general meeting by a proxy, who need not be a shareholder. This right may be limited in the by-laws.

**2.** Proxies shall be given in writing or by remote means of communication that comply with the requirements established in this act for the exercise of distance balloting and must be issued specifically for each general meeting.

**Article 185. Proxy revocability.**

Proxies may be revoked at any time and shall be deemed to have been revoked if the principal attends the meeting in person.

**Article 186. Public request for representation in joint stock companies.**

1. In joint stock companies, if the directors themselves, custodian institutions or the parties responsible for entering ledger notations request proxy status in their own or another party's name, and in general, when such requests are made publicly, the document substantiating the power of attorney must be attached to or contain the agenda, the request for instructions respecting the exercise of voting rights, and information on how the proxy will vote in the absence of instructions.
2. That notwithstanding, the proxy may vote otherwise in the event of risk of impairment of the principal's interest due to the appearance of circumstances that were not known when the instructions were issued. If a vote is cast other than as indicated in the instructions, the proxy shall immediately notify the principal in writing, justifying his/her decision.
3. A public request shall be regarded to exist when the same person represents more than three shareholders.
4. The provisions of this article shall apply to the members of the supervisory board of European companies with registered offices in Spain opting for the two-tier model.

**Article 187. Inapplicability of restrictions.**

The legal restrictions laid down in Articles 184 and 186 shall not apply when the proxy is the principal's spouse or ascendant or descendant, nor when he/she holds a notarised general power of attorney vesting him/her with powers to administer all the assets owned by the principal on Spanish soil.

**Article 188. Right to vote.**

1. In limited liability companies, unless specified otherwise in the corporate by-laws, each stake entitles its holder to the right to cast one vote.
2. Joint stock companies shall not be entitled to create shares that directly or indirectly alter the proportionality between the par value of each share and voting rights.
3. Joint stock company by-laws may establish a general ceiling on the number of votes that may be cast by the same shareholder, companies belonging to the same group or anyone acting in conjunction therewith, without prejudice to the provisions of Article 527, applicable to listed companies.

**Article 189. Special provisions on the right of attendance and voting rights in joint stock companies.**

1. Shares may be grouped for the purposes of exercising the right of attendance at general meetings and voting rights.
2. Depending on the provisions of the by-laws, votes on motions under items included on the agenda of any type of general meeting may be delegated or cast by the shareholder by post, electronic correspondence or any other means of distance communication, provided that the identity of the persons exercising their right to vote is properly substantiated.

3. Shareholders voting by correspondence must be regarded to be present for the intents and purposes of establishing a quorum.

**Article 190. Conflict of interest in limited liability companies.**

1. Partners may not exercise their right to vote corresponding to their stocks or shares when the issue at hand regards adopting an agreement on the following:

- a) Authorising transfer of stocks or shares subject to a legal or statutory restriction,
- b) Exclusion from the company,
- c) Release from an obligation or granting of a right,
- d) Facilitating any type of financial assistance, including the loan of guarantees in their favour or
- e) Allocating any obligations arising from the duty of loyalty stipulated under article 230.

In joint stock companies, the prohibition of exercising the right to vote on the issues described in points a) and b) above, shall only be applied when said prohibition is explicitly foreseen in the corresponding regulatory statutory clauses regarding the restriction or exclusion of free transfer.

2. The stocks or shares of any partner affected by any conflict of interest referred to in the above section shall be deducted from the capital for the purposes of calculating the majority vote required in each case.

3. In the event of any conflict of interest not referred to in section 1, partners shall not be deprived of their right to vote. However, in the event that the vote of the partner or partners with a conflict of interest would have been decisive with regards to the adoption of the agreement, in the event of a dispute, the burden of proof of conformity that the agreement is in the corporate interest shall lie with the company or, if relevant, the partner or partners affected by said conflict of interest. Any partner or partners in dispute must verify the conflict of interest. Excluded from this rule are any agreements relating to allocating, ceasing, revoking or invoking management responsibilities or similar, when the conflict of interest specifically applies to the position held by the partner within the company. In these cases, the responsibility lies with the individuals who dispute the proof of damage to the corporate interest.

**CHAPTER VII**  
**Quorum and adoption of decisions**

**Section one. Quorum**

**Article 191. General meeting officers.**

Unless specified otherwise in the by-laws, the chair and secretary of the general meeting shall be the chair and secretary of the board of directors and, in their absence, the persons so designated by the partners or shareholders present or represented at the start of the meeting.

**Article 192. Attendance list.**

1. Before discussing the agenda, a list of attendees shall be drawn up, specifying for each their nature or proxy representation and the number of own or third-party stakes or shares brought to the meeting.
2. The number of partners or shareholders attending or represented shall be noted at the end of the list, along with the amount of the capital held and an indication of the partners or shareholders with voting rights.
3. In limited liability companies, the attendance list must necessarily be included in the minutes.

**Article 193. Quorum in joint stock companies.**

1. In joint stock companies, the general meeting shall be deemed to reach a quorum in the first call when the shareholders present or represented own at least twenty-five per cent of the subscribed capital with voting rights. The by-laws may establish a higher quorum.
2. In the second call, a quorum shall be deemed to be reached regardless of the amount of share capital present or represented, unless the by-laws establish a quorum, which must be less than the quorum established or required by law for the first call.

**Article 194. Stricter quorum requirements in special cases.**

1. In joint stock companies, shareholders holding at least fifty per cent of the subscribed capital with voting rights must be present or represented in the first call for the general meeting or extraordinary general meeting to validly adopt decisions regarding: an increase or reduction of the company share capital or any other amendment to the by-laws; the issue of bonds or debentures; the cancellation or restriction of the pre-emptive rights to acquire new shares; the conversion, merger, spin-off or global assignment of assets and liabilities; and the transfer of the registered office abroad.
2. Twenty-five per cent of the share capital present or represented shall suffice in the second call.
3. The by-laws may call for larger majorities than stipulated in the preceding articles.

**Article 195. Extension of meetings.**

1. General meetings shall be held on the day specified in the notice, but may be extended for one or more consecutive days.
2. Such extension may be adopted where proposed by the directors or requested by a number of partners or shareholders representing one-fourth of the capital present at the meeting.
3. Regardless of the number of sessions held, they shall be regarded to constitute a single general meeting, and only one set of minutes shall be kept for all the sessions.

## Section two. Right to information

### **Article 196. Right to information in limited liability companies.**

- 1.** The partners of limited liability companies may request in writing prior to the general meeting, or verbally during the meeting, any reports or clarification that they deem necessary in connection with items on the agenda.
- 2.** The governing body shall be bound to provide such reports or clarification either verbally or in writing, depending on when and what kind of information is requested, except where, in the governing body's opinion, disclosing such information may be detrimental to the company's interests.
- 3.** Information may not be withheld when requested by partners representing at least twenty-five per cent of the capital.

### **Article 197. Right to information in joint stock companies.**

- 1.** Shareholders may ask the directors to provide any information or clarification that they deem necessary about the items on the agenda, or pose any questions they deem appropriate, in writing up until the seventh day before the date on which the meeting is scheduled to be held.

The directors shall be bound to furnish the information in writing by the date of the general meeting.

- 2.** During the general meeting, the company's shareholders may verbally request any information or explanations that they deem necessary with respect to the items on the Agenda, and whenever their queries cannot be immediately answered, the directors shall be obliged to provide the information in writing no more than seven days after the general meeting.
- 3.** The directors shall be bound to furnish the information requested pursuant to the provisions of the two preceding paragraphs except in cases where, in the chairperson's opinion, disclosing the information requested may be detrimental to the company's interests.
- 4.** Information requested by shareholders representing at least twenty-five per cent of the share capital may not be withheld. Smaller percentages, necessarily in excess of five per cent of the share capital, may be stipulated in the by-laws.
- 5.** Infringement of the right to information foreseen in section 2 shall only entitle the shareholder to demand compliance with the obligation to information and any damages and loss that it could cause, but shall not be cause of disputing the general meeting.
- 6.** In the event of abusive or prejudicial use of the information requested, the partner shall be responsible for any damages caused.



### **Section three. Adoption of decisions**

#### ***Sub-section 1. Voting on agreements***

**Article 197 bis.** Separate voting on issues.

- 1.** In the general meeting, separate votes must be held for any issue that is deemed significantly independent.
- 2.** In all cases, whether or not they appear on the same agenda item, the following must be voted on separately:
  - a) The appointment, ratification, re-election or dismissal of each director.
  - b) When modifying the company by-laws, any article or group of articles that may be autonomous.
  - c) Any issue so provided for in the company by-laws.

#### ***Sub-section 2. Majorities in limited liability companies***

**Article 198.** Plurality.

In limited liability companies, corporate resolutions shall be adopted by a plurality of valid votes cast, provided they represent at least one-third of the votes pertaining to the stakes into which the capital is divided. Blank ballots shall not be counted.

**Article 199.** Majority and qualified majority.

Exceptions to the provisions of the preceding article are listed below.

- a) Increases or reductions in capital and amendments to the by-laws shall require an aye response from over half of the votes associated with the stakes into which the capital is divided.
- b) A majority of at least two-thirds of the votes associated with the stakes into which the capital is divided shall be required to: authorise directors to engage in an activity that is the same as or similar or complementary to the company's corporate purpose; cancel or limit pre-emptive rights in capital increases; convert, merge, spin off or globally assign assets and liabilities; transfer the registered office abroad; or exclude partners.

**Article 200.** Qualified majority required in the by-laws.

1. For all or some items, the by-laws may require a higher percentage of aye votes than established by law, but not unanimity.
2. In addition to the proportion of votes established by law or the by-laws, the latter may demand that aye votes be cast by a certain number of partners.

#### ***Sub-section 3. Majorities in joint stock companies***

**Article 201.** Majorities.

1. In joint stock companies, corporate decisions shall be adopted by a majority of the votes of the shareholders present in person or by proxy.



2. Adoption of the agreements referred to in article 194 shall require an absolute majority if the share capital represented by those present in person or by proxy is over fifty percent. Adoption of the decisions referred to in Article 194 shall require a two-thirds majority of the share capital represented by those present in person or by proxy at the meeting when, at second call, shareholders entitle to vote and who represent at least twenty-five percent of subscribed capital but not exceeding the same by fifty percent may attend.

3. The by-laws may call for larger majorities than specified in the preceding paragraphs.

## CHAPTER VIII

### Minutes

#### **Article 202. Minutes.**

1. All corporate decisions must be recorded in the minutes.

2. The minutes shall be approved by the general meeting at the end of the meeting or within fifteen days thereof by the Chairman and two auditors, one representing the majority and the other the minority opinion.

3. Corporate decisions may be implemented from the date of approval of the minutes in which they are recorded.

#### **Article 203. Notarised minutes.**

1. The directors may ask a notary public to attend the general meeting and take the minutes and shall be obliged to do so when requested by shareholders representing at least one per cent of the company's capital, in joint stock companies, or five per cent in limited liability companies. Such requests must be lodged five days before the date scheduled for the meeting. In the event, decisions shall only be effective if recorded in the notary public's minutes.

2. The minutes taken by a notary public, which shall not be subject to the approval procedure, shall constitute the minutes of the meeting and the decisions recorded therein may be implemented from the date of issue.

3. The notary public's fees shall be paid by the company.

## CHAPTER IX

### Challenging decisions

#### **Article 204. Decisions subject to challenge.**

1. Corporate decisions that are contrary to law or the by-laws or detrimental to corporate interests to the benefit of one or various partners or shareholders or of third parties shall be subject to challenge.

Damage to corporate interest is also caused when the agreement, without causing damage to corporate assets, is imposed in an abusive manner by the majority. An agreement is understood to have been imposed in an abusive manner when, rather



than responding reasonably to a corporate need, the majority adopts the agreement in their own interests and to the unjustifiable detriment of the other partners.

**2.** Corporate agreements that have been withdrawn or superseded by another agreement adopted before the challenge may not be challenged. If the withdrawal or substitution takes place after the challenge, the judge shall impose a termination order on the proceedings for lack of purpose.

This section is understood without prejudice to the right to challenge for the elimination of any effects or repair of damage that may have been caused by the agreement while it was in force.

**3.** The following reasons shall not be sufficient to challenge any agreement:

- a) The infringement of any procedural requirements established by the law, by-laws or general meeting regulations to call or establish the body, or adopt an agreement, unless it refers to an infringement relating to the form and place of the call, the basic regulations of the establishment of the body, or the majorities needed for the adoption of agreements, in the same way as other reasons of a relevant nature.
- b) Inaccurate or insufficient information supplied by the company in response to exercising the right to prior information from the general meeting, unless the incorrect or missing information would have been essential for the reasonable exercise of the shareholder or partner's right to vote or any of their other participatory rights.
- c) Non-authorised persons participating in the meeting, unless said participation may have been a determining factor in constituting the organisation.
- d) The invalidity of one or various votes, or the calculation error of any issued, unless the invalid vote or calculation error may have been a determining factor in the achievement of the necessary majority.

Once the claim has been made, the question of the essential or decisive nature of the challenge mentioned in this section shall be established as an incidental matter for prior admission.

#### **Article 205. Expiry of action for challenge.**

**1.** Action to challenge null decisions must be lodged within one year. This shall not apply to decisions whose consideration or content runs counter to law and order.

**2.** The validity period shall be calculated from the date of the agreement adoption if it was adopted in a members' general meeting or board of directors' meeting and from the date of receipt of copy of the act if the agreement was adopted in writing. If the agreement was in writing, the validity period shall be calculated from the date of enforceability of the entry.

#### **Article 206. Legal capacity to challenge decisions.**

**1.** Any director, any third party that accredits a legitimate interest and any partner that may have done the same before the agreement adoption is capacitated to challenge

corporate agreements, assuming that they represent, either individually or jointly, at least one percent of the share capital.

The by-laws may reduce the percentages of share capital indicated and in all cases, partners who do not reach said percentages shall have the right to redress the damage that has been caused to them by the challengeable agreement.

**2.** Any partner, even if they acquired this position after the agreement, board director or third party shall be capacitated to challenge agreements that are contrary to public order.

**3.** Actions for challenge shall be brought against the company. When the claimant holds exclusive powers to represent the company and the general meeting has no other designee, the judge hearing the challenge shall appoint a representative from among the partners who voted in favour of the challenged agreement.

**4.** Partners who voted in favour of the challenged agreement may intervene in the proceedings to defend its validity, at their own expense.

**5.** Any person who, having had the opportunity to lodge a claim at the opportune moment, did not do so, may not allege defects during the agreement adoption process.

**Article 207. Challenge procedure.**

**1.** The formalities for ordinary proceedings and the provisions of the Rules of Civil Law Procedure shall be followed in action brought to challenge corporate decisions.

**2.** Where the reason for challenging the decision can be removed, the judge, at the behest of the respondent company, shall establish a reasonable term in which to remedy the situation.

**Article 208. Ruling in favour of the challenger.**

**1.** Final rulings declaring a decision subject to registration to be null and void shall themselves be registered in the Mercantile Registry and published in the Official Journal of the Mercantile Registry.

**2.** If the decision challenged was registered in the Mercantile Registry, the ruling shall order cancellation of the respective entry, as well as of any subsequent contradictory entries.

## **TITLE VI**

### **Corporate governance**

#### **CHAPTER I**

##### **General provisions**

###### **Article 209. Governing body competence**

The directors shall be empowered to manage and represent the company under the terms provided in this act.

###### **Article 210. Organisational arrangements.**

- 1.** Company administration may be entrusted to a sole director, several directors acting severally or at the same time, or a board of directors.
- 2.** In joint stock companies, when administration is entrusted to two directors, they shall act jointly and when entrusted to more than two directors, they shall form a board of directors.
- 3.** In limited liability companies, the by-laws may envisage several organisational schemes, vesting the general meeting with the authority to opt for any one of these alternatives with no need to amend the by-laws.
- 4.** Any decision that alters the arrangements for corporate governance, whether or not it entails amending the by-laws, shall be recorded in a public instrument and registered in the Mercantile Registry.

###### **Article 211. Determination of the number of directors.**

When the by-laws specify only the minimum and maximum number of directors, the general meeting shall determine the exact number, subject only to the limitations provided by law.

#### **CHAPTER II**

##### **Directors**

###### **Article 212. Subjective requirements.**

- 1.** Directors of corporate enterprises may be individuals or legal entities.
- 2.** Unless specified otherwise in the by-laws, company directors need not be partners or shareholders.

**Article 212 bis. Body corporate directors.**

1. When a body corporate is appointed director, a single natural person must be permanently designated thereby to fulfil the duties incumbent upon the position.
2. Dismissal of a body corporate director's representative shall not be effective until a substitute is designated. Such designations shall be registered in the Mercantile Registry under the terms provided in Article 215.

**Article 213. Prohibition.**

1. None of the following is eligible to be a company director: non-emancipated minors, the legally incompetent, persons disqualified pursuant to the Insolvency Act during the disqualification period established in the insolvency ruling, and persons convicted for any manner of falsehood or of crimes against freedom, property, socio-economic order, public safety, or the administration of justice, and anyone whose position is incompatible with commercial endeavours.
2. Public officials whose responsibilities are associated with activities intrinsic to the companies in question, judges or magistrates and other persons bound by legal incompatibility are likewise ineligible.

**Article 214. Appointment and acceptance.**

1. Competence to appoint directors shall be held by the general meeting subject only to the exceptions provided by law.
2. In the absence of provisions in the by-laws, the general meeting shall set the security to be provided by the directors or release them from such provision.
3. Directors' appointments shall be effective upon their acceptance of their positions.

**Article 215. Registration of appointment.**

1. Upon acceptance by the directors concerned, application shall be made for entry of their appointment in the Mercantile Registry, specifying in the application the identity of the appointees and, for directors vested with powers to represent the company, whether they can act singly or are bound to do so jointly.
2. Application for entry in the Registry shall be made within ten days of acceptance.

**Article 216. Deputy directors.**

1. Unless otherwise provided in the by-laws, deputy directors may be appointed in the event of severance of one or several of the directors in office. Deputy director appointment and their acceptance as directors shall be registered in the Mercantile Registry upon severance of the former director.
2. In the event that the corporate by-laws establish a specific term of office for directors, deputies shall be understood to be appointed for the term pending completion by the person whose vacancy is filled.

**Article 217. Directors' remuneration.**

**1.** Directors positions are unremunerated, unless the company by-laws provide otherwise and establish the remuneration scheme.

**2.** The established remuneration system shall determine the concept or concepts for which directors should be remunerated and which may consist, among others, of one or various of the following:

- a) a fixed assignment,
- b) attendance fees,
- c) shares in the profits,
- d) variable remuneration with general indicators or benchmarks,
- e) remuneration in shares or linked to their growth,
- f) compensation for dismissal, assuming that the dismissal was not motivated by incompletion of the director's duties and
- g) any savings systems or provision deemed appropriate.

**3.** The maximum amount of annual remuneration for directors in their capacity as such, must be approved by the general meeting and shall remain valid until amendment of the same is approved. Unless the general meeting decides otherwise, distribution of remuneration among each director is established by agreement with the same and, in the case of the board of directors, by said board's decision, which must take the duties and responsibilities of each director into consideration.

**4.** In all cases, directors' remuneration must remain proportionate to the significance of the company, the economic situation at that moment and the market standards of comparable companies. The established remuneration system must be designed to promote the long term profitability and sustainability of the company and incorporate the necessary precautions to avoid excessive risk-taking or rewarding unfavourable results.

**Article 218. Remuneration via a share in profits.**

**1.** When remuneration includes a share of the profits, the company by-laws shall determine the maximum share or percentage thereof. In the event of the latter, the general meeting shall determine the percentage to be applied, within the maximum established by the company by-laws.

**2.** In limited liability companies, the maximum share percentage may not, under any circumstances, exceed ten percent of the profits set aside for distribution among partners.

**3.** In joint stock companies, when remuneration consists of a share in the profits, it may only be drawn from net earnings and only after provisioning the legal reserve, any other reserve described in the by-laws and a four-per cent dividend (or higher if provided in the by-laws) has been earmarked for shareholders.



**Article 219.** *Remuneration in the form of company shares.*

- 1.** In joint stock companies, any remuneration consisting of shares or options thereon or that is linked to the value of shares shall be explicitly mentioned in the by-laws, and application of such provisions shall be subject to a general meeting decision.
- 2.** The agreement by the shareholders' general meeting must include the maximum number of shares to be assigned during each financial year as part of this remuneration system, the strike price and the system used to calculate the strike price of share options, the value of the shares taken as a reference, when appropriate, and the term of the remuneration plan.

**Article 220.** *Provision of services by directors*

In limited liability companies, the establishment of any manner of arrangements between the company and one or several of its directors in connection with the provision of services or works shall be subject to a decision by the general meeting.

**Article 221.** *Term of office.*

- 1.** The directors of limited liability companies may hold their offices indefinitely unless the by-laws establish a specific term, in which event they may be re-elected on one or more occasions for terms of the same duration.
- 2.** The directors of joint stock companies shall hold their offices for the term established in the by-laws, which may not exceed six years and must be the same for all directors.

Directors may be re-elected on one or several occasions for terms of the same duration.

**Article 222.** *Expiry.*

Directors' appointments shall expire at the first general meeting held at the end of their term, or on the deadline for holding the general meeting for the review and approval, as appropriate, of the preceding year's financial statements.

**Article 223.** *Director dismissal.*

- 1.** Directors may be dismissed at any time by the general meeting, even when dismissal is not included on the meeting agenda.
- 2.** In limited liability companies, the by-laws may require a qualified majority for dismissal, which may not be more than two-thirds of the votes corresponding to the stakes into which company capital is divided.

**Article 224.** *Special cases of dismissal of joint stock company directors.*

- 1.** Directors subject to any legal prohibition shall be dismissed immediately at the behest of any shareholder, without prejudice to the liability they may incur for their disloyal conduct.
- 2.** Directors and persons holding whatsoever interests that clash with company interests shall be dismissed by a decision adopted by the general meeting at the behest of any shareholder.



## CHAPTER III

### Directors' duties

#### **Article 225. Due diligence.**

- 1.** Directors must carry out their role and fulfil their tasks in accordance with the laws and by-laws, with the diligence of an orderly business person, taking into account the nature of the role and the duties inherent in each one.
- 2.** Directors must possess the appropriate dedication and adopt the necessary measures for good management and control of the company.
- 3.** When fulfilling their duties, directors have the right to demand and seek from the company, the appropriate information necessary for them to complete their obligations.

#### **Article 226. Protection from business judgement rule.**

- 1.** With regards to strategic and business decisions subject to business judgement rule, the standard of diligence from an orderly business person is understood to have been fulfilled when the director acts in good faith, without personal interest in the matter being decided, with sufficient information and organisation to be able to proceed to an appropriate decision.
- 2.** Any decision that may personally affect other directors or related persons, in particular those that authorise the operations described in article 230, shall not be considered as under the business judgement rule.

#### **Article 227. Duty of loyalty.**

- 1.** Directors must perform their roles as loyal representatives, operating in good faith and in the best interest of the company.
- 2.** Upon breach of loyalty, the director shall be bound to compensate any damage caused to company assets and also to return to the company, any unjust gains obtained.

#### **Article 228. Basic obligations arising from duty of loyalty.**

- 1.** In particular, the duty of loyalty binds directors to the following:
  - a) Not exercise their powers for any end purpose other than that for which they were granted.
  - b) Maintain the confidentiality of any information, data or records to which they may have access in the course fulfilling their role, including after said role has ceased, except in any case where the law allows or requires disclosure.
  - c) Refrain from participating in discussions and votes on agreements and decisions in which the director or a related person may have a direct or indirect conflict of interest. Agreements and decisions that affect the director in their position as such, for example assignment or reduction of roles within the directing body or other similar decisions, shall be excluded from the previous obligation of abstention.

- d) Fulfil their roles under the principle of personal responsibility with freedom of opinion and judgement and independence with respect to third party instructions and links.
- e) Adopt the necessary measures to avoid situations arising in which their interests, whether their own or of another party, may enter into conflict with the company's interests and their duties to the company.

**Article 229. Duty to avoid conflict of interest.**

1. In particular, the duty to avoid conflict of interest situations as referred to in section e) of the previous article 228 binds the director to refrain from the following:
  - a) Completing transactions with the company, except when these are ordinary transactions, made under standard customer conditions and are of scarce relevance, understood to mean anywhere information is not needed to fairly express the entity's assets, financial situation or profits.
  - b) Using or invoking their position as director to unduly influence the completion of private transactions.
  - c) Making use of company assets, including confidential company information, for private ends.
  - d) Taking advantage of the company's business opportunities.
  - e) Obtaining advantages or remuneration from third parties separate to the company or its group, related to the fulfilment of their role, unless it refers to simple expressions of courtesy.
  - f) Performing activities on their own or others' behalf that entail a current or potential effective competition with the company, that would otherwise place them in permanent conflict of interest with the company's interests.
2. The previous provisions shall also be applied in the event that the beneficiary of prohibited acts or activities is a person associated with the director.
3. In all cases, directors must inform the other directors and where necessary, the board of directors or, in the event of a sole director, the general meeting, of any direct or indirect conflict of interest situation that they or any person associated with them may have with the company's interests.

Conflicts of interest involving directors shall be the subject to the information recorded and referred to in article 259.

**Article 230. Imperative and dispensary system.**

1. The system with regards to loyalty and responsibility for breaching the same is imperative. By-laws limiting or contrary to this system shall not be valid.
2. Notwithstanding the stipulations of the previous section, the company may exempt the prohibitions contained in the previous article in exceptional circumstances, by authorising a director or related person to complete a particular transaction with the company, use certain company assets, take advantage of a specific business opportunity or obtain an advantage or remuneration from a third party.



When the release from prohibition refers to obtaining a benefit or remuneration from third parties, or affects a transaction with a value exceeding ten percent of the corporate assets, the authorisation must be duly agreed by the general meeting. In limited liability companies, the general meeting must also grant authorisation when it refers to the provision of any form of financial assistance, including guarantees from the company in the director's favour or when it establishes a work or services relationship with the company.

In all other cases, the directing body may authorise aforementioned release, assuming that the members who grant it are independent from the director to whom it is being granted. Furthermore, it is necessary to ensure that the authorised operation shall not affect corporate assets and, if relevant, that it is conducted within market conditions and with full transparency.

**3.** The obligation not to compete with the company may only be subject to exemption in the event that no damages are expected to be suffered by the company or that the damages expected to be suffered shall be compensated by the benefits forecast to be gained by obtaining said exemption. The exemption shall be granted through the explicit separate agreement of the general meeting.

In all cases, at the request of any partner, the general meeting shall decide upon the severance of a director who performs competitive activities, when the risk of damage to the company becomes relevant.

#### **Article 231. Directors' affiliates.**

**1.** For the purposes of the preceding articles, directors' affiliates shall be the persons listed below:

- a) The director's spouse or persons with an analogous relationship.
- b) The director's or his/her spouse's parents, children and siblings.
- c) The spouses of the director's parents, children and siblings.
- d) Companies with which the director, directly or by proxy, is affiliated in any of the manners described in article 42, paragraph one of the commercial code.

**2.** When directors are bodies corporate, their affiliates shall be the persons listed below:

- a) Partners or shareholders who are affiliated with such body corporate in any of the manners described in article 42, paragraph one of the commercial code.
- b) De jure or de facto directors, liquidators, and attorneys with general powers of attorney in the company's body corporate director.
- c) Companies forming part of the same group and their partners or shareholders.
- d) Persons who, pursuant to the provisions of the preceding paragraph, qualify as affiliates in respect of the above body corporate's representative.

#### **Article 232. Actions arising from a breach of duty to loyalty.**

Exercise of the actions of responsibility described in article 236 and onwards shall not prevent exercise of the actions of challenge, cessation, or removal of effects or, when



relevant, annulment of the acts and contracts ratified by the directors in violation of their duty of loyalty.

## CHAPTER IV

### Company representation

#### ***Article 233. Attribution of power of representation.***

- 1.** In corporate enterprises, the company shall be represented, in or out of court, by the directors in the manner provided in the by-laws, without prejudice to the provisions of the following paragraph.
- 2.** Attribution of the power of representation shall be governed by the rules set out below.
  - a) Where the company has a sole director, that director shall necessarily be vested with representative powers.
  - b) Where it has joint and several directors, all shall be vested with representative powers, without prejudice to the provisions of the by-laws or any decisions that may be adopted by the general meeting on the distribution of powers, whose scope shall be purely internal.
  - c) In limited liability companies with more than two joint directors, at least two shall jointly exercise representative powers in the manner provided in the by-laws. In joint stock companies, representative powers shall be held jointly.
  - d) In companies with a board of directors, representative powers shall be vested in the board itself, acting collegiately. The by-laws may nonetheless vest one or several members of the board with representative powers, individually or jointly.

When the board delegates its powers to an executive committee or one or several managing directors, it shall delimit the scope of their action.

#### ***Article 234. Scope of representative powers.***

- 1.** Company representation shall extend to all acts included in the corporate purpose described in the by-laws. Any limitation to the directors' representative powers, even where registered in the Mercantile Registry, shall be null and void vis-à-vis third parties.
- 2.** The company shall be bound to honour its commitments to third parties acting in good faith and not incurring gross negligence, even where, according to the by-laws registered in the Mercantile Registry, the transaction involved may be inferred not to be included in the company's corporate purpose.

#### ***Article 235. Notices intended for the company.***

When company administration is not collegiate, correspondence or notices may be addressed to any of the directors. Where companies have a board of directors, correspondence and notices shall be addressed to its chairperson.



## CHAPTER V

### Directors' liability

#### **Article 236. Budgets and subjective extension of liability.**

**1.** Directors shall answer to the company and its partners and creditors for any damage caused by their acts or omissions contrary to the law or the by-laws, or for having failed to complete any duties inherent to their roles, assuming there has been misconduct or negligence.

When the act is contrary to the law or the company by-laws, guilt shall be presumed, until proven otherwise.

**2.** Under no circumstance shall the fact that the act or agreement has been adopted, authorised or ratified by the general meeting waive liability for the detrimental agreement.

**3.** Directors' liability is extended equally to de facto directors. To wit, persons who perform the tasks and role of director without the title, or with a null or void title, or with another title, shall be considered de facto directors, such as, for example, any person under whose instructions the company directors act.

**4.** When no permanent delegation powers of the board exist in one or more directors, all provisions regarding directors' duties and liabilities shall be applied to the person, whatever their position, who has the highest management role in the company, without prejudice to the actions of the company based on their legal relation to said person.

**5.** The individual assigned to the permanent exercise of the duties of the role of incorporated entity director must meet the legal requirements established for directors, shall be subject to the same duties and shall respond jointly with the incorporated entity director.

#### **Article 237. Joint and several liability.**

All members of the governing body adopting the detrimental decision or performing the respective act shall answer jointly and severally, unless they prove that having taken no part in its adoption or implementation, they were unaware of its existence or, if aware, took all reasonable measures to prevent the damage or at least voice their objection thereto.

#### **Article 238. Corporate action to demand liability.**

**1.** Action to demand director liability shall be brought by the company pursuant to a general meeting decision, which may be adopted at the behest of any shareholder even where not included on the agenda. The by-laws may not require a qualified majority for the adoption of such decisions.

**2.** The general meeting may reach a settlement in or waive such action at any time, unless an objection is raised thereto by partners or shareholders representing five per cent of the capital.

3. The decision to bring action or reach a settlement shall entail dismissal of the directors concerned.

4. Approval of the financial statements shall not preclude action for liability nor constitute a waiver of the action agreed or brought.

**Article 239. *Legitimisation of the minority.***

1. Any partner or partners individually or jointly representing a share that permits them to request a general meeting, shall be able to bring action for liability to defend corporate interests when the directors fail to convene the general meeting requested for these purposes, when the company does not bring said action within one month of the date of the adoption of the respective agreement, or when the meeting decides against the claim for liability.

When it is based on the breach of the duty to loyalty, the partner or partners referred to in the previous paragraph may exercise the action for liability directly, without the need to submit the decision to the general meeting.

2. In the event of total or partial estimation of the claim, the company shall be bound to reimburse the necessary expenses incurred by the claimant, in accordance with the limits described in article 394 of Law 1/2000 of 7 January, on Civil Procedure, unless the claimant has already received reimbursement of these expenses or the offer of reimbursement of expenses was unconditional.

**Article 240. *Creditors' subsidiary capacity to bring corporate action.***

The company's creditors may institute corporate action for liability against its directors when not brought by the company or its partners or shareholders if the company has insufficient assets to repay its liabilities.

**Article 241. *Individual action for liability.***

Actions for indemnity that may be incumbent upon partners or shareholders or third parties for directors' action that is directly detrimental to their interests shall be excepted.

**Article 241 bis. *Prescription of actions for liability***

Action for liability against directors, whether corporate or individual, shall expire four years from the day on which it could have first been exercised.

## **CHAPTER VI**

### **Board of directors**

**Article 242. *Membership.***

1. The board of directors shall have no less than three members. The by-laws may establish the exact or a minimum and maximum number of members for the board of directors. In the latter case the general meeting shall determine the exact number.

2. In limited liability companies, the board of directors, if any, may have no more than twelve members.

**Article 243. Proportional representation.**

- 1.** In joint stock companies, shares that are voluntarily grouped to constitute share capital amounting to or exceeding the sum resulting from dividing the capital by the number of members of the board of directors, shall be entitled to designate the number of members deduced from the proportion of share capital so grouped, rounding any fractions.
- 2.** If this power is exercised, the shares so grouped shall not take part in the election of the remaining members of the board.

**Article 244. Cooptation.**

In joint stock companies, if vacancies should arise during the directors' term and no deputies have been appointed, the board may designate from among the company shareholders the person or persons who are to fill such positions until the next general meeting is held.

**Article 245. Board of directors organisation and modus operandi.**

- 1.** In limited liability companies the by-laws establish the organisational arrangements and modus operandi of the board of directors, which shall include at least the rules on convening its meetings and the quorum required, as well as the manner in which it shall conduct its discussions and the majority needed to adopt its decisions.
- 2.** In joint stock companies, unless otherwise specified in the by-laws, the board of directors may designate its chairman, regulate its own modus operandi and accept the resignation of directors.
3. The board of directors must meet at least once per quarter.

**Article 246. Notice of board meetings.**

- 1.** Meetings of the board of directors shall be convened by the chairperson or acting chairperson.
- 2.** Directors comprising at least one third of the members of the board may convene a meeting, specifying the agenda, which must be held in the town or city where the registered office is located if the chairperson, after being asked to do so, fails to convene the meeting within one month of the request.

**Article 247. Quorum for board of directors' meetings.**

- 1.** In limited liability companies, the quorum for board of directors' meetings shall be reached when they are attended, in person or by proxy, by the number of directors specified in the by-laws, which may not be less than the majority of the board members.
- 2.** In joint stock companies, the quorum for board of directors' meetings shall be a majority of its members, attending in person or by proxy.

**Article 248. Adoption of decisions by joint stock companies' boards of directors.**

- 1.** In joint stock companies, board of directors' decisions shall be adopted by the majority of directors attending.

2. In joint stock companies, voting in writing outside meetings shall only be accepted when no director objects to this procedure.

**Article 249. Delegation of powers by the board of directors.**

1. Unless otherwise provided in the corporate by-laws, the board of directors may designate from among its members an executive committee or one or several managing directors, without prejudice to the powers that may be vested in any person whatsoever.

2. The permanent delegation of any of the board of directors' powers to the executive committee or to any delegated director and the appointment of any director to occupy these positions, shall require the favourable vote of two thirds of the board members and shall not take effect until registration in the Companies Register.

3. When a member of the board of directors is nominated as a delegated director or is granted executive duties with regards to the other title, it shall be necessary to draw up a contract between said director and the company, which must be pre-approved by the board of directors with a favourable vote of at least two thirds of its members. The implicated director must refrain from attending the deliberations and from participating in the vote. The approved contract must be incorporated as an annex to the session's minutes.

4. The contract shall detail all the concepts for which remuneration could be obtained for the completion of executive duties, including, when relevant, eventual compensation for early cessation of said duties and sums granted by the company for insurance premiums or as contributions to savings schemes. The director may not receive any remuneration for the completion of any executive duties whose quantities or concepts are not detailed in this contract.

The contract must conform to the approved remuneration policy, when relevant, by the general meeting.

**Article 249 bis. Non-delegable powers.**

The board of directors may not delegate under any circumstances, the following powers:

- a) Supervising the effective operation of any committees established or the performance of any delegated bodies or managers it may have nominated.
- b) Determining the company's general policies and strategies.
- c) Authorising or allocating the obligations arising from the duty of loyalty in accordance with the provisions of article 230.
- d) Its own organisation and performance.
- e) Preparing the annual statements and presenting said statements to the general meeting.
- f) Preparing any type of report required from the board by law, assuming that the operation to which the report refers cannot be delegated.
- g) Nominating or removing delegated directors from the company, or establishing the conditions of their contract.



- h) Nominating or removing managers on whom the board or some of its members may directly depend, such as establishing the basic conditions of their contracts, including remuneration.
- i) Decisions relating to directors' remuneration, within the statutory framework and, when relevant, the remuneration policy approved by the general meeting.
- j) Calling the shareholders' general meeting and preparing the agenda and proposal for agreements.
- k) The policy relating to shares or own shares.
- l) Any powers that the general meeting has vested to the board of directors, unless the board has explicitly authorised that they may be sub-delegated.

**Article 250. Minutes of board of directors' meetings.**

Board of directors' discussions and decisions shall be recorded in a minutes book, which shall be signed by the chairperson and the secretary.

**Article 251. Challenging board of directors' decisions.**

1. Directors may challenge null and unchallengeable decisions adopted by the board of directors or any other governing body within thirty days of their adoption. Similarly, such decisions may be challenged by partners or shareholders representing five per cent of the capital no more than thirty days after they became aware thereof and provided less than one year has elapsed since their adoption.
2. The causes, processing and effects of these challenges shall be subject to the same as established for challenges to general meeting agreements, with the special provision that, in this case, they shall also be processed for breach of the board of directors' regulations

## CHAPTER VII

### Administration of limited partnerships

**Article 252. Administration of limited partnerships.**

1. In limited partnerships, the company shall necessarily be administered by the general partners, who shall have the same powers, rights and duties as joint stock company directors. Any new director shall assume the status of general partner from the time of acceptance of his/her appointment.
2. Severance from the office of director shall require amendment to the by-laws. Should severance occur for no just cause, the partner shall be entitled to indemnity for damages.
3. Removal from office of general partners as directors shall bring to an end their unlimited liability in relation to corporate debts incurred after registration of their severance in the Mercantile Registry.
4. The partners concerned shall refrain from voting in decisions relating to their severance as directors.

## **TITLE VII** **Financial statements**

### **CHAPTER I** **General provisions**

#### **Article 253. Issue of the financial statements.**

- 1.** Within three months of the end of the financial year, the company's directors shall issue the financial statements, the management report and the proposed distribution of earnings, and, as appropriate, the consolidated financial statements and management report.
- 2.** The financial statements and management report must be signed by all the directors. If any of their signatures is missing, all the documents impacted shall contain a mention thereof and an explicit explanation therefor.

#### **Article 254. Contents of the financial statements.**

- 1.** The financial statements shall comprise the balance sheet, income statement, statement of the changes in the equity for the financial year, cash flow statement and the respective notes.
- 2.** These documents, which form a whole, must be drafted clearly and present a true and fair view of the company's net worth, financial position and net income, in accordance with this act and the provisions of the Commercial Code.
- 3.** The structure and contents of the documents that form the financial statements shall conform to the statutorily approved models.

#### **Article 255. Separate items.**

- 1.** In the documents that form the financial statements, the items listed in the statutorily approved models shall be displayed separately, in the order indicated therein.
- 2.** These items may be subdivided to furnish further detail, provided the structure of the established models is maintained.

New items may also be added where their contents are not included in any of the items included in the models.

#### **Article 256. Grouping of items.**

Certain items listed in the documents forming the financial statements may be grouped when the amount involved is irrelevant for the purposes of presenting a true and fair



view of the company's net worth, financial position and net income, or for purposes of clarity, provided that the grouped items are discussed separately in the notes to the financial statements.

**Article 257. Abridged balance sheet and statement of changes in net worth.**

**1.** Companies may prepare an abridged balance sheet and statement of changes in net worth if, on the closing date of two consecutive financial years, they meet at least two of the following circumstances:

- a) Total entries of the assets shall not exceed four million euros.
- b) Net amount corresponding to the annual turnover shall not exceed eight million euros.
- c) Average headcount during the financial year not over fifty employees.

Companies no longer meeting any two of the circumstances referred to in the preceding paragraph for two consecutive years shall forfeit this privilege.

**2.** In the first financial year after their formation, conversion or merger, companies may issue an abridged balance sheet and statement of changes in net worth if, at the end of that financial year, they meet at least two of the three circumstances listed in the preceding paragraph.

**3.** Companies entitled to issue an abridged balance sheet and statement of changes in net worth shall not be bound to issue a cash flow statement.

**Article 258. Abridged income statement.**

**1.** Companies may prepare an abridged income statement if they meet at least two of the circumstances listed below on the closing date of two consecutive financial years:

- a) Total assets not over eleven million four hundred thousand euros.
- b) Net annual turnover not over twenty two million eight hundred thousand euros.
- c) Average headcount during the financial year not over two hundred fifty employees.

Companies no longer meeting any two of the circumstances referred to in the preceding paragraph for two consecutive years may not prepare an abridged income statement.

**2.** In the first financial year after their formation, conversion or merger, companies may issue an abridged income statement if, at the end of that financial year, they meet at least two of the three circumstances listed in the preceding paragraph.

**CHAPTER II**  
**Annual Report**

**Article 259. Purpose of the notes.**

The notes shall complete, extend and comment on the contents of the other documents that form the financial statements.

**Article 260. Contents of the notes.**

In addition to the information specifically indicated by the Commercial Code and this act and the regulations enlarging thereon, the notes shall contain at least the items listed below.

One. The valuation criteria applied to the items in the financial statements and the methods for calculating valuation corrections.

If any items on the financial statements are expressed in a currency other than the euro either initially or in the target year, the notes shall describe the procedure used to calculate the euro exchange rate.

Two. The registered name, registered office and legal status of the companies in which: the company is a general partner, directly or indirectly holds no less than twenty per cent of the capital, or exercises a significant influence, while holding less than such twenty per cent.

The report shall specify the company's capital holding and the percentage of its voting rights over the total, as well as the investees' total equity in their last financial year.

Three. The existence of unequal shares or stocks, the content of thereof and variations in types of share, the number and nominal value of those pertaining thereto and the content of rights pertaining thereto.

Four. The existence of dividend certificates, founder's bonds, convertible bonds and others involving similar amounts or rights, stating the number thereof and the scope of rights they grant.

Five. The number and nominal value of shares subscribed during the year within the limits of authorised capital, in addition to the amount of acquisitions and disposals of own shares and stocks, and shares and stocks in the parent company. This information shall be given separately for each debt item.

Six. The company's outstanding amounts becoming due and payable after more than five years and all the debts with tangible security, specifying their form and nature.

This information may be separately given for each entry relating to a debt.

Seven.

a) The overall sum of third party commitments, without prejudice to their inclusion as a balance sheet liability when the actual compliance of an obligation is likely to derive therefrom.

Pension and group company-related commitments shall be mentioned clearly and separately.

b) The nature and purpose of the transactions not recorded in the company's balance sheet and their financial impact, providing that this information is significant and necessary for determining the company's financial position.



c) Significant transactions between the company and related third parties, indicating the nature of the relationship, the amount and any other information about the transactions needed to determine the company's financial position

Eight.

a) The difference that may result between calculating the accounting profit for the year and having assessed the items using tax criteria, on the provision that they do not match the mandatory accounting principles. In the event that said valuation substantially influences the future tax burden, an indication shall be given in this respect.

b) The difference between the tax burden attributed to the year and previous years and the tax burden for which payment has already been made or shall be made for said years, when it is known that said difference will affect the future tax burden.

Nine. The distribution of the net turnover from the company's ordinary business operations by category of operations and geographical markets, as far as, from the standpoint of the organisation of product sales, service provision or other income from the company's ordinary business operations, such categories and markets differ substantially. Companies entitled to issue abridged income statements may omit such information.

Ten. The average number of employees during the fiscal year, indicating their categories, as well as personnel expenses of said fiscal year, itemising the amounts relating to salary, earnings and social security contributions, indicating the amounts relating to pension apart, when are not recorded in the income statement.

The gender distribution of the employees of the company at the end of the fiscal year, itemised into a sufficient number of categories and levels, including director and senior management positions.

The average number of employees during the fiscal year with a disability equal to or above thirty-three percent, identifying the category to which they belong.

Eleven. The salaries, daily subsistence allowances and remuneration of any kind accruing throughout the financial year to senior management and members of the board of directors, for any reason, and the amount of any pension or life insurance premium relating obligations incurred with respect to former and current board members and senior management personnel. If the board members are bodies corporate, the foregoing requirements shall refer to the natural persons representing them.

This information may be given globally by category of remuneration.

In the event that the company has satisfied, either in full or in part, the civil liability insurance premium of all or some of members of the board for damages resulting from actions or omissions in the exercise of their duties, express mention shall be made in the Annual Report, stating the amount of the premium.

Twelve. The sum of any advances or loans granted to each senior management and members of the governing bodies, specifying the interest rate, their essential

characteristics and any amounts repaid, as well as the obligations accepted on their behalf as security. If board members are bodies corporate, the foregoing requirements shall refer to the individuals representing them.

This information may be given globally by category.

Thirteen. The itemised sum of the fees for auditing the accounts and other services rendered by the auditor, as well as the fees paid to persons or entities related thereto.

Fourteen. Movements in the different non-current asset items.

Fifteen.

a) When financial instruments have been assessed at their fair value, the following shall be stated: the main assumptions on which the assessment techniques and models are based; the variations in the value recorded in the profit and loss account for each financial instrument category and, for derivative financial instruments, their nature and the main conditions regarding amounts and timing in addition to the fair value movements in reserves over the course of the year.

b) When financial instruments have not been assessed at their fair value, the fair value for each category shall be stated in the terms and under the conditions provided for in the General Chart of Accounts.

Sixteen. The early conclusion, amendment or termination of any agreement between a trading company and any of its partners or administrators, or any person acting on their behalf, when said agreement involves transactions that fall out of the scope of the Company's ordinary course of business or are not carried out under normal conditions.

Seventeen. The corporate name and address of the company drafting the consolidated financial statements of the group to which the company belongs and the Companies Register under which the consolidated financial statements are recorded or, where applicable, the circumstances that waive the obligation to prepare consolidated accounts.

Eighteen. When the company holds the largest number of assets among the set of the companies registered in Spain, which are subject to a single decision-making body, as they are controlled by any means by one or several individuals or legal entities not obliged to prepare consolidated accounts and which act at the same time, or because said companies are subject to the unified basis direction by means of agreements or by-laws, a description of said companies shall be included, mentioning why they are subject to single decision-making body. In addition, amount of assets, liabilities, equity, turnover and earnings of the set of companies shall be stated.

The company with the largest number of assets shall be understood as the company that, at the time of its inclusion in the decision-making body, has the largest amount within total assets in the balance sheet.

The other companies under a single decision-making body shall indicate in the annual report the decision-making body to which they belong as well as the Mercantile Registry in which the company, which contains the information required under the first paragraph of this item, have presented the annual financial statements.



Nineteen. The amount and nature of income or expenditure items, the amount or impact of which is exceptional.

Twenty. The proposed appropriation of earnings.

Twenty One. The nature and financial implications of the relatively significant circumstances that arise following the balance sheet date that are not reflected in the profit and loss account or the balance sheet, and the financial impact of said circumstances.

**Article 261. Abridged annual report.**

Companies capable of preparing abridged financial statements may omit the indications that may be laid down according to regulations from the Report.

In any event, the information required under statements one, five, six and ten must be provided as regards the average number of employees over the course of the year in addition to statements fourteen, fifteen, sixteen, nineteen and twenty one.

Furthermore, the Report shall provide an overview of the data to which statement seven and twelve of said article refers, in addition to the corporate name and address of the company that establishes the consolidated financial statements for the smaller group of companies included in the group to which the company belongs.

**CHAPTER III**  
**Management report**

**Article 262. Content.**

**1.** The management report shall contain a true and fair description of the company's business and situation, and of the main risks and uncertainties to be confronted.

The description must be a balanced and comprehensive analysis of the variations in and results of the company's business and position, consistent with its size and complexity.

To the extent necessary for an understanding of company trends, performance or position, this analysis must cover financial and other key performance indicators and, as appropriate, non-financial indicators relevant to the specific business activity, including information on environmental- and employee-related matters. Companies that are entitled to issue abridged income statements shall be released from the obligation to include non-financial information.

On providing this analysis, the management report shall, as appropriate, include references and additional explanations about the sums shown on the financial statements.

Companies that cannot provide an abridged income statement must indicate on the management report their average payment period to suppliers; in the event that said period exceeds the maximum established by payment default regulations, they must also indicate the measures to be applied during the following financial year to reduce these payments to within the established maximum.

**2.** It shall also report on any material post-balance sheet events, the foreseeable evolution of such events, any research and development-related activities and, in the terms set forth hereunder, the acquisition of the company's own shares.

**3.** Companies that issue an abridged balance sheet and statement of changes in net worth shall not be required to issue a management report. In that case, if the company acquires its own shares or shares in its controlling company, the notes to the financial statements shall include at least the information required in letter d) of Article 148.

**4.** Whenever the use of financial instruments by the company is relevant for measuring its assets, liabilities, financial position or earnings, the management report shall include the following information:

- a) Company financial risk management objectives and policies, including hedging against each significant type of planned transaction for which hedge accounting is used
- b) Company exposure to price risk, credit risk, liquidity risk and cash flow risk.

**5.** Capital companies that, in accordance with the audit legislation of accounts, are considered to be entities of public interest must include in the management report a non-financial information status or prepare a separate report with the same content as that provided for the accounts consolidated by article 49, sections 5, 6 and 7 of the Commercial Code, although it is referred exclusively to the subject company, provided that the following requirements are fulfilled:

- a) That the average number of employees employed by the group companies during the tax year exceeds 500.
- b) That during two consecutive tax years they meet at least two of the following circumstances on the closing date of each of them:
  - 1. That the total assets entries exceeds 20,000,000 euro.
  - 2. That the net amount of the annual business figure exceeds 40,000,000 euro.
  - 3. That the average number of employees employed by the group companies during the tax year exceeds two hundred and fifty.

The companies will cease their obligation to prepare the status of non-financial information if they fail to collect, for two consecutive years, two of the requirements of letter b) above, or when by the end of the tax year the average number of employees employed did not exceed 500.

In the first two tax years since the incorporation of the company, it will be obliged to prepare the consolidated non-financial information statement when, at the end of the first year, at least two of the three circumstances referred to in section b) are met, provided that at the end of the year the requirement foreseen in section a) is also met.

In exceptional cases, information regarding imminent events or issues in the course of a negotiation may be omitted when, in the duly justified opinion of the governing body, the disclosure of such information could seriously harm the group's commercial position, provided that this omission does not impede a faithful and balanced



understanding of the evolution, the results and the situation of the group, and of the impact of its activity.

A company that is dependent on a group will be exempt from the obligation established in this section if this company and its subsidiaries, if any, are included in the consolidated management report of another company, prepared in accordance with the content established in this article. If a company accepts this option, it must include in the management report a reference to the identity of the parent company and the Mercantile Registry or other public office where its accounts must be deposited together with the consolidated management report or, in the assumptions of not being obliged to deposit their accounts in any public office, or having chosen to prepare a separate report, on where it is available and possible to access the consolidated information of the parent company.

**6.** The information contained in the management report shall under no circumstances justify its absence in the annual accounts when this information must be included in them in accordance with the provisions herein and the provisions implementing it.

## CHAPTER IV

### Financial statement audit

#### **Article 263. Auditor.**

- 1.** The financial statements and, as appropriate, the management report must be reviewed by an auditor.
- 2.** Companies to which at least two of the circumstances listed below apply on the closing date of two consecutive financial years shall be released from this obligation.
  - a) Their assets do not total over two million eight hundred fifty thousand euros.
  - b) Their net yearly turnover is not in excess of five million seven hundred thousand euros.
  - c) Their average headcount during the year is not over fifty.

Eligibility for this privilege shall be forfeited when fewer than two of the aforementioned circumstances are in place for two consecutive years.

- 3.** In the first year after their formation, conversion or merger, companies shall be released from the obligation to audit their accounts if at the end of the financial year at least two of the three circumstances listed in the preceding paragraph are applicable thereto.

#### **Article 264. Appointment by the general meeting.**

- 1.** The person responsible for conducting the audit shall be appointed by the general meeting before the end of the financial year to be audited, for an initial period that may be no less than three nor more than nine years, calculated from the starting date of the first financial year to be audited, without prejudice to a possible extension pursuant to the provisions laid down in the legislation regulating accounts auditing.

2. The general meeting may appoint one or several individuals or bodies corporate who shall act jointly. When the appointees are individuals, the general meeting shall appoint both principal and substitute auditors.
3. The general meeting may not dismiss auditors without just cause before the end of the initial period for which they were appointed, or before the end of each of the periods for which they are hired after the end of the initial period.
4. Any contractual clause that limits the appointment of certain categories or lists of statutory auditors or audit firms shall be regarded null and void.

**Article 265. Appointment by the mercantile registrar.**

1. When the general meeting is bound to appoint the auditor before the end of the financial year to be audited and fails to do so, or the appointee fails to accept the commission or is unable to perform the respective duties, the directors and any shareholder may ask the mercantile registrar serving the place where the registered office is located to appoint a person or persons to conduct the audit.

In joint stock companies, the request may also be filed by the representative of the bondholders' syndicate.

2. In companies that are not bound to have their financial statements audited, shareholders representing at least five per cent of the share capital may apply to the mercantile registrar serving the place where the registered office is located to appoint an auditor to, at the company's expense, audit the financial statements for a given financial year within the three months following the end of such financial year.

3. The request to appoint an auditor and his/her appointment shall comply with the provisions of the Companies Register Regulation. Before accepting the appointment, the auditor shall assess the effective compliance of the assignment, pursuant to the provisions of the regulations in force on auditing activities.

**Article 266. Revocation of the auditor.**

1. Whenever there is a just cause, the company's directors and parties with legal capacity to request the appointment of the auditor may request the Clerk of the Court or the Mercantile Registrar to revoke the appointment made by them or the general meeting and to appoint a new auditor.

2. The application to the registrar shall be processed in agreement with the provisions of Companies Register regulations.

If the revocation is made through the clerk of the commercial court, the procedures shall comply with the provisions of the voluntary jurisdiction legislation.

3. The resolution passed on the revocation of the auditor shall be open to challenge before the commercial court judge.

Furthermore, as regards public-interest companies, shareholders representing 5% or more of voting rights or capital, the Audit Commission or the Institute of Accounting and Account Audits may ask for a judge to revoke the auditor or auditors or the audit firm or



firms nominated by the Shareholders' Meeting or by the Companies Register and appoint another or others, when there is just cause

**Article 267. Auditor's remuneration.**

**1.** Auditors' remuneration shall be established in accordance with the provisions of the Spanish Auditing Act.

**2.** The auditor shall receive no other remuneration or benefit from the company audited for performing this duty.

**3.** When the auditor is appointed by the companies registrar, following the appointment, said individual shall establish the remuneration to be received by the auditor for the entire period in which he/she performs the role or, at least, the criteria for establishing said amount. Before accepting the assignment and prior to its registration in the Companies Register, an agreement shall be reached regarding the corresponding fees. Auditors may request an appropriate surety or the provision of funds to cover his/her fees before starting to perform his/her duties.

**Article 268. Object of the audit.**

The auditor shall verify whether the financial statements present a true and fair view of the net worth, financial position and earnings of the company, and as appropriate, the consistency between the management report and the financial statements for the financial year.

**Article 269. Auditor's report.**

The auditors shall issue a detailed report on the result of their audit, in accordance with auditing regulations.

**Article 270. Deadline for issuing the report.**

**1.** Auditors shall be given at least one month from the date of receipt of the accounts signed by the directors in which to submit their report.

**2.** If, as a result of the report, the directors must alter the financial statements, the auditor shall extend his/her report and add the changes made.

**Article 271. Corporate action for liability. Legal capacity.**

The legal capacity to hold the auditor liable to the company shall be governed by the provisions on company directors.

## CHAPTER V

### Financial statement approval

**Article 272.** *Financial statement approval.*

- 1.** The financial statements shall be approved by the general meeting.
- 2.** After the general meeting has been convened, any shareholder may apply to the company to obtain, immediately and cost-free, the documents that have to be submitted to the general meeting for approval, and, as appropriate, the management and auditor's reports.

Mention of this right shall be included in the notice of the meeting.

- 3.** Unless specified otherwise in the by-laws, during that same period of time, any partner or partners of limited liability companies representing at least five per cent of the capital, may alone or in the company of an expert accountant visit the registered office to examine the documents substantiating the financial statements and used as a basis for their formulation.

The provisions of the preceding paragraph do not preclude or limit the right of the minority to appoint an auditor at the company's expense.

**Article 273.** *Distribution of earnings.*

- 1.** The general meeting shall decide on the distribution of the earnings for the financial year as shown on the approved balance sheet.
- 2.** Dividends may only be drawn on the year's profits or freely available reserves after meeting the requirements laid down by law and in the by-laws, and if the value of the corporate equity is not, or as a result of such distribution would not be, less than the company's capital. For these purposes, any profit directly allocated to total equity may not be distributed either directly or indirectly.

In the event of losses in preceding years that reduce corporate equity to less than the company's capital, profits shall be used to offset such losses.

- 3.** Profit distribution shall likewise be prohibited if the amount of the distributable reserves comes to less than the sum of the research and development expenses shown as assets on the balance sheet.

**4.** (Repealed)

**Article 274.** *Legal reserve.*

- 1.** An amount equal to ten per cent of the profit for the year shall in any event be earmarked for the legal reserve until such reserve represents at least twenty per cent of the capital.
- 2.** The legal reserve may not be used to offset losses unless it exceeds twenty per cent of the capital and no other sufficient reserves are available for such purpose.

**Article 275. Distribution of dividends.**

- 1.** In limited liability companies, unless specified otherwise in the by-laws, the dividends shall be distributed to the partners in proportion to their stakes in the company capital.
- 2.** In joint stock companies, the dividends shall be distributed to the ordinary shareholders in proportion to the capital paid up.

**Article 276. Date and method of dividend payments.**

- 1.** In its decision on distribution of dividends, the general meeting shall determine the date and method of payment.
- 2.** If no stipulation is made in this regard, the dividend shall be payable at the registered office from the day after the day on which the decision is adopted.

**Article 277. Interim dividends.**

The distribution of interim dividends among shareholders shall only be approved by the general meeting or by the directors where the conditions set out below are met.

- a) The directors shall prepare a statement of accounts confirming the existence of sufficient liquidity to pay the interim dividend. This statement must be subsequently included in the notes to the financial statements.
- b) The amount to be distributed shall not exceed the amount resulting from deducting from the earnings booked since the end of the last year, the sum of previous years' losses, the amounts earmarked for the reserves required by law or the by-laws, and the estimated tax due on the aforesaid earnings.

**Article 278. Dividend reimbursement.**

Any distribution of dividends or interim dividends that breaches the provisions of this act must be reimbursed by the recipient shareholders, including any legal interest as appropriate, when the company proves that such recipients were aware, or under the circumstances could not have been unaware, of the undue distribution of the dividends.

## CHAPTER VI

### Filing and public record of the financial statements

**Article 279. Filing the financial statements.**

- 1.** Within one month of the approval of the financial statements, a duly signed certificate of the general meeting's decisions approving the financial statements, the distribution of profits, and as appropriate, the consolidated financial statements, shall be filed by the company's directors with the competent Mercantile Registry for the company's registered office. Copies of the respective statements shall be attached thereto. The directors of companies legally bound to audit their accounts or deciding to do so at the behest of the minority shall also submit the management and the auditors' report.
- 2.** When any of the financial statements are issued in abridged format, the certificate shall specify and justify that circumstance.

**Article 280. Registry acceptance.**

**1.** Within fifteen days of the date of submission, the registrar, under his/her responsibility, shall determine whether the documents submitted are compliant with the existing legislation, duly approved by the general meeting and signed as required. If no defects are detected, the registrar shall accept the documents as filed and include the respective entry in the accounts filing ledger and on the company's page in the registry. Otherwise, he/she shall proceed as stipulated in respect of faulty documents.

**2.** The Mercantile Registry shall keep the filed documents for a period of six years.

**Article 281. Public availability of statements filed.**

Information contained in any and all documents on file with the Mercantile Registry may be requested by any party.

**Article 282. Denial of registration.**

**1.** If the governing body fails to meet its obligation to file the documents referred to in this chapter by the established deadline, no company-related documents shall be registered while such obligation remains outstanding.

**2.** This shall not apply to documents relating to the dismissal or resignation of directors, managers, directors general or liquidators, or to the withdrawal or waiver of powers, company dissolution and appointment of liquidators or the entries that must be made by order of the competent judicial or administrative authority.

**Article 283. Penalties.**

**1.** Governing body failure to file the documents referred to in this chapter within the established deadline shall also give rise to a fine imposed by the Spanish Institute of Accounting and Accounts Auditing for an amount ranging from 1 200 to 60 000 euros, further to preliminary proceedings conducted in accordance with the regulatory procedure established in the Act on Public Administration and Common Administrative Procedures.

When the company or, as appropriate, the corporate group has an annual turnover exceeding 6 000 000 euros, the ceiling for the fine per each year of arrears shall be 300 000 euros.

**2.** The fine to be imposed shall be determined on the grounds of company size, defined in terms of total assets and turnover in the last financial year for which returns were filed with the tax authority. The company must furnish this information to the official conducting the inquiry; failure to do so shall be taken into consideration for the purposes of calculating the fine. If such information is not available, the amount of the fine shall be calculated in accordance with company capital, which shall be requested from the respective Mercantile Registry for these intents and purposes.

**3.** If the documents referred to in this chapter are filed prior to the institution of disciplinary proceedings, the company shall be fined at fifty per cent of the minimum rate.

4. The breaches referred to in this article lapse after three years.

**Article 284. Public disclosure.**

If the documents filed in the Mercantile Registry are made public, they must bear an indication of whether they are full or abridged versions. If full, the text of the documents filed in the Mercantile Registry must be accurately reproduced, and always include the full version of the auditors' report. If abridged, reference shall be made to the Mercantile Registry where the documents are on record. While the auditor's report may be omitted in this case, mention must be made of whether or not any reservations were raised therein.

## **TITLE VIII**

### **Amendments to the by-laws**

#### **CHAPTER I**

##### **Amendments to the by-laws**

###### **Section one. General provisions**

###### **Article 285. Competence.**

- 1.** By-laws may only be amended by the general meeting.
- 2.** Notwithstanding the stipulations detailed in the previous section and unless otherwise stipulated in the by-laws, the directing body shall be competent to relocate the registered office within national territory. By-laws shall be considered to stipulate otherwise when the same expressly establish that the directing body is not vested with the aforementioned competence.

###### **Article 286. Proposals for amendment.**

The directors or, as appropriate, the partners or shareholders authoring the proposal, shall draft the wording of the proposed amendment in full and, in joint stock companies, they shall also draft a written report justifying the proposal.

###### **Article 287. Notice of the general meeting.**

The notice convening the general meeting shall contain explicit reference, with the necessary clarity, to the points to be amended and to partners' or shareholders' right to examine the full wording at the registered office and, in joint stock companies, to the respective report, and to request cost-free copies of such documents, either at the registered office or at their own address.

###### **Article 288. Decision to amend the by-laws.**

- 1.** In limited liability companies, decisions to amend the by-laws shall be subject to approval by the qualified majority defined in Article 199.
- 2.** In joint stock companies and limited partnerships, decisions to amend the by-laws shall be subject to approval by the majority defined in Articles 194 and 201.

###### **Article 289. Public notice of certain decisions to amend the by-laws**

(Repealed)

**Article 290. Instrument and registration of amendment.**

**1.** Decisions to amend the by-laws shall be laid down in a public instrument to be registered in the Mercantile Registry and published in the Official Journal of the Mercantile Registry. The mercantile registrar shall forward ex officio the agreement registered, electronically and at no extra cost, to the Official Journal of the Mercantile Registry for publication.

**2.** After the change in company denomination is entered in the Mercantile Registry, it shall be recorded at other Registries in the form of marginal notes.

**Section two. Special rules on legal protection for partners or shareholders****Article 291. New obligations for partners or shareholders.**

When an amendment to the by-laws entails new obligations for partners or shareholders, its adoption shall be contingent upon the consent of the parties concerned.

**Article 292. Individual protection of partners' rights in limited liability companies.**

When amendments refer to the individual rights of partners in limited liability companies, their adoption shall be contingent upon the consent of the parties concerned.

**Article 293. General protection of the rights of shareholders in joint stock companies.**

**1.** Amendments to the by-laws that directly or indirectly affect the rights of a specific class of shares shall only be valid when adopted by the general meeting in compliance with the requirements laid down in this act and approved by a majority of the shares pertaining to the class in question. When several classes are involved, a separate decision shall be required for each. Any amendment that has a significant level of clearly asymmetrical economic or political impact on other shares or shareholders, shall be deemed discriminatory.

**2.** When the amendment affects only part of the shares in a given class and the same lead to discrimination between them, for the purposes of this article, the affected and unaffected shares shall be deemed to constitute separate classes and, therefore, a separate decision shall be required for each. Any amendment that has a significant level of a clearly asymmetrical economic or political impact on other shares or shareholders shall be deemed discriminatory.

**3.** The decision by the shareholders affected shall be subject to approval by the majority required in this act for amending the by-laws, either at a special meeting or by a separate vote at the general meeting, and shall be explicitly included in the notice of that meeting.

**4.** The provisions of this act for the general meeting shall apply to special meetings.

**Article 294. Individual protection of general partners in a limited partnerships.**

When a proposal to amend the by-laws of a limited partnership refers to the appointment of directors, a change in the arrangements for company administration or corporate purpose, or extension of the life of the company beyond the term established in the by-laws, the decision must be adopted by the general meeting in compliance with the requirements laid down in this act, and its validity shall be contingent upon the consent of all the general partners.

**CHAPTER II**  
**Capital increases**

**Section one. Types of increase**

**Article 295. Types of increase.**

- 1.** Company capital may be increased by either creating new stakes or issuing new shares or by increasing the par value of the existing stakes or shares.
- 2.** In both cases the capital increase may be booked against new cash or non-cash contributions to the company equity, including credits held against the company, or charged to profits or reserves shown on the last approved balance sheet.

**Section two. Decision to increase capital**

**Article 296. Decision on capital increase.**

- 1.** Decisions to increase company capital must be adopted by the general meeting and shall be subject to approval by the majority required in this act for amending the by-laws.
- 2.** Adoption of decisions to increase capital by raising the par value of stakes or shares shall be contingent upon the consent of all partners or shareholders, unless the increase is fully charged to profits or reserves shown on the last approved balance sheet.
- 3.** In joint stock companies, at least one-fourth of the value of all company shares must be paid up after the capital increase.

**Article 297. Power vested in directors.**

- 1.** In joint stock companies, the general meeting may adopt decisions to vest the directors with the powers listed below, which shall be subject to approval by the majority required in this act for amending the by-laws:
  - a)** The power to set the date on which the decision to increase capital by the sum agreed will be implemented and to establish whatsoever terms and conditions were not determined by the meeting; the term in which this power must be exercised may not exceed one year, except as regards convertible bonds.
  - b)** The power to increase company capital in one or several stages up to the sum specified, when and for the amounts deemed appropriate, without consulting the general meeting; such increases may under no circumstance involve over half the



company capital at the time the authorisation is forthcoming and must be implemented in the form of cash contributions within no more than five years of the meeting's decision.

2. By virtue of the foregoing, the directors are vested with the power to redraft the article of the by-laws on share capital after the increase is adopted and implemented.

**Article 298. Increases with premiums.**

1. In capital increases, stakes may be created and shares issued with a premium.
2. The premium must be fully paid up when the new stakes are taken or new shares are subscribed.

**Article 299. Increases charged to cash contributions.**

1. In joint stock companies, except insurance companies, capital increases booked against new cash contributions to the company equity may not be made until all previously issued shares are fully paid up.
2. Notwithstanding the provisions of the preceding paragraph, if the amount outstanding does not exceed three per cent of the share capital, the increase may be effected.

**Article 300. Increases charged to non-cash contributions.**

1. Where increases consist of non-cash contributions, along with the notice of the meeting, partners or shareholders must be provided with a directors' report containing a detailed description of the planned contributions, their valuation, the persons expected to make them, the number and par value of the stakes or shares to be created or issued, the amount of the capital increase and the security established to render the increase effective, in keeping with the nature of the assets comprising such contribution.
2. The notice of the general meeting shall inform all partners or shareholders of their right to examine the report at the registered office, as well as to request cost-free copies of such document to be received in hand or forwarded to their address.

**Article 301. Increases to offset loans.**

1. When limited liability companies increase their capital by offsetting loans, such loans must be fully liquid and receivable. When joint stock companies increase their capital by offsetting loans, at least twenty-five per cent thereof must be liquid, mature and receivable, and none of the remaining loans may mature in over five years.
2. At the same time as the general meeting is convened, the partners or shareholders shall be given access to a report at the registered office, prepared by the company's governing body, on the nature and characteristics of the loans to be offset, the identity of contributors, the number of stakes or shares to be created or issued and the amount of the increase, explicitly confirming the concurrence between the data on the loans and company accounts.

**3.** In joint stock companies, at the same time as the general meeting is convened, shareholders shall have access, at the registered office, to a certificate issued by the auditor confirming that his/her verification of the company accounts found the information provided by the directors on the loans in question to be accurate. If the company has no auditor, the certificate shall be issued by an auditor appointed by the Mercantile Registry at the behest of the directors.

**4.** The notice convening the general meeting must inform all partners or shareholders of their right to examine the directors' report and, in the case of joint stock companies, the auditor's certificate, at the registered office, as well as to request cost-free copies of such documents to be received in hand or forwarded to their address.

**5.** The directors' and, in joint stock companies, the auditor's reports, shall be attached to the public instrument on the capital increase.

**Article 302. Increases by converting bonds.**

When the capital is increased by converting bonds into shares, the provisions of the bond issue agreement shall apply.

**Article 303. Increases charged to reserves.**

**1.** When capital increases are charged to reserves, the reserves that may be earmarked for this purpose include unrestricted reserves and reserves constituted with new partner or shareholder stake or share premiums. In limited liability companies, the legal reserve in full and in joint stock companies, the sum in the reserve in excess of ten per cent of the share capital after the increase, may also be used for this purpose.

**2.** The operation shall be based on a balance sheet approved by the general meeting as of a date no more than six months prior to the decision to increase capital, verified by the company's auditor or by an auditor appointed by the Mercantile Registry at the behest of the directors, in companies not obliged to audit their accounts.

**Section three. Implementation of decision to increase capital**

**Article 304. Pre-emptive right.**

**1.** In capital increases involving the issue of new ordinary or preference stakes or shares, posted against cash contributions, partners or shareholders shall be entitled to take or subscribe a number of stakes or shares in proportion to the par value of their holdings prior to the increase.

**2.** Pre-emptive rights shall not be in order when the capital increase is the result of the takeover of another company or of all or part of the equity divested by another company or the conversion of bonds into shares.

**Article 305. Term for the exercise of the pre-emptive right.**

**1.** In limited liability companies, pre-emptive rights shall be exercised within the term specified in the respective decision. In joint stock companies, pre-emptive rights shall be exercised within the term established by the directors.



**2.** The term for the exercise of such rights may not be less than one month counting from the date of publication of the announcement of the offering for new stakes or shares in the Official Journal of the Mercantile Registry.

**3.** When all limited liability company stakes or all joint stock company shares are registered, in lieu of publishing an announcement, the governing body may send a written notice to all partners or shareholders and, as appropriate, usufructuaries entered in the stakeholders' ledger or the ledger of registered shares. The term for taking new stakes or subscribing new shares shall begin on the date such notice is sent.

**Article 306. Transfer of pre-emptive rights.**

**1.** In limited liability companies, the pre-emptive right to take new stakes may be the object of voluntary inter vivos transfer to parties who, in accordance with this act or the company by-laws, may freely acquire the stakes. The bylaws may likewise allow the transfer of this right to other parties, subjecting such transfer to the conditions established for the inter vivos transfer of stakes, with the exception, as appropriate, of the term established therefor, which may be modified.

**2.** In joint stock companies, the transfer of pre-emptive rights shall be subject to the same conditions as transfer of the shares to which they refer.

Where capital increases are charged to reserves, the aforementioned rule shall be applicable to the right to cost-free allocation of new shares.

**Article 307. Pre-emptive right: second round.**

**1.** In limited liability companies, unless otherwise stipulated in the by-laws, stakes not taken up during the term for the exercise of the pre-emptive right shall be offered by the governing body to the partners who exercised such right, for take-up and settlement in no more than fifteen days of the first round deadline. If several partners are interested in the offer, the stakes shall be allocated in proportion to each partner's existing stake in the company.

**2.** For fifteen days after the end of the above period, any stakes not taken up may be awarded by the governing body to third parties.

**Article 308. Suspension of the pre-emptive right.**

**1.** If deemed to be in the company's best interests, the general meeting, when approving the capital increase, may decide to wholly or partially waive partners' or shareholders' pre-emptive subscription right.

**2.** The pre-emptive right may be waived where the conditions listed below are met.

a) The directors prepare a report specifying the value of the stakes or shares in the company and justifying the proposal in detail, along with the price to be paid for the new stakes or shares. Such report shall also list the parties to whom the new holdings are to be attributed. In joint stock companies, an auditor other than the company auditor appointed by the Mercantile Registry for this purpose must

prepare a second report, under his/her responsibility, on the fair value of the company shares, the theoretical value of the pre-emptive right partially or wholly waived and the soundness of the data contained in the directors' report.

- b) The notice of the meeting includes the proposal to waive the pre-emptive right, the manner in which new stakes are to be created or new shares issued and information on partners' or shareholders' right to examine the report or reports referred to in the preceding paragraph at the registered office, as well as to request cost-free copies of such documents at the registered office or their own address.
- c) The par value of the new stakes or shares plus, as appropriate, the minimum premium, are in line with the fair value allocated to the shares in the directors' report, in limited liability companies, or the auditor's report in joint stock companies.

#### **Article 309. Share subscription form.**

**1.** In joint stock companies, when shares are publicly offered for subscription, the offer shall be subject to the requirements laid down by the securities market regulations and shares shall be subscribed under cover of a document entitled 'share subscription form' that shall be issued in duplicate and contain at least the following data:

- a) Company name and address, along with the data identifying its entry in the mercantile registry.
- b) Subscriber name and surname or company name, and nationality and address.
- c) Number of shares subscribed, the par value and series, where more than one is offered, and the type of issue.
- d) The amount paid by the subscriber specifying, as appropriate, the portion of the par value already paid up and the sum corresponding to the issue premium.
- e) The identity of the financial institution where the subscription will materialise and payment will be made of the sums shown on the form.
- f) The date as of which the subscriber may claim the refund of any monies paid in the event of failure to register the formalisation of the capital increase in the mercantile registry.
- g) The date and the subscriber's or his/her representative's signature, and the signature of the person receiving payment.

**2.** All subscribers shall be entitled to receive a signed copy of the subscription form.

#### **Article 310. Incomplete take-up in limited liability companies.**

**1.** When limited liability company capital increases are not fully paid up within the established deadline, the company capital shall be increased by the amount paid up, unless according to the terms of the decision the increase is to be declared null and void if not completely taken up.

**2.** If the capital increase is rendered null and void, the governing body shall refund the contributions made within one month of the payment deadline. In the event of cash contributions, the refunds may be made by deposit of the respective amounts in an account in the name of the contributors at a financial institution in the place where the



registered office is located. The parties concerned shall be notified in writing of the date of payment and the financial institution where the sums are deposited.

**Article 311. Incomplete take-up in joint stock companies.**

**1.** When joint stock company capital increases are not fully paid up within the payment deadline, the capital shall only be increased by the amount of the payments made, if the conditions of the issue explicitly envisage such possibility.

**2.** If the capital increase is rendered null and void, the governing body shall publish an announcement to this effect in the Official Journal of the Mercantile Registry and, within one month of the subscription deadline, shall refund all contributions made. In the event of cash contributions, the refunds must be paid to the contributors directly or by deposit of the respective amounts in their name at the Bank of Spain or the Official Deposit Fund.

**Article 312. Payment in capital increases.**

Parties taking new stakes or subscribing new shares shall be bound to make payment upon subscription.

**Section four. Registration of capital increases**

**Article 313. Directors' powers.**

After the decision to increase capital is implemented, the directors must redraft the by-laws to reflect the new sum. They shall be understood to be empowered to do so by virtue of the aforementioned decision.

**Article 314. Formalisation of capital increases.**

Documents formalising capital increases must specify the assets or rights contributed and, in the event of limited liability companies and unlisted joint stock companies, whether the increase involves the creation of new stakes or the issue of new shares, the identity of the persons to whom they are allocated, the numbers of the stakes or shares, and the governing body's confirmation that stake or share ownership has been recorded in the stakeholders' ledger or that registered share ownership has been entered in the ledger of registered shares.

**Article 315. Registration of capital increases.**

**1.** The decision to increase capital and its implementation must be entered simultaneously in the Mercantile Registry.

**2.** Notwithstanding the provisions of the preceding paragraph, the decision to increase joint stock company capital may be entered in the Mercantile Registry prior to its formalisation when the two conditions listed below are met.

a) The capital increase agreement explicitly envisages subscription of less than the full offering.

b) The issue of new shares is authorised or verified by the National Securities Market Commission.

**Article 316. Right to refund.**

1. If the documents substantiating implementation of the capital increase are not submitted for entry in the Mercantile Registry within six months of the beginning of the period for exercising pre-emptive rights, all stake takers or share subscribers may request cancellation of their obligation to make contributions and demand the refund of any made.
2. If the failure to present such documents for registration is attributable to the company, interest at the legal rate may also be claimed.

**CHAPTER III**  
**Capital reductions**

**Section one. Types of reduction**

**Article 317. Types of reduction.**

1. Capital reductions may seek to re-establish the balance between the company's capital and its equity, which may have declined as a result of losses, the creation or provisioning of legal or voluntary reserves or the refund of contributions. In joint stock companies, capital reductions may also aim to cancel the amounts due on outstanding contributions.
2. Reductions may be effected by lowering the par value of stakes or shares, or redeeming or grouping these equities.

**Article 318. Decision to reduce share capital.**

1. Decisions to reduce share capital must be adopted by the general meeting and shall be subject to approval by the majority laid down for amending the by-laws.
2. The general meeting's decision shall specify at least the amount of the reduction, its purpose, how it shall be implemented and the term for its implementation. It shall also indicate the amount to be paid, if any, to partners or shareholders.

**Article 319. Public notice of the decision to reduce capital.**

The decision to reduce joint stock company capital must be published in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the province where the company has its registered office.

**Section two. Reduction to reflect losses**

**Article 320. Principle of equal treatment.**

When a reduction seeks to re-establish the balance between a company's capital and its equity, adversely impacted by losses, it must affect all stakes or shares in equal proportion to their par value, while respecting any privileges in this regard that may have been granted to certain stakes or shares by law or the by-laws.

**Article 321. Prohibitions**

Capital reductions resulting from losses may not under any circumstance entail refunds to partners or shareholders or, in the case of joint stock companies, the cancellation of sums owed on outstanding contributions.

**Article 322. Condition for non-admissibility of capital reductions.**

1. Limited liability companies may not reduce their capital to reflect losses when they have any manner of reserves.
2. Joint stock companies may not reduce their capital to reflect losses whilst the company has any manner of voluntary reserves or if the legal reserve, after the reduction, is greater than ten per cent of the capital.

**Article 323. Balance sheet.**

1. The balance sheet showing the losses to be reflected in the capital reduction shall be formulated for a date no more than six months prior to the respective decision, be verified by the company's auditor and approved by the general meeting. When the company's financial statements are not subject to mandatory audit, the auditor shall be appointed by the directors.

2. The balance sheet and audit report must be attached to the public document formalising the decision to reduce capital.

**Article 324. Public notice of the decision to reduce capital.**

The general meeting's decision to reduce capital as a reflection of losses and the public announcement thereof must explicitly state the purpose of such reduction.

**Article 325. Application of surplus.**

In joint stock companies, any surplus in assets over liabilities resulting from the capital reduction to reflect losses must be used to provision the legal reserve, which may not as a result exceed one-tenth of the reduced share capital.

**Article 326. Condition for distribution of dividends.**

Companies that have reduced their capital may not distribute dividends until their legal reserve amounts to ten per cent of their capital.

**Article 327. Mandatory reduction.**

Joint stock companies shall be bound to reduce their capital when their losses decrease their equity below two-thirds of their capital and the equity has not been recovered within one full financial year.

**Section three. Reduction to provision the legal reserve****Article 328. Reduction to provision the legal reserve.**

The provisions of Articles 322 to 326 shall apply to the constitution of or additions to the legal reserve.

## Section four. Reduction to refund contributions

### **Article 329. Decision to reduce capital. Pre-requisites.**

When not all stakes or shares are equally impacted by a decision to reduce capital with a view to refunding contributions, in limited liability companies the individual consent of the stakeholders affected, and in joint stock companies the agreement of a majority of the shareholders affected, reached in the manner defined in Article 293, shall be requisite to such decision.

### **Article 330. Pro rata rule**

Partners' contributions must be refunded in proportion to the amount paid for the stakes or shares, unless other arrangements are unanimously approved.

## Section five. Creditor protection

### ***Sub-section 1. Protection for limited liability company creditors***

#### **Article 331. Joint and several liability of limited liability company partners.**

- 1.** Partners whose contributions have been refunded in full or in part shall be held jointly and severally liable to one another and the company for the payment of company debt acquired prior to the date on which the reduction became effective in respect of third parties.
- 2.** The liability of each partner shall be limited to the amount refunded thereto.
- 3.** Partner liability shall lapse five years after the date when the reduction became effective in respect of third parties.
- 4.** The Mercantile Registry entry recording the implementation of the decision to reduce capital shall specify the identity of the persons whose contributions were refunded in full or in part or, as appropriate, the governing body's statement to the effect that the reserve referred to below has been created.

#### **Article 332. Exception to joint and several liability.**

- 1.** If the decision to reduce capital to refund all or part of the value of the contributions is attendant upon the use of profits or unrestricted reserves to provision a reserve for an amount equal to the sums refunded, partner joint and several liability shall not be in order.
- 2.** Such reserve shall remain restricted for a period of five years from publication of the capital reduction in the Official Journal of the Mercantile Registry, unless all company debt acquired before the date on which the reduction became effective in respect of third parties is repaid prior thereto.

#### **Article 333. Inclusion in the by-laws of creditors' right to challenge reductions.**

- 1.** In limited liability companies, the by-laws may provide that the implementation of decisions to reduce capital to refund partners' contributions shall be subject to a three-month delay counting from the date of the notice served on creditors.



**2.** Such notice shall be served upon each creditor individually. If one or more creditors' address is unknown, announcements shall be published in the Official Journal of the Mercantile Registry and in a daily newspaper widely circulated in the province where the company is located.

**3.** During said delay, ordinary creditors may challenge the implementation of the decision to reduce capital if their receivables are not honoured or if the company fails to provide security.

**4.** Refunds paid prior to end of the three-month period or despite challenges lodged by any creditor in due time and manner shall be null and void.

**5.** Partners' contributions must be refunded in proportion to the stakes held, unless other arrangements are unanimously approved.

#### ***Sub-section 2. Protection for joint stock company creditors***

##### ***Article 334. Joint stock company creditors' right to challenge reduction.***

**1.** Joint stock company creditors whose receivables from the company are dated prior to the last announcement of the decision to reduce capital and mature on a date subsequent thereto shall be entitled to challenge the reduction until such time as the debt is secured.

**2.** Creditors whose receivables are sufficiently secured shall not be so entitled.

##### ***Article 335. Exception to the right to challenge reductions.***

Creditors may not challenge capital reductions when any of the following ensue:

- a) When the sole aim of the capital reduction is to re-establish the balance between the company's capital and its equity, reduced as a result of losses.
- b) When the reduction aims to create or provision the legal reserve.
- c) When the reduction is charged to unrestricted profits or reserves by redeeming shares acquired free of charge by the company. In this case, the amount of the par value of the shares redeemed or of the reduction in their par value must be posted to a reserve whose drawdown shall be subject to the same requirements as set forth for reducing share capital.

##### ***Article 336. Term for exercising the right to challenge capital reductions.***

The right to challenge capital reductions must be exercised within one month of the date of the last announcement of the respective decision.

##### ***Article 337. Consequences of challenge.***

If the right to challenge capital reductions is exercised, the share capital may not be reduced until the company secures its debt to the satisfaction of the creditor or notifies such creditor of the creation of a joint and several performance bond at a financial institution with the capacity to secure the sum of the debt held by the creditor through the date when entitlement to claim settlement of such debt lapses.

## Section six. Reduction through acquisition of own stakes or shares for redemption

### **Article 338. Requirements.**

- 1.** When capital is reduced by purchase of the company's own stakes or shares for subsequent redemption, the buyback offer shall be made to all partners or shareholders.
- 2.** If the decision to reduce capital affects only one class of shares, it shall be contingent upon the separate consent of the majority of the shares in the class affected, adopted in the manner defined in Article 293.

### **Article 339. Offer to acquire stakes or shares.**

- 1.** In limited liability companies, the offer shall be sent to all partners by registered post with acknowledgement of receipt.
- 2.** In joint stock companies, the buyback proposal must be published for at least one month in the Official Journal of the Mercantile Registry and in a daily newspaper widely circulated in the province where the company has its registered office. Such announcement shall include all the information reasonably required by shareholders wishing to sell their shares and, as appropriate, shall specify the outcome if the number of shares offered fails to reach the amount established in the decision.

When all shares are registered, the by-laws may provide for notifying shareholders of the offer by registered post with acknowledgement of receipt in lieu of publishing the respective announcement.

### **Article 340. Acceptance.**

- 1.** The period for accepting the offer shall be counted from the date on which the notification was sent.
- 2.** If more stakes or shares are offered for sale than established by the company for repurchase, the number offered by each partner or shareholder shall be reduced in proportion to their respective holdings.
- 3.** Unless otherwise provided in the decision of the general meeting or buyback proposal, when fewer stakes or shares are offered for sale than established, the capital shall be understood to be reduced by the amount of holdings repurchased.

### **Article 341. Founders' bonds.**

- 1.** When capital is reduced to redeem shares, founders' bonds may be allocated to the holders of redeemed shares, in which case the decision to reduce capital shall specify the rights attached to such bonds.
- 2.** Founders' bonds shall not carry voting rights.

**Article 342. Mandatory redemption.**

Stakes acquired by the company must be redeemed within three years of the date of the repurchase offer. Shares acquired by the company must be redeemed within one month of the buyback offer deadline.

**CHAPTER IV**  
**Simultaneous capital reduction and increase**

**Article 343. Simultaneous capital reduction and increase.**

- 1.** Decisions to reduce the share capital to zero or to below the legal minimum may only be adopted when a simultaneous decision is adopted to convert the company or increase its capital to an amount equal or above such minimum.
- 2.** In any event, all partners' or shareholders' pre-emptive rights to take stakes or subscribe shares must be honoured.

**Article 344. Conditioned effectiveness of decision to reduce capital.**

In the event of simultaneous capital reductions and increases, the effectiveness of the decision on capital reduction shall be subject, as appropriate, to implementation of the decision on capital increase.

**Article 345. Simultaneous registration.**

The decision to reduce capital may not be entered in the Mercantile Registry unless submitted for registration simultaneously with the decision to convert the company or the decision and implementation thereof to increase its capital.

**TITLE IX**  
**Partner or shareholder exit and exclusion**  
**CHAPTER I**  
**Exit**

**Article 346.** *Legal causes for exit.*

- 1.** Partners or shareholders not voting in favour of the respective decision, including non-voting partners or shareholders, shall be entitled to exit the company in any of the following circumstances:
  - a) Supersession or amendment of the corporate purpose
  - b) Extension of company term
  - c) Company reactivation
  - d) Creation, amendment or early cancellation of ancillary commitments, unless otherwise provided in the by-laws.
- 2.** In limited liability companies, partners not voting in favour of amendment of the arrangements for the transfer of stakes shall also be entitled to exit the company.
- 3.** In company conversions and relocations of the registered office abroad, partners or shareholders shall be entitled to exit rights in the terms laid down in Act 3/2009 of 3 April on structural changes in trading companies.

**Article 347.** *Causes for exit in the by-laws.*

- 1.** The by-laws may establish causes for exit other than provided in this act. In such event, they shall determine the procedure for accrediting existence of the cause and for exercising exit rights as well as the term for doing so.
- 2.** Amendment or removal of the provisions in the by-laws on the causes for exit shall be subject to the unanimous consent of all the partners or shareholders.

**Article 348.** *Exercise of the exit right.*

- 1.** Decisions giving rise to exit rights shall be published in the Official Journal of the Mercantile Registry. In limited liability companies and joint stock companies with registered shares only, in lieu of publication, the directors may serve notice on all partners or shareholders not voting in favour of the decision.
- 2.** Exit rights shall be exercised in writing within one month of publication of the decision or receipt of the notification.



**Article 348 bis. Right of exit due to failure to distribute dividends.**

1. Beginning in the fifth financial year counting from entry of the corporate enterprise in the Mercantile Registry, partners or shareholders voting in favour of distributing dividends shall be entitled to exit the company if the ordinary general meeting decides not to distribute a dividend of at least one third of the legally distributable profit earned in the preceding year in pursuit of the corporate purpose.

2. The term for exercising the right of exit shall be one month from the date of the ordinary general meeting.

3. The provisions of this article shall not be applicable to listed companies.

**Article 349. Registration of the decision.**

The public document formalising decisions that generate exit rights may not be entered in the Mercantile Registry unless it, or a subsequent instrument, contains the directors' confirmation that no partner or shareholder has exercised his/her exit rights within the established deadline or that the company, acting on general meeting authorisation, has acquired the exiting partners' or shareholders' stakes or shares, or their confirmation of the capital reduction.

## CHAPTER II

### Exclusion

**Article 350. Legal causes for exclusion.**

Limited liability companies may exclude partners who voluntarily fail to honour their ancillary commitments, or managing partners who breach the prohibition on competition or are ordered in an unappealable court ruling to indemnify the company for damages deriving from acts that run counter to this act or the by-laws or from the absence of due diligence.

**Article 351. Causes for exclusion of partners or shareholders in the by-laws.**

Specific causes for exclusion may be stipulated in the by-laws of corporate enterprises, or any such causes included therein may be amended or removed, subject to the unanimous consent of all the partners or shareholders.

**Article 352. Exclusion procedure.**

1. A decision of the general meeting shall be requisite to exclusion. The identity of partners or shareholders who voted in favour of the decision shall be included in the minutes of the general meeting or in an appendix thereto.

2. With the exception of managing partners or shareholders ordered by the court to indemnify the company, the exclusion of a partner or shareholder with a holding greater than or equal to twenty-five per cent of the capital who disagrees with the decision adopted by the general meeting shall be subject not only to such decision, but also to an unappealable court ruling.

**3.** When the company fails to institute proceedings for exclusion within one month of the date of adoption of the respective decision, any partner or shareholder who voted in favour of such decision shall be legally capacitated to do so in its name.

### **CHAPTER III**

#### **Rules common to partner or shareholder exit and exclusion**

**Article 353.** *Valuation of the partner's or shareholder's stakes or shares.*

**1.** In the absence of an agreement between the company and the partner or shareholder on the fair value of stakes or shares, the identity of their appraisers, or the procedure to be followed for their valuation, these holdings shall be valued by an auditor other than the company's auditor. Such expert shall be designated by the mercantile registrar serving the place where the company's registered office is located, at the behest of the company or of any of the partners or shareholders owning the stakes or shares to be appraised.

**2.** Where shares are listed on an official secondary market, the value shall be the average quotation price for the last quarter.

**Article 354.** *Independent auditor report.*

**1.** The auditor may obtain any information or documents deemed useful from the company and shall proceed to any verifications regarded to be necessary for the performance of his/her duty.

**2.** The auditor's report shall be issued no later than two months after appointment and appended to a notarised notification served upon the company and all partners or shareholders concerned. A copy shall also be filed in the Mercantile Registry.

**Article 355.** *Auditor's remuneration*

**1.** The auditor's remuneration shall be paid by the company.

**2.** In the event of exclusion, however, the company may deduct the percentage of the partner's or shareholder's capital holding to the fees paid and deduct the sum thus found from the amount owed as reimbursement.

**Article 356.** *Reimbursement.*

**1.** Within the two months of receipt of the valuation, the partners or shareholders concerned shall be entitled to obtain the fair value of their stakes or shares at the registered office as consideration for the price at which they are acquired or redeemed by the company.

**2.** By the aforementioned deadline, the directors shall deposit the respective amount in a financial institution engaging in business in the municipality where the registered office is located, in the name of the parties concerned.

**3.** Notwithstanding the provisions of the preceding paragraphs, whenever corporate enterprise creditors are acknowledged rights of challenge, partners or shareholders may not be reimbursed until three months after the date that creditors are individually

notified of the reduction or that the respective announcement is published in the Official Journal of the Mercantile Registry and one of the daily newspapers most widely circulated in the place where the registered office is located, and then only if no ordinary creditors have exercised such right. Otherwise, the provisions of Title VIII, Chapter III, Section 5 shall apply.

**Article 357. Protection of creditors of limited liability companies.**

Partners of limited liability companies whose redeemed stakes are reimbursed shall be subject to the provisions on liability for corporate debts established for capital reductions via refund of contributions.

**Article 358. Public instruments formalising capital reductions.**

**1.** Unless the general meeting adopting the respective decision takes it upon itself to authorise acquisition by the company of stakes or shares from the partners or shareholders concerned and order reimbursement thereof or deposit the sum involved, the directors, with no need for a specific decision from the general meeting, shall immediately formalise the capital reduction in a public instrument, specifying the stakes or shares redeemed, the date of reimbursement or deposit, and the amount by which the capital is reduced.

**2.** Where as a result of the reduction the capital amounts to less than the legal minimum, the provisions of this act on dissolution shall apply.

**Article 359. Public instrument on acquisition.**

When the company acquires stakes or shares from its partners or shareholders, after the price is paid or the respective sums deposited, the directors, with no need for a specific decision by the general meeting, shall formalise a public instrument on acquisition of the stakes or shares, for which the consent of excluded or exiting partners or shareholders shall not be required. Such instrument shall specify the stakes or shares acquired, the identity of the partner/ or shareholder/s concerned, the cause for exit or exclusion, and the date of payment or deposit.

## **TITLE X**

### **Dissolution and liquidation**

#### **CHAPTER I**

##### **Dissolution**

###### **Section one. Dissolution as per the law**

**Article 360.** *Dissolution as per the law.*

**1.** Corporate enterprises shall be dissolved as per the law in any of the circumstances listed below:

- a) Expiry of the term of duration established in the by-laws, unless where explicitly renewed and where the renewal is registered in the Mercantile Registry prior to the expiry date.
- b) Lapse of one year after adoption of the decision to reduce capital to below the legal minimum in compliance with the legislation, where no entry has been recorded in the Mercantile Registry on company conversion or dissolution or reflecting an increase in its capital to a sum greater than or equal to the legal minimum; where no entry is recorded on company conversion or dissolution or on an increase in its capital within one year, the directors shall answer personally, jointly and severally to one another and the company for corporate debts.

**2.** The registrar, ex officio or at the behest of any party concerned, shall include an entry on the company's page in the Registry reflecting its dissolution as per the law.

**Article 361.** *Dissolution and insolvency.*

**1.** The institution of insolvency proceedings in respect of a corporate enterprise shall not, *per se*, constitute a cause for dissolution.

**2.** The initiation of the liquidation phase in insolvency proceedings shall entail company dissolution as per the law. In such event, the insolvency judge shall take note of the existence of dissolution proceedings in the ruling on the initiation of liquidation.

###### **Section two. Dissolution for causes provided by law or in the by-laws**

**Article 362.** *Dissolution for causes provided by law or in the by-laws.*

Corporate enterprises shall be dissolved due to the existence of causes provided for by law or in the by-laws and duly identified in a decision of the general meeting or a court ruling.

**Article 363. Causes for dissolution.****1. A corporate enterprise shall be dissolved:**

- a) upon interruption of the activity or activities that constitute its corporate purpose; in particular, inactivity for over one year shall be deemed to constitute interruption; upon termination of the mission that constitutes its corporate purpose;
- c) where achievement of the corporate purpose is manifestly impossible;
- d) due to governing body standstill, rendering it impossible to conduct business;
- e) due to losses that reduce its equity to an amount lower than one half of the share capital, except where the capital is increased or decreased as required and application for insolvency protection is not warranted;
- f) due to a capital reduction to a sum below the legal minimum, except as in compliance with a legal provision;
- g) Because the par value of non-voting stakes or shares exceeds one half of the paid-up capital and the due proportion is not recovered within two years;
- h) for any other cause established in the by-laws.

**2. Limited partnerships shall also be dissolved due to the death, dismissal or incapacity of all their general partners, or commencement of liquidation in insolvency proceedings, unless a new general partner joins the company or the company is converted into another type of enterprise within six months and the by-laws amended accordingly.****Article 364. Dissolution decisions.**

In any of the circumstances described in the preceding article, dissolution of the company shall be subject to a decision adopted by the general meeting. In limited liability companies, such decision shall require the plurality vote and quorum provided in Article 198, and in joint stock companies, the majority votes laid down in Articles 193 and 201.

**Article 365. Obligation to convene the general meeting.****1. The directors shall convene the general meeting within two months to adopt the decision on dissolution or, in the event of company insolvency, to institute insolvency proceedings.**

Any partner or shareholder may call upon the directors to convene a general meeting if, in his/her opinion, a cause for dissolution exists or the company is insolvent.

**2. The general meeting may adopt the decision on dissolution or, if included on the agenda, the decision or decisions necessary to remedy the cause.****Article 366. Dissolution under court ruling.****1. If the general meeting is not convened, is not held, or none of the decisions described in the preceding article are adopted, any party concerned may apply to the judge of the commercial court with jurisdiction in the place where the company's registered office is**

located to dissolve the company. The action for dissolution shall be brought against the company.

**2.** The directors shall be bound to apply to the court for company dissolution when the company decides against dissolution or its decision cannot be implemented.

The application shall be submitted within two months of the date scheduled for the general meeting if not held, or from the day of the meeting, when the decision was against dissolution or no decision was adopted.

**Article 367. Joint liability of the directors.**

**1.** Directors who fail to convene the mandatory general meeting within two months to adopt a decision on dissolution shall be jointly and severally accountable for corporate obligations incurred after the legal cause for dissolution is forthcoming. Directors who fail to apply for a court ruling to dissolve the company or, as appropriate, to institute insolvency proceedings within two months of the date scheduled for the meeting, if not held, or from the day of the meeting, if the dissolution proposal is defeated, shall be equally liable.

**2.** In such cases, corporate obligations constituting the object of claims shall be regarded to be subsequent to the legal cause for dissolving the company unless the directors can substantiate that they are dated prior thereto.

**Section three. Dissolution by mere decision of the general meeting**

**Article 368. Dissolution by mere decision of the general meeting.**

A corporate enterprise may be dissolved by mere decision of the general meeting adopted pursuant to the requirements established for amendment to the by-laws.

**Section four. Common provisions**

**Article 369. Public record and notice of dissolution.**

Dissolution of corporate enterprises shall be registered in the Mercantile Registry. The mercantile registrar shall forward the entry on dissolution, electronically and at no extra cost, to the Official Journal of the Mercantile Registry for publication.

**Article 370. Reactivation of a dissolved company.**

**1.** The general meeting may agree to restore a dissolved company to active life provided the cause for which it was dissolved is remedied, book equity is not lower than company capital and no surplus after liquidation has been paid to partners or shareholders. Reactivation decisions may not be made where dissolution was instituted as per the law.

**2.** The decision on reactivation shall be subject to the requirements established for amendment to the by-laws.

**3.** Partners or shareholders not voting in favour of reactivation shall be entitled to exit the company.



4. Corporate creditors may challenge the decision on reactivation under the same conditions and with the same consequences as described in this act for capital reductions.

## CHAPTER II

### Liquidation

#### Section one. General provisions

##### **Article 371. Company in liquidation.**

1. Dissolution initiates the liquidation period.
2. Dissolved companies shall retain their legal personality during the liquidation proceedings and shall add the expression “en liquidación” (in liquidation) to their denomination throughout that period.
3. During the liquidation period, the provisions in the by-laws on convening and holding general meetings shall be observed, and the liquidators shall report thereto on liquidation progress to determine the most suitable action for the common interest. All other provisions in this act that are not incompatible with those established in this chapter shall continue to apply to the company.

##### **Article 372. Special nature of liquidation in insolvency proceedings.**

Where liquidation is instituted in insolvency proceedings, it shall be conducted pursuant to the provisions of Title V, Chapter II of the Insolvency Act.

##### **Article 373. Government intervention in joint stock companies.**

1. When the Government, at the behest either of shareholders representing at least one-fifth of the share capital or of company personnel, deems continuation of the joint stock company to be in the interest of the national economy or socially beneficial, it may so rule by royal decree, specifying how the company is to subsist and the consideration payable to shareholders deprived of their right.
2. In any event, the royal decree shall specify that shareholders, assembled in a general meeting, shall be entitled to extend the life of the company and continue operations, provided the decision is adopted within three months of publication of the royal decree.

#### Section two. Liquidators

##### **Article 374. Dismissal of directors.**

1. Upon institution of liquidation proceedings, the directors shall be dismissed from their positions and their powers to represent the company shall be terminated.
2. Former directors, if so required, shall cooperate in liquidation proceedings.

##### **Article 375. Liquidators.**

1. Upon institution of liquidation proceedings, the liquidators shall assume the duties established in this act and ensure the integrity of corporate equity through conclusion

of liquidation and distribution of any liquidation dividend among partners or shareholders.

**2.** The rules established for directors that are not incompatible with the provisions of this chapter shall apply to liquidators.

**Article 376. Appointment of liquidators.**

**1.** The liquidators shall be the company's directors at the time of dissolution, unless otherwise stipulated in the by-laws or where liquidators are appointed by the general meeting adopting the decision to dissolve the company.

**2.** Where dissolution is the result of the institution of liquidation proceedings in a company having arranged a composition with creditors, liquidators shall not be appointed.

**Article 377. Filling of vacancies.**

**1.** In the event of death or dismissal of the sole liquidator, all joint and several liquidators, any of the liquidators acting jointly, or the majority of liquidators acting collegiately, and in the absence of deputies, any partner or shareholder or party with a legitimate interest may apply to the judge of the commercial court with jurisdiction in the place where the company's registered office is located to convene the general meeting for the appointment of liquidators. Any of the remaining liquidators may also convene the general meeting for this sole purpose.

**2.** When the meeting convened pursuant to the preceding paragraph fails to appoint liquidators, any party concerned may ask the judge of the commercial court with jurisdiction in the place where the company's registered office is located to proceed to their appointment.

**3.** The application to the registrar shall be processed in agreement with the provisions of Companies Register regulations. The petition to the clerk of the commercial court shall comply with the procedures established in the voluntary jurisdiction legislation.

**4.** The resolution by which the appointment is agreed or rejected shall be open to challenge before the commercial court judge.

**Article 378. Term of office.**

Unless otherwise provided in the by-laws, liquidators shall be appointed for an indefinite tenure.

**Article 379. Representation.**

**1.** Unless otherwise provided in the by-laws, each liquidator shall represent the company individually.

**2.** Liquidators' power of representation shall extend to all operations necessary for company liquidation.

**3.** Liquidators may appear in court on the company's behalf and agree to transactions and arbitration when in the corporate interest.

**Article 380. Dismissal of liquidators.**

**1.** Liquidators not appointed by the court may be dismissed by the general meeting, even where no item in this regard is included on the agenda. Where liquidators are designated in the corporate by-laws, the decision shall be adopted pursuant to the requirements respecting the majority vote and, in the case of joint stock companies, the quorum, established for amendment to the by-laws.

Joint stock company liquidators may also be dismissed by court decision, for just cause, at the behest of shareholders representing one-twentieth of the share capital.

**2.** Liquidators appointed by the judge shall be dismissed thereby, at the duly reasoned behest of anyone substantiating a legitimate interest.

**3.** The resolution passed on auditors' dismissal shall be open to challenge before the commercial court judge.

**Article 381. Comptrollers.**

**1.** In the event of liquidation of joint stock companies, shareholders representing one-twentieth of the share capital may apply to the judge of the commercial court with jurisdiction in the place where the company's registered office is located for designation of a comptroller to supervise liquidation operations.

If the company has issued bonds that are in circulation, the bondholders' syndicate may also appoint a comptroller.

**2.** The application to the registrar shall be processed in agreement with the provisions of Companies Register regulations. The petition to the clerk of the commercial court shall comply with the procedures established in the voluntary jurisdiction legislation.

**3.** The resolution by which the appointment is agreed or rejected shall be open to challenge before the commercial court judge.

**Article 382. Government auditing in liquidation of joint stock companies.**

In joint stock companies, when substantial assets are to be liquidated and distributed, a large number of shareholders or bondholders are involved, or where otherwise warranted by the importance of the liquidation proceedings, the Government may appoint an auditor to control and supervise company liquidation, ensuring compliance with the laws and corporate by-laws.

**Section three. Liquidation operations****Article 383. Initial duty of the liquidators.**

Within three months of the institution of liquidation proceedings, the liquidators shall prepare a company inventory and balance sheet as of the dissolution date.

**Article 384. Corporate operations.**

The liquidators shall finalise any operations outstanding and conduct new transactions as necessary for company liquidation.

**Article 385. Collection of receivables and payment of corporate debts.**

- 1.** It shall be incumbent upon liquidators to receive corporate credits and pay corporate debts.
- 2.** In joint stock companies and limited partnerships, the liquidators shall receive the sums outstanding on shares agreed to upon the initiation of liquidation proceedings. They may also call for other amounts outstanding to reach the par value of the shares as required to pay creditors.

**Article 386. Duties to keep and custody accounts.**

The liquidators shall keep company accounts and custody its books, documentation and correspondence.

**Article 387. Duty to alienate corporate assets.**

The liquidators shall alienate corporate assets.

**Article 388. Duty to report to partners or shareholders.**

- 1.** The liquidators shall periodically notify partners or shareholders and creditors of liquidation progress by the means regarded to be most effective in each case.
- 2.** If liquidation lasts beyond the deadline established for the approval of the financial statements, in the first six months of each financial year the liquidators shall submit an annual statement of company accounts and an accurate and detailed progress report on the liquidation proceedings to the general meeting.

**Article 389. Court ruling to replace liquidators in unduly long liquidation proceedings.**

- 1.** If, three years after the institution of liquidation proceedings, the final liquidation balance sheet has not yet been submitted to the general meeting for approval, any partner or shareholder or person with a legitimate interest may ask the judge of the commercial court with jurisdiction in the place where the company's registered office is located to dismiss the liquidators.
- 2.** The judge, after hearing the liquidators, shall order their dismissal unless the delay is justified, appoint such new liquidator or liquidators as he/she deems suitable, and determine their terms of reference.
- 3.** The ruling on dismissal and appointment of liquidators shall not be subject to appeal.

**Article 390. Final liquidation balance sheet.**

- 1.** Upon completion of the liquidation proceedings, the liquidators shall submit a final balance sheet, a complete report on the operations performed and a proposal for distribution of the remaining assets among partners or shareholders to the general meeting for approval.
- 2.** The decision approving the balance sheet may be challenged by the partners or shareholders not voting in favour thereof within two months of the date of its adoption. When accepting the challenge, the judge shall proceed ex officio to order entry of a caveat in this respect in the Mercantile Registry.



## Section four. Distribution of corporate equity

### **Article 391. Distribution of corporate equity.**

- 1.** Any surplus corporate assets resulting from liquidation shall be distributed pursuant to the rules established in the by-laws or, in the absence thereof, established by the general meeting.
- 2.** The liquidators shall not pay the partners or shareholders their liquidation dividend until all creditors have been paid or the sum of the company debts is deposited at a financial institution in the place where the registered office is located.

### **Article 392. Right to the liquidation dividend.**

- 1.** Unless otherwise provided in the corporate by-laws, partners' or shareholders' liquidation dividends shall be proportional to their participation in company capital.
- 2.** In joint stock companies and limited partnerships, if all shares were not paid up in the same proportion, shareholders or partners who paid up the highest amounts shall first be paid the surplus over the contribution on which they paid up the least, after which the remainder shall be distributed among partners or shareholders in proportion to the par value of their shares.

### **Article 393. Right to payment of the liquidation dividend in cash or in kind.**

- 1.** Unless the partners or shareholders unanimously decide otherwise, they shall be entitled to receive their liquidation dividend in cash.
- 2.** The by-laws may establish the right of some or any of the partners or shareholders to receive their liquidation dividend via restitution of non-cash contributions or the allocation of other corporate assets, if any, which shall be appraised at their actual value at the time of approval of the proposed distribution of the surplus assets among partners or shareholders.

In such case, the liquidators shall first alienate all other corporate assets and if, after the creditors are paid, the surplus suffices to pay all partners or shareholders their dividend, the parties entitled to receive it in kind shall first pay all the other parties the difference in cash.

### **Article 394. Payment of the liquidation dividend.**

- 1.** If, after the deadline for challenging the final liquidation balance sheet lapses, no claims are brought or the ruling dismissing any challenge thereto is final, the partners or shareholders shall be paid their liquidation dividend. Prior thereto, payment of amounts owed but not yet payable shall be secured.
- 2.** Liquidation dividends that are not claimed within ninety days of the decision on payment shall be deposited at the Official Deposit Fund for drawdown by their legitimate owners.

## Section five. Company termination

### **Article 395. Public instrument on company termination.**

- 1.** The liquidators shall formalise the public instrument on company termination, which shall contain statements to the effects listed below.
  - a) The deadline for challenging the resolution on approval of the final balance sheet has expired and no challenge has been made or the ruling on dismissal thereof is final.
  - b) Creditors have been paid or the amounts owed have been deposited.
  - c) Partners or shareholders have been paid their liquidation dividend or the amount thereof has been deposited.
- 2.** The final liquidation balance sheet and the list of partners or shareholders shall be included in the public instrument, specifying their identity and the sum of the liquidation dividend to which each is entitled.

### **Article 396. Cancellation of registry entries.**

- 1.** The public instrument on termination shall be registered in the Mercantile Registry.
- 2.** The final liquidation balance sheet shall be transcribed in the records and the identity of partners or shareholders and the sum of the liquidation dividend to which each one is entitled shall be specified. A note shall be added confirming that all entries relating to the company have been cancelled.
- 3.** The liquidators shall deposit all the terminated company's books and documents in the Mercantile Registry.

### **Article 397. Liquidator liability after company cancellation.**

The liquidators shall be liable to partners or shareholders and creditors for any damage incurred thereby due to mens rea or negligence in the performance of their duties.

## Section six. Ex post facto assets and liabilities

### **Article 398. Ex post facto assets.**

- 1.** If corporate assets materialise after cancellation of entries on the company, the liquidators shall allocate any additional liquidation dividend to the former partners or shareholders, after converting the assets into cash whenever necessary.
- 2.** If the additional liquidation dividends are not allocated to the former partners or shareholders six months after the liquidators were required to do so as provided in the preceding paragraph, or in the absence of liquidators, any party concerned may ask the judge with jurisdiction in the place where the last registered office was located to appoint a substitute to perform the respective duties.

### **Article 399. Ex post facto liabilities.**

- 1.** Former partners or shareholders shall answer jointly and severally for unpaid corporate debts up to the sum received from the liquidation dividends.

**2.** Partner or shareholder liability shall be understood without prejudice to liquidator liability.

**Article 400. Formalisation of legal acts after company cancellation.**

**1.** After cancellation of company registration, or whenever necessary, the former liquidators may formalise legal acts in the name of the terminated company for the intents and purposes of formal requirements in respect of legal acts subsequent to cancellation of company registration.

**2.** In the absence of liquidators, any party concerned may apply to the judge with jurisdiction in the place where the company's former registered office was located for such formalisation.

## **TITLE XI**

### **Bonds**

#### **CHAPTER I**

##### **Bond issues**

###### **Article 401. Issuing company.**

- 1.** Joint stock companies and limited partnerships may issue numbered series of bonds and other securities that acknowledge or create a debt.
- 2.** The total sum issued by a limited company may not exceed double their own resource value, unless the issue is guaranteed by mortgage, securities pledge, government guarantee or joint guarantee from a credit entity.

In the event that the issue is guaranteed by joint guarantee from a mutual guarantee company (being the Spanish acronym SRC), the limits and other conditions of the guarantee shall be determined by the guarantee capacity of the company at the point of issue, pursuant to their relevant regulation.

The obligations detailed in articles 67 to 72 shall result in the application of increases to capital through non-monetary contributions completed by limited companies with bonds or other securities that recognise or create an ongoing debt.

Limited liability companies may not, under any circumstances, issue or guarantee bonds convertible into company shares.

- 3.** Unless otherwise provided in special Acts, securities that recognised or creates a debt issued by joint stock company and limited liability company shall be subject to the conditions established for the obligations provided in the present title.

###### **Article 402. Legal prohibition.**

(Repealed)

###### **Article 403. Conditions for issue.**

In cases where special legislation provides for the issue of bonds and other securities that recognise or create a debt, it shall be requisite to create a defence association or bondholder syndicate and for the company to appoint a person as trustee, who must be in attendance during the formalisation of the contract, on behalf of future bondholders, in accordance with the stipulations of articles 419 to 429. Article 404. Security

**Article 404. Security.**

**1.** The entire issue may be secured in favour of present and future holders of the securities and in particular:

- a) With a mortgage on chattel or real property.
- b) With a pledge on securities, to be deposited at a financial institution.
- c) With a non-possessory pledge.
- d) With national, regional, provincial or local government backing.
- e) With a joint and several bank guarantee.
- f) With a joint and several guarantee from a mutual surety company registered at the Ministry of the Economy and Finance's special registry.

**2.** In addition to the abovementioned guarantees, bondholders may redeem their credits against the debtor institution's other assets, rights and securities.

**Article 405. On the issue of bonds by Spanish companies abroad.**

**1.** Spanish companies may issue bonds and other debt securities abroad.

**2.** The capacity, the competent body and the conditions of adopting the agreement to issue said bonds shall be determined by Spanish law.

**3.** The law to which the issue of bonds is subject, shall determine the rights of the bondholders with regards to the issuer, its methods of collective organisation and its system of repayment and amortisation of the bonds.

**4.** In the case of convertible bonds, the content of the right to conversion shall be determined by the law in the country of issue, while always remaining within the limits established by the Spanish company as its governing law.

The value at which the bonds may be issued, the limits on the conversion and the system for excluding the right to preferential subscription shall be determined by Spanish law.

**Article 406. Jurisdiction of the governing body.**

**1.** Unless otherwise stipulated in the by-laws and without prejudice to the provisions of the previous section, the directing body shall be competent to agree the issuing, admission and the negotiation of bonds, as well as agreeing the granting of guarantees for the issuing of bonds.

**2.** The shareholders' general meeting shall be competent to agree the issuing of convertible bonds into shares and bonds allocated to bondholders as a share of the corporate profits.

**Article 407. Public deed.**

**1.** All bond issues must record in the public deeds that they shall be granted by a company representative and a person who, as trustee, represents future bondholders.

**2.** The bond issues public deeds must contain the following information:

- a) The identity, business activity and capital of the issuing company, with an indication of whether they are fully paid out. If there are outstanding bonds, any issuing of bonds that may be fully or partially pending amortisation, conversion or exchange must be recorded, with an indication of the value.
- b) A statement from the body that agreed the issue and the date on which said agreement was adopted.
- c) The total value of the issue and the number of bonds that form it, with a statement regarding whether they are recorded as securities or book entries.
- d) The nominal value of the bonds issued, as well as the interest accrued or the formula with which to calculate the type, premiums, prizes and various other benefits that may exist.
- e) The regulations governing the organisation and performance of the bondholders' syndicate and its relationship with the issuing company.
- f) The system for amortisation of bonds, with a statement regarding the terms and conditions under which it takes place.

**3.** If specially secured bonds were issued, the register must show the securities for said issue. If the securities were collateral, the item on which the security was constituted shall be identified, with a statement from the public register in which the security was recorded and the date of registration and the entity depositing the pledged goods or rights, in addition to the pledge date. If the sureties were personal, the guarantor must attend the granting of the record of issue.

**Article 408. Announcement of issue.**

(Repealed).

**Article 409. Subscription.**

Bond subscription implies the full ratification of the issue agreement by each bondholder and his/her membership in the syndicate.

**Article 410. Preference system.**

(Repealed).

**Article 411. Reduction of capital and reserves.**

**1.** Unless the issue is secured by a mortgage, pledged securities, government endorsement or a joint and several guarantee from a financial institution, the consent of the bondholders' syndicate shall be required for reductions in share capital or company reserves that entail a reduction in the initial proportion between the total thereof and the amount of unredeemed bonds.

**2.** Bondholders syndicate consent shall not be required for simultaneous capital increases charged to balance sheet regularisation and updating accounts or to reserves.



## CHAPTER II Proof of bond ownership

### **Article 412. Proof of bond ownership.**

- 1.** Bonds may be represented by certificates or book entries.
- 2.** When represented by certificates, bonds may be registered or bearer securities and shall be enforceable and transferable subject to the provisions of the Commercial Code and applicable laws.
- 3.** When represented by book entries bonds shall be governed by the securities market regulations.

### **Article 413. Bond certificate.**

Bond certificates must all be equal and include:

- a) Specific designation.
- b) The characteristics of the issuing entity and, specifically, the place where it shall make payment.
- c) The date of the public instrument on the bond issue, the appointment of the notary public and respective record.
- d) The amount of the issue in euros.
- e) The number, par value, interest, premiums and lots, if any.
- f) Issue security.
- g) The signature of at least one director.

## CHAPTER III Convertible bonds

### **Article 414. Issue requirements.**

- 1.** Companies may issue convertible bonds, provided the general meeting determines conversion conditions and ratios and adopts a decision to increase the capital by the required amount.
- 2.** Prior to convening the general meeting, the directors must draft a report explaining conversion conditions and ratios, to be submitted together with a report drafted by an auditor other than the company's own auditor, appointed for this purpose by the Mercantile Registry.

### **Article 415. Legal prohibitions.**

- 1.** Convertible bonds may not be issued for an amount under their par value.
- 2.** Convertible bonds may not be convertible into shares when their par value is below the share par value.

**Article 416. Pre-emptive right.**

- 1.** Company shareholders shall have a pre-emptive right to subscribe convertible bonds.
- 2.** The pre-emptive right to subscribe convertible bonds shall be governed by the provisions of Articles 304 to 306.

**Article 417. Waiver of pre-emptive right of subscription.**

- 1.** When deciding to issue convertible bonds, the general meeting may, subject to the requirements for amendment of the by-laws, waive shareholders' pre-emptive right in full or in part where deemed to be in the company's best interests.
- 2.** Waiver of the pre-emptive right shall be subject to meeting the requirements set out below:

- a) The directors' report justifies the proposal in detail.
- b) The auditor's report contains a technical opinion on the soundness of the data included in the directors' report and the suitability of the conversion rate and, as appropriate, any adjustment formulae designed to offset the possible dilution of shareholders' financial stakes.
- c) The notice of the general meeting mentions the proposal for suspension of the pre-emptive right.

**Article 418. Conversion.**

- 1.** Unless otherwise agreed by the general meeting when deciding to issue bonds, the bondholders may request conversion at any time. In this case, in the first month of each half of the year, the directors shall issue the shares belonging to the bondholders who requested conversion during the half-year previous and in the following month shall register the resulting capital increase in the Mercantile Registry.

- 2.** The general meeting must always specify the deadline for conversion.

Whenever possible, where capital is increased and charged to reserves or reduced due to losses, the bond-share conversion ratio must be modified in proportion to the amount of capital increase or reduction, ensuring that shareholders and bondholders are equally impacted.

- 3.** The general meeting may not decide to reduce capital by reimbursing shareholders for their contributions or writing-off capital calls whilst convertible bonds are in circulation, unless conversion is previously offered to bondholders with all due guarantees.



## CHAPTER IV

### Bondholders' syndicate

#### **Article 419.** *Creation of the syndicate.*

Once the public instrument on the bond issue has been registered, bond purchasers shall be deemed to join the bondholders' syndicate when they receive their bond certificates or their book entries are recorded.

#### **Article 420.** *Syndicate expenses.*

Any normal expenses incurred to run the syndicate shall be borne by the issuer, and may under no circumstances exceed two per cent of the annual interest accruing on the bonds issued.

#### **Article 421.** *Trustee.*

**1.** Once the issue of bonds is agreed, the issuing company shall proceed to nominate a trustee, who must be a natural or legal person with recognised experience in legal and economic matters. The issuing company shall determine the trustee's remuneration.

**2.** The trustee shall supervise the bondholders' common interests and, in addition to the faculties conferred upon them by the issuing procedure, they shall have any faculties granted to them by the bondholders' general assembly.

**3.** The trustee shall establish the syndicate's internal regulations, which must be consistent with the conditions established in the register of bond issues.

**4.** The trustee shall be the legal representative of the bondholders' syndicate, in addition to being the liaison between the company and its bondholders. As such, the trustee may attend, with the right to speak and to vote, any of the issuing company's general meeting deliberations, to inform the meeting about any syndicate agreements and request the meeting for any reports that, in the trustee or bondholders' assembly's judgement, may be of interest to said bondholders.

**5.** The trustee shall witness any draws held, both for awarding and amortisation of bonds and shall monitor the reimbursement of the nominal value and payment of any interest.

**6.** The trustee shall be permitted to exercise, on behalf of the syndicate, any relevant actions against the issuing company, directors or liquidators and against anyone who may have secured the bond issue.

**7.** The trustee shall answer to the bondholders and, when appropriate, to the company, for any damages caused by the acts performed in the fulfilment of their role without the due professional diligence with which they should have been performed.

#### **Article 422.** *Power and obligation to convene the assembly.*

**1.** The general assembly of bondholders may be convened by the company directors or the trustee. The trustee must also convene the assembly whenever so requested by bondholders representing at least one-twentieth of the bonds issued and unredeemed.

**2.** The trustee may require the presence of the company directors, who may attend even if not convened.

**3.** If the trustee does not respond in time to the application to convene the assembly by the bondholders, as referred to in section 1, after hearing the trustee, the clerk of the commercial court or the registrar of companies in the location of the registered offices may convene said assembly.

The clerk of the commercial court shall proceed to convene the bondholders' assembly in accordance with the provisions of the voluntary jurisdiction legislation.

The mercantile registrar shall proceed to convene the general assembly pursuant to the Mercantile Registry regulations.

There shall be no recourse whatsoever to appeal the decree or resolution under which it is agreed to convene the bondholders' general assembly.

**Article 423. Method for convening bondholders.**

The general assembly shall be convened in a way that ensures bondholder awareness thereof.

**Article 424. Powers of the assembly.**

The bondholders' assembly, duly convened, shall be empowered to decide on any matters regarding the effective protection of bondholders' legitimate interests with respect to the issuer, the modification, in agreement with the issuer, of the security established, dismissal or appointment of the trustee, the institution, as appropriate, of legal action and approval of any expenses incurred in the defence of common interests.

**Article 424 bis. Attendance.**

**1.** Bondholders are permitted to attend personally or send representation in the form of another bondholder. Under no circumstances may they be represented by company directors, even if said directors also be bondholders.

**2.** The trustee must attend the bondholders' general assembly irrespective of whether they convened it.

**Article 424 ter. Right to vote.**

Each bond confers on the bondholder a right to vote that is proportionate to the unamortised nominal value of the bonds held.

**Article 425. Adoption of agreements.**

**1.** Agreements shall be adopted by absolute majority of the votes issued. As an exception to this rule, amendments to the terms or conditions of reimbursement of the nominal value, conversion or exchange, shall require a favourable vote of two thirds of the outstanding bonds.

**2.** Agreements adopted by the bondholders' general assembly shall bind all bondholders, including those who did not attend and those who dissented.

**Article 426. Individual action.**

Legal action or out-of-court proceedings brought by bondholders may be instituted individually or separately when they are consistent with syndicate decisions, fall within its competence and compatible with the powers granted thereto.

**Article 427. Challenges to agreements by the bondholders' general assembly.**

Agreements by the bondholders' general assembly may be challenged by the bondholders in accordance with the provisions of this Act, on challenging corporate agreements.

**Article 428. Control.**

If the company postpones payment of interest due or capital redemptions for over six months, the trustee may raise a proposal to the board to suspend any of its directors and convene a general shareholders' meeting, if not already convened, to dismiss such directors.

**Article 429. Foreclosure.**

If the issue is secured by a mortgage or a pledge and the company postpones interest payment for over six months, the trustee, subject to a decision adopted by the general bondholders assembly, may foreclose on the assets constituting the security to make payment of the principal and interest due.

## CHAPTER V

### Bond repurchase and redemption

**Article 430. Redemption.**

The company may buy back the bonds issued by:

- a) Redemption or early payment, further to the terms of the instrument on the bond issue.
- b) Agreements by and between the company and the bondholders' syndicate.
- c) Purchase on the stock exchange, for redemption thereof.
- d) Conversion into shares, by agreement with the holders.

**Article 431. Claims on interest.**

Interest on redeemed bonds collected by bondholders in good faith may not be subject to claim by the issuer.

**Article 432. Reimbursement.**

- 1.** The company must pay the amount of the bonds within the term stipulated, together with the premiums, lots and benefits established in the instrument on the bond issue.
- 2.** The company shall likewise be bound to hold drawings from time to time in the terms and manner set forth in the redemption schedule, with the participation of the trustee and in the presence of a notary public, who shall issue a record of the proceedings.



Failure to fulfil this obligation shall authorise creditors to claim early redemption of the bonds.

**Article 433. Cancellation of security.**

**1.** Where bonds are represented by certificates, the certificates must be submitted to be stamped or rendered invalid as a requisite to cancellation of issue security in whole or in part. Such certificates must be replaced by others in accordance with the provisions regarding the replacement of certificates in Article 117, if the debt remains live but unsecured.

If the bonds are represented by book entries, the certificates issued by the entities responsible for book entries must be returned, and the entry in the accounting record in question amended accordingly.

**2.** Where redemption is the result of agreements between the company and the bondholders' syndicate, if the cancellation agreement is reached by majority vote and the syndicate is unable to submit all the certificates, the preceding provisions shall not apply.

## **TITLE XII**

### **New business concerns**

#### **CHAPTER I**

##### **General provisions**

###### **Article 434. Legal status.**

New business concerns are regulated hereunder as a special instance of limited liability companies.

###### **Article 435. Registered name.**

- 1.** At the time the company is formed, its name shall comprise one of the founding partners' two surnames and given name, followed by an alphanumerical code for unequivocal and unique identification.
- 2.** The company name must necessarily include the indication "New Limited Business Concern" ("Sociedad Limitada nueva empresa") or its acronym "SLNE".
- 3.** The company name shall be immediately added to a special subsection of the Names Section in the Central Mercantile Registry and duly recorded in a certificate issued to that end. Certificates accrediting the name of the new limited business concern may be requested either by a shareholder or a third party in his/her name. The beneficiary for whom the certificate is issued shall necessarily be the founding member whose name appears in the company name.

###### **Article 436. Corporate purpose.**

- 1.** The corporate purpose of new business concerns shall include all or some of the following activities, which shall be literally transcribed in the by-laws: agriculture, livestock, forestry, fishing, manufacturing, construction, retailing, tourism, transport, communications, brokering, professional services or services in general.
- 2.** Moreover, founding members may include in the corporate purpose any singular activity other than enumerated above. If the inclusion of a singular activity leads to rejection of the company's deed of incorporation by the mercantile registrar, entry in the Registry shall not be suspended, but rather shall be effected excluding the activity in question, provided this arrangement is explicitly accepted by the founding members either in the deed of incorporation or subsequent thereto.

3. Under no circumstance may the corporate purpose include activities that require joint stock company status or business engagement that entails a sole, exclusive purpose.

**Article 437. Subjective requirements.**

1. Only natural persons may be members of new business concerns.
2. At the time of the company is formed, these concerns may have no more than five partners.

**Article 438. Single membership.**

1. Any person who is a single member of one new business concern may not be the single member of a second new business concern.

To this end, deeds of incorporation of single member new business concerns or instruments on acquisition of such status must contain a statement to the effect that the single member is not the single member of any other new business concern.

2. The new business concern's single membership status may be recorded in the same instrument from which such status derives.

## CHAPTER II

### Formation requirements

**Article 439. Procedures for company formation.**

1. The procedures for the formalisation and registration of deeds of incorporation for new business concerns may be conducted using digital information and communications technologies.
2. Notaries public's and mercantile registrars' correspondence and notices shall be signed electronically.

**Article 440. Deed of incorporation.**

1. Further to the legislation on the incorporation of information and communications technologies to preventive legal security, only notaries public may forward a legalised copy of the company's deed of incorporation to the Mercantile Registry or, as appropriate, to other registries or public authorities, as needed.

Notwithstanding the provisions of the preceding paragraph, founding members may, prior to formalisation of the deed of incorporation, release the notary public from the obligations laid down in this article and appoint a representative to conduct the procedures for company formation pursuant to the general rules or express their intention to do so themselves. In such case, the notary public must issue a legalised first copy on hard media within twenty-four hours of formalisation of the company's deed of incorporation.

2. Pursuant to legislation on company registration, the notary public formalising the company's deed of incorporation shall ensure that no other company exists with a



name identical to the name of the company to be incorporated. Thereafter, the notary public shall proceed immediately to formalise the deed.

**3.** Once the deed has been formalised, the notary shall immediately send it, along with the single electronic document, to the competent tax authority to obtain the company's tax identification number; as appropriate and in accordance with tax legislation, the notary public shall likewise submit to the competent authority substantiation of payment of any taxes levied on company formation and shall send the legalised copy of the deed to the Mercantile Registry for entry.

**Article 441. Company registration.**

**1.** Irrespective of the procedure adopted, and provided the official model by-laws are used, the mercantile registrar shall assess and enter the deed of incorporation, as appropriate, within twenty-four hours of submission or, in the event of a rectifiable defect, of the time of submission of the rectified documents. The entry shall be recorded in a special section created for this purpose.

**2.** If the mercantile registrar denies registration of the deed submitted, the notary public formalising the document, as well, as appropriate, as the company representative appointed by the founding partners, shall be notified thereof within twenty-four hours. The respective tax authority shall likewise be notified.

If the nature of the defect is such that it can be rectified by the notary public ex officio, and the notary public agrees to the registrar's assessment, he/she shall rectify the defect within twenty-four hours of the time of notification of rejection by the mercantile registrar, and inform the founding partners or their agents of such rectification.

**Article 442. Post-registration formalities.**

**1.** Immediately following registration, the mercantile registrar shall inform the notary public of the registration data for inclusion in the original and any subsequent copies, and shall forward to the notary public the part of the single electronic document to which the company's registration data were added.

The notary public shall issue a legalised hard copy of the company's deed of incorporation within twenty-four hours of the notification of the registration data by the mercantile registrar. This copy shall include the company's tax identification number and substantiation of transmission of a copy of the deed of incorporation and the single electronic document to the tax authorities, to enable them to proceed to inform the founding partners of the company's permanent tax identification number. Similarly, at the behest of the founding partners, the notary public shall forward the documents needed to meet all social security-related obligations.

**2.** Once the company has been registered, the mercantile registrar shall transfer the data on company formalisation to the Central Mercantile Registry in the manner and within the term provided in the regulations. Likewise at the behest of the founding partners or their representatives, the registrar shall serve any other pertinent notifications.

## CHAPTER III

### Share capital and stakes

#### **Article 443. Share capital.**

- 1.** The share capital of the new business concern may not be less than three thousand or more than one hundred and twenty thousand euros.
- 2.** The capital may only be paid up in cash contributions.

#### **Article 444. Subjective requirements in stake transfers.**

- 1.** New business concerns may comprise more than five partners as a result of stake transfers.
- 2.** Voluntary inter vivos transfers of stakes may only be transacted between natural persons.

If stakes are acquired by a corporate body, they must be sold to individuals within three months of the date of acquisition. The result of failure to do so shall be that the company shall become subject to the general regulations on limited liability companies, without prejudice to directors' liability if the decision to adapt the by-laws accordingly is not reached.

#### **Article 445. Proof of partnership.**

- 1.** No shareholders' ledger shall have to be kept, inasmuch as the public instrument certifying acquisition shall constitute sufficient proof of partnership.
- 2.** The governing body shall be notified of the transfer of partnership and the creation of limited rights ad rem on the stakes via receipt of the public instrument in which such transactions are recorded.
- 3.** The governing body must notify all other partners of the transfer, the creation of rights ad rem or the seizure of stakes as soon as it becomes aware thereof, and shall be held liable for any damages ensuing from the failure to meet this obligation.

## CHAPTER IV

### Governing bodies

#### **Article 446. Annual general meeting.**

The new business concern's general meeting may be convened by registered mail with acknowledgement of receipt sent to the address specified by partners for this purpose, as well as by any electronic or digitised method for transmitting information informing partners of the notice, and reliably confirming the transmission of an electronic message convening the meeting or providing for acknowledgement of receipt from the partners themselves.

In such cases, no announcement in the Official Journal of the Mercantile Registry or in the press shall be necessary.

**Article 447. Governing body structure.**

- 1.** Company governance may be entrusted to a single or a multiple member body, whose members shall act jointly or jointly and severally. When governance is entrusted to a multiple member body, such body shall not under any circumstance adopt the form or operating arrangements of a board of directors.
- 2.** In the event of a single director, company representation and certification of its decisions shall be incumbent thereupon; in the event of various joint and several directors, upon one of them; and in the event of various joint directors, upon any two.

**Article 448. Directors.**

- 1.** Directors must be company partners.
- 2.** Directors may be remunerated in the manner and for the amounts established by the general meeting.
- 3.** Directors shall be appointed indefinitely. Nevertheless, after the company is formed, the general meeting may appoint directors for a specific period of time.

**Article 449. Dismissal of directors.**

- 1.** Dismissal of directors shall be subject to a decision adopted by the general meeting, which may be reached, even if not included on the agenda for the meeting, by the plurality vote defined in Article 198; the by-laws may not require more than a two-thirds majority of the votes corresponding to the stakes into which the capital is divided for such decisions.
- 2.** The partner affected by dismissal as director may not cast the votes attached to his/her stakes, which shall be deducted from the total capital to calculate the majority vote.

## CHAPTER V

### Amendments to the by-laws

**Article 450. Amendments to the by-laws.**

- 1.** In new business concerns, amendments may only be made to the company's name or registered office and, within the scope defined hereunder, its capital.
- 2.** The provisions of the preceding paragraph shall not apply if the new business concern is converted into a limited liability company, pursuant to the provisions hereunder.

**Article 451. Registered name.**

- 1.** Pursuant to the legislation on company registration, the notary public formalising the instrument on the change of registered name shall ensure that no other company exists with a name identical to the name proposed.

To this end, the notary public shall attach to the instrument on amendment of the registered name the automated registered name certification issued by the Central



Mercantile Registry over the registrar's electronic signature. The amendment shall be recorded as laid down in Article 113.1 of Act 24/2001 of 27 December.

2. If the partner whose name and surname appear in the company name forfeits partner status, the company shall be bound to immediately amend its registered name.

**Article 452. Increase of company capital in excess of the ceiling.**

If the partners decide to increase the capital to an amount in excess of the limit established hereunder, they must also decide whether they wish to convert the new business concern to a different corporate typology or continue to conduct business as a limited liability company.

## **CHAPTER VI**

### **Dissolution**

**Article 453. Dissolution.**

1. New business concerns shall be dissolved for the reasons defined hereunder for limited liability companies as a result of losses that lower their equity to less than half of the capital for at least six months, unless the equity is re-established during that period.
2. In any case, the provisions of Articles 364 to 367 shall apply.

## **CHAPTER VII**

### **Conversion to limited liability company**

**Article 454. Continuing business as a limited liability company.**

1. New business concerns may continue to operate as limited liability companies, subject to a general meeting decision in this regard and adaptation of their by-laws accordingly. A plurality vote shall suffice for both.
2. The instrument formalising the adaptation of the company's by-laws must be submitted for registration in the Mercantile Registry within two months of the date of the general meeting's decision.

## **TITLE XIII**

### **European companies**

#### **CHAPTER I**

##### **General provisions**

**Article 455. European companies. Definition and status.**

European companies (SE) with registered offices in Spain shall be governed by the provisions of Council Regulation (EC) 2157/2001 of 8 October 2001, the provisions of this title and the law regulating worker involvement in European companies.

**Article 456. Prohibition of concurrent company names.**

A European company planning to locate in Spain may not be registered in the Mercantile Registry under a name that is identical to pre-existing Spanish company.

**Article 457. Public record and notice of proceedings involving European companies.**

**1.** European companies planning to locate in Spain shall file their proposed deed of incorporation with the Mercantile Registry.

**2.** Company formation and other proceedings subject to registration by European companies with registered offices in Spain shall be entered in the Mercantile Registry in accordance with the provisions for joint stock companies.

**3.** The data of and proceedings engaged in by European companies with registered offices in Spain must be the object of public notice under the circumstances and in the manner stipulated in the general provisions applicable to joint stock companies.

#### **CHAPTER II**

##### **Registered office and transfer to another Member State**

**Article 458. Registered office.**

European companies must establish their registered offices in Spain when their headquarters is located on Spanish soil.

**Article 459. Discrepancy between registered office and actual address.**

The situation arising when a European company having its registered office in Spain moves its headquarters outside the country must be remedied within one year, either by relocating the headquarters in Spain or by moving the registered office to the Member State where such headquarters is sited.

**Article 460. Regularisation procedure.**

European companies whose circumstances are as described in the preceding article and which fail to regularise their situation within one year must be dissolved pursuant to the general provisions contained hereunder; the Government may appoint a person responsible for controlling and supervising the liquidation procedure and ensuring compliance with the laws and by-laws.

**Article 461. Exit right.**

If a European company with a registered office in Spain decides to move such office to another European Union Member State, shareholders voting against such decision may exit the company as provided hereunder for shareholder exit.

**Article 462. Creditor's right to challenge.**

Company creditors holding debt created prior to the date of publication of the company's proposed relocation in another Member State shall be entitled to challenge such relocation as provided hereunder for creditor challenge.

**Article 463. Certification prior to relocation**

The mercantile registrar, in light of the data recorded in the Registry and in the public instrument on change of address submitted, shall certify compliance with all proceedings and procedures to be conducted by the company prior to the change.

**Article 464. Challenge to relocation to another Member State.**

**1.** If the relocation of a European company with its registered office on Spanish soil involves a change in the applicable legislation, the change shall not be effective if the Government, at the behest of the Ministry of Justice or the autonomous community where the joint stock company has its registered office, challenges such change in the defence of the public interest.

When European companies are subject to supervision by a supervisory authority, that authority shall also be capacitated to challenge relocation.

**2.** Within five days of the date the entry is deemed to be made, the mercantile registrar shall inform the Ministry of Justice, the autonomous community where the joint stock company has its registered office and, as appropriate, any supervisory authority concerned, of the submission of a proposed change of address by a European company.

**3.** The decision to challenge the change of registered office must be formulated within two months of the publication of the proposed relocation. That decision may be appealed to the competent judicial authority.



## CHAPTER III Formation

### Section one. General provisions

#### **Article 465. Participation of other companies in the formation of a European company.**

In addition to the companies defined in Regulation (EC) 2157/2001, companies whose central administrations are not located in the European Union but are nonetheless incorporated in accordance with the laws of a Member State, have their registered office in that Member State and maintain an effective and ongoing relationship with its economy, may participate in the incorporation of a European company planning to establish its registered office in Spain.

An effective relationship is deemed to exist when the company has offices in the Member State from which it manages its operations and conducts its business.

#### **Article 466. Challenge to the formation of a European company via merger involving a Spanish company.**

**1.** For reasons of public interest, the Government, at the behest of the Ministry of Justice or the autonomous community where the joint stock company has its registered office, may challenge the proposed formation of a European company in another Member State via merger involving a Spanish company. When the Spanish company participating in the formation of a European company via merger is subject to supervision by a supervisory authority, the challenge to its participation may also be lodged by that authority.

**2.** After entering the merger proposal, the mercantile registrar shall inform the Ministry of Justice, the autonomous community where the joint stock company has its registered address and, as appropriate, the respective supervisory authority of the proposed merger, enabling them to lodge a challenge thereto, as appropriate.

**3.** The challenge must be lodged prior to the issue of the certificate referred to in Article 469. Appeals against such challenges may be lodged with the competent judicial authority.

### Section two. Incorporation via merger

#### **Article 467. Appointment of an expert or experts to report on the merger proposal.**

If one or more Spanish companies participate in the merger or when the European company undertakes to establish its registered office in Spain, the mercantile registrar, as the competent authority for this purpose, shall appoint one or several independent experts to draft the single report set forth in Article 22 of Regulation (EC) 2157/2001, at the joint request of the companies planning the merger.

#### **Article 468. Shareholder exit right.**

Shareholders of Spanish companies voting against a merger that entails the formation of a European company with its registered office in another Member State may exit the company as provided for hereunder for cases of shareholder exit. The same right shall



be acknowledged to shareholders of Spanish companies taken over by a European company with a registered office in another Member State.

**Article 469. Certification for the company taking part in the merger.**

The mercantile registrar serving the place where the company's registered office is located shall, in light of the data on record in the Registry and the public instrument on merger submitted, certify compliance by the Spanish joint stock company involved with all proceedings and procedures prior to the merger.

**Article 470. Registration of the company ensuing from the merger**

If the European company resulting from the merger establishes its registered office in Spain, the mercantile registrar serving the place where such office is located shall verify the existence of the certificates issued by the authorities in the countries where the registered offices of the foreign companies taking part in the merger are located and attest to the legality of the procedures in respect of the merger and formation of the European company.

**Section three. Formation via holding**

**Article 471. Public notice and record of proposed deed of incorporation.**

**1.** The directors of a Spanish company or companies participating in the formation of a European holding company must file the company's proposed deed of incorporation with the respective Mercantile Registry. Once the deed has been filed, the registrar shall inform the central mercantile registrar of the entry and the date on which it is made, for immediate publication in the Official Journal of the Mercantile Registry.

**2.** The general meeting responsible for adopting a decision on the operation may not meet until one month after the date of publication referred to in the preceding paragraph.

**Article 472. Appointment of an expert or experts to report on the proposed deed of incorporation.**

**1.** The competent authority responsible for appointing the independent expert or experts referred to in paragraph 4 of Article 32 of Regulation (EC) 2157/2001 shall be the mercantile registrar serving the places where the Spanish companies promoting the formation of a European holding company, or the future European company, have their registered offices.

**2.** The request for appointment of an independent expert or experts shall be lodged as laid down in the provisions of the Mercantile Registry Regulations.

**Article 473. Protection for shareholders of companies participating in European company formation.**

The shareholders of companies promoting the formation of a European holding company voting against the respective decision may exit the company as described in the provisions of this act on shareholder exit.



## Section four. Formation via conversion

### **Article 474. Conversion of an existing joint stock company into a European company.**

If a European company is formed as a result of the conversion of a Spanish joint stock company, the directors shall prepare a conversion proposal as provided in Regulation (EC) 2157/2001 and a report explaining and justifying the legal and financial aspects of the conversion. Such report shall address the implications for the shareholders and employees of converting to a European company. The conversion proposal shall be filed with the Mercantile Registry and published pursuant to Article 471.

### **Article 475. Expert certification.**

Before the general meeting to approve the conversion proposal and the by-laws of the European company is convened, one or more independent experts, appointed by the mercantile registrar serving the place where the company to be converted has its registered office, shall certify that such company has sufficient net assets to meet European company capital and reserves requirements.

## CHAPTER IV Governing bodies

### Section one. Governance arrangements

#### **Article 476. By-law options.**

European companies with registered offices in Spain may opt for one-or two-tier governance, as defined in their by-laws.

#### **Article 477. One-tier system.**

If a one-tier administration system is chosen, the provisions of this act for directors of joint stock companies shall apply to the governing body, insofar as they are not inconsistent with the provisions of Regulation (EC) 2157/2001 or the act on employee involvement in European companies.

### Section two. Two-tier system

#### **Article 478. Bodies in the two-tier system.**

Where a two-tier system is chosen, the company shall have directors and a supervisory board.

#### **Article 479. Directors' powers.**

- 1.** Directors shall be vested with company representation and management.
- 2.** Any limitation to the powers of European company directors, even if registered in the Mercantile Registry, shall be ineffective in respect of third parties.
- 3.** The possession and scope of directors' powers of representation shall be governed by the provisions of this act on directors.

**Article 480. Organisational arrangements for the directors.**

1. Depending on the provisions of the by-laws, company management may be entrusted to a single director or any number of directors acting jointly or jointly and severally, or to a board of directors.
2. When management is jointly entrusted to more than two people, they shall constitute a board of directors.

**Article 481. Board of directors membership.**

The board of directors shall have no less than three and no more than seven members.

**Article 482. Determination of number of board members.**

The company by-laws may specify an exact number of board members or the minimum and maximum number and the rules for determining the exact number.

**Article 483. Board of directors organisation, modus operandi and decision-making.**

Except as otherwise provided in Regulation (EC) 2157/2001, board of directors organisation, modus operandi and decision-making shall be governed by the provisions of the by-laws and, wanting that, the provisions hereunder on joint stock companies' boards of directors.

**Article 484. Limit to term of supervisory board members on board of directors to fill vacancies.**

Pursuant to Article 39.3 of Regulation (EC) 2157/2001, the term of the appointment of a supervisory board member to fill a board of directors vacancy shall not exceed one year.

**Article 485. Supervisory board operation.**

The provisions of this act regarding the operation of the management board, insofar as they are not inconsistent with the provisions of Regulation (EC) 2157/2001, shall apply to the supervisory board.

**Article 486. Appointment and dismissal of the members of the supervisory board.**

Supervisory board members shall be appointed and dismissed by the general meeting, without prejudice to the provisions of Regulation (EC) 2157/2001, the act regulating employee involvement in European companies and Article 243 hereunder.

**Article 487. Company representation to the board of directors.**

The supervisory board shall represent the company before the board of directors.

**Article 488. Board of director presence at supervisory board meetings.**

The supervisory board may, at its discretion, convene the members of the board of directors to attend but not vote at its meetings.

**Article 489. Operations subject to supervisory board authorisation.**

The supervisory board may decide to make certain board of directors operations subject to its prior authorisation. The absence of such prior authorisation shall be ineffective in respect of third parties, unless the company can prove that the third party acted fraudulently or in bad faith to the detriment of the company.

**Article 490. Governing body member liability**

The provisions on liability established for the directors of corporate enterprises shall be applicable to the management, board of directors and board of supervisors within the scope of their respective duties.

**Article 491. Challenging governing body decisions.**

The members of each board may challenge any null or annulable decisions of the board on which they sit within one month of adoption of the decision in question. Shareholders representing at least five per cent of the share capital may also challenge decisions within one month of their awareness thereof, provided less than a year has lapsed since the decision was adopted.

### **Section three. Annual general meeting**

**Article 492. Convening the general meeting in the two-tier system.**

**1.** In the two-tier governance system, the board of directors is vested with the power to convene the general meeting. The board of directors shall convene the general meeting when requested to do so by shareholders that account for at least five per cent of the share capital.

**2.** Should the meetings not be convened within the periods provided in Regulation (EC) 2157/2001 or the by-laws, they may be called by the supervisory board or, at the behest of any shareholder, by the judge of the commercial court with jurisdiction in the place where the company's registered office is located, as provided hereunder in respect of general meetings.

**3.** The supervisory board may convene the general meeting whenever it is deemed to be in the company's interest.

**Article 493. Deadline for the notice of the general meeting.**

The notice convening European companies' general meetings must be sent at least one month prior the date scheduled for the meeting.

**Article 494. Inclusion of new items on the agenda.**

Minority shareholders holding at least five per cent of the share capital may request the inclusion of items on the agenda of a general meeting after it is convened, or ask to have an extraordinary general meeting convened, further to the provisions of this act. The supplementary notice must be published at least fifteen days before the date scheduled for the meeting.

## **TITLE XIV** **Publicly listed companies**

### **CHAPTER I** **General provisions**

#### **Article 495. Definition.**

- 1.** Listed joint stock companies are companies whose shares are traded on an official secondary securities market.
- 2.** In all matters not covered herein, listed companies shall be governed by the provisions laid down for joint stock companies, in addition to any other regulations that may apply, with the following particularities:
  - a) The minimum percentage of five percent required by certain provisions applicable to joint stock companies for the exercise of certain shareholders' rights recognised herein, shall be three percent for listed companies.
  - b) The fraction of corporate capital necessary to be permitted to challenge corporate agreements, in accordance with articles 206.1 and 251, shall be one per thousand of corporate capital.
  - c) Without prejudice to the provisions of article 205.1 on any agreements that may be contrary to public order, the action of challenge to corporate agreements shall expire within three months.

### **CHAPTER II** **Special provisions on shares**

#### **Section one. Proof of share ownership**

#### **Article 496. Proof of share ownership in listed companies.**

- 1.** Shares and bonds that are to be listed or continue to trade on an official secondary securities market must be represented by book entries.
- 2.** When securities are represented by a book entry, any certificates formerly accrediting ownership shall be cancelled as per the law, and such annulment shall be published in notices in the Official Journal of the Mercantile Registry, the Official Journal of the Stock Exchange and in three daily newspapers with large nation-wide circulations.
- 3.** The Government, further to a report from the National Securities Market Commission, shall establish the deadlines and procedures for the representation of listed shares by means of book entries.

**Article 497. Right to know shareholders' identity.**

**1.** The issuing company shall have the right at any moment, to obtain data corresponding to shareholders, including addresses and any means of contact available, from the entities controlling the securities register.

**2.** Shareholder associations established within the issuing company and who represent a minimum of one percent of the corporate capital, shall have the same right, as shall shareholders who jointly or individually hold a share of at least three percent of the corporate capital. This right is exclusively for the purpose of facilitating communication with shareholders for the exercise of their rights and better defence of their common interest.

In the event of abusive or prejudicial use of the information requested, the association or partner shall be responsible for any damages or loss caused.

**3.** The technical and formal aspects necessary for the exercise of the right to data, in accordance with the two previous sections, shall be updated on a regulatory basis.

**Section two. Preference shares****Article 498. Obligation to decide on the distribution of preference dividends.**

When the preference granted by shares issued by listed companies consists of the right to obtain a preference dividend, the company shall be bound to proceed to distribute such dividends where distributable profits are earned, and the by-laws may not stipulate otherwise.

**Article 499. Preference dividends.**

**1.** The provisions governing dividends for preference shares issued by listed companies shall be as laid down for non-voting shares in Title IV, Chapter II, Section II.

**2.** The provisions of the by-laws shall apply to the pre-emptive right of subscription for the holders of non-voting shares; to recovery of their voting rights where the minimum dividend is not paid; and to the non-cumulative nature of that dividend.

**Section three. Redeemable shares****Article 500. Issue of redeemable shares.**

**1.** Listed joint stock companies may issue shares that are redeemable at the request of the issuer, the holders or both, for a par value not exceeding one quarter of the share capital. The issue agreement shall establish the terms for the exercise of the right of redemption.

**2.** Redeemable stocks must be fully paid up when subscribed.

**3.** If the right of redemption is granted exclusively to the company, it may not be exercised until after three years of the share issue.

**Article 501. Redemption of redeemable shares.**

1. The redemption of redeemable shares must be charged to unrestricted profits or reserves or to the proceeds from a new share issue approved by the general meeting to fund the redemption operation.
2. If share redemption is charged to unrestricted profits or reserves, the company must create a reserve for an amount equal to the par value of the redeemed shares.
3. If unrestricted profits or reserves are insufficient or no new shares are to be issued to fund the operation, redemption shall be subject to a capital reduction and share buyback.

**Section four. Shares subject to usufruct**

**Article 502. Calculation of the value of new shares subject to usufruct.**

1. When new shares are subscribed either by the owner or the usufructuary, the usufruct shall extend to the shares whose price can be determined from the average price at which the shares traded during the subscription period.
2. The amounts to be paid in the event of termination of the usufruct or due to non-exercise by the owner of the pre-emptive right of subscription in capital increases shall be calculated from the average price at which the shares traded in the preceding quarter.

**CHAPTER III**  
**Special provisions on share subscription**

**Article 503. Minimum term for the exercise of the right of subscription.**

In listed companies, pre-emptive subscription rights shall be exercised within the period granted by the directors of the company, which shall not be less than fifteen days from the date of publication of the announcement of the new share offering in the Official Journal of the Mercantile Registry.

**Article 504. General system of waiver of the pre-emptive subscription right.**

1. In listed companies, waiver of the pre-emptive subscription right shall be subject to the provisions of Article 308.
2. Fair value shall be understood to be market value. Except where other arrangements can be justified, market value shall be presumed to be the securities exchange listing.

**Article 505. Special system of waiver of pre-emptive subscription right.**

1. Notwithstanding the provisions of the second paragraph of the preceding article, once the general meeting has received the directors' and the auditor's report stipulated in Article 308, it may decide to issue new shares at any price higher than their net value as established in the auditor's report. The meeting may also limit its decision to establishing the procedure for determining the price.



2. The directors' and the auditor's reports must specify the net value of the shares to enable the general meeting to adopt the decision referred to in the preceding paragraph.
3. The auditor shall determine the net value of the shares on the basis of the company's most recent audited annual accounts or, if subsequent thereto, its most recent audited financial statements as described in Article 254, prepared in both cases by the directors in accordance with accounting principles contained in the Commercial Code. The closing date of these accounts or statements may not be more than six months prior to the date on which the general meeting decides to increase capital, provided no significant transactions are conducted in the interim. The value must be calculated taking into consideration any reservations to the accounts or statements expressed by the auditor.
4. For listed companies that are group parent companies, equity shall be determined on the basis of the data shown for the company in the consolidated group accounts.
5. Operations shall be posted in accordance with the accounting rules and principles established in the Commercial Code.

**Article 506.** *Delegation of the power to waive the pre-emptive subscription right in the event of new share issues.*

1. In listed companies, whenever the general meeting delegates the power to increase the share capital to company directors, it may also vest them with the power to waive the pre-emptive subscription right for the share issues approved under such delegation, where deemed to in the company's best interests.
2. The notice of the general meeting, including the proposal to vest the directors with the power to increase the share capital, must also make explicit mention of the proposal on waiver of the pre-emptive subscription right. From the time the general meeting is convened, the shareholders shall have access to a report prepared by the directors justifying the delegation of such power.
3. In capital increases approved in the exercise of the powers granted by the general meeting, the directors' and the auditor's reports must refer to each specific increase.
4. The par value of the shares to be issued plus the amount of the issue premium, if any, must match the fair value taken from the auditor's report. Such reports shall be made available to the shareholders and presented at the first general meeting held after the capital increase agreement.

**Article 507.** *Incomplete subscription of new shares.*

Whenever the National Securities Market Commission intervenes in the initial verification of a listed company's capital increase operation with the issue of new shares, the whole or partial failure of the operation in the form of incomplete subscription must be reported to the Commission.

**Article 508. Right to contribution refund.**

- 1.** Where the issue of new shares by a listed company is authorised or verified by the National Securities Market Commission, if the instrument on implementation of the decision is not presented in the Mercantile Registry within one year of the subscription deadline, the registrar may, ex officio, or at the behest of any interested party, cancel registration of the decision to increase capital. This action shall be the object of a certificate sent to the company and to the National Securities Market Commission.
- 2.** Once the registration of the increase has been cancelled, the holders of the newly issued shares shall be entitled to claim refund of any contributions laid out. If the cause for cancellation is attributable to the company, they may also claim interest at the legal rate.

**CHAPTER IV**  
**Treasury share ceiling**

**Article 509. Treasury share ceiling.**

Except where the company's own shares are acquired cost-free, in listed companies the par value of treasury shares acquired directly or indirectly by the company, added to any already owned by the acquiring company and its subsidiaries or, if applicable, by the parent company and its subsidiaries, may not exceed ten per cent of the capital subscribed.

**CHAPTER V**  
**Bonds**

**Article 510. Bond issues.**

The maximum legal limit for bond issues shall not be applicable to listed joint stock companies.

**Article 511. Delegation of the power to waive the pre-emptive subscription right in convertible bond issues.**

- 1.** In listed companies, whenever the general meeting delegates the power to issue convertible bonds to directors, the meeting may also grant them the power to waive the pre-emptive subscription right for convertible bonds issued under delegated powers, if in the company's best interests.
- 2.** The notice of the general meeting that includes the proposal to vest the power to issue convertible bonds in the directors shall also contain explicit mention of the proposal to waive the pre-emptive subscription right. A directors' report justifying such waiver proposal shall be made available to the shareholders when the general meeting is convened.
- 3.** In capital increases approved in the exercise of the powers granted by the general meeting, the directors' and the auditor's reports must refer to each specific increase.



Such reports shall be made available to the shareholders and submitted to the first general meeting held after the date of the decision to increase capital.

## CHAPTER VI

### Special provisions on the general shareholders' meeting

#### Section 1. General meeting competencies

##### **Article 511 bis. Additional competencies.**

**1.** In listed companies, the following are considered matters reserved for the jurisdiction of the general meeting, in addition to those recognised in article 160:

- a) Transfer to subsidiaries, of essential activities that until that moment have been performed by the company itself, although said company shall maintain full control over them.
- b) Operations whose effect be equivalent to that of liquidating the company.
- c) The directors' remuneration policy under the terms established in accordance with this law.

**2.** Activities and operating assets shall be considered of an essential nature when the volume of the transaction exceeds twenty-five percent of the total assets on the balance sheet.

#### Section 2. General meeting regulations

##### **Article 512. Mandatory nature of general meeting regulations.**

The general meeting of a joint stock company whose shares trade on an official secondary securities market, having reached the quorum laid down in Article 193 or higher if so stipulated in the by-laws, shall approve specific regulations for the general meeting. These regulations shall govern all general meeting-related matters and must be consistent with the law and the company by-laws.

##### **Article 513. Public record and notice of the regulations.**

**1.** The regulations for listed companies' general meetings shall be submitted to the National Securities Market Commission, together with a copy of any related documentation.

**2.** After such notification, the regulations shall be entered in the Mercantile Registry in accordance with the general rules and, once registered, shall be published by the National Securities Market Commission.

#### Section 3. General meeting performance

##### *Sub-section 1. General*

##### **Article 514. Equal treatment.**

All shareholders of the same status in listed companies shall be guaranteed equal treatment at all times in respect of information on, participation in and the exercise of voting rights at the general meeting.

**Article 515. Deadline for convening extraordinary general meetings.**

- 1.** When the company provides electronic voting procedures effectively accessible to all shareholders, extraordinary general meetings may be convened a minimum of fifteen days in advance.
- 2.** Shortening the advance notice with which the meeting must be convened shall be subject to an explicit decision adopted at the ordinary general meeting by at least two-thirds of the subscribed capital entitled to vote, and such decision shall not be valid beyond the date of the following general meeting.

**Article 516. Public announcement of the meeting notice.**

- 1.** Listed companies are required to convene their ordinary or extraordinary general meetings in a fashion that guarantees speedy and non-discriminatory access to the information by all shareholders. To that end, communication media shall be deployed that ensure that the meeting notice is duly publicised and access thereto is cost-free for all shareholders throughout the European Union.
- 2.** The announcement carrying the notice shall be published in at least the following media:
  - a) the Official Journal of the Mercantile Registry or one of the daily newspapers most widely circulated in Spain.
  - b) the National Securities Market Commission's website.
  - c) the convening company's website.

**Article 517. Content of meeting notice.**

- 1.** In addition to the information generally required of all general meeting notices, announcements convening the general meetings of listed companies shall include: the date by which shareholders must register their shares in their respective names to be able to participate in and vote at the general meeting; the place and procedure for obtaining the full text of the documents and proposals submitted; and the address of the corporate website where the information will be available.
- 2.** The announcement must also contain clear and accurate information about the procedures to be followed by shareholders to participate in and cast their votes at the general meeting, in particular in connection with the following items:
  - a) the right to request information, include items on the agenda and submit proposals, as well as the deadline for the exercise of these rights; when the announcement specifies that more detailed information may be obtained on such rights on the corporate website, the information included in the announcement may be limited to the deadline by which they must be exercised.
  - b) the system for proxy voting, specifying in particular the forms that should be used to name a proxy and the procedure to be followed for the company to accept electronic notification thereof.
  - c) the procedures established for voting by ordinary or electronic mail.

**Article 518. General information prior to the meeting.**

From the date of publication of the notice to the date the meeting is held, at least the following information must be carried uninterruptedly on the company website:

- a) the announcement convening the meeting.
- b) the total number of shares and voting rights on the date of the announcement, broken down by share classes, as appropriate.
- c) any documents that shall be subject to presentation at the general meeting and, in particular, any reports by directors, account auditors and independent experts.
- d) the full text of any proposals for agreement, in addition to each of the agenda items and, in relation to any points that are merely for information purposes, a report from the competent body commenting on each of the said points. Proposals for agreement submitted by shareholders shall also be included.
- e) in the event of nomination, ratification or re-election of members of the board of directors, the identity, curriculum and category to which each belongs, in addition to the proposal and reports referred to in article 529 decies. If the information is regarding an incorporated entity, it must also include the corresponding information for the individual who shall be nominated for the permanent exercise of the duties of the role.
- f) the forms to be used for proxies and postal voting, except when these forms are sent directly to each shareholder. If the forms cannot be published on the website for technical reasons, the company must specify on the site how to obtain hard copies, which must be sent to all shareholders who request the same.

**Article 519. Right to add new items to the agenda and submit new proposals.**

**1.** Shareholders representing at least five per cent of the share capital may request the publication of a supplementary notice of the ordinary general meeting to include one or more new items on the agenda, providing these items are duly justified or, as appropriate, refer to the submission of justified proposals. Under no circumstances may the preceding right be exercised on the occasion of extraordinary general meetings.

**2.** This right must be exercised with due notification, which must be received in the company's registered offices, within five days of the publication of the call to convene. The addendum must be published a minimum of fifteen days prior to the date established for the general meeting. Failure to publish the addendum within the deadline shall be cause to challenge the general meeting.

**3.** Shareholders representing a minimum of three percent of the corporate capital may present proposals for agreement on matters already included or that should be included in the agenda items for the general meeting, within the same deadline detailed in the previous section. The company shall ensure said proposals for agreement and accompanying documentation are disbursed among the rest of the shareholders, in accordance with the stipulations in letter d) of the previous article.

**Article 520. Exercise of shareholders' right to information.**

- 1.** The exercise of shareholders' right to information is governed by the provisions of Article 197. In addition, shareholders may ask directors, in writing up to the fifth day prior to the date of the meeting or verbally on the occasion thereof, for any clarifications they deem necessary about the auditor's report and about any publicly accessible information furnished by the company to the National Securities Market Commission from the date of the preceding general meeting.
- 2.** Valid requests for information, clarifications or written questions and the answers provided in writing by the directors shall be included on the company's website.
- 3.** In the event that, prior to the formulation of a specific question, the requested information is available in a clear, explicit and direct manner for all shareholders to access on the website, in a question-response format, the directors may limit their response to providing the information in said format.

**Article 521. Distance participation.**

- 1.** Shareholders may participate in all manner of general meetings and vote on proposals relating to the items on the agenda by proxy or directly by post, electronic mail or any other distance communication media under the terms established in the company by-laws, providing voter identity and the security of the respective electronic communications are guaranteed.
- 2.** Pursuant to provisions in the by-laws, the general assembly regulations may govern the off-site exercise of such rights, including in particular any or all of the following methods:
  - a) broadcasting the general meeting in real time.
  - b) interactive communication in real time to enable shareholders to address the general meeting from a place other than the venue.
  - c) a mechanism for voting before or during the general meeting with no need to appoint a proxy physically present at the meeting.

**Article 521 bis. Right to attend.**

In listed joint stock companies, the by-laws may not enforce attendance at the general meeting possession of more than one thousand shares.

**Sub-section 2. Participation in meetings by proxy**

**Article 522. Shareholder representation in the general meeting.**

- 1.** Clauses in the by-laws limiting shareholders' right to be represented by the person of their choice shall be null and void. The by-laws may, however, prohibit third party substitution for the proxy, without prejudice to the designation of a natural person when the representative is a body corporate.
- 2.** Where the principal provides instructions, the representative shall vote in accordance therewith and shall be required to keep such instructions on file for one year from the date of the respective general meeting.



3. Shareholders may appoint their proxies and notify the company thereof in writing or electronically. The company shall establish the method for the electronic notification of such appointments, as well as the necessary and proportionate formal requirements to guarantee the identity of the shareholder and the proxy or proxies appointed. The provisions of this paragraph shall be applicable to revocation of proxy appointments.

4. Proxies may represent an unlimited number of shareholders. Votes cast by proxies representing several shareholders may be non-concurrent, depending on the instructions furnished by their principals.

5. The number of proxy shares present shall be included in quorum computations.

**Article 523. Representatives' conflict of interest.**

1. Prior to their appointment, proxies must provide the shareholder with detailed information on any conflicts of interest. If a conflict arises subsequent to the appointment and the principals were not advised of that possibility, they must be informed thereof immediately. In both cases, the proxy must abstain from voting on behalf of the principal unless the latter furnishes specific instructions for each matter to be voted.

2. For the intents and purposes of the present article, a conflict of interest may exist when the proxy is:

- a) a controlling shareholder in the company or an entity controlled by such shareholder;
- b) a member of the company's governing, management or supervisory bodies or of the governing, management or supervisory bodies of the controlling shareholder or of an entity controlled thereby; or a director, in which case the provisions of Article 526 shall apply;
- c) a company employee or auditor or employee or auditor of the controlling shareholder or an entity controlled thereby;
- d) a natural person related to any of the preceding, defined to be a spouse or person equivalently related at present or in the two years previous, as well as ascendants, descendants and siblings and their respective spouses.

**Article 524. Relations between financial intermediaries and their clients for the intents and purposes of voting.**

1. Entities that appear as authorised shareholders on behalf of the accounting records of shares but which act on behalf of several persons may, if so needed, split the vote and exercise it in divergent manners in fulfilment of their instructions on different votes, if any.

2. The intermediary entities referred to in the previous section may delegate the vote to each one of the indirect holders or third parties designated by them, without being permitted to limit the number of authorised delegates.

### ***Sub-section 3. Voting***

#### ***Article 525. Results of voting.***

**1.** The minimum information to be determined for each item submitted to a vote in the general meeting shall include the number of shares for which valid votes were cast, the proportion of the share capital represented thereby, the total number of valid votes, the number of votes in favour and against each proposal and, as appropriate, the number of abstentions.

**2.** The decisions adopted and the result of the voting shall be published in full on the company's website within five days of the date of the general meeting.

#### ***Article 526. Voting through directors in the event of public request for proxies.***

**1.** When the directors of a listed company or others on their behalf or in their interest issue a public request to represent shareholders, in addition to meeting the requirements laid down in Article 523, paragraph 1, the directors obtaining such representation must refrain from exercising the voting rights attached to the shares represented in any of the items on the agenda that may entail a conflict of interest, unless they received from the principals specific voting instructions for each of such items pursuant to Article 522. Such conflicts of interest shall exist in all of the following decisions:

- a) their own appointment or ratification as directors;
- b) their own dismissal, forced separation or removal from their position;
- c) the institution of liability action against them by the company;
- d) the approval or ratification, as appropriate, of company transactions with them, companies controlled or represented by them or persons acting on their behalf.

**2.** The proxy may also cover any matters which, while not included on the agenda attached to the notice of the meeting, are lawfully discussed on the occasion thereof, in which case the provisions of the preceding paragraph shall apply.

**3.** The provisions of the present article shall be applicable to the members of supervisory boards of European joint stock companies with registered offices in Spain and opting for the two-tier system.

#### ***Article 527. Clauses restricting voting rights.***

Clauses in the by-laws of listed joint stock companies that directly or indirectly establish a general ceiling on the number of votes that can be cast by a single shareholder or companies belonging to the same group or anyone acting in conjunction therewith shall be null and void when, after a takeover bid, the bidder holds 70 per cent or more of the voting share capital, unless such bidder is not bound by an equivalent break-through rule or fails to invoke it.



## CHAPTER VII

### Special provisions on governance

#### Section 1. Regulations of the board of directors

##### **Article 528. Board of directors' mandatory rules of procedure.**

In listed joint stock companies, the board of directors shall adopt rules of procedure for its own internal purposes, informing the general meeting thereof. Such rules must be consistent with the law and the by-laws and shall contain specific measures designed to ensure good company governance.

##### **Article 529. Public record and notice of the rules of procedure.**

**1.** The National Securities Market Commission shall be notified of adoption of the rules and receive a copy thereof.

**2.** After that notice is served, such regulations shall be entered in the Mercantile Registry in accordance with its general rules and, once registered, shall be published by the National Securities Market Commission.

#### Section 2. Special provisions on the board of directors

##### **Article 529 bis. Necessity for the board of directors.**

**1.** Listed companies must be governed by a board of directors.

**2.** The board of directors must ensure that the selection procedures for its members favour diversity based on gender, experience and knowledge and do not suffer from implicit bias that may imply any discrimination and in particular, that may facilitate selection of directors.

##### **Article 529 ter. Non-delegable powers.**

**1.** Listed companies' boards of directors may not delegate their decision-making authority referred to in article 249 bis, nor may they delegate the following specific examples:

- a) Approval of the strategic or business plan, annual management objectives and budget, investment and finance policies, corporate liability policy and the dividends policy.
- b) Establishment of the risk control and management policy, including financial and the supervision of the internal information and control systems.
- c) Establishment of the company and group's corporate governance policy of whichever be the dominant entity, its organisation and performance and, in particular, the approval and amendment of its own regulations.
- d) Approval of the financial information that, pursuant to its listed nature, the company must periodically make public.
- e) Definition of the structure of the group of companies of which the company is the dominant entity.

- f) Approval of all types of investments and transactions that, due to their high quantity or special nature, are of special strategic or financial risk, unless their approval falls to the general meeting.
- g) Approval of the creation or acquisition of shares in special purpose entities or registered in countries or territories considered tax havens, in addition to any other transaction or operation of a similar nature that, due to its complexity, may undermine the transparency of the company and its group.
- h) Approval, prior to any report from the audit committee, of any operations the company or companies in the group perform with directors, pursuant to articles 229 and 230, or with significant shareholders, either individually or jointly with others, of a significant share, including shareholders represented by proxy in the board of directors of the company or other companies that form part of the same group, or with persons related to them. Directors affected, who represent, or who are related to shareholders affected, must abstain from participating in the deliberations and voting on the agreement in question. Transactions may only be exempt from this approval if they have all three of the following characteristics:
  - 1st that they are performed under contracts whose conditions are standardised and applied en masse to a large number of clients,
  - 2nd that they are performed at prices or rates generally established by the supplier of the goods or services at issue and,
  - 3rd that their quantity does not exceed one percent of the company's annual income.
- i) Establishing the company's fiscal strategy.

2. Under urgent, duly justified, circumstances, decisions relating to the previous matters may be adopted by the delegated bodies or persons, which must be ratified in the first board of directors' meeting held after the adoption of the decision.

**Article 529 quater. Attendance of meetings.**

1. Directors must personally attend any sessions held.
2. Notwithstanding the previous item, directors may delegate a representative from among the other directors. Non-executive directors may only delegate other non-executive directors.

**Article 529 quinque. Information.**

1. Unless the board of directors is established or exceptionally called for reasons of urgency, the directors shall receive in advance, with sufficient notice, any information necessary for the deliberation and adoption of agreements on the matters at issue.
2. The chairperson of the board of directors, with the collaboration of the secretary, must ensure compliance with this provision.

**Article 529 sexies. Chairperson of the board of directors.**

- 1.** The board of directors, prior to a report by the appointments and remuneration committee, shall designate a chairperson from among its members and, when appropriate, one or more vice chairpersons.
- 2.** The chairperson bears overall responsibility for the efficient performance of the board of directors. In addition to those granted by the law, the company by-laws and the board of directors' regulations, the chairperson holds the following powers:
  - a) Convene and preside over the board of directors' meetings, establishing the agenda items for said meetings and directing the discussions and deliberations.
  - b) Unless otherwise stipulated in the by-laws, preside over the shareholders' general meeting.
  - c) Ensure that the directors receive, with prior notice, sufficient information to be able to deliberate on the agenda items.
  - d) Stimulate the debate and active participation of directors during sessions, safeguarding their freedom to take a position.

**Article 529 septies. Separation of roles.**

- 1.** Unless otherwise stipulated in the by-laws, the role of chairperson of the board of directors may fall upon an executive director. In this case, designation of the chairperson shall require a favourable vote of two thirds of the members of the board of directors.
- 2.** In the event that the chairperson be an executive director, the board of directors, with executive directors abstaining, must by necessity, nominate a co-ordinating director from among its independent directors, who shall have the special powers to request a call to convene the board of directors, to include new items in the agenda of a board already called, to co-ordinate and convene non-executive directors and to manage, when relevant, the periodic assessment of the chairperson of the board of directors.

**Article 529 octies. Secretary of the board of directors.**

- 1.** The board of directors, prior to a report by the appointments and remuneration committee, shall designate a secretary and, when appropriate, one or more vice secretaries. The same procedure shall be followed to agree the dismissal of the secretary and, when relevant, each vice secretary. The secretary and the vice secretaries may or may not be directors.
- 2.** In addition to those assigned by the law, the company by-laws and the board of directors' regulations, the secretary must perform the following duties:
  - a) Maintain the board of directors' documentation, record the sessions in the minute book and certify their contents and the resolutions adopted by the board.
  - b) Ensure that the actions of the board of directors remain in accordance with the applicable regulations and comply with the company by-laws and any other internal regulations.

c) Assist the chairperson so that the directors receive the information relevant to the fulfilment of their role for each financial year, with sufficient prior notice and in the appropriate format.

**Article 529 nonies. Performance evaluation.**

**1.** The board of directors must complete an annual performance evaluation on itself and its committees and, based on the results of the same, propose a plan of action to correct any issues detected.

**2.** The results of the evaluation shall be included in the record of the session or incorporated into the same as an annex.

**Article 529 decies. Allocating and re-electing directors.**

**1.** Members of a listed company's board of directors shall be nominated by the shareholders' general meeting or, in the case of an early vacancy, by the director themselves through co-option.

**2.** Co-option in listed companies shall be governed by the provisions of this law, with the following exceptions:

a) The director nominated by the board does not necessarily have to be a company shareholder.

b) Upon the position becoming vacant and after having called the general meeting but before holding said meeting, the board of directors may nominate an interim director until the next general meeting is held.

**3.** In listed joint stock companies alternates shall not be nominated.

**4.** Proposals for the nomination or re-election of members of the board of directors shall correspond to the appointments and remuneration committee, if it refers to independent directors and the board itself in all other cases.

**5.** In each case, the proposal must be accompanied by an explanatory report by the detailing the competency, experience and merits of each candidate proposed, which shall be added to the records of the general meeting or board meeting.

**6.** The proposed appointment or re-election of any non-independent director must be preceded by a report from the appointments and remuneration committee.

**7.** The stipulations of this article shall be equally applicable to any individual who is designated representative of a director who is an incorporated entity. Proposals by individual representatives must be included in the report by the appointments and remuneration committee.

**Article 529 undecies. Duration of role.**

**1.** The duration of listed company directors' mandates shall be determined by the company by-laws, except that under no circumstance, shall it exceed four years.

**2.** Directors may be re-elected for the role one or more times, for the same maximum duration period.

**Article 529 duodecies. Categories of directors.**

**1.** Executive directors are those who perform management duties within the company or the group, whatever their legal connection to the same. However, directors who are senior management or directors of companies belonging to the group of the dominant entity of the company shall also be considered proprietary directors.

When a director performs their management duties and at the same time, is or represents a significant shareholder or is represented on the board of directors, they are considered an executive director.

**2.** Non-executive directors are all other directors in the company, whether proprietary, independent or other external directors.

**3.** Proprietary directors are those who possess a shareholding equal to or exceeding the quantity legally considered significant, or who have been appointed due to their position as shareholder, although their shareholding does not reach said required quantity, as well as those who represent the aforementioned shareholders.

**4.** Independent directors are those who, appointed in recognition of their personal and professional status, may perform their duties without appearing biased due to relationships with the company or its group, its significant shareholders or its management team.

Any person who finds themselves in the following scenarios may not be considered an independent director:

a) Anyone who has been either employed or an executive director of any company in the group, unless either 3 or 5 years respectively, have elapsed since the end of that relationship.

b) Anyone who receives from the company or its group, any sum or benefit for a concept other than the remuneration of a director, unless it is not specifically for the director.

For the purposes of this point b), neither dividends nor supplements to pensions received by the director arising from their previous professional or working relationship shall be taken into account, assuming that such supplements are unconditional and therefore, the company paying them may not use their discretion to suspend, amend or revoke their payment without breaching its obligations.

c) Anyone who is or has been during the last 3 years, a partner at the external auditors or responsible for the audit report, when the audit in question was carried out during said period in the listed company, or any other company in its group.

d) Anyone who is an executive director or in senior management at another company in which any executive director or senior management from the company is an external director.

e) Anyone who maintains or has maintained during the last year, a significant business relationship with the company or any company in its group, whether in their own name or as a significant shareholder, director or senior manager at an entity that maintains or has maintained said relationship.

Business relationships are considered to be with suppliers of goods or services, including financial and advisors and consultants.

f) Anyone who is a significant shareholder, executive director or senior management at an entity that receives or has received in the last 3 years, donations from the society or its group.

Anyone who is simply patron of a foundation that receives donations is not considered to be included in point f).

g) Anyone with a spouse or close relative of a similar nature or up to second-degree kinship who is an executive director or senior manager at the company.

h) Anyone who has not been proposed for appointment or renewal by the appointments committee.

i) Anyone who has been a director for a continuous period of more than 12 years.

j) Anyone who, with regards to any significant shareholder or representative on the board, finds themselves in any of the scenarios detailed in aforementioned points a), e), f) or g). In the case of the relationships detailed in point g), the limitation shall apply not just to the shareholder but also to their proprietary directors in the investee company.

Proprietary directors who lose said consideration as a consequence of the sale of their share by the shareholder they represented, may only be re-elected as independent directors when the shareholder they represented until that point has sold the entirety of their shares in the company.

A director who possesses a shareholding in the society may be considered independent, assuming they satisfy all the conditions established in this article and furthermore, that their share is not significant.

**5.** To this effect, the by-laws and the board of directors' regulations may anticipate other incompatible scenarios, different to those detailed in the previous section, and impose stricter conditions on when a director may be considered independent than those established in this article.

**6.** For the purpose of registration in the Companies Register, the agreement of the general meeting or the board must contain the category of director, which shall be sufficient for its registration and without which, the registrar of companies may enter to assess compliance with the requirements for registration into the referred category. In all cases, an incorrect classification of category of director shall not affect the validity of agreements adopted by the board of directors.

#### **Article 529 terdecies. Committees on the board of directors.**

**1.** The board of directors may set up specialist committees, drawn from its members, determining their composition, appointing its members and establishing the day-to-day duties of each.

**2.** Notwithstanding the previous point, the board of directors must set up at least one audit committee and one or two separate committees for appointments and remuneration, with the minimum composition and duties stipulated in this law.



**3.** The committees' records must be at the disposal of all members of the board of directors.

**Article 529 quaterdecies. Audit committee.**

**1.** The audit committee shall be composed exclusively of non-executive directors, appointed by the board of directors; of whom at least the majority must be independent directors and one of whom shall be nominated by virtue of their knowledge and experience in matters of finance, auditing or both.

As a whole, members of the committee shall have technical knowledge of the industry to which the audited company belongs.

**2.** The chairperson of the audit committee shall be nominated from among the independent directors that form said committee and must be replaced every four years. They may be re-elected once a period of one year has elapsed since the end of their tenure.

**3.** The company by-laws or the board of directors' regulations, in accordance with the provisions therein, shall establish the number of members in the committee and regulate its performance, remaining independent in the performance of its duties.

**4.** Without prejudice to the other duties stipulated in the by-laws or in compliance with them in addition to those set out in the board of directors' regulations, the audit committee shall have, as a minimum, the following duties:

- a) Inform the shareholders' meeting of any issues that may arise as regards affairs for which the committee is responsible and, in particular, regarding the outcome of the audit, explaining how it has contributed to the integrity of financial information and the role that the committee has played during this process.
- b) Supervise the efficiency of the company's internal controls, internal audit and risk management systems, in addition to discussing with the accounts auditor any significant weaknesses in the internal control system detected in the course of the audit, without compromising its independence. To this end, and where appropriate, recommendations or proposals may be submitted to the board of directors and the corresponding time frame for follow-up activities.
- c) Monitor the process of creating and submitting the financial information required and submit recommendations or proposals to the board of directors with a view to safeguarding its integrity.
- d) Escalate proposals to select, appoint, re-elect and replace the auditor to the board of directors, assuming responsibility for the selection process pursuant to the provisions of Articles 16, Sections 2, 3 and 5, and 17.5 of Regulation (EU) No. 537/2014, of 16 April, in addition to the conditions of his/her engagement and regularly request information on the audit plan and its execution from him/her, in addition to ensuring his/her independence in the exercise of audit duties.
- e) Establish appropriate relationships with the external auditor to receive information on issues that may threaten his/her independence, to be analysed by the committee, and any other issues related to the process of auditing financial statements. Furthermore, when appropriate, authorise services other than those

prohibited under the conditions provided for in Articles 5, section 4, and 6.2.b) of Regulation (EU) No. 537/2014, of 16 April, and the provisions of Title 1, Chapter IV, Section 3 of Law No. 22/2015, of 20 July on the Auditing of Accounts, regarding the independence of auditors, in addition to other requirements set out in legislation on the auditing of accounts and auditing standards. In all cases, an annual statement must be received from the external auditors, regarding their independence with regards to their relationship with the entity or directly or indirectly related entities, in addition to detailed information on an individual basis about any type of additional services provided and the corresponding payments received from these entities by the external auditor or by persons or entities related to them, pursuant to the regulations on auditing activities.

- f) Issue on an annual basis, prior to the issuance of the audit report, a report containing an opinion regarding whether the independence of auditors and audit firms has been compromised. This report must contain, in all cases, a detailed evaluation of the provision of each and every additional service referenced in the previous point e), considering each service individually and jointly, separate to the legal audit and in relation to the system of independence and regulations governing audit activities.
- g) Inform the board of directors, with prior notice, about all matters foreseen in this law, the by-laws and the board regulations; in particular those regarding:

1. Financial information that the company must periodically make public,
2. The creation or acquisition of shares in special purpose entities or that are registered in countries or territories considered tax havens, and
3. Transactions with related parties.

The audit committee shall not exercise the duties foreseen in this point g) when they are attributed through the by-laws to another committee and said committee is composed solely of non-executive directors and at least two independent directors, one of whom must be the chairperson.

5. The provisions of points d), e) and f) of the previous section, shall be understood without prejudice to the governing regulations on the audit.

#### **Article 529 quindecies. Appointments and remuneration committee.**

1. The appointments and remuneration committee shall comprise entirely of non-executive directors, appointed by the board of directors; at least two of whom must be independent directors. The committee chairperson shall be nominated from among the independent directors that form said committee.
2. The company by-laws or the board of directors' regulations, in accordance with the provisions therein, shall establish the number of members in the committee and regulate its performance, remaining independent in the performance of its duties.
3. Without prejudice to the other duties stipulated in the by-laws or in compliance with them, the board of directors' regulations, the appointments and remuneration committee shall have, as a minimum, the following duties:



- a) Evaluate the competencies, knowledge and experience necessary for the board of directors. To this end, define the duties and capabilities necessary in candidates who shall fill each vacancy and evaluate the time and dedication necessary in order to efficiently fulfil their commitment.
  - b) Establish an objective regarding the representation of the least represented gender in the board of directors and develop guidelines on how to reach said objective.
  - c) Submit to the board of directors, proposals for the appointment of independent directors for their nomination by co-option or for their submission to the shareholders' general meeting's decision, in addition to proposals for the re-election or dismissal of said directors, by the shareholders' general meeting.
  - d) Inform of any proposals for appointment of all other directors for their nomination by co-option or for their submission to the shareholders' general meeting's decision, in addition to proposals for the re-election or dismissal of said directors, by the shareholders' general meeting.
  - e) Inform of any proposals for appointment or dismissal of senior management and the basic conditions of their contracts.
  - f) Research and organise the succession of the chairperson to the board of directors and the first executive of the company and, when relevant, formulate proposals to the board of directors so that said succession be processed in an ordered and well-executed manner.
  - g) Propose to the board of directors, the directors' and managing directors' remuneration policy and of whoever else performs senior management duties under the direct supervision of the board, executive committees or delegated directors, in addition to the individual remuneration and other contractual conditions of executive directors, ensuring compliance with the same.
4. The provisions of this article shall apply in the event that the by-laws or board of director regulations opt to separately establish one committee for appointments and another for remunerations.

### **Section 3. Special provisions for remuneration of directors**

#### **Article 529 sexdecies. Necessity for remuneration.**

Unless otherwise stipulated in the by-laws, the role of director of a listed company shall, by necessity, be remunerated.

#### **Article 529 septdecies. Remuneration of directors for their position as such.**

1. The directors' remuneration policy shall determine the directors' remuneration for their position as such, within the remuneration system foreseen in the by-laws and must include by necessity, the maximum amount of annual remuneration to satisfy all directors in that condition.

2. Remuneration for each director for their position shall be determined by the board of directors, who, for this purpose, shall take into account the duties and responsibilities

attributed to each director, their position in board committees and any other objective circumstances considered relevant.

**Article 529 octodecies. Remuneration of directors for performing executive duties.**

**1.** Remuneration of directors for fulfilling the executive duties foreseen in the approved contracts, pursuant to the provisions of article 249, shall be adjusted to the directors' remuneration policy, which, by necessity, must include the sum of fixed annual remuneration and variations thereof, during the period to which the policy refers; the different parameters for fixing variable components and the main terms and conditions of their contracts, paying particular attention to their duration, compensation for early severance or termination of the contractual relationship and exclusivity, post-contractual non-competence, permanence and loyalty pacts.

**2.** The board of directors is responsible for fixing directors' remuneration for performing their executive duties and for the terms and conditions of their contracts with the company, in accordance with the provisions of article 249.3 and the directors' remuneration policy, approved by the general meeting.

**Article 529 novodecies. Approval of the directors' remuneration policy.**

**1.** The directors' remuneration policy shall be adjusted in accordance with the remuneration system established in the by-laws and shall be approved by the shareholders' general meeting at least every three years as a separate item on the agenda.

**2.** The board of directors' proposal for the remuneration policy shall be motivated and must be accompanied by, a specific report from the appointments and remuneration committee. Both documents shall be placed at the disposal of the shareholders through the company website, from the time of the call to convene the general meeting. Shareholders may also request that it be delivered or sent, free of charge. The announcement of the call to general meeting shall mention this right.

With regards to the transitional application system, see section 2 on the single transitional provision of the aforementioned regulation.

**3.** The approved directors' remuneration policy shall remain valid for the three financial years following that in which it was approved by the general meeting. Any amendment or substitution of the same during the aforementioned term, shall require the prior approval by the shareholders' general meeting, in accordance with the procedures established for approval.

**4.** In the event that the annual report on directors' remuneration is rejected by consultive vote in the ordinary general meeting, the remuneration policy applicable to the following year must be submitted for the approval of the general meeting prior to application, even if the aforementioned three year term has not elapsed. Cases where the remuneration policy has been approved in the same ordinary general meeting are exempt from this point.

**5.** Any remuneration received by directors for the exercise or termination of their role or for the fulfilment of their executive duties, shall be in accordance with the directors'



remuneration policy valid at that time, excepting remunerations explicitly approved by the shareholders' general meeting.

## CHAPTER VIII

### Shareholders' agreements subject to public notice

#### **Article 530. Shareholders' agreements in listed companies.**

- 1.** For the present intents and purposes, shareholders' agreements are understood to be agreements that regulate the exercise of voting rights at general meetings or restrict or condition the free transferability of shares in listed joint stock companies.
- 2.** The provisions hereunder shall also be applicable to agreements with the same aims referring to convertible or exchangeable bonds issued by listed joint stock companies.

#### **Article 531. Public record and disclosure of shareholders' agreements.**

- 1.** The adoption, extension or amendment of shareholders' agreements on voting rights in general meetings or that restrict or condition the free transferability of shares or convertible or exchangeable bonds in listed joint stock companies must be immediately reported to the company itself and to the National Securities Market Commission.

Attached to such notice shall be a copy of the clauses of the document containing the provisions that affect the right to vote or restrict or condition the free transferability of shares or convertible or exchangeable bonds.

- 2.** After the notice is served, the document containing the shareholders' agreement must be filed with the Mercantile Registry where the company is registered.
- 3.** The shareholders' agreement must be made public as relevant information.

#### **Article 532. Legal capacity to publicly disclose shareholders' agreements.**

- 1.** Any of the signatories of the shareholders' agreement shall be capacitated to serve the aforementioned notices and deposit the agreement, even where the agreement itself specifically appoints one of them or a third party to take such measures.
- 2.** In shares held in usufruct or pledged, whoever holds the right to vote shall also be capacitated to publicly disclose the foregoing in respect thereof.

#### **Article 533. Consequences of failure to publicly disclose shareholders' agreements.**

Until the respective notices are served, entry in the Registry effected and the announcement as relevant information published, shareholders' agreements shall have no effect whatsoever on the matters to which they refer.

#### **Article 534. Inter-shareholder agreements in companies controlling a listed company.**

The provisions of the preceding articles shall apply to agreements between partners or shareholders of a company that controls a listed company.

**Article 535. Temporary exemption from public disclosure obligations.**

Where public disclosure may be severely detrimental to a company, the National Securities Market Commission, at the behest of the parties concerned, may adopt a substantiated decision to refrain from disclosing all or part of a shareholders' agreement of which it has been notified. Such ruling shall exempt the company itself from the obligation to disclose the agreement, deposit the respective document in the Mercantile Registry and publish it as relevant information. The Commission shall also establish the time during which the information may be kept secret by the parties concerned.

## CHAPTER IX

### Corporate information

**Section 1. Special provisions on financial statements****Sub-section 1. Financial statements****Article 536. Prohibition of abridged financial statements.**

Companies whose shares are traded on a regulated market in any European Union Member State may not issue abridged versions of their balance sheets, statements of changes in net equity or income statements.

**Sub-section 2. Special provisions on the notes to the financial statements****Article 537. Obligation to provide additional information.**

Companies issuing shares traded on a regulated market in any European Union Member State and which, pursuant to the existing legislation, need only present individual financial statements, shall be bound to include information in the notes thereto on how their equity or income statement would have been affected if the international financial reporting rules set out in the European Union Regulations had been applied, and specify as well the valuation criteria used.

**Sub-section 3. Special provisions on the management report****Article 538. Inclusion of the corporate governance report in the management report.**

Companies issuing shares traded on a regulated market in any European Union Member State shall include their corporate governance reports in a separate section of their management reports.

**Section 2. Special information instruments****Article 539. Special information instruments.**

**1.** Listed joint stock companies must meet their information obligations using electronic or digitised methods, without prejudice to shareholders' right to request information on hard copy.



**2.** Listed joint stock companies must have a website where shareholders may exercise their right to information, and on which any relevant information required by securities market legislation is carried. Furthermore, listed joint stock companies shall publish, on said website, their average payment period to suppliers and, when applicable, the matters referred to in the last paragraph of article 262.1.

On the company website, there shall be an electronic shareholders' forum, which both individual shareholders and any voluntary associations that they may set up, may access, with due security, for the purpose of facilitating communication prior to holding general meetings. In the forum, they may publish proposals intended for presentation as addendums on the agenda announcing the call to convene, requests for adhesion to said proposals, initiatives for reaching the sufficient percentage needed to establish a minority right foreseen in the law, in addition to offers or petitions for voluntary representation.

**3.** The board of directors must establish the information to be provided on the website, pursuant to the provisions laid down by the Ministry of the Economy and Finance or, where explicitly empowered thereby, the National Securities Market Commission.

**4.** Shareholders from each listed company may set up specific, voluntary associations to exercise shareholders' representation in listed companies' general meetings and the other rights recognised in this law. For this purpose, associations must comply with the following requirements:

- a) They shall have as their exclusive objective, the defence of shareholders' interests, avoiding any conflict of interest situations that may occur, contrary to said objective.
- b) They shall have a minimum of one hundred members, none of whom may be shareholders with a share exceeding 0.5 percent of the capital with voting rights in the company.
- c) They shall be set up via public deed, which must be registered in the appropriate Companies Register to the registered listed company and, for the sole purpose of publicity, in a special register created for the purpose, in the National Securities Market Commission. The organisation and performance regulations for the association shall be fixed in the articles of association.
- d) They shall perform their accounting in accordance with the provisions of the Spanish Code of Commerce for corporations and they shall submit their annual accounts for audit. Within the month following approval of the previous year's annual accounts by the assembly of members of the association, the association must place an example of said accounts on the companies register, together with the corresponding audit report and a report detailing the activity carried out; providing a copy of these documents to the National Securities Market Commission. As an annex to the previous documents, they shall also submit to the National Securities Market Commission, a record of the association members at the point when the previous financial year was closed.

e) They shall register any representations made to them by shareholders so that they can represent them in the general meetings, as well as any representations made in each general meeting, with a report on the identity of the shareholder represented and the number of shares that attended on their behalf. The representations register shall be at the disposal of the National Securities Market Commission and the issuing entity.

Shareholders' associations may not receive, either directly or indirectly, any amount of financial benefit from the listed company.

Requirements for shareholders' associations shall be regulated, for exercise of the rights attributed to them in this law, that shall include, at least, the requirements and limits of their establishment, the foundation of their organisational structure, the rules concerning their performance and the rights and obligations corresponding to them, particularly with relation to the listed company and the conflict of interest system, to ensure proper compliance with the purposes for which they were established.

5. Moreover, the Government or, as appropriate, the Ministry of Economy and Finance and when explicitly empowered thereby, the National Securities Market Commission, may establish any necessary technical or legal stipulations relating to the provisions of this article.

### **Section 3. Annual report on corporate governance and annual report on directors' remunerations**

#### **Article 540. Annual corporate governance report.**

1. Listed joint stock companies must prepare and make public, an annual corporate governance report.

2. The annual corporate governance report shall be subject to communication to the National Securities Market Commission, accompanied by a copy of the document itself. The National Securities Market Commission shall provide a copy of the report to the relevant supervisory authorities in the case of listed companies within their area of competency.

3. The report shall be subject to publication as a relevant fact.

4. The content and structure of the corporate governance report shall be determined by the Ministry of Economy and Competitiveness or, with explicit authority, by the National Securities Market Commission.

The aforementioned report must provide a detailed explanation of the structure of the company's governing system and how it functions in practice. In all cases, the corporate governance report must contain a minimum of the following information:

a) Ownership structure of the company, which must include:

1st Information relating to the shareholders with significant shares, indicating the percentages held and any relationships of a family, commercial, contractual or corporate nature, as well as their representation on the board,



2nd Information on the members of the board of directors' shareholdings that must be communicated to the company, in addition to the existence of any shareholders' agreements communicated to the company itself, the National Securities Market Commission and, when relevant, registered in the Companies Register,

3rd Information on the securities not negotiated on a regulated community market, with an indication, when relevant, of the different classes of shares and, for each class, the rights and obligations conferred upon them, as well as the percentage of corporate capital they represent in the company portfolio and any significant variations,

4th Information relating to the regulations applicable to amending the company by-laws.

b) Any restriction on the transferability of securities and any restriction on the right to vote.

c) Management structure of the company, which must include:

1st Information relating to the composition and the organisational and performance rules of the board of directors and its committees,

2nd The identity and remuneration of its members, duties and roles within the company, its relationships with shareholders with significant shareholdings, indicating the existence of crossed or related directors and the procedures for selection, removal or re-election,

3rd Information on the members of the board of directors' powers and in particular, those relating to the possibility of issuing or repurchasing shares,

4th Information on any significant agreements made by the company that take effect, amend or terminate upon a change of control of the company following a takeover bid and its effects, except when its disclosure may be seriously detrimental to the company. This exception shall not apply when the company is legally obliged to publish said information,

5th Information on any agreements between the company and its directors, management or employees regarding compensation in the event of their resignation or wrongful dismissal or if their working relationship comes to an end due to a takeover bid.

6th a description of the diversity policy applied in relation to the board of directors, including its objectives, the measures adopted, the manner in which it is implemented and the results in the reporting period, as well as the measures that the appointments committee would have agreed in this regard where appropriate. The diversity policy shall include issues such as training and professional experience, age, disability and gender, which will refer to the measures that, if applicable, would have been adopted to try to include a number of women in the board of directors, which enables the achievement of a balanced presence of women and men.

If a policy of this type is not applied, an explanation should be offered.

Small and medium-sized entities shall only be obliged to provide information on the measures that, where appropriate, were adopted in terms of gender, in accordance with the definition contained in the legislation on account audit.

- d) Operations relating to the company with its shareholders, directors, management roles and intragroup operations.
- e) Risk control systems, including financial.
- f) General meeting performance, with information relating to the development of any meetings held.
- g) Level of adherence to the corporate governance recommendations, and, when relevant, an explanation for the lack of adherence to said recommendations.
- h) A description of the main characteristics of the internal control and risk management systems in relation to the process of issuing financial information.

**5.** Without prejudice to the sanctions imposed for the failure to provide documentation, or the corporate governance report, or for the existence of omissions or misleading or incorrect data, the National Securities Market Commission shall be responsible for monitoring the rules of corporate governance, for which purpose it may collect as much information as it deems necessary, and make public the information it considers relevant about its effective level of compliance.

**6.** When the listed company is a European joint stock company, registered in Spain, which has opted for a dual system, it shall accompany the annual corporate governance report prepared by its directors, with a report prepared by its co-ordination committee, about the exercise of its duties.

**Article 541. Annual report on directors' remuneration.**

**1.** The board of directors for listed joint stock companies must annually prepare and publish a report on its directors' remunerations, including those who receive or should receive remuneration for their position as such and, when relevant, for fulfilling their executive duties.

**2.** The annual report on directors' remuneration must include full, clear, comprehensive information about the directors' remuneration policy applicable to the current financial year. It shall also include an overall summary of the application of the remuneration policy during the previous, closed, financial year, and detail individual remunerations paid for all concepts, for each of the directors in said year.

**3.** The annual directors' remuneration report shall be distributed throughout the company as a relevant fact, at the same time as the annual corporate governance report.

**4.** The annual directors' remuneration report shall be submitted to a consultive vote, as a separate agenda item, at the shareholders' ordinary general meeting.

**5.** The Ministry of Economy and Competitiveness or, with explicit authority, the National Securities Market Commission, shall determine the content and structure of the annual directors' remuneration report, which may contain information on, as well as other matters, the amount of fixed remuneration components, variable remuneration concepts and the performance criteria chosen for their design, in addition to the role performed, when relevant, by the payments committee.

**Additional provision one. Prohibition to issue bonds.**

Bonds and other negotiable instruments grouped by issues may not be issued or secured by individuals or general or limited partnerships.

**Additional provision two. Taxation on share transfers.**

Share transfers shall be taxed as provided for the transfer of securities in Article 108 of Act 24/1988 of 28 July on the Securities Exchange.

**Additional provision three. Single electronic document (DUE).**

**1.** The single electronic document (Documento Único Electrónico, DUE) is a document including all the data which, according to the existing legislation, must be furnished to legal registries and public authorities to:

- a) Form limited liability companies.
- b) Register limited liability entrepreneurs in the Mercantile Registry.
- c) Comply with all the tax and social security obligations inherent in business start-ups undertaken by individual entrepreneurs and trading companies.
- d) Handle any other proceedings required by State, regional or local authorities in connection with starting up or conducting business, including the issue of whatsoever authorisations, communications or liability statements, as well as proceedings relative to business wind- up.

In companies conducting business, the preceding provisions shall not apply to tax- or social security-related obligations, proceedings associated with government contracting or applications for subsidies or government support.

**2.** Outgoing and incoming DUE shall be confined to the data required for the proceedings conducted by the authority in question.

Where provided by the regulations or, as appropriate, by special agreements reached with the respective public authorities, specifications and conditions shall be laid down for the use of the DUE in the formation of any manner of company. Such specifications and conditions shall be fully consistent with all applicable substantive legislation and provisions on public notice or disclosure and with the regulations listed in paragraph 6 of additional provision four.

**3.** The DUE shall be conveyed by electronic or digitised methods pursuant to the rules for the use of such methods, as well as with the provisions of specific legislation.

**4.** The founding partners of new business concerns may inform the notary public prior to formalisation of the deed of incorporation of their intention to conduct the procedures and transmit the data included in the DUE directly or via an appointed representative, in which case the terms of this additional provision relative to company formation shall not be applicable.

**5.** The DUE shall be approved by the Council of Ministers at the behest of the Minister of Industry, Energy and Tourism, subject to reports from all the other ministries involved in the subject matter addressed, and it shall be available in all the officials languages of the Spanish State.

**6.** Entrepreneur Support Counters shall be government- or privately-run offices or virtual information and on-line application handling sites.

Entrepreneur Support Counters shall facilitate new company formation and actual start-up and conducting of business by furnishing information, document handling, advisory and training services, as well as business financing assistance pursuant to the respective agreements. DUE proceedings shall be initiated through such counters.

**7.** The Ministry of Industry, Energy and Tourism, after consulting the Ministry of Finance and Public Administrations, may conclude agreements to establish Entrepreneur Support Counters with other public authorities or private organisations.

**8.** The public authorities shall establish the electronic procedures required for the necessary data interchange.

**Additional provision four. Social collaboration.**

**1.** The tax authorities may implement the social collaboration provided in Article 92 of General Tax Act 58/2003 of 17 December, and implementing legislation, for the submission of tax returns, notifications and other documents associated with starting up and engaging in commercial activities by new business concerns, through agreements concluded with the General Board of Notaries Public, the Chartered Institute of Property, Chattels and Mercantile Registrars of Spain and other chartered institutes, as well as chambers of commerce and the entrepreneurial advisory and start-up counters (PAIT).

**2.** The tax authority may also establish mechanisms for adhering to such agreements by notaries public, mercantile registrars and other members of chartered institutes to implement such social collaboration. These agreements shall be binding on the members of the corporate organisations mentioned in the preceding paragraph when so provided in tax regulations. The tax authority may also establish mechanisms to adhere to such agreements by duly qualified professionals with a view to implementing such social collaboration.

**3.** The Ministry of Economy and Finance shall issue an order establishing the circumstances and conditions under which the entities concluding such agreements and the notaries public, mercantile registrars and members of other chartered institutes adhering thereto must present tax returns, notifications and other documents on behalf of third parties by electronic or digitised methods.

**4.** The Ministry of Labour and Immigration shall establish the means for the electronic or digitised handling of notifications and other documents related to the formation or start-up of new business concerns submitted to the bodies and services under its aegis, via agreements concluded with the General Board of Notaries Public, the Chartered Institute of Property, Chattels and Mercantile Registrars of Spain and other chartered institutes.

**5.** The Ministry of Labour and Immigration shall issue an order establishing the circumstances and conditions under which the entities concluding such agreements and the notaries public, mercantile registrars and other duly qualified professionals



adhering thereto must submit tax returns, notifications and other documents on behalf of third parties by electronic or digitised methods.

**6.** All the provisions of the preceding paragraphs shall apply notwithstanding any regulations specific to the inclusion of electronic or digitised methods for transmitting information in the public administration and the preventive legal security scheme.

**Additional provision five.** *Appeals against the results of assessment of deeds of incorporation for new business concerns.*

If the mercantile registrar delivers a negative assessment on the deed of incorporation for a new business concern, the provisions of Articles 322 to 329 of the consolidated text of the Mortgage Act, adopted by Decree on 8 February 1946 and re-drafted pursuant to the provisions of the regulations introduced in Act 24/2001 of 27 December on tax, administrative and social measures, shall apply, except with respect to the time allowed for rulings, which in this case shall be 45 days.

**Additional provision six.** *Taxation measures applicable to new limited liability business concerns.*

**1.** The tax authority, at the behest of new limited liability business concerns, shall grant postponement of payment of the transfer tax and stamp duty in connection with corporate operations levied on the formation of these concerns. Postponement shall be for one year and shall not be subject to the provision of security of any kind whatsoever. The tax authority, likewise at the behest of new limited liability business concerns shall also grant postponement of the corporation tax on earnings during the first two financial years after formation, for which no security shall be required. Payment of the tax liability for the first and second financial years must be made 12 and 6 months, respectively, after of the deadline for filing the respective tax returns.

The tax authority may further grant, at the behest of new business concerns, the postponement of payment or instalment payment of income tax withholdings or advances accruing during the first year after formation. Such benefits may or may not be subject to providing security.

The amounts postponed or paid by instalment pursuant to the provisions of this paragraph shall bear delayed payment interest.

**2.** For the first two financial years after formation, new business concerns shall not be bound to make the advance payments on the corporation tax referred to in Article 45 of the consolidated text of the Corporation Tax Act, approved by Royal Legislative Decree 4/2004 of 5 March.

**Additional provision seven.** *Supervisory powers of the National Securities Market Commission.*

The provisions contained in Articles 512, 513, 514, 515, 516, 517, 525.2, 526, 528, 529, 529 quaterdecies, 529 quindecies, 530, 531, 532, 533, 534, 538, 539, 540 and 541 under Title XIV of this consolidated text, form part of the regulatory and disciplinary rules governing the securities exchange, supervision of which is entrusted to the

National Securities Market Commission, further to the provisions of Title VIII of Securities Exchange Act 24/1988 of 28 July.

The National Securities Market Commission shall be empowered to initiate and conduct disciplinary proceedings stemming from the breach of any of the obligations set forth in the articles specified in the preceding paragraph, pursuant to the provisions of Articles 95 et seq. of Securities Exchange Act 24/1988 of 28 July.

**Eighth additional provision. Calculating average payment period to suppliers.**

In order to calculate the average payment period to suppliers, referred to in article 262.1, the criteria approved for the matter by the Ministry of Finance and Public Administration shall apply, pursuant to the stipulations of the third section of the second final provision of Organic Law 2/2012, of 27 April, on Budgetary Stability and Financial Sustainability.

**Ninth additional provision. Committees on the board of directors.**

The system regarding board of director's committees and the audit committee respectively, in articles 529 terdecies and 529 quaterdecies, shall also be applicable to the issuing entities of securities other than shares admitted for negotiation in official secondary markets

**Tenth additional provision.**

**1.** For the purposes of Law No. 11/2015, of 18 June on the recovery and resolution of credit entities and investment service companies, the shareholders' meeting of listed companies subject to this Law may, by a two-third majority of the votes validly issued, approve or amend the company's by-laws, indicating that the shareholders' meeting to decide on the capital increase shall be convened within the time frame provided by Article 176 of this Law, provided that said meeting is not held within ten days of it being called, that the conditions of Articles 8 to 10 of Law No. 11/2015, of 18 June are complied with and that the capital increase is needed to prevent the resolution conditions established in Articles 19 to 21 of said Law from occurring.

**2.** For the purposes of the provisions of the above section, the time frames set out by articles 179.3 and 519.2 of this Law shall not apply.

**Transitional provision.**

Application of the provisions of article 348 bis of this Law is postponed until 31 December 2016.

**Final provision one. Pool of company names, model by-laws and fast-track registration.**

- 1.** The Government is hereby authorised to regulate a Pool of Company Names, including reservation services.
- 2.** Model by-laws for limited liability companies may be approved by an order issued by the Minister of Justice.
- 3.** If the deed of incorporation of a limited liability company contains the aforementioned model by-laws and its formation involves no non-cash contributions, the mercantile



registrar must register the company within forty-eight hours, subject to payment of the transfer tax and stamp duty under the terms set forth in the respective regulations.

**Final provision two. Modification of category ceilings and amounts of fines.**

The Government is hereby authorised to approve any of the following by royal decree.

**1.** The limits specified in this act below which corporate enterprises are allowed to issue abridged financial statements, which may be aligned with the criteria laid down in European Union directives.

**2.** The amounts of the fines specified in the Commercial Code and in this act, which may be adjusted to changes in the cost of living.



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