

# 90/2012 Coll.

## ACT

of 25 January 2012

### on Commercial Companies and Cooperatives (Business Corporations Act)

The Parliament passed this Act of the Czech Republic:

## PART ONE

### BUSINESS CORPORATIONS

#### TITLE I

#### Chapter 1

##### Common provisions

##### Section 1

- (1) Business corporations include commercial companies ("companies") and cooperatives.
- (2) Companies include an unlimited partnership and a limited partnership ("partnerships"), a limited-liability company and a joint-stock company ("capital companies"), as well as a European Company and a European Economic Interest Grouping.
- (3) Cooperatives include a cooperative and a European Cooperative Society.
- (4) A European Company, a European Economic Interest Grouping and a European Cooperative Society shall be governed by the provisions of this Act to the extent permitted by directly applicable legislation of the European Union governing the European Company, the European Economic Interest Grouping or the European Cooperative Society.

##### Section 2

- (1) A partnership can only be established for the purpose of doing business or for the purpose of managing its own assets.
- (2) Activities that may only be carried out by a natural person pursuant to other legal regulations may constitute the objects or activity of a business corporation, provided that such activities are performed by persons authorised to this end pursuant to other legal regulations. The foregoing shall be without prejudice to the liability of these persons under other legal regulations.

##### Section 3

- (1) The provisions of the Civil Code on associations shall only apply to business corporations if so provided by this Act.
- (2) Where this Act imposes an obligation to compensate damage, the party causing the damage shall also be liable to compensate any non-pecuniary damage.
- (3) A memorandum of association under this Title and Title IV shall also mean articles of association and a deed of foundation.
- (4) A member under this Title shall also mean a member of a cooperative.

##### Section 4

- (1) Where it is permitted by this Act for a member of a business corporation to claim any right on behalf of or against the business corporation, the burden of proof that he or she did not commit the infringement shall be upon the obliged person, unless a court has decided that this cannot be reasonably requested from the obliged person.
- (2) Subsection (1) shall apply *mutatis mutandis* where a member or a former member claims from another member a settlement, a similar consideration or compensation of damage if the position of the former in the business corporation was terminated or if the former suffered any damage in connection with its position in the business corporation under the conditions provided in this Act or in another legal regulation.

##### Section 5

- (1) A business corporation may request a person who violated the ban on competition to return any benefit obtained as a result of the violation or to transfer any rights arising therefrom to the business corporation, unless the same is excluded by the nature of the acquired rights; the same shall apply *mutatis mutandis* to any other person who acquired such benefit or right, unless the person acted in good faith.

(2) The right referred to in subsection (1) may be claimed from the obliged person within 3 months after the date when the business corporation became aware of the violation of the ban on competition, but no later than 1 year after the violation occurred. Any later claim shall be disregarded.

#### Section 6

(1) Legal acts governing the establishment, incorporation, modification, dissolution or winding up of a business corporation must be in written form with certified signatures, failing which such acts shall be invalid. Courts shall have, even *ex officio*, regard for such invalidity.

(2) Subsection (1) shall not apply to decisions of the supreme body of a business corporation.

#### Section 7

(1) Where a capital company or a cooperative includes information about its registered capital in its commercial documents, such information may only concern the part of the registered capital that has been subscribed and paid-up.

(2) A joint-stock company shall release information, which it is obliged to include in commercial documents, as well as other information prescribed by this Act without undue delay after its incorporation and thereafter on a continuous basis, in a manner allowing remote access, which is free of charge for the public, so that the information is easily accessible upon entering an e-mail address (the "website").

(3) The provision of subsection (2) shall apply *mutatis mutandis* to a limited-liability company, which has established a website.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to enterprises of foreign capital companies or foreign cooperatives and to their branches. Information about the registration of a foreign entity in the register of entrepreneurs in the country, the law of which is applicable to the foreign entity, shall not be required unless the registration in such register is required or permitted by this Act.

## Chapter 2

### Establishment of a business corporation

#### Section 8

(1) A business corporation shall be established by a memorandum of association. A memorandum of association on the establishment of a capital company shall have the form of an authentic instrument. A memorandum of association on the establishment of cooperative under this Act shall be concluded upon its adoption at the foundation meeting.

(2) If permitted by law for a company to be established by a sole founder, the company shall be established by a deed of foundation in the form of an authentic instrument.

#### Section 9

(1) Not filing the application for registration of a company in the commercial register within 6 months after the date of its establishment shall be conclusively presumed to have the same effect as a withdrawal from a contract.

(2) The period referred to in subsection (1) may be modified in the memorandum of association.

(3) In a cooperative, the expiry of the period referred to in subsection (1) or (2) shall be conclusively presumed to constitute a withdrawal of application by all candidates for membership.

#### Section 10

If this Act requires an expert to prepare an expert opinion, such expert opinion shall be prepared without bias and independently of the person for whom or for whose benefit it is to be elaborated.

## Chapter 3

### Single-member company

#### Section 11

(1) A capital company may be established by a single founder.

(2) A capital company may also have a sole member as a result of all its business shares being held by that member.

#### Section 12

(1) In a single-member company, the powers of the supreme body shall be exercised by its member.

(2) Where this Act or another legal regulation requires the decisions of a company's supreme body to be certified by an authentic instrument, the decisions of the sole member shall be in the form of an authentic instrument.

#### Section 13

A contract between a single-member company represented by the sole member and such member must be in written form with certified signatures. This shall not apply where such a contract is concluded in the ordinary course of business and under terms and conditions common for that business.

#### Section 14

In the event that a company becomes a single-member company, provisions in the memorandum of association prohibiting or restricting the transferability or pledging or permitting the passage of the business share shall be disregarded throughout the period when the company is a single-member company.

### **Chapter 4**

#### **Contribution**

#### Section 15

(1) A contribution is the monetary value of the subject of the contribution into the registered capital of a business corporation. In case of a joint-stock company, a contribution shall be expressed as the nominal or book value of a share.

(2) The subject of the contribution shall be an item which a member or a future member (the "contributor") undertakes to contribute to the business corporation in order to acquire or increase a business share in the business corporation (the "contribution obligation").

(3) The contribution obligation may be met by a cash payment (the "cash contribution") or by contributing another item whose value can be expressed in monetary terms (the "contribution in kind").

(4) For the purposes of this Act, the issue price shall be the contribution and the share or contribution premium, if any.

#### Section 16

(1) A member shall not be entitled to restitution of the subject of the contribution throughout the existence of the business corporation or after its dissolution.

(2) It is not possible to agree on or pay interest on the issue price.

#### Section 17

(1) The contributor shall fulfil the contribution obligation within the period of time and in the manner prescribed by this Act and by the memorandum of association.

(2) The value of a contribution in kind shall be specified in the memorandum of association of the business corporation.

(3) A contribution in kind may not consist of work or services.

#### **Contribution administrator**

#### Section 18

(1) Before the incorporation of a business corporation, the subjects of the contribution or parts thereof that have been paid up or contributed shall be received and administered by the contribution administrator appointed in the memorandum of association. The founder or one of the founders may also act as the contribution administrator.

(2) Unless agreed otherwise, the contribution administrator shall act in accordance with the provisions of the Civil Code governing an order.

#### Section 19

Where the contribution in kind consists of an immovable property, the subject of the contribution shall be contributed by the contributor by handing over the immovable property to the contribution administrator together with a written statement on the contribution of the immovable property, with certified signature.

#### Section 20

(1) Where the contribution in kind consists of a movable property, the subject of the contribution shall be contributed by handing the item over to the contribution administrator, unless provided otherwise in the memorandum of association.

(2) If, by nature, it is impossible effectively hand over the movable property, it shall be handed over through the delivery of the data carriers or other media capturing the item to be handed over, and the documentation describing the nature,

contents and other facts relevant for the possibility to use the contribution in kind.

#### Section 21

(1) Where the contribution in kind consists of an enterprise or a part thereof, the subject of the contribution shall be contributed on the effective date of the contribution agreement. The relevant provisions of the Civil Code on purchases shall apply *mutatis mutandis* to a contribution agreement of an enterprise or a part thereof.

(2) Where the contribution in kind consists of a receivable, the subject of the contribution shall be contributed on the effective date of the agreement on the contribution of the receivable. The relevant provisions of the Civil Code on the assignment of receivables shall apply *mutatis mutandis* to an agreement on the contribution of a receivable. The contributor shall be liable for the collection of the receivable up to its valued amount.

(3) A member's receivable towards the capital company may not constitute the subject of his or her contribution to such company; such receivable may be set off against the company's receivable from the payment of the issue price on a contractual basis only. The set-off contract must be in written form and its draft shall be approved by the general meeting.

#### Section 22

In all other cases, the contribution in kind shall be contributed on the effective date of the contribution agreement between the contributor and the contributor administrator.

#### Section 23

(1) A cash contribution into capital companies shall be paid into a designated account held with a bank or a savings and loan cooperative (the "bank") to be opened by the contribution administrator. The bank shall not make these funds available for disposal before the incorporation of the capital company unless necessary for the payment of incorporation expenses or refund of issue prices to the founders.

(2) A contribution in kind shall be contributed to the capital company prior to its incorporation.

#### Section 24

(1) A written declaration on the fulfilment of the contribution obligation or a part thereof by the individual contributors shall be issued by the contribution administrator to the person who is entitled to file the application for registration in the commercial register. Such declaration shall be attached to the application for registration in the commercial register, unless it is not required by law to register the extent in which the contribution obligation is fulfilled in the commercial register.

(2) If the contribution administrator indicates an amount higher than the actual fulfilment of the contribution obligation in the declaration referred to in subsection (1), the contribution administrator shall be liable to the creditors of the business corporation for its debts up to the amount of the difference. The liability of the contribution administrator shall cease if no receivable towards the business corporation is claimed before court within 5 years after the incorporation of the business corporation.

#### Section 25

##### **Transfer of ownership**

(1) The ownership of the subject of the contribution contributed before the incorporation of the business corporation shall be acquired by the business corporation upon its incorporation.

(2) The ownership of an immovable property registered in a public register, which is the subject of the contribution, shall be acquired by the business corporation upon the registration of ownership in the public register based on the declaration referred to in Section 19. This shall apply, *mutatis mutandis*, to other items the ownership of which shall be acquired upon its registration in the relevant register.

#### Section 26

(1) In the event that the ownership to a contribution in kind, which has been contributed, is not transferred to the business corporation, the contributor shall pay its price in cash based on the value specified in the memorandum of association and the business corporation shall return the accepted subject of the contribution, unless the business corporation has handed it over or is obliged to hand it over to another beneficiary.

(2) If a contributor (member) transfers his or her business share to another contributor, the former shall be liable for the fulfilment of the obligation referred to in subsection (1), unless it constitutes an acquisition of a business share on a regulated market based in a member state of the European Union pursuant to the Act on capital market undertakings (the "European regulated market").

#### Section 27

(1) Upon the incorporation of the business corporation, the subjects of the contributions including the fruits and benefits shall be handed over by the contribution administrator to the business corporation, unless otherwise stipulated in the memorandum of association as regards the fruits and benefits.

(2) If the business corporation is not incorporated, the contribution administrator shall return the subjects of the contributions or parts thereof including the fruits and benefits to the contributors without undue delay; the founders shall be

jointly and severally liable for the fulfilment of such obligation.

#### Section 28

If, as at the date when the business corporation acquired ownership of the contribution in kind, its value does not reach the issue price specified in the memorandum of association, the contributor shall be obliged to pay the difference in cash; the provision of Section 26(1) shall apply *mutatis mutandis*.

#### Section 29

The provisions of this Chapter, except for Section 17(2), Section 18, Section 23(1), Section 24, Section 25(1) and Section 27(1), shall apply *mutatis mutandis* to an increase in registered capital.

### Chapter 5

#### Registered capital

#### Section 30

The registered capital of a business corporation shall be equal to the sum of all contributions.

### Chapter 6

#### Business share

#### Section 31

A business share represents a member's interest (participation) in a business corporation and the rights and duties attached thereto.

#### Section 32

(1) Each member may hold one business share only in the same business corporation. This shall not apply to an interest in a capital company and to business shares of a limited partner.

(2) A member's business share in a business corporation may not consist in a security or a book-entry security unless the business corporation is a capital company or unless provided for by another legal regulation.

(3) A member's business share in a business corporation can only be pledged under the same conditions under which it may be transferred. Pledging a business share in a housing cooperative may be made conditional or excluded in the articles of association.

(4) Where a business share in a commercial company is in joint ownership, the joint owners shall act as co-member and their interest shall only be administered by the administrator of joint property vis-à-vis the commercial company.

(5) Where an interest in a cooperative is in joint ownership, the joint owners shall act as co-members and their interest shall only be administered by the administrator of joint property vis-à-vis the cooperative, who may be one of the joint owners. If the joint owners of an interest in a cooperative are spouses, the interest may be administered by either of the spouses vis-à-vis the cooperative.

#### Section 33

A business corporation may acquire its own business shares only if this Act so provides.

#### Profit share

#### Section 34

(1) A profit share shall be determined on the basis of ordinary or extraordinary financial statements approved by the supreme body of the business corporation. It can only be distributed among the members, unless provided otherwise in the memorandum of association.

(2) A profit share of capital companies shall be due and payable within 3 months after the date when the supreme body of the business corporation adopted the decision on profit distribution, unless stipulated otherwise in the memorandum of association or by the supreme body. A profit share of a partnership shall be due and payable within 6 months after the end of the accounting period, unless stipulated otherwise in the memorandum of association.

(3) Decisions to pay a profit share are made by the statutory body. Where the profit and the profit shares are distributed in violation of this Act, the profit shares shall not be paid out. The members of the statutory body, who agreed to the payment of the profit share in violation of this Act, shall be deemed to not have acted with due care.

#### Section 35

(1) A profit share shall not be reimbursed unless the person to whom the profit share was paid out knew or should

have known that the conditions provided in this Act were violated by the payment. If in doubt, good faith shall be presumed.

(2) The period of limitation of the right to reimbursement of the profit share referred to in subsection (1) shall commence on the date of its payment.

(3) Subsections (1) and (2) shall not apply to advance payments referred to in Section 40(2).

#### Section 36

(1) Upon termination of a member's participation in a business corporation during its existence in a manner other than by a transfer of the member's interest or by an auction knock-down under enforcement proceedings, the member or its legal successor shall be entitled to receive a settlement (the "settlement share"), unless stipulated otherwise by another legal regulation.

(2) Unless provided otherwise in the memorandum of association, the amount of the settlement share shall be calculated as at the date of termination of the member's participation in the business corporation as a proportion of the equity determined from the interim, ordinary or extraordinary financial statements prepared as at the date of termination of the member's participation in the business corporation.

(3) Subsection (2) shall not apply in the event that the fair value of the company's assets differs significantly from their valuation in the accounting records. In such case, the determination of the settlement share shall be based on the fair value of the assets less the amount of debts reported in the financial statements referred to in subsection (2). A different method of determining the settlement share may be specified in the memorandum of association.

(4) The settlement share shall be determined by the ratio of business shares held by the members in the various forms of business corporations and shall be paid out in cash without undue delay after it has been or could have been determined as to the amount referred to in subsection (2) or (3), unless stipulated otherwise in the memorandum of association or in an agreement between the business corporation and the member, or the member whose participation was terminated, or its legal successor.

#### Share of liquidation balance

##### Section 37

(1) Upon a business corporation's winding-up with liquidation, each member shall be entitled to a share of the liquidation balance. Such share shall be paid out in cash, unless stipulated otherwise in the memorandum of association or in a separate agreement between the members.

(2) The liquidation balance shall be first distributed among the members up to the level at which they met their contribution obligation. Where the liquidation balance is insufficient for such distribution, it shall be distributed among the members according to the proportion of their paid-up or contributed contributions.

(3) Where none of the members was subject to a contribution obligation, the liquidation balance shall be distributed equally among the members.

##### Section 38

(1) The remainder of the liquidation balance shall be distributed equally among the members and, in case of capital companies and cooperatives, according to the proportion of their business shares.

(2) The liquidator shall pay the share of liquidation balance without undue delay upon the approval of the proposal on the use of the liquidation balance. If the proposal on the use of the liquidation balance is not approved, its distribution shall be decided on by court on the basis of a petition by the liquidator or a member.

(3) If so provided by the memorandum of association, the provisions of subsection (1) and Section 37 shall not apply.

##### Section 39

Upon a business corporation's winding up with liquidation, the members shall be liable for its debts after its winding-up up to the amount of their share of liquidation balance and at least to the extent in which they were liable during its existence. A settlement among the members themselves shall be carried out in the same manner as for their liability during the company's existence. Where the members were not liable for the company's debts during its existence, the settlement amongst them shall be carried out according to the proportion of their contributions as at the date of winding-up of the company.

#### Restrictions on profit pay-outs and pay-outs from other own resources

##### Section 40

(1) Profit or funds from other own resources, including advance payments for this purpose, may not be paid out by a business corporation if the same could result in its insolvency under another legal regulation.

(2) An advance payment for the profit share may be paid out only on the basis of interim financial statements clearly showing that the business corporation has sufficient funds for the profit distribution. The amount of the advance payment of profit may not be higher than the sum of the profit (loss) of the current accounting period, retained profits from previous years and other funds created from profits less accumulated losses from previous years and the mandatory allocation to the reserve fund. Reserve funds created for other purposes or designated own resources the purpose of which cannot be modified by the

business corporation may not be used to pay the advance payment.

#### Section 41

The provisions of Section 40(1) shall apply *mutatis mutandis* to the provision of advance payments, loans or credits by a business corporation for the purpose of acquiring its business shares or the provisions of security by the business corporation for these purposes (the "financial assistance") as well as to the acquisition of shares by employees under preferential terms.

#### Section 42

##### **Passage of business share**

(1) Upon a member's death or dissolution, its business share in the business corporation shall pass to the heir or the legal successor, unless such passing is prohibited or restricted by the memorandum of association. It is forbidden to prohibit or restrict the passing of a business share in a joint-stock company and in a housing cooperative.

(2) If, during inheritance proceedings, the heirs do not agree on the exercise of the rights attached to the business share, which is a part of the estate, and where no administrator is appointed for such part of the estate, such administrator shall be appointed by the court before which the estate is heard, on the basis of a petition of the business corporation or any of the heirs. The estate administrator shall be entitled to exercise all rights attached to the business share.

#### Section 43

##### **Division of business share**

(1) The business share of a member in an unlimited partnership and the business share of a general partner pursuant to Section 118 cannot be divided.

(2) The business share of a limited partner pursuant to Section 118 and the business share of a member in a limited-liability company can only be divided in connection with a transfer or passing of the business share, unless stipulated otherwise in the memorandum of association.

(3) The division of a business share shall require the consent of the supreme body of the business corporation.

### **Chapter 7**

#### **Business corporation bodies**

#### Section 44

(1) The supreme body of a partnership is all of its members, the supreme body of a capital company is the general meeting, and the supreme body of a cooperative is the members' meeting.

(2) For the purpose of this Act, the supervisory body of a business corporation shall be the supervisory board, the auditing committee or other similar body.

(3) A collective body shall appoint its chairman, whose vote shall be decisive in the event of a tie, unless stipulated otherwise for this case in the memorandum of association. This shall not apply to partnerships.

(4) Each member of a partnership shall act as its statutory body.

(5) In a limited-liability company, each executive shall act as the company's statutory body, unless the memorandum of association stipulates that multiple executives shall act as a collective body.

#### Section 45

(1) The provisions of the Civil Code governing associations shall be applied to assess situations in which a decision taken by a body of a business corporation is to be regarded as not having been taken. This shall not apply to decisions in breach of good manners.

(2) A decision taken by a body of a business corporation shall also be considered as not having been taken where its contents are vague or incomprehensible or where the obliged performance is impossible.

(3) The provisions of the Civil Code on apparent legal acts, invalidity of legal acts, errors and consequences of invalid legal acts shall not apply to the decisions taken by a body of a business corporation, except for the obligation to compensate any damage caused such invalid legal acts.

(4) Any decision taken by a body of the business corporation shall be effective vis-à-vis the business corporation upon its adoption. Any decision taken by the sole member acting as a body of the business corporation shall be effective vis-à-vis the business corporation upon its receipt by the business corporation. Any decision taken by a body of the business corporation shall be effective vis-à-vis third parties as from the time when they became aware or could have become aware thereof.

#### Section 46

(1) Persons who lack integrity within the meaning of the Trade Licensing Act or those showing the occurrence of a

fact which is an obstacle to a trade may not be a member of a body of a business corporation.

(2) A person who is to become a member of a body of a business corporation shall inform the founder or the business corporation in advance whether insolvency proceedings under another legislative act or proceedings pursuant to Sections 63 to 65 hereof are pending in relation to that person's assets or the assets of any business corporation in which the person acts or has acted as a member of a body in the past 3 years, and/or whether other obstacles to the function occurred with that person.

(3) The representative of a legal entity which is a member of a body of a business corporation must fulfil the requirements and preconditions for the execution of the function defined by law for the members of the body themselves. Compensation for any damage caused by the representative shall be provided to the business corporation by the representative and the legal entity he or she represents, acting jointly and severally. The provisions of the Civil Code on the consequences of ineligibility for the performance of a function and its loss shall apply *mutatis mutandis* to the representative.

(4) The representative of a legal entity which is a member of a body of a business corporation shall be subject to the provisions of this Act concerning conflicts of interest, ban on competition and the provisions of the applicable legislation governing the obligation to act with due care and the consequences of violating such obligation.

#### Section 47

Restrictions of the authorisation to act enjoyed by a body of a business corporation, which may be stipulated in the memorandum of association or other arrangement or in a decision taken by a body of the business corporation, shall not be effective vis-à-vis third parties, even if published.

#### Section 48

Legal acts taken without the consent of the supreme body of the business corporation in cases where such consent is required by law shall be invalid. Such invalidity may be claimed within six months after the date when the authorised person became aware or should and could have become aware of such invalidity, but no later than within ten years after the date when such act took place.

#### Section 49

(1) In the event that the supervisory body does not grant its consent to any acts to be taken by the statutory body where its prior consent is required by this Act or by the memorandum of association, or in the event that the supervisory body forbids the statutory body from performing certain acts, the members of the supervisory body who did not act with due care shall be liable for any potential damage caused to the company instead of the members of the statutory body.

(2) Where the supervisory body grants its consent to any acts referred to in subsection (1), the members of the supervisory body and the statutory body who did not act with due care shall be liable for any potential damage jointly and severally.

#### Section 50

Where an agreement was concluded without the legally required proof of an expert opinion or in conflict with such opinion, the person for whose protection the submission of the expert opinion is intended may demand settlement from the other party within 3 months after the date when the party that suffered damage from such conclusion of the agreement becomes aware that the agreed consideration is lower than that implied from the expert opinion, but no later than within 10 years after the date of conclusion of the agreement. The settlement shall be paid in cash as if the consideration was agreed in accordance with the expert opinion. Following the expiry of this period, the disadvantaged party may withdraw from the agreement.

### **Rules of conduct for members of a body**

#### Section 51

(1) A person shall be deemed to act with due care and the necessary knowledge where, in business-related decisions, he or she could in good faith and reasonably assume to be acting on an informed basis and in justifiable interest of the business corporation. The foregoing shall not apply in cases where such decision-making was carried out without the necessary loyalty.

(2) A member of the statutory body of a capital company may request instructions from the supreme body of the business corporation regarding the management of its business; however, the same shall be without prejudice to his or her obligation to act with due care.

#### Section 52

(1) When assessing whether a member of a body acted with due care, the care that would be exercised in a similar situation by another reasonably diligent person if they would be in the position of a member of a similar body of the business corporation shall always be taken into account.

(2) Where, in proceedings before court, it is to be assessed whether a member of a body of a business corporation acted with due care, the burden of proof shall be upon such member, unless the court decides that the same cannot be reasonably required from him or her.

#### Section 53

(1) A person who violated the duty of due care shall return to the business corporation any benefit obtained in



connection with such behaviour. Where such return of the benefit is impossible, the obliged person shall pay an equivalent amount to the business corporation in cash.

(2) Legal acts of a business corporation restricting the responsibility of a member of its bodies shall be disregarded.

(3) If any damage was suffered by the business corporation as a result of the violation of the duty of due care, it may be settled by the business corporation by agreement with the obliged person. The approval of the supreme body of the business corporation adopted a majority of at least two thirds of all votes of all members shall be required in order for such agreement to be effective.

(4) Where a resolution of the supreme body of a business corporation approving the agreement on the settlement of the damage referred to in subsection (3) is declared invalid by court, it shall be considered invalid. A new period of limitation for the right to claim compensation of damage referred to in subsection (1) shall commence on the date when the decision on the invalidity of the resolution becomes legally effective.

### **Conflict of interest rules**

#### **Section 54**

(1) If a member of a body of a business corporation becomes aware of a conflict that may arise between his or her interest and the interest of the business corporation during the exercise of his or her office, he or she shall inform, without undue delay, other members of the body of which he or she is a member as well as the supervisory body, if established, or, failing that, the supreme body. The same shall apply *mutatis mutandis* to potential conflicts of interest of persons who are closely related to the member of a body of the business corporation, and persons influenced or controlled by that member.

(2) A member of a body shall also comply with the obligation referred to in subsection (1) by informing the supreme body, unless the member himself as a sole member acts as the supreme body.

(3) This provision shall be without prejudice to the obligation of the members of a body of the business corporation to act in the interests of the business corporation.

(4) The supervisory or supreme body may suspend, for a defined period of time, the execution of the function by a member of a body who informed them about the conflict of interest referred to in subsection (1).

#### **Section 55**

(1) Where a member of a body of a business corporation intends to sign a contract with the corporation, he or she shall inform, without undue delay, the body of which he or she is a member as well as the supervisory body, if established, or, failing that, the supreme body. At the same time, the member shall indicate under which conditions the contract is to be concluded. The same shall apply *mutatis mutandis* to contracts between the business corporation and any person who is closely related to the member of a body of the business corporation, and persons influenced or controlled by that member.

(2) A member of a body shall also comply with the obligation referred to in subsection (1) by informing the supreme body, unless the member himself as a sole member acts as the supreme body.

(3) The supervisory body shall report to the supreme body about the information received pursuant to subsection (1) or, where appropriate, about the prohibition issued pursuant to Section 56(2).

#### **Section 56**

(1) The provisions of Section 55 shall also apply where the business corporation is to guarantee or confirm debts owed by, or to become a joint debtor of, the persons referred to in Section 55.

(2) The supreme or supervisory body may prohibit the signing of a contract referred to in subsection (1) or Section 55, which is not in the interest of the business corporation.

#### **Section 57**

The provisions of Sections 55 and 56 shall not apply to contracts concluded in the ordinary course of business.

#### **Section 58**

(1) The provisions of Sections 51 to 57 and the rules laid down by this Act regarding the ban on competition shall also apply to corporate agents. The same shall apply *mutatis mutandis* to a corporate agent appointed by an entrepreneur who is not a business corporation.

(2) A corporate agent shall comply with the obligations under Sections 54 to 57 by communicating the required information to the body which appointed him.

### **Executive service agreement**

#### **Section 59**

(1) The rights and duties between a business corporation and a member of its body shall be governed, *mutatis mutandis*, by the provisions of the Civil Code governing an order, unless implied otherwise from the executive service agreement, where concluded, or from this Act. The provisions of the Civil Code on third-party asset management shall not

apply.

(2) An executive service agreement for a capital company and its subsequent modifications shall be agreed in writing and approved by the company's supreme body.

(3) Unless remuneration is agreed in the executive service agreement in accordance with this Act, it shall be conclusively presumed that the exercise of the office is free of charge.

(4) If an agreed executive service agreement or the remuneration arrangements therein are invalid due to reasons on the part of the business corporation, or if an executive service agreement is not concluded due to impediments on the part of the business corporation or not approved by the supreme body without undue delay upon the commencement of the member's office in a body of the business corporation, subsection (3) shall not apply, and the remuneration shall be determined as standard remuneration common at the time the contract was concluded or, if no contract was concluded, the standard remuneration common at the time of the commencement of the office for activities similar to those carried out by the member of the body concerned.

(5) A member of a body of a business corporation may resign from his or her office. However, he or she may not do so at a time which is inappropriate for the business corporation. Unless determined otherwise in the memorandum of association or the executive service agreement, the resigning member shall notify his or her resignation to the appointing body, and his or her office shall terminate one month after the delivery of such notification, unless the competent body of the business corporation approves a different office termination date at the request of the resigning member. Where the competent body is a sole member, the office shall terminate one month after the delivery of the resignation notification to the sole member, unless they agree on a different office termination date.

#### Section 60

An executive service agreement for a capital company shall also include the following details on remuneration:

(a) definition of all remuneration components which the member of the body is or may be entitled to, including any benefits in kind, payment to the complementary pension insurance scheme or other benefits,

(b) specification of the amount of remuneration or the method of its calculation, and its form,

(c) definition of rules for the payment of special bonuses and profit share for the member of the body, where these may be granted, and

(d) information about the benefits or emoluments for the member of the body consisting in the transfer of participating securities or in the possibility of the acquisition by the member of the body or a person closely related to him or her, where the remuneration is to be provided in such form.

#### Section 61

(1) Other consideration in favour of the person who is a member of a body of a business corporation other than those, to which the person is entitled to under legal regulations, the executive service agreement approved pursuant to Section 59(2) or an internal document approved by a body of the business corporation, which is competent for approving executive service agreements, can only be granted with the consent of the person who approved the executive service agreement and subject to the opinion of the supervisory body, if established.

(2) Consideration pursuant to the executive service agreement or those referred to in subsection (1) shall not be granted where the person's exercise of the office obviously contributed to the unfavourable economic results of the business corporation, unless decided otherwise by the person who approved the executive service agreement.

(3) The provision of subsection (1) shall apply *mutatis mutandis* to the determination of salary as well as other consideration in favour of an employee who is, at the same time, a member of the company's statutory body or a person closely related to him or her.

#### Section 62

(1) If, in insolvency proceedings initiated upon a petition filed by a person other than the debtor pursuant to another legal regulation, the court declared the business corporation bankrupt, the members of its bodies, if called upon to do so by the insolvency administrator, shall return the consideration received under their executive service agreements as well as any other consideration received from the business corporation during the previous 2 years before the decision on bankruptcy becomes legally effective, provided that they knew or should and could have known that the business corporation faces an imminent threat of bankruptcy under another legal regulation and, in breach of the duty of due care, failed to take all necessary and reasonably foreseeable steps to prevent the bankruptcy.

(2) Where the return of consideration referred to in subsection (1) is impossible, the members of the bodies may refund the received consideration in cash.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* to former members of bodies of the business corporation.

## Chapter 8

### Expulsion from office of a member of the statutory body of a business corporation

#### Section 63

(1) During insolvency proceedings, the insolvency court shall, even *ex officio*, decide that a member of the statutory body of the bankrupt business corporation who was in office at the time of the ruling on bankruptcy or afterwards may not hold the office as a member of the statutory body of any business corporation or act as a person in a similar position (the "expulsion") for a period of 3 years after the expulsion decision became legally effective, for reasons specified in Section 64.

(2) The same shall apply *mutatis mutandis* to a person who, at the time of the ruling on bankruptcy, was no longer a member of the statutory body of the business corporation or no longer acted as a person in a similar position, but whose previous actions obviously contributed to the business corporation's bankruptcy.

(3) A petition for a decision referred to in paragraph 1 may be filed by anyone who has an important interest therein.

#### Section 64

(1) The insolvency court shall decide to expel a member if it appears during the insolvency proceedings that the execution of the office by the person referred to in Section 63, taking into account all circumstances of the case, resulted in the bankruptcy of the business corporation.

(2) The insolvency court shall decide to expel a person who became a member of the statutory body of the bankrupt business corporation after the initiation of the insolvency proceedings, if that person's actions obviously contributed to a reduction of the estate and damage to creditors.

(3) The insolvency court shall decide not to expel a person

a) who became a member of the statutory body of the bankrupt business corporation at the time when it was facing an imminent threat of bankruptcy pursuant to another legal regulation, unless that person's actions before the initiation of the insolvency proceedings met the conditions referred to in paragraph 1, or

b) who proves to have exercised such care in his or her actions that would be exercised in a similar situation by another reasonably diligent person in a similar position.

#### Section 65

(1) In addition to the situations referred to in Sections 63 and 64, a court may, even *ex officio*, decide to expel a member if it turns out that, in the past 3 years, the member of the statutory board repeatedly and seriously breached the duty of due care or, where applicable, any other duty of care associated with the exercise of his or her office pursuant to another legal regulation. The provision of Section 63 (3) shall apply *mutatis mutandis*.

(2) Paragraph 1 shall apply *mutatis mutandis* to the person who is obliged to compensate the damage caused by the breach of the duty of due care.

#### Section 66

(1) Upon the expulsion decision becoming legally effective, the person subject to that decision shall cease to be a member of the statutory body in all business corporations. The termination of the office shall be notified by the court which decided on the expulsion, to the court responsible for maintaining the commercial register pursuant to another legal regulation (the "commercial register court").

(2) If a person breaches the prohibition imposed by an expulsion decision, such person shall be liable for the fulfilment of all obligations of the business corporation arising during the period when the same acted as a member of its statutory body despite the prohibition, even if the person did not become or no longer was a member of its statutory body.

#### Section 67

(1) A court shall, even *ex officio*, decide to expel repeatedly for a period of up to 10 years the person who violated the prohibition imposed by an expulsion decision. The provision of Section 63 (3) shall apply *mutatis mutandis*.

(2) A court may decide that, where there are reasons for expulsion of a person, the person may continue to be a member of the statutory body of a different business corporation under the conditions stipulated in the decision, provided that the circumstances of the case prove that the previous exercise of that person's office in the latter business corporation does not justify his or her expulsion from the office and provided that such expulsion could result in harming the legitimate interests of the latter business corporation or its creditors.

(3) A court may decide that a person who was expelled may continue to be a member of the statutory body of a different business corporation under the conditions stipulated in the decision, provided that the circumstances of the case prove that the previous exercise of such person's office does not warrant his or her expulsion from the office in the latter business corporation and provided that such expulsion could result in harming the legitimate interests of the latter business corporation or its creditors; a petition for such decision may be filed by the expelled person or by the business corporation concerned, in accordance with this Act.

#### Section 68

### **Liability of members of a body upon a business corporation's bankruptcy**

(1) A court, on the basis of a petition of the insolvency administrator or a creditor of the business corporation, may decide that a member or a former member of the business corporation's statutory body is liable for the fulfilment of all its obligations if

a) it has been decided that the business corporation is bankrupt, and

b) the member or former member of the statutory body of the business corporation knew or should and could have known that the business corporation was facing an imminent threat of bankruptcy pursuant to another legal regulation and, in breach of the duty of due care, failed to take all necessary and reasonably foreseeable steps to prevent the bankruptcy.

(2) Paragraph 1 shall not apply to members or former members of the statutory body of a business corporation, who were demonstrably appointed to the office for the purpose of preventing the bankruptcy or other unfavourable economic situation of the business corporation and exercised their office with due care.

#### Section 69

### Common provisions

(1) Where the statutory body of a business corporation is a legal entity, the provisions governing expulsion from office of a member of a body of the business corporation shall also apply to the natural person who was appointed by such legal entity to act as the statutory body on its behalf.

(2) This Chapter shall apply *mutatis mutandis* to persons in a similar position to that of a member of the statutory body.

#### Section 70

The provisions of this Chapter and Chapter 7, except for Section 44 (1), Sections 45, 48, 54 to 56 and Section 61 (1) shall not apply to the supreme body of capital companies and cooperatives.

## Chapter 9

### Business groups

#### Section 71

### Influence

(1) Anyone who uses his or her influence in a business corporation (the "influential entity") to influence, in a decisive and significant manner, the behaviour of a business corporation (the "influenced entity") to the damage of the same shall compensate such damage, unless he or she proves that he or she could have in good faith and reasonably assumed, in his or her influencing actions, to be acting on an informed basis and in a justifiable interest of the influenced entity.

(2) Where the influential entity fails to compensate the damage it caused no later than by the end of the accounting period in which the damage occurred or within other agreed reasonable period of time, he or she shall also compensate any damage arising in this connection to the members of the influenced entity.

(3) The influential entity shall be liable towards the creditors of the influenced entity for the payment of the debts, which cannot be partially or fully paid to them by the influenced entity as a result of the influence referred to in paragraph 1.

(4) Influence exercised through another party or parties shall also be treated as influence referred to in paragraph 1.

(5) The provision of paragraph 1 shall not apply to acts of the members of the bodies of the influenced entity and its corporate agent.

#### Section 72

### Exemption from the obligation to compensate damage

(1) The provisions of Section 71 (1) to (3) shall not apply, if the dominant entity as defined in Section 79 proves that the damage referred to in Section 71 (1) occurred in the interests of the dominant entity or another entity with whom it constitutes a concern pursuant to Section 79, and was or will be settled within the concern.

(2) The damage referred to in paragraph 1 is or will be settled, if it was or will be compensated within a reasonable period of time and within the concern, with adequate consideration or other demonstrable benefits arising from the membership in the concern.

(3) Where a dependant entity goes bankrupt as a result of acts by the dominant entity towards the dependant entity, paragraphs 1 and 2 shall not apply.

#### Section 73

### Majority member

(1) The member who has the most votes arising from his or her participation in the business corporation shall be the majority member and the business corporation in which he or she holds such majority shall be a business corporation with a majority member.

(2) For the purposes of this Chapter, votes attached to own business shares owned by the business corporation or by an entity controlled by the business corporation or with business shares acquired by a person acting in his or her own name on the account of the business corporation or an entity controlled by the business corporation shall not be applied towards the total votes arising from the participation in the business corporation.

(3) For the purposes of paragraphs 1 and 2, a business share with no permanent voting right shall have no voting rights attached at times where it acquires voting right on a temporary basis pursuant to this Act.

#### **Controlling and controlled entities**

##### **Section 74**

(1) A controlling entity is an entity which can directly or indirectly exercise decisive influence on a business corporation. A controlled entity is a business corporation controlled by a controlling entity.

(2) Where the controlling entity is a business corporation, it shall be the parent business corporation. Where the controlled entity is a business corporation, it shall be a subsidiary business corporation.

(3) A dominant entity pursuant to Section 79 and a majority member shall always be controlling entities, unless stipulated otherwise in Section 75 in relation to the majority member. A dependant entity pursuant to Section 79 shall always be a controlled entity.

##### **Section 75**

(1) A controlling entity shall be deemed to be the person who can appoint or recall the majority of the persons that are members of the statutory body of the business corporation or persons in a similar position, and members of the supervisory body of the business corporation of which it is a member, or who is able to enforce such appointment or recall.

(2) A person shall be deemed to be a controlled entity, if he or she controls a share in the voting rights representing at least 40% of all votes in the business corporation, unless other person or persons acting in concert control the same or a higher share.

(3) Persons acting in concert, who jointly control a share in the voting rights representing at least 40% of all votes in the business corporation, shall be deemed to be controlling entities, unless other person or persons acting in concert control the same or a higher share.

(4) A controlling entity or controlling entities shall be deemed also include a person who, individually or jointly with persons acting in concert, acquires a share in the voting rights representing at least 30% of all votes in the business corporation, where such share represented more than half of the voting rights of the participants attending the past 3 consecutive meetings of the supreme body of such business corporation.

##### **Section 76**

(1) The provisions of Sections 54 to Section 56 (1) and Section 57 shall apply *mutatis mutandis* where the actions of a member of a body of the business corporation are influenced by the behaviour of the influential or controlling entity.

(2) The provisions of Sections 63 to 66 shall also apply *mutatis mutandis* to the influential or controlling entity where the influence of such entity significantly contributed to the bankruptcy of the business corporation.

(3) The provision of Section 68 shall apply *mutatis mutandis* to the influential or controlling entity.

(4) The provision of Section 60 (d) shall apply *mutatis mutandis* in case that the benefits or emoluments referred to therein are to be granted, or are to be permitted to be granted to a member of a body of the influenced entity by the influential entity.

##### **Section 77**

For the purposes of Chapter 9, the control of voting rights shall mean the possibility to exercise the voting rights based on one's own discretion regardless of whether and on the basis of which legal fact they are exercised or, as appropriate, the possibility to influence, in a crucial manner, the exercise of the voting rights by other person.

##### **Section 78**

#### **Acting in concert**

(1) Acting in concert shall mean actions by two or more persons controlling the voting rights in order to influence, control or manage in a single manner a business corporation. Persons acting in concert shall fulfil their obligations arising therefrom jointly and severally.

(2) Persons acting in concert shall be deemed to include:

a) a legal entity and a member of its statutory body, persons under its direct authority, a member of the supervisory body,

liquidator, insolvency administrator and other receivers pursuant to another legal regulation, official receiver,

b) a controlling entity and entities controlled by it,

c) influential and influenced entities,

d) a limited-liability company and its members or only its members,

e) an unlimited partnership and its members or only its members,

f) a limited partnership and its general partners or only its general partners,

g) persons closely related pursuant to the Civil Code,

h) an investment company and the investment fund or pension fund managed by such investment company or only the funds managed by that investment company, or

i) persons who concluded an agreement on the exercise of voting rights.

### **Concern**

#### **Section 79**

(1) One or more entities subject to single management (the "dependant person") by other person or persons (the "dominant entity") shall form a concern with the dominant entity.

(2) Single management shall mean the influence of the dominant entity on the activities of the dependant entity aimed at coordination and conceptual management of at least one of the important components or tasks within the concern's business activities, in order to ensure a long-term promotion of the concern's interests under the concern's single policy.

(3) The existence of a concern shall be published by its members without undue delay on their websites, otherwise the procedure defined in Section 72 cannot be applied.

#### **Section 80**

Enterprises of the dependant entity and of the dominant entity shall be concern enterprises.

#### **Section 81**

(1) A body of the dominant entity may give instructions to the bodies of the dependant entity regarding the management of its business, where these are in the interests of the dominant entity or other person with whom the dominant person forms a concern.

(2) In the execution of their offices, a member of a body of the dependant entity or its corporate agent shall be not relieved from their duty to act with due care; however, they shall not be held liable for any damage provided that they prove that they could have reasonably expected that the conditions defined in Section 72 (1) and (2) were met.

### **Report on relations**

#### **Section 82**

(1) Within 3 months after the end of an accounting period, the statutory body of a controlled entity shall prepare a written report on the relations between the controlling entity and the controlled entity and between the controlled entity and other entities controlled by the same controlling entity (the "report on relations") for the past accounting period.

(2) The report on relations shall include the following:

a) the structure of relations between the entities referred to in paragraph 1,

b) the role of the controlled entity in the respective relationships,

c) the method and means of control,

d) a summary of actions taken in the past accounting period, which were taken at the initiative or in the interest of the controlling entity or the entities controlled by the controlling entity, where such actions concerned assets exceeding 10% of the controlled entity's equity as determined from the last financial statements,

e) an overview of contracts between the controlled entity and the controlling entity or between the controlled entities, and

f) the assessment of whether or not the controlled entity suffered any damage and the assessment of its settlement pursuant to Sections 71 and 72.

(3) Where the statutory body lacks information necessary for the preparation of the report on relations, such fact shall be indicated in the report together with a relevant explanation.

(4) In its report on relations, the statutory body shall also evaluate the advantages and disadvantages resulting from the relations between the entities referred to in paragraph 1, and indicate whether the advantages or disadvantages prevail and what risks are involved for the controlled entity. At the same time, the statutory body shall indicate whether, how and in what time the damage, if any, was or will be settled pursuant to Section 71 or 72.

#### Section 83

(1) Where a controlled entity has a supervisory body, such body shall review the report on relations. The supervisory body shall notify the results of such review to the supreme body of the controlled entity and shall inform it of its opinion, which shall also include its view on the settlement of damage pursuant to Section 71 or 72.

(2) If, within its review of the report on relations, the supervisory body becomes aware of any deficiencies in the report, it shall invite the statutory body to rectify them.

(3) A review of the report on relations by the supervisory body shall not be required where the controlling entity is the sole member of the controlled entity or where all members of the controlled entity are persons acting in concert vis-à-vis the controlled entity.

#### Section 84

(1) Members of the controlled entity shall be entitled to review the report on relations and, where applicable, the opinion of the supervisory body within the same period of time and under the same conditions as with the financial statements. The statutory body shall brief the members about the findings of these reports at the next meeting of the supreme body.

(2) The report on relations shall be attached to the annual report in accordance with applicable accounting laws.

#### Section 85

(1) Every qualified member pursuant to Section 187 or 365 of the controlled entity, who deems that the report on relations was not prepared duly and properly, may propose that an expert is appointed by the court in order to carry out a review thereof.

(2) A petition to appoint an expert pursuant to paragraph 1 filed by every additional member before such an expert is appointed shall be considered as joining to the proceedings as at the filing date of the petition. Upon the appointment of an expert, no additional petitions by the entitled persons to appoint an expert are admissible.

(3) The right referred to in paragraph 1 may be exercised within 1 year after the date when the qualified member learned or could have learned about the contents of the report on relations in the manner stipulated in Section 84 (1). Any right claimed at a later time shall be disregarded.

#### Section 86

(1) The court shall not be bound by the proposed identity of the expert. The parties to the proceedings shall be the controlled entity, the petitioner and the expert. The local court in whose district the registered office of the controlled entity is located shall have jurisdiction over the matter. The decision on the petition to appoint an expert shall be taken by the court within 15 days after the delivery of the petition; otherwise the proposed expert shall be conclusively presumed to have been approved by the court. Following the expiry of the above deadline, the court shall suspend the proceedings; the parties to the proceedings shall not be notified.

(2) In the event that the appointed expert breaches his or her duties in a particularly serious manner, any member referred to in Section 85 (1) may propose that the court should recall the expert and appoint a new one.

(3) The controlled entity shall provide the expert with all cooperation necessary for the preparation of the expert opinion. In particular, the controlled entity shall provide, without undue delay and at its expense, all necessary underlying materials and information in the form as required by the expert.

(4) The expert shall prepare his or her expert opinion within the period stipulated in the court's decision on the appointment of the expert or, failing that, within one month after his or her appointment. Where the controlled entity fails to provide the expert with the necessary underlying materials, the period shall commence upon their provision to the expert. The expert opinion reviewing the report on relations shall be delivered by the expert to the court that appointed him or her as well as to the person who prepared the report under review. The findings of the expert opinion shall also be delivered to the petitioner and to the persons referred to in Section 85 (2), if known.

#### Section 87

(1) The remuneration for the expert in relation to the preparation of his or her expert opinion shall be determined by agreement and shall be paid by the controlled entity. Where the controlled entity and the expert fail to agree on the amount of his or her remuneration, it shall be determined by the court that appointed the expert, on the basis of a petition of either party. In addition to the remuneration, the expert shall also be entitled to the reimbursement of costs efficiently incurred in connection with the preparation of the expert opinion.

(2) On the basis of a petition of the controlled entity, the court may decide that the standard remuneration of the expert for the preparation of the expert opinion as well as the costs referred to in paragraph 1 shall be borne by the petitioner, if it turns out from the expert opinion that the report on relations was prepared duly and properly and that the petition was clearly of an abusive nature.

## Section 88

(1) The right to propose the appointment of an expert for the purpose of reviewing the report on relations pursuant to Section 85 (1) shall also pertain to every member of the controlled entity, if the report of the statutory body referred to in Section 82 includes information about damage suffered, which was not or will not be settled pursuant to Section 71 or 72.

(2) The right to propose the appointment of an expert for the purpose of reviewing the report on relations pursuant to Section 85 (1) shall also pertain to every member of the controlled entity, if the opinion of the supervisory body referred to in Section 83 (1) includes reservations on the report on relations, unless these reservations could be remedied pursuant to Section 83 (2) and are of such a nature that is not decisive in terms of the credibility and correctness of the report on relations.

(3) The provisions of Sections 85 to 87 shall apply *mutatis mutandis*.

### **Special rights of the members of the controlled entity**

## Section 89

Where the controlling entity uses its influence in the controlled entity in a manner which results in the significant aggravation of the position of the members of the controlled entity or other significant damage to their legitimate interests and, consequently, they cannot be reasonably required to remain in the controlled entity, every member who is not the controlling entity or an entity controlled by the controlling entity shall be entitled to request that his or her business share is bought back by the controlling entity at a fair price. The provisions of Sections 328 and 329 shall apply *mutatis mutandis*.

## Section 90

(1) When assessing whether a significant aggravation of the position of the members or in other significant damage to their legitimate interests pursuant to Section 89 occurred, the burden of proof that this occurred shall be upon the member, unless the court decides that the same cannot be reasonably required from him or her.

(2) When assessing whether the

significant aggravation of the position of the members or other significant damage to their legitimate interests pursuant to Section 89 resulted from the use of the controlling entity's influence in the controlled entity, the burden of proof whether this occurred shall be upon the controlling entity, unless the court decides that the same cannot be reasonably required from the controlling entity.

(3) Where, as a result of the influence referred to in Section 89, the controlled entity goes bankrupt pursuant to another legal regulation, the position of its members shall always be deemed to have deteriorated significantly.

## Section 91

(1) The price for the business share to be paid in the procedure defined in Section 89 shall be determined on the basis of the value of the business corporation's assets, taking into account the future operation of the enterprise, based on an opinion prepared by an expert appointed by court on the basis of a petition of the controlled entity (the "value of the enterprise"). The expert shall determine the value that the enterprise of the controlled entity had at the time before the aggravation of the position of the members or other significant damage to their legitimate interests. Section 86 shall apply *mutatis mutandis* to the appointment of the expert, whereas the expert opinion shall be delivered to the petitioner and to the controlling entity only and published on the company's website with information for the members as to where it is available for review. Where the company has no website, the expert opinion shall also be delivered to the members who suffered from the significant aggravation of the position or other significant damage to their legitimate interests.

(2) For the purposes of the procedure referred to in Section 89, restrictions on the transferability of shares arising from this Act or from the memorandum of association shall be ineffective.

## **Chapter 10**

### **Nullity of a business corporation**

## Section 92

(1) After the incorporation of a business corporation, it shall be pronounced null by a court, even *ex officio*, if:

- (a) the memorandum of association was not drawn up in the prescribed form,
- (b) the provisions concerning the minimum amount of registered capital to be paid up were not complied with, or
- (c) the court finds legal incapacity of all the founding members.

(2) For business corporations, the particulars necessary for the legal existence of a legal entity pursuant to the provisions of the Civil Code on the nullity of a legal entity shall include only the specification of the trade name (the "trade name"), the amount of contributions, the total amount of registered capital subscribed and the objects or activities of the business corporation. Only the specification of the trade name, the amount of contributions and the objects (activities) shall be required for the legal existence of a cooperative.



(3) Where required so by the interest of the creditors of the null business corporation, the obligation of the members to pay the issue price shall remain in full force and effect even after the business corporation was pronounced null.

## **Chapter 11**

### **Dissolution and winding-up of a business corporation and liquidation provisions**

#### **Section 93**

A court, on the basis of a petition of a person who has a legal interest therein or a petition of the prosecutor's office, shall also dissolve a business corporation and order its liquidation, where the court finds a substantial public interest to do so, in the event that:

- (a) the business corporation lost all its business licences; this shall not apply in case the business corporation was also established for the purpose of managing its own assets or for a purpose other than doing business,
- (b) the business corporation has not been able to perform its activities and, consequently, serve its purpose for more than 1 year,
- (c) the business corporation is not able to perform its activities because of insurmountable differences between the members, or
- (d) the business corporation, without making recourse to natural persons, carries out an activity which may only be performed by natural persons pursuant to other legal regulation.

#### **Section 94**

(1) The final liquidation report, the proposal on the use of the liquidation balance and the financial statements shall also be submitted by the liquidator to the supreme body of the business corporation.

(2) The liquidator shall ensure that the aforesaid documents are stored for a period of 10 years after the business corporation was wound up. Where a business corporation is wound up without liquidation, the filing of these documents shall be secured by its legal successor.

## **TITLE II**

### **UNLIMITED PARTNERSHIP**

#### **Section 95**

(1) An unlimited partnership is a company with at least two persons participating in its business activities or the management of its assets and being jointly and severally liable for its debts.

(2) Where the member is a legal entity, the member's rights and duties shall be exercised by its agent, who may be only a natural person.

(3) A person may not be a member if bankruptcy was declared against his or her assets in the past 3 years, or a petition for the initiation of insolvency proceedings was rejected for reason of the insufficiency of assets, or the bankruptcy proceedings were closed for absolute inadequacy of assets; any person who has violated such prohibition shall not become a member even if the company is incorporated.

#### **Section 96**

The trade name shall include the words "veřejná obchodní společnost", which may be replaced with the abbreviation "veř. obch. spol." or "v. o. s.". Where the trade name contains the name of at least one of the members, it shall be sufficient for the trade name to include the words "a spol."

#### **Section 97**

- (1) Mutual legal relations between the members shall be governed by the memorandum of association.
- (2) Unless agreed otherwise in the memorandum of association, the members' business shares shall be equal.

#### **Section 98**

The memorandum of association shall also include:

- (a) the company's trade name,
- (b) the objects of the company or indication that it was established for the purpose of managing its own assets, and
- (c) the identification of the members, specifying their first name(s) and last name or, in case of legal entities, their name (the "name") and their place of residence or registered office.

#### **Section 99**

(1) The memorandum of association can only be amended by agreement of all members.

(2) Where an amendment to the memorandum of association affects the rights of the members, such amendment shall require the consent of the members whose rights are to be affected.

(3) Each member shall have one vote, unless stipulated otherwise in the memorandum of association.

#### Section 100

Where, pursuant to the memorandum of association, a member has a contribution obligation, he or she shall fulfil such obligation within the period of time, in the manner and in the scope determined in the memorandum of association, or otherwise in cash, without undue delay upon the commencement of his or her participation in the company.

#### Section 101

(1) A member who is in default with the payment of his or her cash contribution shall pay late payment interest amounting to double of the late payment interest on the amount owed as set forth in another legal regulation, unless provided otherwise in the memorandum of association.

(2) The member who is in default with the fulfilment of the contribution obligation may be expelled from the company by its supreme body following the expiry of an additional period granted for such fulfilment, if provided so in the memorandum of association; this shall not apply if there are only two members in the company. Such decision shall require the consent of all members; the vote of the member to be expelled shall be disregarded in the decision-making process.

#### Section 102

(1) Every member shall be entitled to claim before court, on behalf of the company, the fulfilment of the contribution obligation by a member, who is in default with its fulfilment, and to represent the company in such proceedings; the same shall apply *mutatis mutandis* to the subsequent enforcement of the ruling. The first sentence shall not apply where the procedure to expel such member from the company pursuant to Section 101(2) has already been commenced before the filing of the petition and the procedure duly continues.

(2) The petition referred to in subsection (1) may be filed by a member only if it is not filed by the company without undue delay after having been notified by the member and no later than within one month.

#### Section 103

(1) If permitted by the memorandum of association, a member may, under the conditions stipulated in the memorandum of association and with the consent of all members, also fulfil his or her contribution obligation by carrying out work or by providing a service on a one-time or repeated basis. In such cases, the memorandum of association shall also include the value of the work to be carried out or the service to be provided or the valuation method.

(2) Where a member is obliged to carry out work or provide services to the company without thereby fulfilling his or her contribution obligation, the company shall grant a profit share to such member in an amount corresponding to the value of the work carried out or the services provided, unless a different settlement method is provided for in the memorandum of association.

#### Section 104

(1) The company shall reimburse the member for expenses incurred by him or her when arranging matters for the company, which could be reasonably seen as necessary by the member; the same shall apply *mutatis mutandis* to standard interest on the expenses incurred to be counted from the date when they were incurred.

(2) The right to the reimbursement of expenses may be claimed within 3 months after the date when they were incurred; any right claimed at a later point in time shall be disregarded.

(3) With the consent of all members and within the period referred to in subsection (2), a member may set off his or her receivable from the reimbursement of expenses incurred pursuant to subsection (1) and the accrued interest against the company's receivable from the payment of his or her contribution.

#### Section 105

Decisions in all company matters shall require the consent of all members, unless stipulated otherwise in the memorandum of association.

#### Section 106

(1) The company's statutory body shall be all members, who meet the requirements laid down in Section 46. The memorandum of association may provide that only some or only one of the members, who meet the requirements laid down in Section 46, are the statutory body of the company.

(2) If, pursuant to the memorandum of association, the appointment of one of the members referred to in subsection (1) is irrevocable, such appointment may be annulled by a court, on the basis of a petition of one of the members, in the event that the appointed member breaches his or her obligation in a particularly serious manner.

#### Section 107

Every member may review all company documents and check the information contained therein; the same shall apply *mutatis mutandis* to a member's representative, provided that the representative is bound by the same confidentiality obligation as the member and can demonstrate this fact to the company.

#### Section 108

(1) Every member shall be entitled to claim before court, on behalf of the company, compensation of damage caused to the company by another member, or the fulfilment by another member of his or her obligations arising from the damage settlement agreement pursuant to Section 53(3); the provision of Section 102 shall apply *mutatis mutandis*.

(2) A member shall not be entitled to claim compensation of damage against another member in accordance with subsection (1) where a damage settlement agreement was approved pursuant to Section 53(3), unless the person who caused the damage to the company is its controlling entity.

#### Section 109

(1) Without the consent of all other members, a member shall not conduct business in the objects of the company, including for the benefit of other parties, or mediate the company's transactions for other parties. In addition, a member may not be a member of the statutory body or other body of a different business corporation having similar objects of activity, unless they form a concern.

(2) The ban on competition may be governed differently in the memorandum of association.

#### Section 110

(1) A member may join a company or withdraw from the company by an amendment to the memorandum of association.

(2) A joining member shall also be liable for the company's debts incurred prior to his or her joining. However, such member may request that the other members provide full compensation for the performance rendered and reimburse all associated costs.

#### Section 111

(1) Upon the termination of his or her participation in a company, the respective member shall only be liable for the debts incurred by the company before the termination date of the member's participation.

(2) A member may not request that the company pays out a business share or distributes its assets among the members.

#### Section 112

(1) Profits and losses shall be distributed among the members equally.

(2) A member shall be entitled to a profit share amounting to 25% of the amount paid by him or her to fulfil the contribution obligation. If the company's profit is not sufficient for the payment of such a profit share, it shall be distributed among the members according to the proportion of the amounts paid by them to fulfil their contribution obligation. The remaining profit shall be distributed among the members pursuant to subsection (1).

(3) Where a profit share is granted to a member pursuant to Section 103(2), the provision of subsection (2) or (3) shall only apply to the part of the profit which is not distributed in this manner.

(4) Where the memorandum of association contains a provision which diverges from subsection (1) only for the profit share or only for the share in loss, such provision of the memorandum of association shall, in case of doubt, be deemed to apply both to profit share and share in loss.

(5) Subsections (1) to (3) shall apply, unless stipulated otherwise in the memorandum of association.

#### Section 113

(1) A company shall be dissolved:

(a) by a termination notice of a member given no later than 6 months before the end of the accounting period, effective on the last day of the accounting period, unless a different period is stipulated in the memorandum of association,

(b) on the date when a court's decision to dissolve the company becomes legally effective,

(c) upon a member's death, unless inheritance in relation to the business share is permitted under the memorandum of association,

(d) upon the winding up of a member which is a legal entity, unless passing of the business share to its legal successor is permitted under the memorandum of association,

(e) on the date when the decision on the declaration of bankruptcy against one of the members' assets, or the rejection of a

petition for the initiation of insolvency proceedings by reason of the insufficiency of the assets, or the closing of the bankruptcy proceedings for absolute inadequacy of the member's assets becomes legally effective,

(f) on the date when the decision on the approval of the debt discharge for any of the members becomes legally effective,

(g) by a legally effective enforcement order for a ruling against the business share of a member in the company, or upon a writ of execution against the business share of a member in the company becoming legally effective following the expiry of the period indicated in the call for fulfilment of the obligation under enforcement pursuant to a special legislative act and, where a petition to discontinue the execution was filed within such period, upon the relevant decision becoming legally effective,

(h) on the date when none of the members fulfils the requirements laid down in Section 46,

(i) upon expulsion of a member pursuant to Section 115(1), or

(j) for other reasons specified in the memorandum of association.

(2) In the case of the grounds for the dissolution of the company listed in subsection (1), except for the grounds provided for in points (b) and (h), other members may – until the submission of the final liquidation progress report by the liquidator – agree by means of an amendment to the memorandum of association that the company shall continue to exist without the participation of the member affected by the grounds for the dissolution. Such agreement by the members can also be included in advance in the memorandum of association.

(3) Where a company was dissolved pursuant to subsection (1)(h), the members may agree that another member fulfilling the requirements laid down in Section 46 shall join the company and that the company shall continue to exist.

(4) The liquidation proceedings shall be closed upon the entry into effect of the agreement referred to in subsection (2) or (3).

#### Section 114

(1) In the event that, after the remaining members agreed on the continued existence of the company, the bankruptcy proceedings against a member's assets are closed for reasons other than the fulfilment of the decree of distribution or the absolute inadequacy of the member's assets, the member's participation in the company shall be restored on the date when such decision becomes legally effective, unless agreed otherwise among the members, including the member against whose assets the bankruptcy was declared.

(2) If a settlement share was already paid by the company, a member's participation shall only be restored if the settlement share is reimbursed by the member to the company within 2 months after the decision referred to in subsection (1) becomes legally effective; the participation shall be restored as at the initial termination date. This shall also apply *mutatis mutandis* to the legally effective suspension of enforcement of a ruling against the member's business share or to the legally effective suspension of execution pursuant to another legal regulation.

(3) Where there are grounds for dissolution of a company pursuant to Section 113 (1)(e) to (g) and the company has not been wound up yet, and the conditions stipulated in subsections (1) and (2) are met, all members, including the member whose participation was restored, may agree that the company shall continue to exist.

#### Section 115

(1) A member may propose that the company is dissolved by a court if there are relevant reasons for the dissolution, especially if another member breaches his or her duties in a particularly serious manner or if it is not possible to achieve the purpose for which the company was established.

(2) The company may propose that the court expels a member, who breaches his or her duties in a particularly serious manner, in spite of him or her having been invited by the company to ensure their due fulfilment and notified in writing about the possibility of expulsion. The petition to expel a member must be approved by members, who have a majority of votes in the company; the vote of the member to be expelled shall be disregarded.

#### Section 116

The transfer of a member's business share in an unlimited partnership is forbidden.

#### Section 117

(1) An heir of a business share, who does not wish to become a member, shall be entitled to terminate his or her participation in the company by notice to be given within 3 months after the date when he or she became an heir; otherwise such termination notice shall be disregarded.

(2) The notice period shall be 3 months and, during such period, the heir is not obliged to participate in the company's activities.

(3) Where an heir gives the notice referred to in subsection (1), he or she shall be conclusively presumed to not have become a member.

### TITLE III

## LIMITED PARTNERSHIP

### Section 118

(1) A limited partnership is a company where at least one member has limited liability (the "limited partner") and at least one member has unlimited liability (the "general partner") for the company's debts.

(2) The trade name shall include the words "komanditní společnost", which can be replaced with the abbreviation "kom. spol." or "k. s." A limited partner whose name is included in the trade name shall be liable for the company's debts as a general partner. The provisions of Section 95(3) shall not apply to the position of the limited partners, unless stipulated otherwise in the memorandum of association.

### Section 119

Unless it follows otherwise from the common provisions of Part Two and this Title of the Act, the provisions governing an unlimited partnership shall apply *mutatis mutandis* to a limited partnership.

### Section 120

(1) The business shares of the limited partners shall be determined according to the proportion of their contributions.

(2) The amount of the settlement share for a limited partner shall be determined in accordance with the rules provided in this Act for the settlement share in a limited liability company.

### Section 121

(1) A limited partner shall fulfil his or her contribution obligation in the amount and in the manner determined in the memorandum of association, or otherwise in cash, without undue delay upon the commencement of his or her participation in the company.

(2) The provision of Section 103 shall not apply to the position of the limited partners, unless stipulated otherwise in the memorandum of association.

### Section 122

A limited partner, together with other members, shall be jointly and severally liable for the company's debts up to the amount of his or her unpaid contribution, pursuant to the record in the commercial register.

### Section 123

Provisions governing the transferability of a business share in a limited liability company shall apply *mutatis mutandis*.

### Section 124

The memorandum of association shall also include:

- (a) the specification as to which of the members is a general partner and which is a limited partner,
- (b) the amount of contribution of each of the limited partners.

### Section 125

(1) The company's statutory body shall be all general partners, who fulfil the requirements laid down in Section 46. The memorandum of association may provide that that statutory body of the company is only some or only one of the general partners, who fulfil the requirements laid down in Section 46.

(2) Unless stipulated otherwise in the memorandum of association, any matters not falling under the competence of the statutory body shall be decided by all members, with the general partners and the limited partners voting separately.

### Section 126

(1) Profits and losses shall be distributed between the company and the general partners. Unless a different distribution method is provided for in the memorandum of association, profits and losses shall be divided in half between the company and the general partners.

(2) The general partners shall share their part of profits and losses in accordance with Section 112.

(3) The part of the profits allocated to the company shall be, after taxes, distributed among the limited partners according to the proportion of their business shares. Losses shall not be borne by the limited partners.

(4) Subsections (2) and (3) shall apply, unless stipulated otherwise in the memorandum of association or in the decision of all members.

### Section 127

(1) The following shall not constitute grounds for the company's dissolution:

(a) declaration of bankruptcy against the assets of a limited partner or rejection of the petition for the initiation of insolvency proceedings by reason of the insufficiency of a limited partner's assets, or closure of the bankruptcy proceedings for absolute inadequacy of a limited partner's assets,

(b) approval of debt discharge in relation to a limited partner,

(c) delivery of a notice of an unsuccessful repeated auction conducted under the enforcement proceedings for a ruling or under execution proceedings or, where the business share of a limited partner is not transferable, legally effective enforcement order for a ruling against the business share of the limited partner, or a writ of execution against the business share of the limited partner becoming legally effective following the expiry of the period indicated in the call for fulfilment of the obligation under enforcement pursuant to a special legislative act and, where a petition to discontinue the execution was filed within such period, the relevant decision becoming legally effective, or

(d) death or dissolution of a limited partner.

(2) The grounds referred to in subsection (1) shall cause the cessation of the limited partner's participation in the company.

(3) In order for a limited partnership to be dissolved, it shall be sufficient that the requirements laid down in Section 46 are no longer met by any of the general partners.

#### Section 128

(1) The limited partner's participation in the company shall be restored:

(a) upon the closure of the bankruptcy proceedings against the limited partner's assets for reasons other than the fulfilment of the decree of distribution or the absolute inadequacy of the limited partner's assets,

(b) upon the legally effective suspension of enforcement of a ruling against the limited partner's business share in the company, or

(c) upon legally effective suspension of execution pursuant to another legal regulation, unless stipulated otherwise in the memorandum of association.

(2) If the settlement share was already paid by the company, the limited partner's participation shall only be restored if the settlement share is reimbursed by the limited partner within 2 months; the participation shall be restored as at the initial termination date.

#### Limited-liability amount

#### Section 129

(1) Where the memorandum of association provides that the limited partners are liable for the company's debts up to a certain amount (the "limited-liability amount"), such amount shall be specified in the memorandum of association. A limited-liability amount that would be lower than the contribution of the limited partner may not be agreed.

(2) If a company follows the provisions of subsection (1), the following exceptions from the provisions governing limited partnerships shall apply:

(a) the part of the profits allocated to the company shall be, after taxes, distributed among the limited partners according to the proportion of their business shares and their limited-liability amounts,

(b) losses shall be covered by the limited partner, together with other members, in accordance with his or her business share, but only up to the amount of his or her limited-liability amount,

(c) a limited partner, together with other members, shall be jointly and severally liable for the company's debts up to the amount of his or her limited-liability amount registered in the commercial register at the time when the fulfilment is demanded by a creditor.

#### Section 130

The limited-liability amount shall be reduced in the extent to which the contribution obligation was fulfilled by the limited partner.

#### Section 131

(1) Modifications to the limited-liability amount shall become effective upon their registration in the commercial register.

(2) Where a limited partner or the company with the limited partner's consent disclosed the increase in his or her limited-liability amount or otherwise notified the creditors, the limited partner shall be liable pursuant to Section 129(2)(c) up to the amount of the increased limited-liability amount.

TITLE IV  
LIMITED LIABILITY COMPANY

**Chapter 1**

**General provisions**

Section 132

(1) A limited liability company is a company whose members are jointly and severally liable for the company's debts up to the amount at which they have not fulfilled their contribution obligation, pursuant to the record in the commercial register at the time when fulfilment was demanded by a creditor.

(2) The trade name shall include the words "společnost s ručením omezeným", which can be replaced with the abbreviation "spol. s r.o." or "s.r.o."

Section 133

A member's business share in a limited liability company shall be determined according to the proportion of his or her contribution pertaining to such business share and the amount of its registered capital, unless provided otherwise in the memorandum of association.

Section 134

(1) Any consideration provided to a creditor by a member based on the liability arrangements applicable to the member pursuant to Section 132(1) shall be applied towards the contribution obligation that is first due and payable by the member.

(2) Where it is impossible to count such performance towards the member's contribution obligation, the member shall be reimbursed by the company for his or her performance. In the event the member does not receive a reimbursement for his or her performance from the company, such reimbursement for his or her performance shall be provided by other members in the proportion in which they have not fulfilled their contribution obligation pursuant to the record in the commercial register as at the date when the member was requested to provide fulfilment.

**Types of business shares**

Section 135

(1) The memorandum of association may allow for different types of business shares to be formed. Each type shall be comprised of business shares associated with the same rights and duties. A business share that is not associated with any special rights and duties shall constitute a basic business share.

(2) If so provided by the memorandum of association, a member may own multiple business shares, whether of the same or different types.

Section 136

The different types of business shares and their contents shall be defined in the memorandum of association.

**Common certificate**

Section 137

(1) If so provided by the memorandum of association, a member's business share may be represented by a common certificate. If the memorandum of association allows for multiple business shares to be formed for one member, a common certificate may be issued by the company for each business share.

(2) A common certificate can only be issued for a business share that is not subject to any restrictions or conditions regarding its transferability.

(3) A common certificate is an order instrument. A common certificate cannot be issued as a book-entry security.

(4) A common certificate may not be subject to public offering or admitted for trading on a European regulated market or other public market.

Section 138

(1) A common certificate shall include:

- (a) its designation as common certificate,
- (b) an unambiguous identification of the company,
- (c) the amount of the contribution relating to the business share,

(d) an unambiguous identification of the member,

(e) identification of the business share for which the common certificate has been issued, and

(f) identification of the common certificate, its number and the signature of the executive(s). The signature may be replaced by a signature print, provided that security features are simultaneously used in the deed in order to protect it against counterfeit or alteration.

(2) Where a global common certificate was issued, it shall also include information about the number of the common certificates substituted by it as well as identification of the business shares substituted by it.

#### **List of members**

##### **Section 139**

(1) Members shall be registered in the register of members kept by the company.

(2) The following shall be registered in the register of members: the member's name and place of residence or registered office or another service address as notified by the member, the member's business share, identification of the business share, the corresponding amount of contribution, number of votes pertaining to the business share, the obligation to contribute to equity in cash above and beyond the member's contribution (the "additional payment") associated with the business share, if determined, and the date of registration in the register of members. If a member owns multiple business shares, their value and the corresponding amount of contribution for each business share shall be specified. Where multiple types of business shares were issued by a company, their identification shall also be specified.

(3) Where common certificates were issued by a company, a corresponding note shall be made for the business share for which a common certificate was issued, indicating also the number of the common certificate.

(4) A company shall record any fact requiring registration without undue delay after the relevant change has been evidenced to the company.

##### **Section 140**

At a member's written request and at the member's expense, a company shall provide its member with a copy or an extract of the data related to the member; the company shall do so no later than 7 days after the delivery of the request.

##### **Section 141**

(1) Data recorded in the register of members may not be used by the company for purposes other than its own needs in relation to the members. The data can only be used by the company for other purposes with the consent of the members to whom the data relates.

(2) If a member ceases to be a member of the company, the company shall delete him or her from the register of members without undue delay.

#### **Contribution**

##### **Section 142**

(1) The minimum amount of a contribution shall be CZK 1, unless a higher amount is stipulated in the memorandum of association.

(2) A different contribution amount may be provided for different business shares.

##### **Section 143**

(1) A contribution in kind shall be valued by an expert selected from the list of experts kept pursuant to another legal regulation. The fee to be paid to the expert for his or her expert opinion shall be determined by agreement and paid by the company. In addition to the fee, the expert shall be entitled to the reimbursement of expenses reasonably incurred in relation to the preparation of the expert opinion. In the event that the company is ultimately not incorporated, the fee shall be paid by the founders jointly and severally.

(2) The expert referred to in subsection (1) shall be selected by the founders in case the company has yet to be incorporated, otherwise by the executive.

(3) The expert opinion prepared by the expert shall include at least a description of the contribution in kind, the valuation method(s) applied, the amount of the valuation for the contribution in kind, and the reasoning leading the expert to such valuation.

(4) The provisions of Sections 468 to 473 shall apply *mutatis mutandis*. A new valuation, if any, shall be carried out pursuant to subsections (1) and (2).

##### **Section 144**



(1) The memorandum of association, the declaration on a contribution increase or the declaration on the assumption of the contribution obligation shall also include a description of the contribution in kind, its valuation and the amount applied towards the issue price. The amount applied towards the issue price may not be higher than the valuation determined in the expert's opinion or the valuation pursuant to Section 468 or 469.

(2) The difference between the price of the contribution in kind determined in the expert's opinion or pursuant to Section 468 or 469 and the amount of a member's contribution shall constitute the contribution premium, unless it is determined in the memorandum of association or by a decision of the general meeting that such difference or a part thereof shall be returned to the contributor, or used, with the member's consent, to create a reserve fund.

#### Section 145

If a business share in the company is divided, giving rise to a new business share, the minimum amount of contribution required by this Act or by the memorandum of association must be maintained. Any division of a business share in breach of this provision shall be disregarded.

### Memorandum of association

#### Section 146

(1) The memorandum of association shall also include:

- (a) the company's trade name,
- (b) the objects or activity of the company,
- (c) identification of the members by indication of their name and their place of residence or registered office,
- (d) determination of the types of business shares held by each member and the rights and duties attached thereto, where different types of business shares are permitted in the memorandum of association,
- (e) the amount of contribution(s) pertaining to the business share(s),
- (f) the amount of registered capital, and
- (g) number of executives and the manner in which they act on behalf of the company.

(2) Upon the company's establishment, the memorandum of association shall also include:

- (a) the contribution obligation of the founders, including the deadline for its fulfilment,
- (b) indication of the person(s) appointed by the founders to act as the executive(s) or, as appropriate, the members of other company bodies who are to be elected by the general meeting in accordance with this Act,
- (c) appointment of the contribution administrator, and
- (d) for any contribution in kind, its description, its valuation, amount applied towards the issue price, and specification of the person appointed as the expert to value the contribution in kind concerned.

(3) The data referred to in subsection (2) may be deleted from the memorandum of association once the company is incorporated and the contribution obligation has been fulfilled.

#### Section 147

(1) The memorandum of association may be amended by agreement of all members. Such agreement shall require the form of an authentic instrument. If so provided by the memorandum of association, it can also be amended by a decision of the general meeting.

(2) A decision of the general meeting resulting in an amendment of the memorandum of association shall replace a decision to amend the memorandum of association. Such decision of the general meeting shall be certified by an authentic instrument.

(3) Unless it follows from the decision of the general meeting what amendments are to be made in the memorandum of association, its contents shall be modified by the executive in accordance with the decision of the general meeting. An authentic instrument shall be drawn up by the executive regarding the modification of the contents of the memorandum of association.

#### Section 148

Before the filing of the application for incorporation to register the company in the commercial register, the entire contribution premium as well as at least 30% of the amount of every cash contribution must be paid up.

#### Section 149

(1) A company may acquire its own business share, unless it is being acquired under a business share transfer agreement. The same shall apply *mutatis mutandis* to the acquisition of a company business share by a controlled entity or by a

person acting in his or her own name on the account of such controlled entity.

(2) A company that has acquired its own business share shall not exercise the voting rights attached thereto.

(3) The right to a profit share attached to an own business share in the company's assets shall cease to exist upon its maturity. Any profit that has not been paid out shall be transferred by the company to the account for retained profits from previous years.

(4) If a company acquires all its business shares, these business shares or at least one of them shall be transferred by the executive to a third party within 3 months after the acquisition of the last business share, failing which the company shall be dissolved by court, even *ex officio*. The value of the business shares shall be determined on the basis of an expert opinion; Section 143 shall apply *mutatis mutandis*.

## Chapter 2

### Rights and duties of members

#### Contribution obligation

##### Section 150

(1) A member shall fulfil his or her contribution obligation within the period of time stipulated in the memorandum of association and no later than 5 years after the date of incorporation of the company or after the assumption of the contribution obligation during the company's existence.

(2) A member may not be relieved of the contribution obligation, unless the registered capital is being decreased.

##### Section 151

(1) A member who is in default with the payment of his or her cash contribution shall pay to the company late payment interest amounting to double of the late payment interest on the amount owed as set forth in another legal regulation, unless provided otherwise in the memorandum of association.

(2) A member who is in default with the fulfilment of his or her contribution obligation may be expelled from the company by the general meeting. Where a member holds multiple business shares, the expulsion shall affect only the business share in relation to which the member is in default with the fulfilment of his or her contribution obligation, unless provided otherwise in the memorandum of association. The provisions of the Civil Code governing the expulsion of a member of an association for a serious breach of obligations shall apply *mutatis mutandis* to the expulsion of a member of the company. The provision on the possibility for a court review of the expulsion shall not apply.

(3) Simultaneously with the expulsion, the company shall invite in writing the expelled member to return his or her common certificate, if issued, to the company without undue delay, noting that if the member fails to do so, Sections 152 to 154 will be applied.

#### Obligation to return the common certificate

##### Section 152

(1) Where so provided by law, a member shall return his or her common certificate to the company without undue delay.

(2) Where a member is in delay with the return of the common certificates that are by law being withdrawn from circulation by the company in order to be replaced, marked with a new amount of contribution or destroyed, the executive shall request the member, in the manner prescribed by law and by the memorandum of association for convening the general meeting, to do so within a reasonable period of time determined to this end by the executive, noting that any common certificates the member fails to submit or return will be declared invalid.

(3) Common certificates which were not returned within the additional period of time despite a specific request shall be declared invalid by the executive and the declaration shall be notified, without undue delay, to all holders of the common certificates concerned by the invalidity to the address specified in the register of members, and published at the same time.

##### Section 153

(1) The common certificates that are to be issued instead of the common certificates declared invalid shall be sold by the company at a fair price. The provision of Section 213(1) shall apply *mutatis mutandis* to the sale of the company's common certificates.

(2) The upcoming sale shall be notified by the company to the former members whose common certificates were declared invalid.

(3) The company shall be entitled to a reimbursement of the costs incurred in relation to the declaration of invalidity of the invalid common certificates and the issuance of new common certificates.

(4) Where the new common certificates are not sold, in accordance with the procedure referred to in subsection (1), within 3 months after the unreturned common certificates were declared invalid, the general meeting shall decide without undue

delay to reduce the registered capital by the amount of contributions related to the unsold common certificates.

#### Section 154

(1) A company shall be entitled to set off the receivables due from a member arising from the declaration of invalidity of a common certificate and the issue of new common certificates, against the receivable of the member whose common certificate was declared invalid that is due by the company from the payment of the purchase price or an amount corresponding to the fulfilled contribution obligation.

(2) The difference shall be paid to the former member whose common certificate was declared invalid, without undue delay after the set-off or otherwise after its sale pursuant to Section 153 or upon the registration of the reduction of the registered capital in the commercial register.

(3) In the event that a common certificate withdrawn from circulation is not to be replaced with a new common certificate to be issued, the declaration of its invalidity shall be without prejudice to the right of the former member whose common certificate was declared invalid to the payment of an amount corresponding to the fulfilled contribution obligation.

(4) A common certificate returned for the purpose of being replaced or destroyed shall be destroyed by the company without undue delay after the effective date of the reduction of the registered capital or of any other reason why the common certificate was returned.

(5) The provisions of Sections 542 and 543 shall apply *mutatis mutandis*.

### Right to information

#### Section 155

At the general meeting as well as outside of the general meeting, a member shall have the right to request company-related information from the executives, review company documents, check data contained in the submitted documents, as well as other rights to information as set forth in the memorandum of association. The same shall apply *mutatis mutandis* to a member's representative, provided that the representative is bound at least by the same secrecy obligation as the member and can document this fact to the company.

#### Section 156

(1) Executives may refuse, in part or in whole, to provide information pursuant to Section 155 only if:

- (a) it concerns confidential information pursuant to another legal regulation,
- (b) the information requested is publicly available.

(2) In case of a dispute, a court, on the basis of a petition of a member, shall decide whether the company is obliged to provide the information; any right claimed later than 1 month after the date of the notice concerning the refusal to provide information shall be disregarded.

(3) During the court proceedings referred to in subsection (2), the period of limitation to claim any rights that are dependent on the requested explanations shall be suspended.

### Action by a member

#### Section 157

(1) Every member shall be entitled to claim, on behalf of the company, compensation of damage against an executive or the fulfilment of his or her obligation, if any, arising from the agreement referred to in Section 53(3), and to represent the company in these proceedings. The same shall apply *mutatis mutandis* to the subsequent enforcement of the ruling.

(2) A member shall not be entitled to claim compensation of damage against an executive pursuant to subsection (1) if such compensation was decided on pursuant to Section 53(3), unless the person who caused the damage is the company's sole member or its controlling entity.

(3) An action can also be lodged by a member:

- (a) if the damage is caused to the company by a member of the supervisory board, if established,
- (b) if the damage is caused to the company by an influential entity,
- (c) to exercise the member's right to claim, on behalf of the company, the fulfilment of the contribution obligation against a member who is in default with its fulfilment, or
- (d) to exercise the company's right to have a member expelled by a court for not fulfilling his or her contribution obligation.

(4) For the purposes of an action by a member, the executive, member of the supervisory board or the influential entity shall also include any person who was in such a position at the time when the damage occurred, the compensation of which is claimed against him or her by the company represented by the member, although presently he or she is no longer in such a position.

#### Section 158

Before exercising the right pursuant to Section 157 against an executive, the member shall notify the supervisory board, if established, in writing about his or her intention.

#### Section 159

Where the notified body fails to exercise, without undue delay after having received the information referred to in Section 158, the right which the member intends to exercise on behalf of the company, the member shall be entitled to exercise such right on behalf of the company himself or herself.

#### Section 160

Where a member who lodged an action ceases to be a member of the company, the company shall be represented in the proceedings by his or her legal successor.

#### Section 161

##### **Profit share**

(1) Members shall be entitled to a share of the profit that was determined by the general meeting for distribution among the members according to the proportion of their business shares, except as otherwise provided in the memorandum of association. Unless determined otherwise in the memorandum of association or by the general meeting, profit shares shall be paid in cash.

(2) A company shall pay a profit share at its own expense and risk to the member's address or by a bank transfer to the member's bank account, unless determined otherwise in the memorandum of association or a resolution of the general meeting.

(3) No resolution of the general meeting concerning the distribution of profit shares shall be required for business shares associated with a fixed profit share. A fixed profit share shall be payable within 3 months after the approval of the financial statements giving rise to the right to a profit share.

(4) The amount to be distributed among the members may not exceed the amount of profit (loss) for the accounting period just ended, increased by the retained profits from previous years, less the accumulated losses from previous years and contributions made to the reserve fund and other funds in accordance with this Act and the memorandum of association.

##### **Additional payments**

#### Section 162

(1) The memorandum of association can provide that, by a resolution of the general meeting, the company may impose upon the members the obligation to provide additional cash payment (the "additional payment obligation").

(2) The memorandum of association shall provide for the maximum amount which may not be exceeded by the aggregate of the additional payments, failing which the respective resolution of the general meeting concerning the additional payment obligation shall be disregarded. The memorandum of association shall also provide whether and to what business shares the additional payment is related.

(3) The additional payments shall be provided by the members in the proportion of their business shares, unless provided otherwise in the memorandum of association.

#### Section 163

(1) With the consent of an executive, a member may also provide an additional payment even if it is not provided for in the memorandum of association.

(2) The additional payment referred to in subsection (1) can also be provided as contribution in kind. The provision of Section 143 shall apply *mutatis mutandis*.

#### Section 164

(1) A member who did not vote in favour of the additional payment obligation can notify the company in writing that he or she intends to withdraw from the company in respect of the business share, to which the additional payment obligation pertains. The additional payment obligation shall expire upon the effectiveness of the withdrawal.

(2) A member can withdraw from the company within 1 month after the date of the decision of the general meeting concerning the additional payment obligation or after the date when he was notified that the general meeting decided on the additional payment obligation pursuant to Section 174(3) or that a decision concerning the additional payment obligation was adopted outside of the general meeting pursuant to Section 177, after which time the member's withdrawal shall be disregarded.

(3) The right to withdraw from a company can only be exercised by a member who has fulfilled in full his or her contribution obligation related to the business share, to which the additional payment obligation was tied.

(4) The withdrawal of a member shall become effective on the last day of the month in which the written notification

referred to in subsection (1) was delivered to the company.

(5) Subsections (1) to (4) shall not apply where provided otherwise in the memorandum of association.

#### Section 165

If the additional payment obligation was violated by a member, Section 151 shall apply *mutatis mutandis* unless the member has withdrawn from the company pursuant to Section 164.

#### Section 166

(1) The general meeting can decide that an additional payment provided by a member shall be returned to that member in the extent in which it exceeds the company's loss.

(2) Unless decided otherwise by the general meeting, the additional payment shall be returned to the member according to proportion of the amount in which it was provided by him or her; an additional payment provided by a member pursuant to Section 162(1) shall be returned first.

### Chapter 3

#### Company bodies

##### General meeting

#### Section 167

(1) Members shall exercise their right to participate in the management of the company at the general meeting or outside of the general meeting.

(2) Where voting at the general meeting or decision-making outside of the general meeting using appropriate technical facilities is permitted by the memorandum of association, the conditions for such voting or decision-making shall be defined in a manner so as to make it possible for the company to verify the identity of the person authorised to exercise the voting right and to determine the business shares associated with the exercised voting right, failing which the votes cast in this manner and the participation of the members voting in this manner shall be disregarded.

(3) The conditions of voting or decision-making referred to in subsection (2) shall be defined in the memorandum of association and shall always be included in the invitation to the general meeting or in the proposal of a decision pursuant to Section 175. Where these conditions are not provided in the memorandum of association, they shall be defined by the statutory body.

(4) Voting by members casting their votes in writing before the general meeting (the "correspondence voting") shall also be deemed to constitute voting at the general meeting using appropriate technical facilities.

#### Section 168

(1) A member shall participate in the general meeting in person or by proxy. The power of attorney must be granted in writing and clearly state whether it was granted for representation at one or more general meetings.

(2) The member shall be informed by its representative, in good time before the date of the general meeting, about any circumstances that could be relevant for the member's assessment as to whether there is a risk of conflict between the member's interests and those of its representative.

#### Section 169

(1) Unless provided otherwise in the memorandum of association, the general meeting shall have a quorum if the members attending have at least a half of all votes.

(2) Every member shall have one vote for every CZK 1 of his or her contribution, unless provided otherwise in the memorandum of association.

(3) When establishing the quorum of the general meeting, the votes of the members who cannot exercise a voting right shall be disregarded.

#### Section 170

The general meeting shall decide by a simple majority of votes of the present members, unless provided otherwise in the memorandum of association.

#### Section 171

(1) Approval by a majority of at least two thirds of the votes of all members shall be required:

(a) to adopt a decision to amend the contents of the memorandum of association,

(b) for a decision resulting in an amendment of the memorandum of association,

(c) for a decision to allow a contribution in kind or the possibility to set off a pecuniary receivable towards the company against the receivable from the fulfilment of the contribution obligation, and

(d) for a decision to dissolve the company with liquidation.

(2) A decision to amend the memorandum of association in a manner which interferes with the rights or duties of only some of the members shall require their approval. Where an amendment to the memorandum of association interferes with the rights and duties of all members, approval by all members shall be required.

#### Section 172

(1) A decision of the general meeting concerning the matters referred to in Section 171(1) as well as other matters, which become effective upon their registration in the commercial register, shall be certified with an authentic instrument.

(2) The authentic instrument shall also contain the approved text of the amendment to the memorandum of association, where amended, and a list of names of the members who voted in favour of the amendment.

#### Section 173

(1) The voting rights shall not be exercised by a member when:

(a) the general meeting is to decide on his or her contribution in kind,

(b) the general meeting is to decide on his or her expulsion or on the filing of a petition for his or her expulsion by court,

(c) the general meeting is to decide on whether the member or a person acting in concert with the member should be relieved of the fulfilment of an obligation, and/or whether the member should be recalled from office as a member of a company body for violating an obligation in the performance of his or her office, or

(d) he or she is in default with the fulfilment of the contribution obligation or with the fulfilment of the additional payment obligation, to the extent of the default.

(2) The prohibition to exercise voting rights shall not apply in the event that all members act in concert.

#### Section 174

(1) Unless provided otherwise in the memorandum of association, a member who was absent from the general meeting may subsequently exercise his or her voting right in writing no later than 7 days after the date of the general meeting.

(2) Where a member casts his or her vote in accordance with the procedure referred to in subsection (1), the member shall be conclusively presumed to have been present at the general meeting when the respective matter was debated.

(3) The provisions of Section 175(3) and Section 177 shall apply *mutatis mutandis*.

### Decisions per rollam

#### Section 175

(1) Unless decisions taken outside of the general meeting ("per rollam decisions") are excluded by the memorandum of association, the person authorised to convene the general meeting shall send a proposal of a decision to the address indicated in the register of members or otherwise in the manner provided for in the memorandum of association.

(2) The proposal of a decision shall also include:

(a) a deadline for the receipt of a member's opinion as determined in the memorandum of association or, failing that, 15 days; the date when the proposal was delivered to the member shall be relevant for the commencement of such period of time,

(b) any documents required for its adoption, and

(c) additional information where so provided in the memorandum of association.

(3) Where this Act requires a decision of the general meeting be certified with an authentic instrument, the member's statement shall also include the contents of the proposed decision of the general meeting, to which the opinion is related. The signature attached to the opinion must be certified.

#### Section 176

(1) Where a member fails to deliver his or her approval of the proposed decision to the person authorised to convene the general meeting within the period of time referred to in Section 175(2)(a), such member shall be conclusively presumed to have disagreed with the proposal.

(2) Majority shall be calculated on the basis of the total votes of all members.

#### Section 177

A decision taken pursuant to Sections 175 and 176, including its adoption date, shall be notified by the company or by the person authorised to convene the general meeting to all members without undue delay after its adoption.

### **Cumulative voting**

#### **Section 178**

Where provided for in the memorandum of association, the members of the company's bodies shall be elected by cumulative voting.

#### **Section 179**

(1) For the purposes of cumulative voting, the number of votes of a member shall be determined by multiplying the number of votes disposed of by the member at the general meeting and the number of elected member positions in a company body. Where both executives and members of the supervisory board, if established, are elected, the number of votes of a member shall be determined separately for each body for the purposes of cumulative voting.

(2) In cumulative voting, a member shall be entitled to use all the votes he or she controls or an arbitrary number of votes for certain person(s) only.

(3) In cumulative voting, each member of a body shall be voted on separately at the general meeting. In cumulative voting, votes are only cast to elect certain person(s).

(4) Where a member of a company body who was elected by cumulative voting is to be recalled, he or she can only be recalled by approval of the majority of the members who voted in favour of his or her election or their legal successors. This shall not apply where the member of a company body seriously violated his or her obligations.

#### **Section 180**

(1) In cumulative voting, the persons for whose election the highest number of votes was cast shall be elected, provided that they were voted by at least an absolute majority of all votes of the members present at the general meeting, as determined for the purposes of cumulative voting.

(2) Where multiple persons receive the same number of votes, a new vote shall be held on these persons. If they receive the same number of votes in the repeated voting, a lot shall be drawn to decide.

(3) The minutes of the general meeting must specify how many votes were cast for the election or recall of every proposed person as well as a list of names of the persons voting in favour of such election or recall.

### **Convening the general meeting**

#### **Section 181**

(1) The general meeting shall be convened by an executive at least once every accounting period, unless this Act or the memorandum of association provides that the general meeting is to be convened more frequently.

(2) The ordinary financial statements shall be discussed by the general meeting no later than 6 months after the last day of the past accounting period.

#### **Section 182**

An executive shall convene the general meeting without undue delay after becoming aware of the fact that the company is threatened by bankruptcy pursuant to another legal regulation or for other serious reasons, in particular where an objective pursued by the company is jeopardised, and shall propose that the general meeting dissolves the company or takes another appropriate action, unless provided otherwise in another legal regulation.

#### **Section 183**

In the event that a company has no executive or the executive permanently fails to fulfil his or her duties, the general meeting shall be convened by any member. Where required in the interest of the company, the general meeting shall be convened by the supervisory board, if established.

#### **Section 184**

(1) The date and the agenda of the general meeting shall be notified to the members in writing at least 15 days in advance, unless provided otherwise in the memorandum of association; the draft resolution of the general meeting shall be included in the invitation.

(2) The invitation shall be sent to the member's address indicated in the register of members, unless provided otherwise in the memorandum of association.

(3) A member may waive the right to have the general meeting convened in a timely and proper manner pursuant to subsection (1) by a written declaration with a certified signature or by an oral declaration made at the general meeting. A declaration made at the general meeting shall be included in the minutes of the general meeting. Where a decision of the general meeting is certified with an authentic instrument, the declaration shall be included in such authentic instrument. The declaration shall also be effective vis-à-vis every subsequent acquirer such member's business share.

(4) An executive shall always attend the general meeting.

#### Section 185

Matters that were not included in the invitation can only be discussed if all members were present and agree with the discussion thereof.

#### Section 186

The time and venue of the general meeting shall not unreasonably restrict a member's right to attend the general meeting.

#### Section 187

(1) A member or members whose contributions represent at least 10% of the registered capital or 10% share in the voting rights (the "qualified member") may request the executive to convene the general meeting in order to discuss the matters proposed by them.

(2) If the general meeting is not convened within 1 month after the delivery date of such a request and is not held within a reasonable period of time, the qualified member shall be entitled to convene the general meeting himself or herself; the provisions of Sections 184 to 186 shall apply *mutatis mutandis*. Any costs related to convening the general meeting shall be covered by the company, unless the convening of the general meeting was clearly unfounded.

### Course of the general meeting

#### Section 188

(1) The general meeting shall appoint its chairman and minute taker; until the chairman is appointed and where no chairman was appointed, the general meeting shall be chaired by the person who convened the general meeting. Where no minute taker was appointed, he or she shall be determined by the person who convened the general meeting.

(2) The attending members shall be registered by the company in an attendance list, indicating the member's name and registered office or place of residence or, as appropriate, the name and place of residence or registered office of the member's representative as well as the number of votes disposed of by such member at the general meeting. The provisions of Section 413(2) and (3) shall apply *mutatis mutandis*.

(3) The minutes of the general meeting shall be drawn up by the minute taker within 15 days after its end and shall be sent to all members, at the company's expense and without undue delay; the minutes shall be signed by the chairman of the general meeting or by the person who convened the general meeting, where no chairman was appointed, and by the minute taker.

#### Section 189

(1) The minutes shall include:

- (a) the company's trade name and registered office,
- (b) the venue and time of the general meeting,
- (c) the names of the chairman or person who convened the general meeting and of the minute taker,
- (d) decision(s) adopted by the general meeting with an indication of voting results,
- (e) any refusal by the executive to provide information pursuant to Section 156, if applicable, and
- (f) contents of the objection raised by a member, executive or, as appropriate, member of the supervisory board, if established, concerning a decision of the general meeting, if the person who raised the objection requested so at the general meeting.

(2) Any submitted proposals, declarations as well as the attendance list shall be attached to the minutes.

#### Section 190

(1) The general meeting shall decide by adopting resolutions.

(2) The powers of the general meeting include:

- (a) decisions to amend the contents of the memorandum of association, if so provided in the memorandum of association or by law, unless it is amended by virtue of law,
- (b) decisions to change the amount of registered capital or to allow a contribution-in-kind or the possibility to set off a pecuniary receivable towards the company against a receivable for the fulfilment of the contribution obligation,
- (c) appointment and recall of an executive and the supervisory board, if established,
- (d) appointment and recall of a liquidator, if provided for in the memorandum of association,



- (e) appointment and recall of corporate agents, unless provided otherwise in the memorandum of association,
- (f) decision to dissolve the company with liquidation, if provided for in the memorandum of association,
- (g) approving ordinary, extraordinary and consolidated financial statements as well as, where their preparation is required under another legal regulation, interim financial statements, distribution of profit or other own resources and coverage of loss,
- (h) decisions to transform the company, unless provided otherwise in the act governing transformations of commercial corporations and cooperatives,
- (i) approval of a transfer or a pledge of an enterprise or such a part thereof that would imply a significant change of the existing structure of the enterprise or a significant change in the objects or activity of the company,
- (j) approval of a silent partnership agreement,
- (k) approval of financial assistance,
- (l) decision to assume the effects of actions taken on behalf of the company before its incorporation,
- (m) decision concerning the use of the contribution premium,
- (n) decisions to change the type of a common certificate,
- (o) any other matters falling within the powers of the general meeting by virtue of this Act, another legal regulation or the memorandum of association.

(3) The general meeting may reserve the decision-making authority in matters that fall within the powers of another company body pursuant to this Act.

#### Section 191

(1) Within the limits of these provisions, every member, executive, member of the supervisory board, if established, or the liquidator may claim the invalidity of a resolution of the general meeting pursuant to the provisions of the Civil Code on the invalidity of resolutions adopted by the members' meeting of an association, on the grounds of being contrary to law or to the memorandum of association. Where a decision was taken outside of the general meeting or where a decision of the general meeting was adopted additionally, the right to file a petition shall expire 3 months after the date when the petitioner became aware or could have become aware of the adoption of the decision pursuant to Section 174(3) or Section 177, but no later than 1 year after the adoption of the decision. The same shall apply in case the decision was taken by a sole member acting as the general meeting.

(2) Violation of good manners shall also constitute grounds for invalidity of a resolution of the general meeting.

#### Section 192

(1) If the right referred to in Section 191 was not exercised within the statutory period of time or, where appropriate, the petition to declare the resolution invalid was not allowed, the validity of the resolution of the general meeting can no longer be reviewed in any way, unless provided otherwise in another legal regulation.

(2) A member cannot claim the invalidity of a resolution of the general meeting, if no objection was raised against such resolution of the general meeting, unless an objection raised was not recorded by a mistake made by minute taker or by the chairman of the general meeting or unless the petitioner was not present at the general meeting or, as appropriate, the reasons for invalidity of the resolution of the general meeting could not be established at that general meeting.

(3) In case of doubt as to whether an objection was raised, it shall be deemed to have been raised.

#### Section 193

(1) The invalidity of decisions taken by other company bodies may be claimed by the persons referred to in Section 191 only if such decisions were taken by a body exercising the powers of the general meeting; the provisions of Sections 191 and 192 shall apply *mutatis mutandis*.

(2) If a member's right was seriously violated by the company when convening or in the course of the general meeting, the member shall be entitled to just satisfaction in accordance with the provisions of the Civil Code governing the right of an association member to just satisfaction.

### Executives

#### Section 194

(1) One or more executives shall constitute the statutory body of a company.

(2) If so provided in the memorandum of association, multiple executives shall constitute a collective body; the provisions of Sections 440 and 444 shall apply *mutatis mutandis*.

#### Section 195

(1) An executive shall be in charge of the management of the company's business. Where a company has multiple executives which do not constitute a collective body, decisions on the management of the company's business shall require the consent of the majority of them, unless stipulated otherwise in the memorandum of association.

(2) Nobody shall be entitled to give instructions to an executive regarding the management of business; this shall be without prejudice to Section 51(1).

#### Section 196

An executive shall ensure that the prescribed records and accounts are duly and properly kept and that a register of members is administered and, upon request, shall inform the members about any company-related matters.

#### Section 197

An executive shall, without undue delay after becoming aware of any change in the memorandum of association occurring based on any legal fact, shall draw up the full wording of the memorandum of association and file it together with the instruments demonstrating such change in the collection of instruments of the commercial register (the "collection of instruments").

#### Section 198

(1) In case of an executive's death, resignation or recall from office or upon another termination of his or her office, a new executive shall be elected by the general meeting within 1 month.

(2) If a legal entity which is an executive is wound up with a legal successor, the legal successor shall become the executive, unless provided otherwise in the memorandum of association. If a legal entity which is an executive is wound up with liquidation, subsection (1) shall apply *mutatis mutandis*.

(3) If no executive is elected pursuant to subsection (1), an executive shall be appointed by a court, on the basis of a petition of a person having a legal interest therein, for a period of time until a new executive is properly elected. Otherwise the court may, even *ex officio*, dissolve the company and order its liquidation.

#### Section 199

(1) Without the consent of all members, an executive shall not:

(a) conduct business in the company's sphere of activity or business, including in favour of third parties, or act as an intermediary of the company's business transactions for third parties,

(b) be a member of the statutory body of another legal entity engaged in a similar sphere of activity or business, or a person in an equivalent position, unless within a concern, or

(c) participate in the business carried out by another business corporation as a member with unlimited liability or as the controlling entity of another entity engaged in the same or similar sphere of activity or business.

(2) If, upon the establishment of the company or at the time when an executive was elected, all members were explicitly notified by the executive of any of the circumstances referred to in subsection (1) or if such a circumstance occurred at a later point in time and the executive notified all members accordingly in writing, it shall be deemed that the activity under prohibition is not prohibited for the executive. This shall not apply, if any of the members expressed his or her disagreement with the executive's activity referred to in subsection (1) within one month after the date when the member was notified accordingly by the executive.

(3) Additional restrictions of the activities of an executive may be provided for in the memorandum of association, subject to approval by all members.

(4) The memorandum of association may stipulate to what extent the ban on competition is to apply to the members as well.

#### Section 200

##### **Financial assistance**

(1) Unless additional conditions are set forth in the memorandum of association, a company may grant financial assistance if:

(a) the financial assistance is granted under fair conditions, particularly as regards the interest or the security provided for the financial assistance in favour of the company,

(b) an executive draws up a written report giving a material justification of the financial assistance to be granted, including an indication of the related advantages and risks for the company, specifying the terms and conditions under which the financial assistance will be granted and stating the reasons why the granting of the financial assistance is not in conflict with the company's interests.

(2) The report referred to in subsection (1)(b) shall be filed by the company in the collection of instruments without undue delay after the financial assistance has been approved by the general meeting; the report must be available to the

members in the company's registered office once the invitations to the general meeting were sent and must be freely accessible to the members at that general meeting.

(3) When granting financial assistance, subsections (1) and (2) shall not apply to financial institutions under another legal regulation governing the pursuit of banking activities, provided that the financial assistance is granted within the common limits of their main activity.

### **Supervisory board**

#### Section 201

(1) A company shall establish a supervisory board, if so provided by the memorandum of association or by another legal regulation.

(2) Unless provided otherwise in the memorandum of association, the supervisory board shall:

- (a) supervise the activity of executives,
- (b) review trade and accounting books, other documents and financial statements, and review the data contained therein,
- (c) file an action pursuant to Section 187 and
- (d) report annually to the general meeting on its activities.

(3) An executive or other person authorised to act on behalf of the company under the records in the commercial register may not be a member of the supervisory board.

(4) Sections 198 and 199 shall apply *mutatis mutandis* to the members of the supervisory board.

### **Chapter 4**

#### **Termination of a member's participation in a company**

##### Section 202

#### **Withdrawal of a member**

(1) A member may only withdraw from a company if permitted by this Act.

(2) Unless provided otherwise in the memorandum of association, a member who did not agree with a decision adopted by the general meeting concerning:

- (a) a change to the predominant nature of the company's business activities, or
- (b) an extension of the term of existence of the company, and voted against the decision at the general meeting, may withdraw from the company. The provision of Section 164 shall apply *mutatis mutandis* to the withdrawal of such member from the company, as regards his or her business shares used by him or her to vote against.

(3) Together with the withdrawal notice, the member shall return his or her common certificate, if issued, to the company, failing which the withdrawal shall be ineffective.

##### Section 203

#### **Agreement to terminate a member's participation**

A member's participation in the company may be terminated by a written agreement affixed with certified signatures of all members and by the return of the company's common certificate, if issued.

##### Section 204

#### **Expulsion of a member**

(1) A company may request that a court expels a member who violated his or her duties in a particularly serious manner in spite of having been invited by the company to ensure their due fulfilment and notified in writing about the possibility of expulsion; this shall be without prejudice to Section 151.

(2) The obligation to make the request referred to in subsection (1) shall not apply if the violation of duties had legal consequences which cannot be remedied.

(3) Without undue delay after the expulsion of the member from the company, the member shall return his or her common certificate, if issued, to the company.

##### Section 205

### **Termination of a member's participation by court**

(1) A member may propose that a court should terminate his or her participation in the company if it cannot be reasonably required from him or her to remain in the company; this shall not apply where the member is the sole member.

(2) Without undue delay after the termination of the member's participation in the company, the member shall return his or her common certificate, if issued, to the company.

#### Section 206

### **Other means of termination of a member's participation in a company**

(1) A member's participation in a company shall cease to exist upon the rejection of a petition for insolvency proceedings by reason of the insufficiency of the member's assets or closing of bankruptcy proceedings for absolute inadequacy of the member's assets. A member's participation in the company shall also cease to exist upon the legally effective enforcement order for a ruling against the business share or upon a writ of execution against the business share becoming legally effective following the expiry of the period indicated in the call for fulfilment of the obligation under enforcement pursuant to a special legislative act and, where a petition to discontinue the execution was filed within such period, upon the relevant decision becoming legally effective, unless the business share is transferable.

(2) Without undue delay after the termination of the member's participation in the company, the member or his or her insolvency administrator shall return his or her common certificate, if issued, to the company.

(3) If the ruling referred to in subsection (1) is annulled, the member's participation shall be restored. Where a settlement share has already been paid to the member by the company, his or her participation shall only be restored if the member reimburses the company for the settlement share within 2 months after the date when the annulling decision becomes legally effective.

(4) Section 213(1) shall apply *mutatis mutandis* to the disposal of the business share of a member in bankruptcy. If the member's business share is not disposed of within six months after the date when bankruptcy was declared on the member's assets, it shall have the same effect as a member's withdrawal from the company. The settlement share shall be determined pursuant to Section 214.

### **Transfer of a business share**

#### Section 207

(1) Every member may transfer his or her business share to another member.

(2) Where, in the memorandum of association, the transfer of a business share referred to in subsection (1) is made conditional upon the consent of a company body and the consent is not granted within 6 months after the execution date of the transfer agreement, it shall have the same effect as a withdrawal from contract, unless provided otherwise in the transfer agreement. The business share transfer agreement shall not enter into effect before the consent has been granted.

(3) Where the body referred to in subsection (2) fails to act or grant its consent without giving reasons, the member, upon the termination of the agreement pursuant to subsection (2), shall be entitled to withdraw from the company; the provision of Section 164 shall apply *mutatis mutandis*. Such a withdrawal from the company shall be possible within 1 month after the date of termination of the agreement pursuant to subsection (2), after which the withdrawal shall be disregarded.

#### Section 208

(1) Unless provided otherwise in the memorandum of association, a member shall be entitled to transfer his or her business share to a person who is not a member, with the consent of the general meeting only. The business share transfer agreement shall not enter into effect before the consent has been granted.

(2) Where the consent is not granted within 6 months after the execution date of the transfer agreement, it shall have the same effect as a withdrawal from the agreement, unless provided otherwise in the transfer agreement.

#### Section 209

(1) Through the acquisition of a business share, the transferee shall accede to the company's memorandum of association. The transferor shall be liable to the company for any debt that has been transferred to the transferee together with the business share.

(2) The transfer of a business share shall be effective vis-à-vis the company upon the delivery of an effective business share transfer agreement with certified signatures.

(3) The consent of the relevant company body shall not be required for the sale of pledged business shares in the enforcement of the pledge. Section 213(1) shall apply *mutatis mutandis* when selling a pledged business share.

#### Section 210

(1) Where a member's business share is represented by a common certificate, the transferee must be clearly identified in the endorsement; the provision of Section 209(1) shall apply *mutatis mutandis*.

(2) A notification of the change in the member's person and a presentation of the common certificate to the company

shall be required in order for the transfer of the common certificate to be effective vis-à-vis the company.

#### Section 211

##### **Inheritance of a business share**

(1) An heir may demand his or her participation in the company be terminated by a court provided that there are reasons why the heir cannot be reasonably required to remain in the company; any right claimed more than 3 months after the court's inheritance decision becomes legally effective shall be disregarded.

(2) An heir who demands termination of his or her participation in the company by a court, may not participate in the company's activities, including when the obligation to participate is stipulated in the memorandum of association, unless agreed otherwise in writing between the heir and other members.

(3) The heir's participation in the company cannot be terminated where he or she is the sole member.

#### Section 212

##### **Free business share**

(1) The business share of a member whose participation was terminated in a manner other than by a transfer of the business share shall be considered to be a free business share.

(2) Where the transfer or passing of a business share is restricted or excluded, subsection (3) shall not apply and the company shall deal with the business share in accordance with the procedure set forth in Sections 214 and 215.

(3) A company shall act as agent in relation to the free business share and shall deal with it in accordance with the procedure referred to in Section 213 or 215.

(4) The rights and duties attached to a free business share cannot be exercised.

##### **Transfer of a free business share and a settlement share**

#### Section 213

(1) A company shall sell a free business share at least at a fair price without undue delay. The members shall have a pre-emptive right to buy the business share to be sold. If the pre-emptive right is exercised by multiple members, the free business share shall be divided among these members according to the proportion of their business shares.

(2) The proceeds from the sale, after deduction of expenses and set-off of receivables referred to in subsection (3), shall constitute the settlement share, which shall be paid to the beneficiary by the company or deposited in official custody without undue delay after its sale.

(3) The company may deduct all reasonably incurred expenses from the proceeds received from the sale and set-off any receivables towards the member whose participation in the company was terminated. If, upon the set-off, the contribution obligation is not satisfied in full, the person entitled to the settlement share shall be liable for the fulfilment of the contribution obligation of the transferee of the business share.

#### Section 214

(1) If a free business share cannot be sold within 3 months pursuant to Section 213(1) and (2), the amount of the settlement share shall be determined pursuant to Section 36(2) as at the termination date of the participation in the company and shall be paid by the company to the beneficiary within 1 month following the expiry of the three-month period referred to in Section 213(1) and (2).

(2) The procedure stipulated in subsection (1) may also be applied where the requirements pursuant to Section 213 are not met, if so provided in the memorandum of association.

#### Section 215

(1) Without undue delay after the payment of the settlement share pursuant to Section 214, but no later than within 1 month after the date of such payment, the company shall decide on the passing of the free business share to the remaining members according to the proportion of their business shares and against a consideration at least equal to the settlement share which was paid by the company; otherwise the company shall decrease its registered capital by the contribution of the member whose participation in the company was terminated. If a company fails to comply with this obligation, a court shall, even *ex officio*, dissolve the company and order its liquidation.

(2) The decision referred to in subsection (1) shall fall within the powers of the general meeting and shall require a majority of two thirds of the votes of all members in order to be adopted; the decision shall be certified with an authentic instrument.

(3) With the decision referred to in subsection (1), the ownership to the business share shall pass to the members according to the proportion of their business shares.

## **Chapter 5**

## **Changes in the registered capital**

### **Division 1**

## **Increase of the registered capital**

### **Subdivision 1**

#### **General provisions**

##### **Section 216**

(1) The registered capital may be increased:

- (a) by the assumption of the contribution obligation to increase existing contributions or to make a new contribution,
- (b) from own resources, or
- (c) by a combination of the methods of increasing the registered capital referred to in paragraphs (a) and (b).

(2) An increase of the registered capital by the assumption of the contribution obligation shall be effective upon the assumption of the contribution obligation and the contribution or payment of the prescribed part thereof, unless a later effective date is provided for in the decision of the general meeting to increase the registered capital. However, an increase of the registered capital shall be effective no later than by the date when the new amount of the registered capital is registered in the commercial register. An increase of the registered capital from own resources or by a combination of the methods referred to in subsection (1)(a) and (b) shall be effective upon the registration of the new amount of the registered capital in the commercial register.

##### **Section 217**

Where an increase of the registered capital is registered in the commercial register, the contributor shall fulfil his or her contribution obligation even if the resolution of the general meeting to increase the registered capital or the declaration on the assumption of the contribution obligation was invalid or ineffective. This shall not apply if a court declares the resolution of the general meeting to increase the registered capital invalid.

##### **Section 218**

(1) A resolution of the general meeting to increase the registered capital shall also be annulled and the obligation contribution shall also cease to exist:

- (a) where an application to register the increase of the registered capital in the commercial register is not filed within 2 months after the decision of the general meeting to increase the registered capital,
- (b) upon a court's ruling rejecting the application to register the increase of the registered capital in the commercial register becoming legally effective, or
- (c) after 2 months from the date when the court's ruling rejecting the application to register the increase of the registered capital in the commercial register became legally effective, unless such application is filed again within the same period of time.

(2) In the event that the resolution of the general meeting to increase the registered capital by the assumption of the contribution obligation was annulled or declared invalid by a court, the issue price paid as well as the usual interest accrued shall be refunded by the company to the persons concerned without undue delay. Unless provided otherwise in this Act, the provisions of Sections 236 to 238 shall apply *mutatis mutandis*.

(3) In the procedure pursuant to subsection (2), the executives shall publish the court's ruling referred to in subsection (1)(b) and (c) or the court's ruling declaring the decision of the general meeting invalid.

(4) Where, in order to increase the registered capital, a company has already issued new common certificates or replaced the existing common certificates with new ones and/or marked the new amount of contribution on the initial common certificates, and the resolution of the general meeting was annulled pursuant to subsection (1) or declared invalid by a court, an executive shall invite the owners of the common certificates without undue delay to return them to the company. Where a company replaced the common certificates or marked the new amount of contribution on the existing common certificates, the company shall mark the initial amount of contribution on the returned common certificates or replace them with common certificates with the initial amount of contribution.

### **Subdivision 2**

#### **Increase of the registered capital by assumption of the contribution obligation**

##### **Section 219**

(1) An increase of the registered capital with cash contributions shall only be permitted if all existing cash contributions have been paid up in full, unless new business shares are being formed for the purpose of increasing the registered capital.

(2) An increase of the registered capital with contributions in kind shall already be permitted before such payment in full. An executive shall present to the general meeting a written report specifying the reasons for an increase of the registered capital with contributions in kind and justifying the amount, which should be added to the issue prices.

#### Section 220

(1) Members shall have a priority right to participate in an increase of the registered capital, where it is increased with cash contributions, by assuming the contribution obligation.

(2) The members shall be entitled to assume the contribution obligations according to the proportion of their business shares, unless stipulated otherwise in an agreement between all members.

(3) The memorandum of association may exclude or restrict the members' priority right or determine the proportion in which the members are entitled to assume the contribution obligation.

#### Section 221

A member may waive his or her priority right in written form with certified signature or by a declaration made at the general meeting; the declaration shall be included in the authentic instrument on the resolution of the general meeting and shall also be effective vis-à-vis every following transferee of such member's business share.

#### Section 222

(1) Where a member does not exercise his or her priority right within the period of time stipulated in the memorandum of association or otherwise within 1 month after the date when the member became aware of the decision of the general meeting to increase the registered capital or of the decision to increase the registered capital adopted outside of the general meeting, the contribution obligation may be assumed by anyone, subject to the consent of the general meeting. The same shall apply *mutatis mutandis* if the members' priority right is excluded under the memorandum of association or if a member waived the priority right pursuant to Section 221.

(2) Subject to the consent of the general meeting, the contribution obligation may also be assumed by any member up to the amount of the proposed increase of the registered capital.

#### Section 223

A resolution of the general meeting shall include:

- (a) the amount of the increase of the registered capital,
- (b) the period for the assumption of the contribution obligation,
- (c) the specification of the type of business shares in case that the new contribution of a member accounts for a new business share or, if applicable
- (d) description of the contribution in kind and the amount applied towards the member's issue price, as determined on the basis of an expert opinion or in accordance with the procedure referred to in Section 468 or 469,
- (e) the deadline for the return of the common certificate or for the collection of the new common certificate.

#### Section 224

(1) The contribution obligation shall be assumed by a written declaration containing:

- (a) the amount of the contribution relating to the new business share and the amount of the new business share, the amount of increase in the business share relating to the existing business share and the amount of such share as well as the contribution premium, if any,
- (b) a description of the contribution in kind and the amount applied towards the member's issue price, as determined on the basis of an expert opinion,
- (c) the period for the fulfilment of the contribution obligation, and
- (d) where applicable, declaration of the future member that he or she joins the memorandum of association.

(2) The signature on the declaration referred to in subsection (1) must be certified; the declaration shall come into effect upon its delivery to the company.

(3) An agreement to set off a subscriber's receivable towards the company against his or her obligation to fulfil the contribution obligation or a part thereof shall be concluded before the application is filed to register the new amount of registered capital in the commercial register.

#### Section 225

(1) Where an obligation to increase a contribution or an obligation to make a new contribution were not assumed within the period set in the decision of the general meeting, the resolution of the general meeting to increase the registered

capital shall be annulled and the contribution obligation shall cease to exist.

(2) In a situation having the effects referred to in subsection (1), the paid-up issue prices as well as the usual interest accrued shall be refunded by the company to the entitled persons without undue delay.

#### Section 226

(1) If the new amount of the contribution is to be marked on the common certificates or if the common certificates are to be replaced with new common certificates with the new amount of contribution, an executive shall invite the owners of the common certificates without undue delay to return them within the period set by the general meeting so that the new amount of the contribution can be marked on them or so that they can be replaced with common certificates with the new amount of contribution, respectively. The provisions of Sections 152 to 154 shall apply *mutatis mutandis*.

(2) Where new common certificates are to be issued in order to increase the registered capital, an executive shall invite the contributors to collect their new common certificates within the period set in the decision of the general meeting. The provisions of Sections 152 to 154 shall apply *mutatis mutandis*.

### Subdivision 3

#### **Increase of the registered capital from own resources**

#### Section 227

(1) The general meeting may decide to increase the registered capital from own resources shown as part of the company's equity in the approved ordinary, extraordinary or interim financial statements, unless these resources are earmarked for specific purposes and the company is not entitled to modify their purpose.

(2) Net profit may not be applied to increase the registered capital on the basis of interim financial statements.

#### Section 228

An increase of the registered capital may not be higher than the difference between the equity and the registered capital.

#### Section 229

(1) The amount of the members' contributions shall be changed according to the proportion of existing contributions as a result of an increase of the registered capital from own resources, unless multiple business shares are permitted under the memorandum of association and the general meeting decided that a new business share is to be formed.

(2) Where such new business shares are to be formed, a new business share must be formed for each of the members, unless a member waives the right in accordance with the procedure provided in Section 221, in the proportion to his or her existing contributions.

#### Section 230

(1) Where the new amount of contribution is to be marked on the common certificates or where the common certificates are to be replaced with new common certificates with the new amount of contribution, an executive shall invite the owners of the common certificates without undue delay to return them within the period set by the general meeting so that the new amount of the contribution can be marked on them or so that they can be replaced with common certificates with the new amount of contribution, respectively. The provisions of Sections 152 to 154 shall apply *mutatis mutandis*.

(2) Where new common certificates are to be issued for the purpose of increasing the registered capital, an executive shall invite the members to collect their new common certificates within the period set in the decision of the general meeting. The provisions of Sections 152 to 154 shall apply *mutatis mutandis*.

#### Section 231

(1) An increase of the registered capital from own resources shall only be possible if the part of the financial statements, on the basis of which the general meeting is to decide on the increase, has been audited and received an audit opinion without reservation.

(2) A company shall prepare financial statements for the purpose of the decision referred to in subsection (1) based on the information established no later than 6 months before the date when the general meeting is to decide on the increase of the registered capital from own resources.

(3) If the interim financial statements show a decrease of the company's own resources, the company shall work with these interim financial statements rather than using the information from the ordinary or extraordinary financial statements.

#### Section 232

The resolution of the general meeting to increase the registered capital from the company's own resources shall include:

(a) the amount of the increase of the registered capital,



- (b) an indication of the own resource(s) used to increase the registered capital, broken down according to the structure of equity as shown in the financial statements,
- (c) the new amount of a member's contribution or the amount of a member's new contribution and, as appropriate
- (d) specification of business shares where a new contribution relates to a new business share,
- (e) deadline for the return of the common certificate or for the acceptance of the new common certificate.

## Division 2

### Decrease of the registered capital

#### Section 233

The decision of the general meeting to decrease the registered capital shall include:

- (a) the amount of the decrease of the registered capital,
- (b) information about the changes in the amount or, as the case may be, the number of the members' contributions,
- (c) information as to whether the amount corresponding to the decrease of the registered capital will be paid out in full or in part to the members or whether a member will be relieved of the fulfilment of his or her contribution obligation and/or how that amount will be disposed of,
- (d) the deadline for the return of the common certificate.

#### Section 234

As a result of a decision to decrease the registered capital, the contribution amount of every member shall be decreased according to the proportion of existing contributions. A decision to decrease the registered capital may also result in a cessation of a member's contribution, provided that he or she still holds another contribution or that it concerns a free business share and/or the company declared his or her common certificate invalid. With the consent of all members, the general meeting may decide that the members' contributions will be decreased unequally.

#### Section 235

(1) As a result of a decrease of the registered capital, the amount of the particular contributions of the members may not fall below the amount provided for in this Act or in the memorandum of association, unless a contribution ceases to exist pursuant to Section 234.

(2) Where, in connection with a decrease of the registered capital, it is necessary to reduce the amount of contribution marked on the common certificates issued or to withdraw these common certificates, the members shall return them to the company within the period set in the decision to decrease the registered capital. The provisions of Sections 152 to 154 shall apply *mutatis mutandis*.

#### Section 236

(1) Executives shall publish the resolution to decrease the registered capital within 15 days after its adoption date; they shall do so twice with a time interval of 30 days.

(2) At the same time, the executives shall invite in writing all known company creditors, whose receivables towards the company came into existence before the adoption of the resolution of the general meeting to decrease the registered capital, to submit their receivables towards the company within 90 days after the publication of the last notice, unless the registered capital is being decreased in order to cover losses.

#### Section 237

(1) Where a receivable towards the company was submitted in time by a creditor, the company shall provide adequate security to the creditor for such receivable or settle such receivable, unless agreed otherwise with the creditor.

(2) The provision of subsection (1) shall not apply provided that the decrease of the registered capital does not impair the collectability of receivables towards the company.

(3) Where a creditor believes that the collectability of his or her receivables was impaired, which the company denies, a court shall decide whether the creditor is entitled to a sufficient security. The provision of Section 238 shall apply *mutatis mutandis*.

#### Section 238

In the event that the company and the creditor are not able to agree on the method of securing a receivable, a court shall decide on an adequate security, taking into account the type and amount of the receivable; the court decision shall be submitted by the company to the commercial register court when filing an application to register the decrease of the registered capital.

#### Section 239

(1) A decrease of the registered capital shall be effective upon the registration of the new amount of registered capital in the commercial register.

(2) A decrease of the registered capital shall only be registered by a court in the commercial register if:

(a) it is proven that the period referred to in Section 236(2) has expired, provided that no creditor submitted its receivable within this period of time,

(b) the company submitted a declaration that the company has no creditors who are entitled to receive a security or settlement for their receivables, provided that such a statement is in accordance with the facts,

(c) it is proven that the receivable has been settled or an adequate security has been provided for the receivable and/or an agreement pursuant to Section 237(1) became effective,

(d) an effective agreement between the company and its creditors, who are entitled to receive a settlement or security for their receivables, concerning the satisfaction of such right is submitted,

(e) it is proven that an adequate security based on a court decision pursuant to Section 238 has been provided.

(3) In case a declaration was made by the company pursuant to subsection (2)(b) and an agreement referred to in subsection (2)(d) was concluded, it shall not be necessary to comply with the period set out in Section 236(2).

(4) Once a decrease of the registered capital is registered in the commercial register, it shall be carried out even if the resolution of the general meeting to decrease the registered capital was invalid or ineffective. This shall not apply if a court declares the resolution of the general meeting to decrease the registered capital invalid.

#### Section 240

(1) The amount corresponding to the decrease of the registered capital may only be disposed of by the company once the decrease of the registered capital is registered in the commercial register.

(2) Where a court declares the resolution of the general meeting to decrease the registered capital invalid, the persons who received any consideration based on the decrease of the registered capital shall return such fulfilment to the company while the company, where it issued any common certificates, shall:

(a) return to these persons their common certificates withdrawn from circulation,

(b) issue new common certificates to these persons,

(c) withdraw the common certificates from circulation in order to replace them for common certificates with a higher contribution or to mark a higher contribution on them.

(3) Sections 152 to 154 shall apply *mutatis mutandis* to the procedure referred to in subsection (2).

### Chapter 6

#### Dissolution of a company

##### Section 241

(1) An agreement of the members to dissolve a company shall have the form of an authentic instrument.

(2) A member may also demand the company to be dissolved by a court for the reasons and under the conditions provided for in the memorandum of association.

##### Section 242

(1) Where common certificates were issued, their return to the company at the liquidator's request shall give rise to the right to receive a share in the liquidation balance.

(2) In the event that a member fails to return his or her common certificates at the liquidator's request, the procedure pursuant to Sections 152 to 154 shall be applied *mutatis mutandis* by the liquidator.

(3) Returned common certificates shall be destroyed by the liquidator without delay.

## TITLE V

### JOINT-STOCK COMPANY

#### Chapter 1

##### General Provisions

##### Section 243

(1) A joint-stock company is a company whose registered capital is apportioned among a certain number of shares.

(2) The trade name shall include the words "akciová společnost", which can be replaced with the abbreviation "akc. spol." or "a.s.".

#### Section 244

(1) A company shall treat all its shareholders in the same manner under the same circumstances.

(2) Any legal act aimed at obtaining an unjust advantage in favour of a shareholder at the expense of the company or other shareholders shall be disregarded, unless provided otherwise in this Act or unless it would be harmful to any third person who relied in good faith on such legal act.

#### Section 245

Participating securities are securities issued by a company, to which a share in the registered capital or voting rights in such company are attached, as well as securities issued by a company which are associated with the right to acquire such securities.

#### Section 246

(1) The registered capital shall be expressed in Czech crowns. Where a joint-stock company keeps its accounts in euros under a special act, its registered capital may be expressed in euros.

(2) The registered capital of a joint-stock company shall amount to at least CZK 2,000,000 or EUR 80,000.

#### Section 247

##### **Share issue price**

(1) The share issue price may not be lower than the par value of the share.

(2) The issue price of a no par value share may not be lower than its book value. The book value of a no par value share shall be determined by dividing the amount of registered capital by the number of no par value shares issued.

##### **Share premium**

#### Section 248

(1) Where the issue price of a share is higher than its par or book value, the difference arising therefrom shall constitute the share premium. Where an amount paid to pay up the issue price or the value of a contributed contribution in kind as determined by the articles of association or by the general meeting is lower than the share issue price, the amount paid shall first be applied towards the share premium.

(2) Where an amount paid to pay up the issue price or the price of a contributed contribution in kind as determined by the articles of association or by the general meeting pursuant to this Act is not sufficient to pay the due and payable part of the par or book value of all subscribed shares, it shall be used as a partial payment of the due and payable part of the par or book values of the individual shares, unless provided otherwise in the articles of association or agreed otherwise in accordance with the articles of association.

#### Section 249

The difference between the value of a contribution in kind and the par or book value of shares, which are to be issued to a shareholder as consideration, shall be considered to constitute the share premium, unless it is determined in the articles of association or in a decision of the general meeting that such difference or a part thereof shall be returned by the company to the subscriber and/or be used by the company to create a reserve fund.

## **Chapter 2**

### **Establishment of a company**

#### Section 250

(1) The establishment of a company shall require the adoption of its articles of association. A person who adopted the articles of association and participates in the subscription of shares shall be the founder.

(2) The articles of association shall also include:

(a) the company's trade name and objects or activity,

(b) the amount of registered capital,

(c) the number of shares, their par value, specification of whether and how many shares will be registered shares or bearer shares, and/or whether they will be issued as book-entry securities or, as appropriate, information about any restrictions of the

transferability of the shares or, as appropriate, information on whether the shares are immobilised,

(d) where multiple types of shares are to be issued, their names and a description of the rights attached to these shares,

(e) the number of votes attached to one share and the method of voting at the general meeting; where shares of different par values are to be issued, the articles of association shall also include the number of votes related to each respective par value of the shares as well as the total number of shares in the company,

(f) information about the selected internal structure system of the company and the rules to determine the number of members of the board of directors or of the supervisory board,

(g) additional information, where so provided in this Act.

(3) At the time of the company's establishment, the articles of association shall also include:

(a) information about how many shares are subscribed by each of the founders and at what issue price, the method of payment and the period in which the issue price is to be paid, and the contribution to be made in order to pay the issue price,

(b) the level in which the registered capital must be paid up at the time of the company's incorporation,

(c) where the issue price is to be paid by contributions in kind, the name of the contributor(s), description of the contributions in kind, as well as the number, par value and type of shares to be issued for such contribution in kind, their form or an indication that they will be issued as book-entry securities, and the appointment of an expert for the valuation of the contribution in kind,

(d) the price of the contributions in kind at the time of the company's establishment,

(e) at least an estimate of costs to be incurred in connection with the company's establishment,

(f) information about the person(s) appointed by the founders to act as members of the company bodies who, under the articles of association, are to be elected by the general meeting,

(g) appointment of the contribution administrator and

(h) where the shares are to be issued as book-entry securities, the numbers of asset accounts to which the book-entry shares are to be issued.

(4) The information referred to in subsection (3) may be deleted from the articles of association once the company is incorporated and the contribution obligation is fulfilled.

### **Valuation of a contribution in kind**

#### **Section 251**

(1) The value of a contribution in kind shall be determined on the basis of an expert opinion prepared by an expert pursuant to another legal regulation; however, it may not be higher than the amount determined by the expert. The expert shall be selected by the founders at the establishment of the company or otherwise by the board of directors.

(2) The expert opinion of the expert engaged to value the contribution in kind shall include at least:

(a) a description of the contribution in kind,

(b) the valuation method(s) applied and information on whether the price of the contribution in kind obtained from these methods corresponds at least to the total issue price of the shares that are to be issued by the company as consideration for such contribution in kind and

(c) the amount at which the contribution in kind is valued.

(3) The expert opinion referred to in subsection (1) shall be filed by the company in the collection of instruments.

(4) The fee to be paid to the expert for his or her expert opinion shall be determined by agreement and paid by the company. In addition to the fee, the expert shall be entitled to a reimbursement of expenses reasonably incurred in relation to the preparation of the expert opinion. In the event that the company is ultimately not incorporated, the fee shall be paid by the founders jointly and severally.

#### **Section 252**

A written receipt shall be delivered by the contribution administrator to every subscriber, containing the following information:

(a) the type, number and par value of the subscribed shares, their form or an indication that they will be issued as book-entry securities,

(b) total amount of the issue price for the subscribed shares and

(c) the extent to which the issue price for the subscribed shares was paid up.

### Section 253

(1) The establishment of a company shall be effective provided that every founder has paid up the share premium, if any, and at least 30% in aggregate of the par or book value of the subscribed shares within the period of time set in the articles of association to the bank account specified in the articles of association, but no later than by the date of filing of the application for the company's registration in the commercial register.

(2) If the obligation referred to in subsection (1) and Section 26 is not met, the company cannot be registered in the commercial register.

### Section 254

(1) Every special advantage granted to any person who was involved in the establishment of a company shall be specified in the articles of association, identifying the person in question.

(2) If the requirement referred to in subsection (1) is not met, any legal act on the basis of which an advantage was granted to any person at the time of the company's establishment shall be disregarded; this may be remedied by an amendment to the articles of association approved by all shareholders.

### Section 255

#### **Acquisition of company assets for consideration from the founders and shareholders during two years after incorporation**

(1) Where a company acquires from its founder or shareholder, during the first 2 years after its incorporation, any assets for consideration exceeding 10% of its subscribed registered capital,

(a) the consideration must be determined so that it does not exceed the value of the acquired assets as determined in an expert opinion; the provisions of Section 251 and Sections 468 to 473 shall apply *mutatis mutandis*, and

(b) the acquisition including the amount of consideration must be approved by the general meeting.

(2) Subsection (1) shall not apply to an acquisition of assets:

(a) in the ordinary course of business,

(b) at the initiative or under the supervision or oversight of a state authority, or

(c) on a European regulated market.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* where, as a result of a transformation, a company changed into a joint-stock company in terms of legal form; the period referred to in subsection (1) shall commence on the effective date of the transformation.

(4) Where a consideration is not fixed pursuant to subsection (1), the members of the board of directors who voted in favour of the acquisition of assets shall be conclusively presumed not to have acted with due care and the founder or the shareholder shall refund to the company any amount exceeding the price determined in the expert opinion.

## **Chapter 3**

### **Shares and other securities issued by a joint-stock company**

#### **Division 1**

#### **Shares**

### Section 256

(1) A share is a security or a book-entry security, to which the rights of the shareholder to participate as a member in the management of the company, profits and liquidation balance in case of its dissolution with liquidation, in accordance with this Act and the company's articles of association, are attached.

(2) Until the issue price of the share is paid up in full, the shareholder's rights and duties constitute an outstanding share, unless an interim certificate was issued. An outstanding share may be transferred pursuant to the provisions governing the assignment of a contract; the company's consent shall not be required. The provision of Section 285(3) shall apply *mutatis mutandis* to the liability of the transferor.

(3) If a share is not issued although the issue price was paid up in full, subsection (2) in connection with Section 321(1) and Section 523(1) shall apply *mutatis mutandis*.

(4) Outstanding shares referred to in subsection (2), unissued shares referred to in subsection (3) and interim certificates shall be subject to the relevant provisions of this Act concerning shares, unless this is excluded by their nature or by other provisions of this Act.

#### Section 257

##### **No par value shares**

(1) Where so provided in the articles of association, a company may issue shares which have no par value and represent equal participations in the company's registered capital ("no par value shares").

(2) If a company issues no par value shares, it may not issue or have issued shares with a par value.

(3) In case of no par value shares, the share in the registered capital shall be determined based on the number of shares. Each no par value share shall be associated with one vote, unless the issuance of shares with different vote weightings is permitted under the articles of association.

(4) The relevant provisions of this Act concerning par value shall not apply if no par value shares were issued by a company.

#### Section 258

(1) The articles of association may provide that a company's employees may acquire its shares or shares of its affiliates under preferential terms pursuant to subsection (2).

(2) The articles of association or the decision of the general meeting to increase the registered capital may provide that employees do not have to pay up the entire issue price of the subscribed shares or may acquire them under other preferential terms, provided that the difference, if any, between the paid-up part of the issue price and the price or between the issue price and the price is covered from the company's own resources.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* to company employees who have retired.

#### Section 259

(1) A share shall include:

- (a) its designation as a share,
- (b) an unambiguous identification of the company,
- (c) its par value,
- (d) a specification of the form of the share, unless the share was issued as a book-entry security, and
- (e) in case of a registered share, an unambiguous identification of the shareholder and
- (f) information about the type of share, with reference to the articles of association, where applicable.

(2) Ordinary shares do not have to include information about the type of share. A no par value share must include the words "kusová akcie".

#### Section 260

(1) A share shall also include a numerical marking and the signature of the member(s) of the board of directors. The signature may be replaced by a signature print, provided that security features are simultaneously used in the deed in order to protect it against counterfeit or alteration.

(2) Where a share is issued as a book-entry security, it shall be sufficient that the information listed in Section 259 is identifiable from the book-entry securities register. The numerical marking of book-entry shares shall only be required where so provided for these shares in this Act.

#### Section 261

The shares of the same company may have different par values.

#### Section 262

Where a global share was issued, it shall also include information about how many shares of which type it substitutes.

#### Section 263

##### **Form of a share**

(1) A share may have the form of a registered security or a bearer security; the same shall apply *mutatis mutandis* to book-entry shares.

(2) A share in the form of a bearer security shall be referred to as a bearer share. A company may issue bearer shares only as book-entry securities or immobilised securities; the same shall apply *mutatis mutandis* to any change in the form or type of shares.

(3) A share in the form of a registered security shall be referred to as a registered share.

#### **Register of shareholders**

##### **Section 264**

(1) A registered share shall be registered in the register of shareholders kept by the company. Where a company issued book-entry shares, the articles of association may provide that the register of shareholders is substituted by a book-entry securities register.

(2) The following shall be recorded in the register of shareholders: type of share, its par value, name and place of residence or registered office of the shareholder, number of a bank account held with an entity authorised to provide bank services in a country which is a full member of the Organisation for Economic Co-operation and Development, share marking and any changes in the data recorded.

(3) Any separation or transfer of a separately transferable right shall also be recorded in the register of shareholders.

##### **Section 265**

(1) As regards a company, a shareholder is presumed to be any person registered in the register of shareholders.

(2) A company shall include a new owner in the register of shareholders without undue delay after a change of the shareholder has been evidenced to the company.

(3) Where a shareholder has caused that his or her name is not included in the register of shareholders or that the record does not correspond to reality, the shareholder cannot claim the invalidity of a resolution of the general meeting on the grounds that the company did not allow him or her to attend the general meeting or to exercise the voting right.

##### **Section 266**

(1) A copy of the list of all shareholders who own registered shares or of a requested part of that list shall be issued by a company to any of its shareholders at his or her written request and at his or her expense, without undue delay after the receipt of such request. The bank account numbers recorded in the list shall only be provided by a company under the conditions specified in subsection (2).

(2) Any data recorded in the register of shareholders shall be provided to third parties by a company under the conditions provided for in an act governing business transactions on the capital market for the provision of data by a person keeping the register of investment instruments, or with the consent of the shareholder concerned by the records.

##### **Section 267**

(1) Any data recorded in the register of shareholders can only be used by a company for internal purposes in relation to the shareholders. The use of such data for any other purpose by a company shall require the consent of the shareholders concerned by the data.

(2) Where a shareholder is no longer a shareholder in a company, he or she shall be deleted by the company from the register of shareholders without undue delay.

##### **Section 268**

The provisions of Sections 264 to 267 shall apply *mutatis mutandis* to outstanding shares and interim certificates.

#### **Registered shares**

##### **Section 269**

(1) A registered share shall be transferred by endorsement, clearly identifying the transferee.

(2) In order for a transfer of a registered share to be effective vis-à-vis the company, the change of the shareholder must be notified to the company and the registered share must be presented to the company.

##### **Section 270**

Transferability of registered shares may be restricted, but not excluded, in the articles of association.

##### **Section 271**

(1) Where the transferability of registered shares is subject to the consent of a company body, an agreement on the transfer of such shares shall not become effective before the consent is granted.

(2) Where the consent is not granted within 6 months after the execution date of the transfer agreement, it shall have the same effect as a withdrawal from the agreement, unless provided otherwise in the transfer agreement.

(3) Where the transferability of shares is restricted in a manner other than that referred to in subsection (1) and a shareholder transfers the shares in violation of that restriction, the transfer of the shares shall be invalid.

#### Section 272

(1) If the articles of association make the transferability of registered shares subject to the consent of a company body, the articles of association may also determine the situations and the conditions when the relevant company body is obliged to grant its consent and, where appropriate, the situations when it is obliged to refuse its consent.

(2) Where the relevant company body fails to decide within 2 months after the delivery of the request, the consent shall be conclusively presumed to have been granted.

(3) Where the relevant company body refuses to grant its consent to the transfer of a registered share, although it was not obliged to refuse its consent under the articles of association, the company shall repurchase such share at a fair price without undue delay after the delivery of the shareholder's request. The period for the exercise of the right to repurchase the share shall be 1 month after the date when the decision to refuse the transfer of the share was delivered to the shareholder; the provision of Section 329(1) and (2) shall apply *mutatis mutandis*.

#### Section 273

(1) Where the transferability of registered shares is restricted in the articles of association, the same rules shall apply to the pledging thereof.

(2) The consent of the relevant company body shall not be required to sell pledged registered shares in the enforcement of the pledge.

#### Section 274

##### **Bearer shares**

(1) A bearer share shall be fully transferable without restriction.

(2) Bearer shares may only be issued as book-entry securities or as immobilised securities. The shareholders shall not be entitled to demand that their immobilised shares be released from global custody.

#### Section 275

##### **Book-entry shares**

(1) Book-entry shares shall be transferable without restriction, unless their transferability is restricted in the articles of association. The provisions governing the restriction of transferability of registered shares shall apply *mutatis mutandis* to the restriction of transferability of book-entry shares.

(2) The transfer of a book-entry share shall be effective vis-à-vis the company, if the change in the shareholder is evidenced to the company with an extract of the shareholder's account, or on the date of delivery or acceptance of an extract from the share issue register pursuant to the act governing business transactions on the capital market.

(3) The rights attached to a book-entry share shall be exercised by the person who is registered in the book-entry share register as the shareholder as at the relevant date and, where no relevant date is set, as at the date when the right is exercised by that person, unless it is proven that the records in the book-entry securities register are not in accordance with the facts.

##### **Types of shares**

#### Section 276

(1) Shares with special rights, to which the same rights are attached, shall constitute a single type. Shares with no special rights attached to them are ordinary shares.

(2) Shares, to which the right to a certain interest regardless of the company's economic results is attached, are forbidden.

(3) In particular, different fixed or subordinated profit shares or shares in the liquidation balance, and/or different vote weightings may be attached to the shares with special rights. Various special rights may be attached to shares with the same par value.

#### Section 277

(1) Special rights and their contents shall be specified in the articles of association. In case of doubt as to their contents, a court, on the basis of a petition of the company or any of its shareholders, may:

(a) decide what special right is attached to the share where the circumstances clearly imply that such a special right expresses the will contained in the articles of association or is the closest possible to this will in terms of its contents, or

(b) where it is impossible to follow the procedure referred to in paragraph (a), decide that the share is an ordinary share.

(2) Where a court decides in accordance with subsection (1)(b), the holder of the share concerned by the decision about its type may request that such a share is repurchased from him or her by the company at a fair price within 1 month after the court's ruling, unless the doubt was already apparent at the time when he or she acquired the share; the provision of Section 329(1) and (2) shall apply *mutatis mutandis*.



## Preference shares

### Section 278

(1) A share with priority rights concerning a profit share or a share in the company's other own resources or in the company's liquidation balance shall constitute a preference share.

(2) Unless provided otherwise in the articles of association, preference shares shall be issued without voting rights. Where the general meeting is required to vote by the type of shares under this Act, the holder of preference shares without voting rights shall be entitled to vote at the general meeting.

### Section 279

Shares with no voting rights attached may only be issued if the sum of their par values does not exceed 90% of the registered capital.

### Section 280

(1) A holder of a preference share shall acquire a voting right starting from the date following the date when the general meeting decided not to pay a preferential profit share or starting from the date of default with the payment of the profit share, and until the time when the general meeting decides to pay a preferential profit share or until the time of its payment where the company was in default with the payment.

(2) A holder of a preference share who, on a temporary basis, acquired a voting right pursuant to subsection (1), shall be entitled to vote also on matters in the full scope of the general meeting agenda, which is to decide on the payment of the preferential profit share.

## Separately transferable rights

### Section 281

(1) A transfer of a share shall entail the transfer of all rights attached thereto, unless provided otherwise by law.

(2) The right to a profit share, the preferential right to subscribe shares and convertible and preferential bonds, the right to a share in the liquidation balance and other equivalent property rights as determined in the articles of association shall be separately transferable.

(3) Where so provided in this Act or in the articles of association in accordance with this Act, the rights referred to in subsection (2), which are otherwise attached to the share, may be separated from the share and attached to a security issued in relation to such share.

(4) The voting right attached to a share cannot be transferred separately.

### Section 282

(1) Where a company gave the instruction to register a separately transferable right attached to a book-entry share in the book-entry securities register, such right shall be transferred upon the registration of the transfer in the book-entry securities register. The provisions of another legal regulation governing the issue and transfer of book-entry securities shall apply *mutatis mutandis* to the procedure of registration of separately transferable rights and their transfers.

(2) A right, for which a security was issued pursuant to Section 281(2) or which was registered pursuant to subsection (1), shall not be transferred together with the share.

(3) The transfer and separation of a separately transferable right shall be marked on the share or in the book-entry securities register.

### Section 283

Except for situations referred to in Section 282, a separately transferable right shall be transferred by an agreement on the assignment of a receivable.

### Section 284

## Relevant date

(1) In cases stipulated in this Act or in cases specified in the articles of association or a decision of the general meeting on the basis of this Act, a separately transferable right attached to a security or a book-entry security or any other right attached thereto, as the case may be, can only be exercised against the company by a person who is entitled to exercise such right as at a certain date provided for in this Act, in the articles of association or in the decision of the general meeting (the "relevant date"), including where the security or the separately transferable right is transferred after the relevant date.

(2) Where a company issued registered shares and the shareholder rights can only be exercised by a person who had these rights as at the relevant date, they shall be exercised by the person who was registered in the shareholder list as at the relevant date.

(3) A person who proves his or her ownership of the bearer shares to the company when exercising the right referred to in subsection (1) shall be deemed to have been entitled to exercise such right as at the relevant date.

#### Section 285

##### Interim certificate

(1) Where so provided in the articles of association, the rights and duties attached to an outstanding share may be attached to an interim certificate.

(2) An interim certificate is a registered security, which includes:

- (a) an indication of "interim certificate",
- (b) an unambiguous identification of the company,
- (c) an unambiguous identification of the interim certificate holder,
- (d) the par value consisting of the sum of the par values of the outstanding shares,
- (e) the number of shares substituted by the interim certificate, their form or an indication that it replaces book-entry shares or, where appropriate, specification of their type,
- (f) the paid-up and outstanding part of the issue price of the shares and the maturity dates, and
- (g) signature of the member(s) of the board of directors. The signature may be replaced by a signature print, provided that security features are simultaneously used in the deed in order to protect it against counterfeit or alteration.

(3) The transferor shall be liable to the company for any debt that has been transferred to the transferee together with the interim certificate.

#### Division 2

##### Convertible and preferential bonds

#### Section 286

(1) Where so provided in the articles of association, a company may, based on a decision of the general meeting, issue bonds with the right to be exchanged for shares or preferential bonds that include a preferential right to subscription of shares.

(2) The issue of convertible bonds pursuant to subsection (1) may be conditional upon an exchange for shares already issued or to a simultaneous decision by the company on a conditional increase of the registered capital. The issue of preferential bonds shall be conditional upon a simultaneous decision by the company on a conditional increase of the registered capital.

(3) By approving the issue of preferential bonds pursuant to subsection (1), the general meeting shall be conclusively presumed to have simultaneously decided to restrict the shareholders' preferential right to subscribe for shares to the extent in which the preferential right may be exercised by the bond holder in accordance with the terms and conditions of the issue and the aforesaid decision of the general meeting; the provision of Section 488(4) shall apply *mutatis mutandis*.

#### Section 287

A resolution of the general meeting to issue bonds pursuant to Section 286 shall include:

- (a) the par value of the bonds and an indication of the yield on the bonds,
- (b) the number of bonds,
- (c) the place and period to exercise the rights attached to the bonds, specifying how the commencement of the period will be notified; the period to exercise the right to exchange the bonds for shares (the "exchange right") or the preferential right to subscribe shares may not be less than 2 weeks,
- (d) the type, form, par value and number of shares that may be exchanged or subscribed for one bond, their form or an indication that they will be issued as book-entry securities; the par value of the shares to be exchanged for convertible bonds may not be higher than the sum of the par values of the convertible bonds, for which they may be exchanged, and
- (e) the proposed issue price of the bonds or the method of its determination and/or authorisation for the board of directors to determine its level, including a specification of the lowest level possible at which the issue price may be determined.

#### Section 288

The provisions of a different legal act governing bonds shall apply to convertible and preferential bonds, unless provided otherwise in this Act.

#### Section 289

Where convertible or preferential bonds were issued as book-entry securities, the exchange rights or preferential right may be exercised by a person who benefited from such a right according to the book-entry share register as at the date when it could have been exercised for the first time.

#### Section 290

(1) Every preferential bond holder shall have a preferential right to subscribe for new shares under the conditions defined in the terms and conditions of the issue where shares are subscribed through cash contributions.

(2) The board of directors shall provide the preferential bond holders, in the manner defined in the terms and conditions of the issue and in any case on the issuer's website, with information containing at least:

(a) the place and period to exercise the preferential right which may not be less than 2 weeks, specifying how the commencement of the period will be notified to the preferential bond holders,

(b) the type, par value and number of shares that may be subscribed for one bond, their form or an indication that they will be issued as book-entry securities, with the possibility of subscribing for full shares only,

(c) the issue price of the shares to be subscribed under the preferential right or the method of its determination and/or information that the board of directors was authorised to determine its level, and

(d) the date pursuant to Section 289 to exercise the preferential right, where preferential bonds were issued as book-entry securities.

(3) A preferential right attached to a preferential bond shall expire after the period set for the exercising thereof.

#### Section 291

(1) The preferential right attached to a preferential bond shall be separately transferable starting from the date specified in a decision of the general meeting.

(2) Where the transferability of a preferential bond is restricted, a similar restriction shall also apply to the transfer of the preferential right.

#### Section 292

(1) A company's shareholders shall have a preferential right to acquire convertible or preferential bonds.

(2) The provisions of this Act on the preferential right to subscribe for shares, including the provisions on the relevant date and on the separate transferability of the preferential right, shall apply *mutatis mutandis* to the preferential right referred to in subsection (1).

#### Section 293

(1) A preferential right shall not be deemed restricted or excluded if, in accordance with a decision of the general meeting, all convertible or preferential bonds are subscribed for by a securities trader based on an agreement to procure the issue of securities, provided that such an agreement includes an obligation on the securities trader to sell to the persons with a preferential right to acquire the convertible or preferential bonds, at their request, the acquired bonds within the scope of their preferential right against a fixed price and within a fixed period of time.

(2) The provisions of this Act on the preferential right to subscribe for shares, including the provisions on the relevant date and on the separate transferability of the preferential right, shall apply *mutatis mutandis* to the sale of convertible or preferential bonds by a securities trader to the shareholders.

#### Section 294

(1) A shareholder may waive the preferential right to acquire convertible or preferential bonds even before the decision of the general meeting that is to decide on the issue thereof.

(2) A waiver of the preferential right shall be made in writing with a certified signature or at the general meeting deciding on the issue of convertible or preferential bonds. A waiver of the preferential right at the general meeting shall be included in the authentic instrument certifying the decision of the general meeting.

(3) A waiver of the preferential right shall also be effective vis-à-vis every other acquirer of these shares.

### Division 3

#### Security to exercise the preferential rights

#### Section 295

(1) A company may issue a warrant in order for the preferential right to be exercised.

(2) A warrant shall be a bearer security.

(3) A warrant may be issued as a book-entry security.

#### Section 296

A warrant shall include:

- (a) its designation as a warrant,
- (b) an unambiguous identification of the company,
- (c) specification of how many shares in which form or how many shares to be issued as book-entry securities of which type and/or how many bonds of the company of which form, or how many bonds to be issued as book-entry securities, may be obtained under the warrant at what par value, and
- (d) the period and conditions to exercise the right.

#### Section 297

(1) A warrant shall also include a numerical marking and the signature of the member(s) of the board of directors. The signature may be replaced by a signature print, provided that security features are simultaneously used in the deed in order to protect it against counterfeit or alteration.

(2) Where warrants were issued as book-entry securities (the "book-entry warrant"), it shall be sufficient that the information listed in Section 296 is identifiable from the book-entry securities register. Where book-entry warrants are to be issued, a company shall instruct the person who keeps records in the book-entry securities register to register the book-entry warrants in the asset account in the book-entry securities register, provided that a preferential right was exercised within the prescribed period of time upon the fulfilment of the conditions applicable to the issue of these securities. At the same time, the company shall give an instruction to cancel the warrants, for which the preferential right was exercised or for which the attached right was not exercised within the prescribed period of time.

### Division 4

#### Subscribing and acquiring own shares

#### Section 298

- (1) A company may not subscribe for its own shares.
- (2) A company may only acquire its own shares under the conditions provided for in this Act.

#### Section 299

(1) Where shares were subscribed for in violation of Section 298(1), the founders or, in case of an increase of the registered capital, the members of the board of directors, shall become their owners; such owner shall pay their issue price.

(2) The owner of the shares referred to in subsection (1) shall not exercise any rights attached to the subscribed outstanding shares until the issue price is paid up in full.

#### Section 300

A person who subscribed for a company's shares in his or her own name, but on the account of the company, shall be considered to have subscribed for the shares on his or her own account.

#### Section 301

(1) A company, acting by itself or through another person acting in his or her own name for the account of the company, may only acquire its own shares provided that their issue price has been paid up in full and provided that:

- (a) the acquisition of its own shares was approved by a resolution of the general meeting,
- (b) the acquisition of the shares, including shares that had previously been acquired and are still held by the company, and shares that were acquired for the account of the company by another person acting in his or her own name, shall not result in a decrease of equity below the subscribed registered capital increased with the funds which cannot be distributed among the shareholders pursuant to this Act or the articles of association, and
- (c) the company has resources to create a special reserve fund for own shares, if such fund is required pursuant to Section 316.

(2) The resolution of the general meeting referred to in subsection (1)(a) shall provide for the details of the envisaged acquisition of shares, including at least:

- (a) the maximum number of shares that may be acquired by the company and their par value,
- (b) the period for which the shares may be acquired by the company under this mandate, which may not exceed 5 years, and
- (c) the maximum and minimum price, for which the shares may be acquired by the company, where the shares are acquired against consideration.

#### Section 302

A company, acting by itself or through another person acting in his or her own name for the account of the company, may not acquire its own shares if such an acquisition would result in the company's bankruptcy pursuant to another legal regulation.

#### Section 303

The board of directors shall be responsible for the fulfilment of the obligations pursuant to Sections 301 and 302.

#### Section 304

(1) The provisions of Section 301(1)(a) shall not apply where the company's own shares are acquired in order to avert a substantial imminent damage to the company or where so provided in this Act.

(2) Where a company follows the provision of subsection (1), the board of directors shall inform the next general meeting about the reasons and objectives of the effected acquisition, the number and par value of the acquired shares or, if they have no par value, the book value of the acquired shares, the portion of the subscribed registered capital represented by these shares, and the consideration provided for these shares.

#### Section 305

The provision of Section 301(1)(a) shall not apply to an acquisition of own shares by a company or through another person acting in his or her own name for the account of the company for the purpose of their sale to the employees; such acquired shares shall be disposed of by the company no later than 1 year after the date of their acquisition.

#### Section 306

(1) A company may also acquire its own shares when the requirements under Sections 301 to 303 are not met, provided that the shares are acquired by the company:

- (a) in order to implement a decision of the general meeting to decrease the registered capital,
- (b) as a universal legal successor or, as the case may be, in connection with the acquisition of an enterprise or a part thereof,
- (c) in order to fulfil an obligation imposed by a different legal regulation or based on a court decision to protect minority shareholders,
- (d) as a result of a shareholder's failure to fulfil the obligation to pay up the issue price, or
- (e) in a judicial auction when executing a decision to enforce a receivable towards the owner of paid-up shares.

(2) A company may acquire shares pursuant to subsection (1), except for their acquisition pursuant to subsection (1)(a), if their par value or, in case of no par value shares, their book value is below 10% of the registered capital. Where a company acquires shares pursuant to subsection (1), except for their acquisition pursuant to subsection (1)(a), above the limit referred to in the first sentence, it shall, within 3 years after the date of their acquisition, dispose of the part exceeding 10% of the registered capital, or decrease its registered capital by the par or book value exceeding 10% of the registered capital and cancel the shares in question.

(3) If a company fails to comply with the requirement referred to in subsection (2), a court may, even *ex officio*, dissolve the company and order its liquidation.

#### Section 307

Where a company's own shares were acquired, the report of the board of directors on the company's business activities and on the state of its assets shall include also the following information:

- (a) the reasons for the acquisition(s), which took place during the accounting period,
- (b) the number and the par value or, where no par value shares were issued, the book value of the shares acquired and disposed of during the accounting period and the portion of the subscribed registered capital represented by these shares,
- (c) the number and the par value or, where no par value shares were issued, the book value of the shares owned by the company and the portion of the subscribed registered capital, at the beginning and at the end of the accounting period,
- (d) if the shares were acquired and transferred against consideration, the consideration provided for these shares and
- (e) specification of the person from whom the shares were acquired by the company, unless it acquired them on a European regulated market.

#### Section 308

(1) A legal act by which the company acquired own shares in violation of this Act shall be effective, unless the transferor did not act in good faith.

(2) Shares acquired in violation of this Act shall be disposed of by the company within 1 year after the date of their acquisition; otherwise, the company shall cancel the shares and decrease its registered capital by the par or book value of the shares in question.

(3) If a company fails to comply with the requirement referred to in subsection (2), a court may, even *ex officio*, dissolve the company and order its liquidation.

#### Section 309

(1) A company that acquired its own shares shall not exercise the voting rights attached thereto.

(2) The right to a profit share attached to its own shares held by the company shall expire upon its maturity. Any undistributed profit shall be transferred by the company to the account of retained profits from previous years.

#### Section 310

A company may only accept its own shares as a pledge under the conditions set forth in this Division for the acquisition of its own shares; this restriction shall not apply to banks and financial institutions as regards transactions concluded in the ordinary course of business.

### Financial assistance

#### Section 311

A company may grant financial assistance where so provided in the articles of association and if at least the following requirements are met:

(a) the financial assistance is granted under fair market conditions, particularly as regards the interest or the security provided in favour of the company for the financial assistance,

(b) the board of directors shall properly examine the financial capacity of the person to whom the financial assistance is to be granted,

(c) the granting of the financial assistance shall be approved in advance by the general meeting, on the basis of a report by the board of directors referred to in paragraph (d); such a decision shall require a majority of at least two thirds of the votes of the present members in order to be adopted,

(d) the board of directors shall prepare a written report:

1. giving a material justification of the financial assistance to be granted, including an indication of the related advantages and risks for the company,
2. specifying the terms and conditions under which the financial assistance will be granted, including the price for which the shares will be acquired by the financial assistance beneficiary,
3. providing the findings of the examination of financial capacity pursuant to paragraph (b),
4. giving reasons why the granting of the financial assistance is in the interest of the company; where the financial assistance is used to acquire shares from the company granting the financial assistance, the acquisition price of these shares must be adequate,

(e) the granting of the financial assistance may not result in a decrease of equity below the subscribed registered capital increased with the funds which cannot be distributed among the shareholders pursuant to this Act or the articles of association, taking into account the decrease of equity, if any, which may occur if the company's shares are acquired by the company itself or by another person for the account of the company,

(f) the company creates a special reserve fund for the amount of the financial assistance to be granted; Section 317 shall apply *mutatis mutandis*.

#### Section 312

The report referred to in Section 311(d) shall be filed by the company in the collection of instruments without undue delay after the financial assistance is approved by the general meeting. The report must be available to shareholders in the company's registered office as from the date when the general meeting expected to approve the financial assistance was convened; by the same date, the report must be posted on the company's website and be freely accessible to shareholders at that general meeting.

#### Section 313

Where financial assistance is to be granted to a member of the board of directors, the company's controlling entity, a member of its statutory body, or to a person acting in concert with the company or with any of the aforesaid persons, or to a person acting in his or her own name but on the account of the aforesaid persons, the report referred to in Section 311(d) shall be reviewed by a generally recognised expert appointed by the supervisory board, who is independent of the company and such persons. In his or her written report, the expert shall assess the correctness of the written report by the board of directors and give an explicit opinion on whether the granting of the financial assistance is not in conflict with the company's interests; the provisions of Section 312 shall apply *mutatis mutandis*.

#### Section 314

The provisions of Section 311(a) to (d) and Section 312 shall not apply to the actions of a company aimed at the

acquisition of its own shares by company employees or of shares for employees of entities controlled by the company. Such shares must be distributed among the employees within 1 year after the date of their acquisition.

#### Section 315

The provisions of Section 311(1)(a) to (c) and (f), Section 312, Section 313 second sentence after the semi-colon and Section 314 shall not apply if the financial assistance is granted by banks and financial institutions, provided that it is granted within the common limits of their main activity.

#### **Special reserve fund for own shares**

##### Section 316

(1) A company whose balance sheet shows its own shares under its assets shall create a special reserve fund for the same amount.

(2) The special reserve fund shall be cancelled or decreased by a company if its own shares, whether in full or in part, are disposed of or used by the company to decrease its registered capital.

(3) A company shall not be entitled to use the special reserve fund for purposes other than provided for in subsection (2).

##### Section 317

Retained profits or other funds which a company may use at its discretion may be used by the company to create or replenish the special reserve fund.

#### **Special provisions for business groupings**

##### Section 318

(1) This Division shall apply *mutatis mutandis* to the subscription, acquisition and pledging of shares of a controlling entity by a controlled entity, except for Section 304, Section 306(1)(a) and (d) and Section 309(2) and the provisions on decreases of registered capital.

(2) If a controlled entity fails to dispose of the shares in its controlling entity which it had acquired, a court may dissolve the entity and order its liquidation.

##### Section 319

(1) The provisions of Section 318 shall not apply if the controlled entity:

(a) acts on the account of another person, unless it acts on the account of its controlling entity and/or on the account of another entity controlled by the controlling entity,

(b) is a securities trader and the transactions are executed as part of its business as a security trader, or

(c) became a controlled entity only after the acquisition of the shares.

(2) The voting rights attached to the shares acquired pursuant to subsection (1) cannot be exercised; these shares shall be included in the calculation of the equity-registered capital ratio referred to in Section 301(1)(b).

##### Section 320

This Division shall also apply *mutatis mutandis* to situations where the company shares are acquired by a third party in his or her own name on the account of the company or of an entity controlled by the company.

##### Section 321

(1) This Division shall also apply *mutatis mutandis* to outstanding shares, interim certificates, if issued, and other outstanding participating securities, unless provided otherwise in this Act.

(2) Outstanding own shares or own interim certificates and/or other outstanding participating securities can only be acquired free of charge by a company.

### **Division 5**

#### **Public bid to buy or exchange participating securities**

##### Section 322

(1) Any person making a public bid to buy or exchange participating securities on a contractual basis shall proceed in accordance with Sections 323 to 325; this shall be without prejudice to the rules on takeover bids pursuant to the Act on takeover bids, public bids pursuant to the Act on transformations of commercial companies and cooperatives, and the rules on public offerings of investment securities pursuant to the Act on capital market undertakings.

(2) Any offer to buy or exchange participating securities directed at a wider group of people and made in a manner other than in the form of a public bid referred to in subsection (1) shall be prohibited. This shall not apply if a person intends to make a bid to buy or exchange participating securities:

- (a) to less than 100 persons,
- (b) whose aggregate par value does not exceed 1% of the registered capital, or
- (c) exclusively on a European regulated market.

(3) The articles of association of a company may provide that subsections (1) and (2) and Sections 323 and 324 shall not apply to its participating securities if, during 12 consecutive months, the buy or exchange bid is made only to shareholders who, together, own participating securities the par value of which does not exceed 5% of the registered capital; this shall not apply where a public bid is required pursuant to this Act or another legal regulation.

#### Section 323

(1) A bidder shall disclose a public bid in the manner prescribed by this Act and the articles of association of the company whose participating securities the bidder intends to acquire (the "target company") for convening its general meeting.

(2) A public bid shall include at least the following:

- (a) the bidder's name and place of residence or registered office, particulars of the purchase or exchange agreement, including information on the amount of consideration offered for each participating security or the method of its determination,
- (b) the binding period of the public bid,
- (c) reasons underlying the public bid.

#### Section 324

(1) A bidder shall deliver the text of the public bid together with the request for an opinion referred to in subsection (2) to the target company within 10 working days before its disclosure.

(2) The board of directors of the target company shall prepare its opinion on the public bid and deliver it to the bidder within 5 working days after the date when the public bid was delivered to the target company. The contents of such opinion shall be subject, *mutatis mutandis*, to the provisions governing the contents of an opinion to be given by the bodies of the target company pursuant to the Act on takeover bids.

(3) If the members of the target company's board of directors do not comply with the requirement to prepare an opinion, they shall be jointly and severally liable for the bidder's debt arising from the compensation of damage pursuant to Section 329.

#### Section 325

(1) Together with the public bid, a bidder shall also disclose the opinion of the target company's board of directors provided that it was delivered to him at least 2 working days before the disclosure date of the public bid.

(2) The provisions of subsection (1) and Section 324 shall not apply if the bidder is the target company itself.

#### Section 326

(1) Once made, a public bid cannot be withdrawn. A public bid can only be modified if such option is expressly stipulated in its terms and conditions or if it is more advantageous for the interested parties; such modifications shall also be reflected in all previously concluded agreements.

(2) The provisions of the Act on takeover bids concerning the conclusion of and withdrawal from an agreement, including the procedure for a partial or conditional takeover bid, shall apply *mutatis mutandis*.

### **Mandatory public bid**

#### Section 327

A mandatory public bid shall be a public bid made by the bidder in order to comply with the statutory obligation to purchase participating securities.

#### Section 328

(1) In the case of a mandatory public bid, the amount of consideration must be adequate for the value of the participating securities. A bidder shall prove the adequacy of the consideration based on an expert opinion; the provision of Section 251(2) shall apply *mutatis mutandis*.

(2) The binding period of the public bid referred to in subsection (1) may not be less than 4 weeks after the date of its disclosure pursuant to Section 323(1).

#### Section 329



(1) Where a bidder did not comply with the obligation to make a public bid, the beneficial owner of the participating securities shall be entitled to propose to the bidder to conclude an agreement to purchase the participating securities for an adequate consideration and the bidder shall be obliged to accept such proposal.

(2) If the proposal is not accepted within 15 working days after its delivery date, the beneficial owner of the participating securities may demand the conclusion of the agreement before a court or claim compensation of damage no later than 6 months after the date when the proposal to conclude the agreement referred to in subsection (1) was delivered; the provisions of Section 390(3) to (5) and (7) shall apply *mutatis mutandis* to the compensation of damage.

(3) If it turns out that the holders of the participating securities which were the subject-matter of the public bid did not receive or are not to receive an adequate consideration under the agreement, they may claim that the bidder tops-up the consideration; the provisions of Section 390(3) to (5) and (7) shall apply *mutatis mutandis*.

#### Section 330

Where a mandatory public bid concerns participating securities, which are admitted for trading on a European regulated market, the bidder shall submit such public bid to the Czech National Bank and document the adequacy of the consideration offered for each participating security; in such a case, an expert opinion referred to in Section 328(1) shall not be required if the adequacy of the consideration is otherwise properly justified by the bidder.

#### Section 331

(1) Within 15 working days after the delivery date of the public bid, the Czech National Bank may issue a decision on the prohibition to make the public bid or a request to rectify any deficiencies of the bid, including an insufficient justification of the adequacy of the consideration.

(2) The issue of a decision prohibiting the making of the public bid shall be the first step in the proceedings; the bidder shall be the only party to the proceedings before the Czech National Bank. The request to rectify any deficiencies referred to in subsection (1) shall include information on the consequences of non-compliance and shall be issued outside of the administrative proceedings.

(3) The period referred to in subsection (1) shall be suspended from the date when the request to rectify any deficiencies in the public bid was issued and shall expire no sooner than 15 working days following the expiry of the period provided for the rectification of any deficiencies in the bid.

(4) In the event that a bidder fails to make a public bid or submit a justification of the proposed amount of consideration within the period of time specified in the request referred to in subsection (1) or if a public bid continues to show deficiencies, the Czech National Bank shall issue a decision prohibiting the making of the public bid.

#### Section 332

A mandatory public bid referred to in Section 330 can only be made following the expiry of the period for the issue of a decision prohibiting the making of such a public bid pursuant to Section 331, unless the Czech National Bank notifies the bidder before the expiry of the period referred to in Section 331 that the review was completed.

### **Mandatory purchase of participating securities**

#### Section 333

(1) A company whose general meeting decided to withdraw its participating securities from trading on a European regulated market shall make a public bid within 30 days after such decision.

(2) Subsection (1) shall not apply in the event that the participating securities are traded at another European regulated market where the issuer complies with the information obligations under the Act on capital market undertakings or under similar provisions of a state, which is a party to the Agreement on the European Economic Area.

#### Section 334

The board of directors shall notify the Czech National Bank and the operator of the European regulated market where the participating securities are traded, without undue delay, of the decision of the general meeting to withdraw the participating securities from trading at such regulated market, and shall disclose the decision in the manner prescribed by this Act and by the articles of association for convening the general meeting.

#### Section 335

(1) Where the general meeting decides to change the type of shares or to restrict and/or make stricter the transferability of registered shares or of book-entry shares, the company shall make a public bid regarding such shares within 30 days after the registration of these facts in the commercial register.

(2) The board of directors shall announce, without undue delay and in the manner prescribed by this Act and by the articles of association for convening the general meeting, the date as at which the change in the type of the shares or the restriction(s) on the transferability of the shares was registered in the commercial register.

#### Section 336

The authentic instrument certifying the decision of the general meeting must specify by name the holders of the participating securities who voted in favour of the withdrawal from trading on a European regulated market or in favour of the change in the type of the shares or in favour of the restriction(s) on the transferability of the shares.

#### Section 337

Upon a submission of a bid to the Czech National Bank pursuant to Section 330, the period referred to in Section 333(1) or Section 335 shall be suspended. The period shall continue to run from the date when the bidder is authorised to make a public bid or from the date when the decision pursuant to Section 331(1) or (4) becomes legally effective.

#### Section 338

A mandatory public bid must be addressed to the persons who were the holders of the company's participating securities as at the date of the general meeting and did not vote in favour of the decision pursuant to Section 333(1) or Section 335(1).

#### Section 339

(1) The beneficiary referred to Section 338 may waive the right of redemption in respect of the participating securities.

(2) A waiver of the right pursuant to subsection (1) must be in written form with a certified signature or made orally at the general meeting. A declaration of waiver made at the general meeting shall be included in the authentic instrument certifying the decision of the general meeting.

(3) A waiver of the right pursuant to subsection (2) shall also be effective vis-à-vis every subsequent acquirer of such shares.

#### Section 340

The price for the participating securities acquired on the basis of a mandatory public bid shall be paid by the company no later than 1 month after the date following the expiry of the binding period of the public bid.

#### Section 341

A company's shareholders who voted in favour of changing the type of shares, restricting or making stricter the transferability of shares, or withdrawing the participating securities from trading on a European regulated market shall buy from the company the securities acquired by the company pursuant to Sections 333 to 340 according to the proportion of the par values of their shares or the number of shares held by them. They shall do so within 3 months after the date when the company purchased the shares for the price paid by the company, plus the usual interest applicable at the time when the public bid was made by the company. This shall not apply if the company can sell the shares under more advantageous terms.

### Division 6

#### Replacement of shares

##### Section 342

Where the general meeting decided to change the type or form of shares and/or to split shares into multiple shares with a lower par value or to merge multiple shares into a single share, the company may issue new shares and determine a deadline when shares must be presented for replacement after such change has been registered in the commercial register.

##### Section 343

Section 526 and Section 531(2) shall apply *mutatis mutandis* to the procedure applicable when replacing shares for shares of a different type or form and/or replacing shares after their splitting or after merging multiple shares into a single share.

### Chapter 4

#### Shareholder's rights and duties

##### Contribution obligation

##### Section 344

(1) A shareholder shall pay the issue price for shares subscribed by him or her within the time provided for in the articles of association or in the decision of the general meeting to increase the registered capital, but no later than 1 year after the incorporation of the company or after the effective date of the increase of the registered capital.

(2) A shareholder who is in default with the payment of the issue price shall pay to the company late payment interest amounting to double of the late payment interest on the amount owed as set forth in another legal regulation, unless provided otherwise in the articles of association.

(3) A shareholder may not be relieved of the contribution obligation, unless the registered capital is being decreased.

##### Section 345

(1) Where a shareholder is in default with the fulfilment of his or her contribution obligation or a part thereof, he or she shall be requested by the board of directors to do so within an additional period of time to be determined in the company's articles of association or, otherwise, within 60 days after the delivery of the request.

(2) Following the expiry of the period referred to in subsection (1), the board of directors shall expel the shareholder in default from the company in relation to the shares, with respect to which he or she failed to fulfil the contribution obligation, and shall demand that the shareholder returns his or her interim certificate, if issued, within a reasonable period of time. This shall not apply if other measures were adopted by the board of directors. If no interim certificate was issued, the outstanding share shall pass to the company upon the expiry of the additional period of time.

(3) The expelled shareholder shall be liable for the payment of the issue price for the shares subscribed by him or her.

#### Section 346

(1) If an expelled shareholder fails to return his or her interim certificate, if issued, within the specified period of time, the board of directors shall declare the interim certificate in question invalid and notify the shareholder of the same in writing. Such decision shall be notified by the board of directors to the shareholders in the manner prescribed by this Act and by the articles of association for convening the general meeting, and shall be released at the same time.

(2) A company shall issue the shares to a person who was approved by the general meeting and paid the issue price. Otherwise the company's registered capital shall be decreased by the par or book value of the interim certificate or the outstanding share.

#### Section 347

(1) The consideration received by the company from the sale of the returned shares shall constitute a consideration replacing the consideration provided by the expelled shareholder for the payment of the issue price, and shall be paid by the company to the shareholder without undue delay.

(2) Any receivables of the company towards the expelled shareholder arising from the violation of his or her obligations shall be set off by the company against the consideration referred to in subsection (1).

(3) Any expenses reasonably incurred in connection with declaring the interim certificate invalid may be set off by company; the amount set off shall be documented to the shareholder.

#### Section 348

(1) A shareholder shall be entitled to a profit share, which was approved by the general meeting to be distributed among the shareholders. Unless determined otherwise in the articles of association in relation to a specific type of shares, such profit share shall be determined based on the proportion of the shareholder's share to the registered capital.

(2) Unless provided otherwise in the articles of association, the profit share shall be paid in cash.

(3) A company shall pay a profit share at its own expense and risk, solely by a bank transfer to the shareholder's bank account specified in the register of shareholders.

(4) For shares associated with a fixed profit share, a decision of the general meeting on its distribution shall not be required. A profit share shall be due and payable within 3 months after the approval of the financial statements.

#### Section 349

Unless provided otherwise in another legal regulation, any pecuniary consideration in favour of a holder of a registered share in certificated form shall be provided by the company solely by a bank transfer to the bank account specified in the register of shareholders.

#### Section 350

(1) A company may not distribute profit or other own resources among its shareholders if, as at the last date of the accounting period just ended, its equity as shown at the regular or extraordinary financial statements or its equity after such profit distribution will fall below the amount of the subscribed registered capital increased with the funds which cannot be distributed among the shareholders pursuant to this Act or the articles of association.

(2) The amount to be distributed among the shareholders may not exceed the amount of profit (loss) of the accounting period just ended increased with the retained profits from previous years, less the accumulated losses from previous years and the contributions made to the reserve fund and other funds in accordance with this Act and the articles of association.

(3) A decision of the general meeting taken in violation of subsections (1) and (2) shall be deemed to have never been taken.

#### Section 351

Unless a different date is determined in the articles of association, the relevant date for the participation at the general meeting which decides to pay out a profit share, shall be the relevant date to exercise the right to a profit share.

#### Section 352

(1) The right to a profit share shall be separately transferable starting from the date when the general meeting decides to pay out a profit share.

(2) In the event that coupons were or are to be issued in order to exercise the right to a profit share through coupons pursuant to another legal regulation, such right may only be transferred together with the coupon.

(3) Coupons can also be issued by the company before the decision of the general meeting to distribute profit for the accounting period covered by the coupon. The provision of subsection (1) shall not apply.

#### Section 353

#### **Voting right**

(1) A shareholder has the right to attend and vote at general meetings.

(2) The exercise of voting rights may be limited in the articles of association by determining the maximum possible number of votes per shareholder, to the same extent for every shareholder or also for an entity controlled by the shareholder.

#### **Cumulative voting**

#### Section 354

If provided for in the articles of association, the members of the company's bodies shall be elected by cumulative voting.

#### Section 355

(1) For the purposes of cumulative voting, the number of votes of a shareholder shall be determined by multiplying the number of votes disposed of by the shareholder at the general meeting and the number of elected member positions in a company body. Where both members of the board of directors and members of the supervisory board are elected, the number of votes of a member shall be determined separately for each body for the purposes of cumulative voting.

(2) In cumulative voting, a shareholder shall be entitled to use all the votes he or she controls or an arbitrary number of votes for certain person(s) only.

(3) In cumulative voting, each member of a body shall be voted on separately at the general meeting. In cumulative voting, votes are only cast to elect certain person(s).

(4) Where a member of a company body who was elected by cumulative voting is to be recalled, he or she can only be recalled by approval of the majority of the shareholders who voted in favour of his or her election or their legal successors. This shall not apply where the member of a company body seriously violated his or her obligations.

#### Section 356

(1) In cumulative voting, the persons for whose election the highest number of votes was cast shall be elected, provided that they were voted by at least an absolute majority of all votes of the shareholders present at the general meeting, as determined for the purposes of cumulative voting.

(2) Where multiple persons receive the same number of votes, a new vote shall be held on these persons. If they receive the same number of votes in the repeated voting, a lot shall be drawn to decide.

(3) The minutes of the general meeting must specify how many votes were cast for the election of every proposed person as well as a list of names of the persons voting in favour of such election.

#### **Right to explanation**

#### Section 357

(1) At the general meeting, a shareholder shall be entitled to request and obtain from the company an explanation of matters concerning the company or the entities controlled by the company provided that such explanation is necessary in order to be able to assess the contents of the matters included in the agenda of the general meeting or to exercise the shareholder's rights at the general meeting. The articles of association may determine that the submission of such request by every shareholder shall be subject to a reasonable time limitation.

(2) The request referred to in subsection (1) may be submitted in writing by the shareholder. A limitation of the scope of the request may be determined in the articles of association. The request must be submitted after the invitation to the general meeting was disclosed and before the general meeting is held.

#### Section 358

(1) An explanation of the matters concerning the ongoing general meeting shall be provided by the company to the shareholder directly at the general meeting. Where this is not possible due to the complexity of the explanation, it shall be provided to the shareholders within 15 days after the general meeting, including when it is no longer necessary in order to be able to assess the discussions at the general meeting or to exercise the shareholder's rights at the general meeting.

(2) The information contained in an explanation must be specific and must provide a sufficient and true picture of the inquired fact. An explanation may be provided in the form of a summary response to multiple questions of a similar content. A shareholder shall also be conclusively presumed to have received an explanation when the information was posted on the company's website no later than on the date preceding the general meeting and is available to the shareholders at the place where the general meeting is held. If information has been communicated to a shareholder, every other shareholder shall be entitled to request such information without the need to follow the procedure pursuant to Section 357.

#### Section 359

The board of directors or a person convening the general meeting may refuse, in full or in part, to provide an explanation in the event that:

- (a) providing the explanation could cause damage to the company or the entities controlled by the company,
- (b) it concerns internal information or confidential information pursuant to another legal regulation, or
- (c) the requested explanation is publicly available.

#### Section 360

(1) The board of directors shall evaluate whether the conditions for refusing to provide an explanation are met, and shall inform the shareholder about the reasons. The notice of the refusal to provide an explanation shall be included in the minutes of the general meeting.

(2) A shareholder shall have the right to require that the supervisory board determines that the conditions for the refusal to provide an explanation were not met and the board of directors is obliged to provide the explanation. The supervisory board shall decide on the shareholder's request directly at the general meeting or, if not possible, within 5 working days after the general meeting.

(3) In the event that the supervisory board disagrees with the provision of an explanation or does not give its opinion within the statutory period of time, a court, on the basis of a petition of the shareholder, shall decide whether the company is obliged to provide the information. The right to file a petition to initiate court proceedings may be exercised within 1 month after the general meeting, which decided to refuse to provide an explanation or, as the case may be, after the refusal or the failure to provide information within the period referred to in Section 358(1). Any right claimed at a later point in time shall be disregarded.

(4) During the proceedings referred to in subsection (3), the period of limitation to claim any rights that are dependent on the requested explanations shall be suspended.

### **Right to make proposals and counterproposals**

#### Section 361

(1) A shareholder shall be entitled to make proposals and counterproposals on matters included in the agenda of the general meeting.

(2) If a shareholder intends to make a counterproposal on an issue included in the agenda of the general meeting, he or she shall deliver it to the company within a reasonable period of time before the general meeting; this shall not apply to proposals to appoint certain persons to the company's bodies. The provisions of Section 369(2) shall apply *mutatis mutandis*.

#### Section 362

(1) The board of directors shall notify the shareholders, in the manner prescribed by this Act and by the articles of association for convening the general meeting, of the wording of a shareholder's counterproposal accompanied by its opinion; this shall not apply if the notification was delivered less than 2 days before the date of the general meeting or if the expenses to deliver the opinion would be in gross disproportion to the relevance and contents of the counterproposal and/or if the text of the counterproposal contains more than 100 words.

(2) Where a counterproposal contains more than 100 words, the board of directors shall inform the shareholders about the substance of the counterproposal accompanied by its opinion and shall post the counterproposal on the company's website.

#### Section 363

A shareholder shall also have the right to make proposals concerning matters included in the agenda of the general meeting before the disclosure of the invitation to the general meeting. A proposal, which was delivered to the company no later than 7 days before the disclosure of the invitation to the general meeting, shall be disclosed by the board of directors, including its opinion, together with the invitation to the general meeting. Section 362 shall apply *mutatis mutandis* to proposals delivered after that deadline. The articles of association of a company may shorten the period stipulated in second sentence.

#### Section 364

(1) Unless provided otherwise in the articles of association, a shareholder's proposal shall be voted on first.

(2) The articles of association or the general meeting at which the proposal is to be presented may determine that the presentation of proposals by every shareholder shall be subject to a reasonable time limitation.

## **Rights of qualified shareholders**

### **Section 365**

(1) A shareholder or shareholders of a company with a registered capital exceeding CZK 100,000,000, who hold shares with an aggregate par value or in a quantity corresponding to at least 3% of the registered capital, shall enjoy special rights provided for in this Act (the "qualified shareholder").

(2) In a company having a registered capital of CZK 100,000,000 or less, the shareholder or shareholders who hold shares with an aggregate par value or in a quantity corresponding to at least 5% of the registered capital, shall be considered to be a qualified shareholder.

(3) In a company having a registered capital of CZK 500,000,000 or more, the shareholder or shareholders who hold shares with an aggregate par value or in a quantity corresponding to at least 1% of the registered capital, shall be considered to be a qualified shareholder.

(4) Provisions in the articles of association restricting the statutory provisions governing the rights of the qualified shareholders shall be disregarded.

### **Section 366**

Qualified shareholders may request the board of directors to convene the general meeting to discuss matters proposed by them. Their request shall include a draft resolution on, or a justification of, the proposed matters.

### **Section 367**

(1) At a request of qualified shareholders, provided that it meets the requirements specified in Section 366, the board of directors shall convene the general meeting in the manner prescribed by this Act and by the articles of association so that the general meeting is held within 40 days after the date when the convening request was delivered to the board of directors. In such a case, the period of time to disclose and send an invitation to the general meeting shall be reduced to 15 days. In the case of a company whose shares were admitted for trading on a European regulated market, the periods of time referred to in the first sentence and the second sentence shall be 50 days and 21 days, respectively.

(2) The board of directors shall not be entitled to modify the proposed agenda of the general meeting. With the consent of the persons who requested the convening of the general meeting pursuant to Section 366, the board of directors shall only be entitled to amend the proposed agenda of the general meeting by adding new items.

### **Section 368**

(1) In the event that the board of directors fails to convene the general meeting within the period of time referred to in Section 367(1), a court shall authorise the qualified shareholders who so request to convene the general meeting and, at the same time, shall authorise them to take all the actions on behalf of the company that are related to the general meeting. Where considered appropriate, a court may *ex officio* also appoint a chairman of the general meeting.

(2) An invitation to the general meeting shall include the court's verdict referred to in subsection (1) including the information on the court which issued the ruling and when it became enforceable. The provision of Section 367 concerning the invitation shall apply *mutatis mutandis*; qualified shareholders shall be entitled to request an extract from the book-entry securities register for the purposes of the general meeting convened by them.

(3) The expenses associated with the general meeting taking place shall be borne by the company; the members of the board of directors shall be jointly and severally liable for the fulfilment of this obligation. The authorised shareholders shall have the right to claim from the company a reimbursement of the court fees and other reasonably incurred expenses.

### **Section 369**

(1) Where so requested by a qualified shareholder, the board of directors shall include the matter determined by him or her into the agenda of the general meeting provided that every such matter is accompanied by a draft resolution or by the grounds for its inclusion.

(2) In the event that a request referred to in subsection (1) was only delivered after the disclosure and dissemination of the invitation to the general meeting, the board of directors shall disclose an addendum to the agenda of the general meeting no later than 5 days prior to the date of the general meeting or, as the case may be and where determined, prior to the relevant date for the participation at the general meeting, in the manner prescribed by this Act and by the articles of association for convening the general meeting.

### **Section 370**

A qualified shareholder may request the supervisory board to review the exercise of powers by the board of directors in the matters specified in the request. The supervisory board shall review the exercise of powers by the board of directors without undue delay and shall inform the qualified shareholder about the findings of the review in writing no later than 2 months after the delivery date of the request in question.

## **Action by a shareholder**

### **Section 371**

Every qualified shareholder shall be entitled to claim, on behalf of the company, compensation of damage caused to the company by a member of the board of directors or of the supervisory board, or the fulfilment of their obligations arising from an agreement pursuant to Section 53(3), and/or the payment of the issue price by a shareholder who is in default with his or her payment, and shall be entitled to represent the company in such proceedings. The same shall apply *mutatis mutandis* for the subsequent enforcement of the ruling.

#### Section 372

(1) A qualified shareholder shall not be entitled to claim compensation of damage pursuant to Section 371 where the damage was decided on pursuant to Section 53(3), unless the person who caused the damage to the company is its sole shareholder or its controlling entity.

(2) An action by a shareholder can also be filed against an influential entity if it caused damage to the company.

(3) For the purposes of an action by a shareholder, a member of the board of directors, a member of the supervisory board or an influential entity shall also include any person who was in such a position at the time when the damage occurred, the compensation of which is claimed against him or her by the qualified shareholder, or at the time of the conduct resulting in such damage, although presently he or she is no longer in such a position.

#### Section 373

Where an action has been filed by a shareholder who is no longer a shareholder in a company, the company shall be represented by his or her legal successor in the proceedings, provided that the initial shareholder was known to the legal successor.

#### Section 374

(1) Prior to exercising the right to claim compensation of damage against a member of the board of directors, a shareholder shall inform the supervisory board in writing about his or her intention.

(2) Where the notified body fails to exercise, without undue delay after having received the information referred to in subsection (1), the right to claim compensation of damage or the payment of the issue price, the shareholder shall be entitled to exercise such right himself or herself on behalf of the company.

### **Forced passage of participating securities**

#### Section 375

A shareholder shall be entitled to demand that the board of directors convenes the general meeting and submits for decision a proposal on the passing of all other participating securities to that shareholder where he or she holds the company's shares:

(a) the aggregate par value of which represents at least 90% of the company's registered capital, for which shares with voting rights were issued, and

(b) to which at least a 90% share of the voting rights in the company is attached (the "principal shareholder").

#### Section 376

(1) Owners of participating securities shall have the right to receive adequate consideration in cash, the amount of which shall be determined by the general meeting. The principal shareholder shall prove the adequacy of the consideration on the basis of an expert opinion or justify it in accordance with Section 391(1). As at the date of delivery of the request pursuant to Section 375, the expert opinion must not be older than 3 months.

(2) Together with the request pursuant to Section 375, the principal shareholder shall deliver to the company a justification of the amount of the consideration or an expert opinion and decision of the Czech National Bank referred to in Section 391, where required.

#### Section 377

(1) The board of directors shall convene the general meeting within 30 days after the receipt by the company of the request pursuant to Section 375.

(2) The invitation to the general meeting shall also contain relevant information about the determination of the amount of consideration or the findings of the expert opinion, where required, a call on the pledgees to notify the company of the existence of a pledge to the participating securities issued by the company, and the statement of the board of directors as to whether the amount of consideration is deemed adequate.

#### Section 378

(1) The consideration shall be paid out by an authorised entity. Only the following may act as an authorised entity:

(a) a bank,

(b) a securities trader, or

(c) a foreign entity operating in the territory of the Czech Republic, whose objects correspond to the activities of either of the entities referred to in paragraphs (a) and (b).

(2) A principal shareholder shall transfer to the authorised entity funds in the amount required for the payment of the consideration and shall document this fact to the company.

(3) The authorised entity shall return any remaining funds together with interest to the principal shareholder without undue delay following the expiry of the deadline for the payment of the consideration.

(4) The transferred funds shall not be included in the estate of the authorised entity in the event of its bankruptcy pursuant to another legal regulation or a similar situation under the law of a member state other than the Czech Republic.

#### Section 379

(1) A company shall make accessible the information about the principal shareholder as well as the expert opinion referred to in Section 376(1) for review by every owner of participating securities in its registered office.

(2) A company whose participating securities are admitted for trading on a European regulated market shall make accessible, in the manner stipulated in subsection (1), the information about the identity of the principal shareholder, the decision of the Czech National Bank referred to in Section 391 as well as the justification of the amount of consideration paid by the principal shareholder. The information about the procedure pursuant to Section 375 shall be posted on the company's website.

(3) At the request of an owner of participating securities, a company shall issue a copy of the documents referred to in subsection (1) or (2) without undue delay and free of charge. The company shall notify the shareholders of this right in the invitation to the general meeting.

#### Section 380

Without undue delay after becoming aware of the convening of the general meeting, the owners of pledged participating securities shall inform the company about the pledge and the identity of the pledgee. A notice of this obligation shall be included in the invitation to the general meeting.

#### Section 381

As regards the determination of the amount of consideration, a draft resolution of the general meeting may not include an amount lower than the amount determined in the expert opinion, or in the justification of the amount of consideration where an expert opinion is not required under this Act.

#### Section 382

(1) The consent of at least 90% of votes of all shareholders shall be required in order for the decision of the general meeting to be adopted; the owners of preference shares and the principal shareholder shall always have the right to vote. An authentic instrument shall be drawn up on the decision of the general meeting and shall be accompanied by the expert opinion on the amount of consideration in cash or by the justification of the amount of consideration.

(2) The resolution of the general meeting shall also include a specification of the principal shareholder, the amount of consideration determined in accordance with Section 376(1) and the deadline for its payment.

#### Section 383

In case the consideration is not adequate, it shall not constitute grounds to declare invalidity of the resolution of the general meeting on the passing of the participating securities to the principal shareholder.

#### Section 384

(1) Without undue delay after the adoption of the resolution of the general meeting, the board of directors shall file a petition for its registration in the commercial register. At the same time, the board of directors shall disclose the resolution of the general meeting and the findings of the expert opinion, where required, in the manner prescribed by this Act and by the articles of association for convening the general meeting of the company and shall store the authentic instrument for review in the company's registered office. Information about such storage shall also be included in the released notice.

(2) If an expert opinion is not required, the company shall disclose the justification of the amount of consideration and the consent of the Czech National Bank referred to in Section 391, where required, in the manner referred to in subsection (1).

#### Section 385

(1) One month after the publication of the registration of the resolution in the commercial register pursuant to Section 384, the ownership to the company's participating securities shall pass to the principal shareholder.

(2) Where participating securities whose ownership was passed were pledged, the pledge shall cease to exist upon the passing of the ownership. Sections 386 and 387 shall apply *mutatis mutandis* to a pledgee holding the pledged participating security.

#### Section 386



Without undue delay after the passing of the ownership to the principal shareholder, a company shall instruct the person authorised to keep the relevant securities register pursuant to another legal regulation to register the change in the owners of the book-entry participating securities in the asset accounts; the underlying documents for such registration of the change shall include the decision of the general meeting pursuant to Sections 375 and 382 and a proof of its publication.

#### Section 387

(1) The existing owners of the participating securities shall present them to the company within 30 days after the passing of the ownership; if in default, they may not claim any consideration.

(2) Where the existing owners of the participating securities fail to present the securities referred to in subsection (1) within 1 month or, as appropriate, within an additional period of time granted by the company, which may not be less than 14 days, the company shall proceed in accordance with the first sentence of Section 346(1).

(3) The returned participating securities shall be handed over by the company to the principal shareholder without undue delay.

(4) New participating securities of the same form, type and par value shall be issued by the company without undue delay for the principal shareholder to replace any participating securities that were declared invalid.

#### Section 388

(1) The right of the existing owners of book-entry participating securities and the owners of other participating securities to receive the consideration and the usual interest applicable at the time of the passing of the ownership to the participating securities shall arise upon the registration of the ownership in the asset account in the relevant book-entry securities register and upon their presentation to the company pursuant to Section 387, respectively, starting from the date when the ownership of the participating securities passed from the company shareholders to the principal shareholder.

(2) The right to interest referred to in subsection (1) shall not arise as long as the beneficiary is in default with the presentation of the participating securities to the company.

#### Section 389

(1) An authorised entity shall provide the consideration to the beneficiaries without undue delay after the conditions stipulated in Section 388(1) are met.

(2) An authorised entity shall provide the consideration to the person who was the owner of the company's participating securities as at the moment of passing of the ownership, unless a creation of a pledge to these securities has been proven; in that case, the consideration shall be provided to the pledgee. This shall not apply if the owner can prove that the pledge ceased to exist before the passing of the ownership.

#### Section 390

(1) As from the due date of the consideration, the owners of the participating securities may claim the right to a top-up against the principal shareholder, if the consideration provided is not adequate for the value of the participating securities as at the date of passing of the ownership to the principal shareholder. This right shall expire if it is not exercised by any of the owners of the participating securities against the principal shareholder within 3 months after the publication date of the registration of the resolution of the general meeting pursuant to Section 384 in the commercial register.

(2) A principal shareholder shall notify the date for the exercise of the right referred to in subsection (1) without undue delay and in the manner prescribed for convening the general meeting. The period of limitation shall commence on the date when the principal shareholder meets the notification obligation.

(3) A court ruling awarding the right to a different amount of consideration shall be binding on a principal shareholder as regards the essence of the granted right, also vis-à-vis other owners of participating securities. The owners of the participating securities who claimed the right to a top-up shall be entitled to a reimbursement of reasonably incurred expenses in the proceedings; where the obligation to provide such reimbursement is not imposed on the principal shareholder, the reimbursement shall be provided from the funds in custody referred to in subsection (4).

(4) Within the period of time determined by a court, a principal shareholder shall settle the top-up in favour of all owners of the participating securities by depositing the funds into legal custody. Together with the ruling referred to in the first sentence of subsection (2), the court shall post on its notice board an invitation addressed to the owners of participating securities to report to the court to claim the top-up. At the same time, the company shall disclose the ruling and the invitation to report to the court to claim the top-up in the manner prescribed by this Act and by the articles of association for convening the general meeting. Reasonably incurred expenses related to the settlement deposited into legal custody shall be covered from the funds deposited into custody.

(5) The provisions of the Civil Procedure Code concerning the forfeiture of the subject-matter of the custody shall not apply. Where a period of three years has expired after the resolution on acceptance into custody becoming legally effective, a court shall decide that the subject-matter of the custody is to be returned to the principal shareholder provided that nobody claims it within 1 year after the publication date of such resolution. This resolution shall be posted on the court's notice board.

(6) If a principal shareholder and an owner of a participating security agree on a top-up outside of legal proceedings, such agreement shall be binding for the principal shareholder as regards the essence of the recognised right, also vis-à-vis other owners of participating securities, and the principal shareholder shall notify other owners of the participating securities of its conclusion in the manner prescribed by this Act and by the articles of association for convening the general meeting. Without

undue delay after concluding the agreement referred to in the first sentence, the principal shareholder shall settle the top-up in favour of all owners of the participating securities by depositing the funds into legal custody; subsections (4) and (5) shall apply *mutatis mutandis*.

(7) For owners of participating securities who were not a party to the proceedings pursuant to subsections (2) and (3), the period of limitation to claim the right to a top-up from the funds referred to in subsection (4) shall commence on the disclosure date of the court ruling pursuant to subsection (4). For owners of participating securities who are not a party to the agreement referred to in subsection (6), the period of limitation to claim the right to a top-up from the funds referred to in subsection (6) shall commence on the disclosure date of the notification pursuant to subsection (4).

#### Section 391

(1) The adoption of a decision of the general meeting on the passing to the principal shareholder of all other participating securities of a company whose participating securities are admitted for trading on a European regulated market shall require a justification of the amount of consideration by the principal shareholder and the previous consent of the Czech National Bank.

(2) The Czech National Bank shall only assess whether the bidder has properly justified the proposed amount of consideration.

(3) The Czech National Bank shall issue its decision within 15 working days after the receipt of the relevant request; this period may be extended by no more than 15 working days.

(4) The principal shareholder shall be the sole party to the proceedings before the Czech National Bank.

#### Section 392

If the participating securities of a company are admitted for trading on a European regulated market, the expert opinion referred to in Section 376(1) shall not be required.

#### Section 393

(1) Where a principal shareholder acquired shares in accordance with Section 375 as a result of a mandatory takeover bid, the consideration provided under such mandatory takeover bid shall be conclusively presumed to be adequate consideration.

(2) Where a principal shareholder acquired, in accordance with Section 375 and as a result of a voluntary takeover bid pursuant to the Act on takeover bids, shares covered by the voluntary bid, the consideration provided under such voluntary takeover bid shall be conclusively presumed to be adequate consideration.

(3) Where a principal shareholder failed to exercise the right pursuant to Section 375 within 3 months after the end of the binding period of the takeover bid, the provision of subsection (1) shall not apply.

#### Section 394

(1) As of the date of passing of ownership to the participating securities pursuant to Section 385, the participating securities shall be excluded from trading at the Czech regulated market; the provisions of Sections 334, 338 and 339 shall not apply.

(2) Without undue delay after a decision of the general meeting pursuant to Sections 375 and 382 and in accordance with the Act on capital market undertakings, a company shall notify the operator of the regulated market which admitted the participating securities for trading.

#### Section 395

##### **Right to sell**

Owners of participating securities, in relation to whom a principal shareholder may apply the procedure pursuant to Section 375, may request that their participating securities are bought by the principal shareholder in accordance with the provisions of this Act concerning a mandatory public bid.

## **Chapter 5**

### **Company bodies**

#### **Division 1**

##### **Internal structure system of a company**

#### Section 396

(1) An internal structure system of a company, in which a board of directors and a supervisory board are established, is a dualistic system.

(2) An internal structure system of a company, in which an administrative board and a statutory manager are

established, is a monistic system.

(3) If in doubt, the dualistic system shall be conclusively presumed to have been chosen.

#### Section 397

(1) A company may change its selected internal structure system by an amendment to its articles of association.

(2) A selection of the internal structure system shall be without prejudice to the provisions of this Act concerning the general meeting, unless provided otherwise in this Act.

### **Division 2**

#### **General meeting**

##### **Introductory provisions**

#### Section 398

(1) Shareholders exercise their right to participate in the management of the company at the general meeting or outside of the general meeting.

(2) Where voting at the general meeting or decision-making outside of the general meeting using appropriate technical facilities is permitted by the articles of association, the conditions for such voting or decision-making shall be defined in a manner so as to make it possible for the company to verify the identity of the person authorised to exercise the voting right and to determine the shares associated with the exercised voting right, failing which the votes cast in this manner and the participation of the shareholders voting in this manner shall be disregarded.

(3) The conditions of voting or decision-making referred to in subsection (2) shall be defined in the articles of association and shall always be included in the invitation to the general meeting or in the proposal of a decision pursuant to Section 418. Where these conditions are not provided in the articles of association, they shall be defined by the board of directors.

(4) Correspondence voting shall also be deemed to constitute voting at the general meeting using appropriate technical facilities.

#### Section 399

A shareholder shall participate in the general meeting in person or by proxy. The power of attorney for the general meeting must be granted in writing and clearly state whether it was granted for representation at one or more general meetings.

#### Section 400

(1) A person registered in the investment instruments register as a manager and/or as a person authorised to exercise the rights attached to the shares shall be entitled to represent a shareholder in exercising all rights attached to the shares recorded at the relevant account, including voting at the general meeting.

(2) Instead of a power of attorney, such person shall submit an extract from the investment instruments register. This shall not be required where the company itself has requested an extract from such register for these purposes.

#### Section 401

(1) The shareholder shall be informed by its representative, in good time before the date of the general meeting, about any circumstances that could be relevant for the shareholder's assessment as to whether there is a risk of conflict between the shareholder's interests and those of the representative.

(2) Where a shareholder acts on the account of another person in respect of certain shares, the shareholder shall be entitled to exercise the voting rights pertaining to such shares differently.

#### **Convening the general meeting**

#### Section 402

(1) The general meeting shall be convened by the board of directors at least once in every accounting period, unless provided for in the articles of association that the general meeting is to be convened more frequently.

(2) The general meeting shall be convened by the board of directors, or by a member of the board of directors if the board of directors fails to convene it without undue delay when this Act requires the general meeting to be convened, and/or if the board of directors has not had a quorum for an extended period of time, unless provided otherwise in this Act.

(3) Members of the board of directors shall always attend the general meeting. A member of the board of directors shall be permitted to speak whenever he or she requests.

#### Section 403

(1) Ordinary financial statements shall be discussed by the general meeting no later than 6 months after the last day

of the past accounting period.

(2) The board of directors shall convene the general meeting without undue delay after becoming aware that the total loss of the company as shown in the financial statements reached such a level that, if covered from the company's available resources, the outstanding accumulated loss would or, in view of the circumstances, could be expected to amount to half of the registered capital, or for other serious reasons. The board of directors shall propose to the general meeting that the company should be dissolved or other appropriate measures should be taken.

#### Section 404

If the board of directors of a company has not been elected or if the elected board of directors has persistently failed to fulfil its duties and the general meeting has not even been convened by a member of the board of directors, the general meeting shall be convened by the supervisory board. The supervisory board may also convene the general meeting when necessary in the interests of the company. At the same time, the supervisory board shall propose the necessary measures. If the supervisory board fails to convene the general meeting, it may be convened by any member of the supervisory board.

#### Section 405

##### **Relevant date for participation in the general meeting**

(1) The articles of association or a decision preceding the general meeting may determine the date which is relevant for participation in the general meeting. The decision of the general meeting referred to in the first sentence shall not be deemed to constitute a decision amending the articles of association.

(2) The relevant date may not precede the date of the general meeting by more than 30 days.

(3) Where a company's shares are admitted for trading on a European regulated market, the relevant date for participation in the general meeting shall always be the seventh day preceding the date of the general meeting. Subsection (1) shall not apply.

(4) Unless a different relevant date is determined by the articles of association of a company, which issued book-entry shares that are not admitted for trading on a European regulated market, the relevant date for participation in the general meeting shall be conclusively presumed to be the seventh day preceding the date of the general meeting. A company which issued book-entry shares shall obtain an extract in relation to the issue and as at the relevant date from the book-entry securities register no later than by the date of the general meeting.

#### Section 406

(1) At least 30 days prior to the date of the general meeting, the convener shall post an invitation to the general meeting on the company's website and, at the same time, send it to shareholders holding registered shares or book-entry shares to their address specified in the register of shareholders or in the book-entry securities register and/or in the records kept by the custodian holding immobilised shares in custody. Additional requirements for convening the general meeting may also be defined in the articles of association. The articles of association may also determine the procedure substituting the sending of the invitations to the shareholders' addresses pursuant to the first sentence; this procedure may not unreasonably restrict the shareholder's possibilities to participate in the general meeting.

(2) Upon the posting of an invitation, the invitation shall be deemed to have been delivered to shareholders holding bearer shares. The invitation must be posted on the company's website until the time of the general meeting.

#### Section 407

(1) An invitation to the general meeting shall always include at least:

- (a) the company's trade name and registered office,
- (b) the venue, date and time of the general meeting,
- (c) an indication of whether an ordinary or substitute general meeting is being convened,
- (d) the agenda of the general meeting, including a specification of the person(s) proposed to be appointed a member of a company body,
- (e) the relevant date for participation in the general meeting, if determined, and an explanation of its relevance for voting at the general meeting,
- (f) a draft resolution of the general meeting and its justification,
- (g) a deadline for the receipt of the shareholders' observations on the agenda of the general meeting, where correspondence voting is made possible, which may not be less than 15 days. The date of delivery of the proposal to the shareholder shall be decisive for the commencement of the period.

(2) If a draft resolution is not being submitted pursuant to subsection (1)(f), the invitation to the general meeting shall include the opinion of the company's board of directors on each item proposed. Without undue delay after their receipt, a company shall also post on its website the shareholders' proposals for resolutions of the general meeting.

#### Section 408

(1) The venue, date and time of the general meeting shall be determined in a manner so as to ensure that the shareholder's right to attend the general meeting is not unreasonably restricted.

(2) In its registered office, a company shall permit every shareholder to review, free of charge, the proposed amendment(s) to the articles of association within the period of time specified in the invitation to the general meeting. The shareholders shall be notified by the company of this right in the invitation to the general meeting.

(3) Matters which were not included in the agenda of the general meeting can only be discussed or decided at the general meeting if all shareholders agree to the same.

#### Section 409

The general meeting may decide that some of the items included in the agenda of the general meeting are to be postponed to the next general meeting or are not to be discussed at all. This shall not apply where the general meeting is held at the request of a qualified shareholder, unless such shareholder agrees to it.

#### Section 410

(1) A cancellation or postponement of the date of the general meeting shall be notified by the company to the shareholders in the manner prescribed by this Act and by the articles of association for convening the general meeting and at least 1 week before the initially announced date of the general meeting. Otherwise, the company shall reimburse the shareholders who arrived for the general meeting in accordance with the initial invitation all expenses reasonably incurred in this connection.

(2) Where the general meeting was convened at the initiative of qualified shareholders, the cancellation or postponement of its date shall only be possible if such shareholders agree to it.

#### Section 411

(1) The determination of a new venue, date and time of the general meeting, where appropriate, shall be without prejudice to the periods of time prescribed by this Act for the distribution of invitations to the general meeting and for convening the general meeting at the initiative of qualified shareholders.

(2) Unless the requirements for convening the general meeting provided for in this Act are met, the general meeting may only take place subject to the consent of all shareholders and where so provided in the articles of association.

#### Section 412

##### **Quorum of the general meeting**

(1) The general meeting shall have a quorum if the present shareholders hold shares the par value or the number of which exceeds 30% of the registered capital, unless provided otherwise in the articles of association.

(2) When establishing the quorum of the general meeting, any shares or issued interim certificates to which no voting rights are attached or where the voting right cannot be exercised under this Act or under the articles of association shall be disregarded. This shall not apply where these temporarily gain a voting right.

#### Section 413

(1) The following information shall be recorded by the company in the attendance list for the present shareholders:

- (a) name and place of residence or registered office,
- (b) data referred to in paragraph (a) concerning the agent where a shareholder is represented,
- (c) the share numbers,
- (d) the par value of shares giving the shareholder the right to vote or, as appropriate, information that the share does not give the shareholder the right to vote.

(2) If a certain person is refused for registration in the attendance list, the refusal and reasons for it shall be specified in the attendance list.

(3) The correctness of the attendance list shall be confirmed by the signature of the convener or a person appointed by him or her.

#### Section 414

##### **Substitute general meeting**

(1) If the general meeting does not have a quorum, a substitute general meeting with the same agenda shall be convened by the board of directors without undue delay, if still necessary, in the manner prescribed by this Act and by the articles of association. The substitute general meeting shall have a quorum regardless of Section 412(1), unless provided otherwise in the articles of association; the period of time to send an invitation shall be reduced to 15 days and the invitation

does not have to include appropriate information about the essence of the individual items included in the agenda of the general meeting pursuant to Section 407(1)(d).

(2) An invitation to the substitute general meeting shall be sent to the shareholders no later than 15 days after the date of the initial general meeting; the substitute general meeting must take place no later than 6 weeks after the date of the initial general meeting.

(3) Any matters which were not included in the proposed agenda of the initial general meeting, can only be decided at the substitute general meeting if all shareholders agree to it.

### **Decision-making of the general meeting**

#### **Section 415**

The general meeting adopts decision by a majority of votes of the present shareholders, unless a different majority is required by this Act or by the articles of association.

#### **Section 416**

(1) Approval by a majority of at least two thirds of the votes of the present shareholders shall be required to adopt a decision amending the articles of association pursuant to Section 421(2)(m), a decision resulting in an amendment of the articles of association, a decision to authorise the board of directors to increase the registered capital, a decision on the possibility to set off a pecuniary receivable towards the company against a receivable from the payment of the issue price, a decision on the issue of convertible or preferential bonds, a decision to dissolve a company with liquidation and for a decision to distribute the liquidation balance.

(2) Decisions of the general meeting on the matters referred to in subsection (1) as well as on other matters which only become effective upon their registration in the commercial register shall be certified with an authentic instrument. An approved text of the amendments to the articles of association, where amended, shall be included in the authentic instrument.

#### **Section 417**

(1) A decision to change the amount of registered capital pursuant to Section 421(2)(m) shall also require approval by a majority of at least two thirds of the votes of the present shareholders for each type of shares, whose rights are affected by that decision.

(2) A decision to change the type or form of shares, to change the rights attached to a certain type of shares, to restrict the transferability of registered shares or book-entry shares and to exclude participating securities from trading on a European regulated market shall also require the approval by a majority of at least three fourths of the votes of the present shareholders holding such shares.

(3) A decision to exclude or restrict the preferential right to acquire convertible or preferential bonds, to allow the distribution of profit to persons other than the shareholders pursuant to Section 34(1), to exclude or restrict the shareholder's preferential right when the registered capital is being increased by subscription of new shares and to increase the registered capital with contributions in kind shall require the approval by a majority of at least three fourths of the votes of the present shareholders. Where a company issued shares of various types, these decisions shall also require the approval by a majority of at least three fourths of the votes of the present shareholders of each type of shares, unless such decisions do not prejudice the owners of these types of shares.

(4) A decision to merge shares shall also require the approval by all shareholders whose shares are to be merged.

### **Decisions per rollam**

#### **Section 418**

(1) Where decisions per rollam are permitted under a company's articles of association, a person authorised to convene the general meeting sends a proposal of a decision to all shareholders.

(2) The proposal of a decision shall include:

- (a) the text of the proposed decision and its justification,
- (b) a deadline for the receipt of a shareholder's opinion as determined in the articles of association or, failing that, 15 days; the date when the proposal was delivered to the shareholder shall be relevant for the commencement of such period of time,
- (c) any documents required for its adoption, and
- (d) additional information where so provided in the articles of association.

#### **Section 419**

(1) Where a shareholder fails to deliver his or her approval of the proposed decision to the person authorised to convene the general meeting within the period of time referred to in Section 418(2)(b), such shareholder shall be conclusively presumed to have disagreed with the proposal.

(2) If it is required under this Act that a decision of the general meeting is certified with an authentic instrument, the

shareholder's decision shall have the form of an authentic instrument, which must also include the contents of the proposed decision of the general meeting concerned by the statement.

(3) The decisive majority shall be calculated on the basis of the total votes of all shareholders.

#### Section 420

The result of the decision-making procedure pursuant to Sections 418 and 419, including the date of adoption, shall be notified by the person authorised to convene the meeting to all shareholders, without undue delay and in the manner prescribed by this Act and by the articles of association for convening the general meeting.

### Competence of the general meeting

#### Section 421

(1) The general meeting shall decide by adopting resolutions.

(2) The powers of the general meeting include:

(a) decisions to amend the articles of association, where so provided in the articles of association or by law, unless it is an amendment resulting from an increase of the registered capital by a duly authorised board of directors or an amendment occurring on the basis of other legal facts,

(b) decisions to change the amount of registered capital and to authorise the board of directors to increase the registered capital,

(c) decisions to allow the possibility to set off a pecuniary receivable towards the company against a receivable from the payment of the issue price,

(d) decisions to issue convertible or preferential bonds,

(e) appointment and recall of members of the board of directors or the statutory manager, unless it is determined in the articles of association that it falls under the competence of the supervisory board,

(f) appointment and recall of members of the supervisory board or administrative board and other bodies specified in the articles of association, except for those members of the supervisory board who are not elected by the general meeting,

(g) approval of ordinary, extraordinary or consolidated financial statements as well as, where their preparation is required under another legal regulation, of interim financial statements,

(h) decisions to distribute profit or the company's other own resources, or to cover the loss,

(i) decisions to file an application to have the company's participating securities admitted for trading on a European regulated market or to exclude such securities from trading on a European regulated market,

(j) decisions to dissolve the company with liquidation,

(k) appointment and recall of a liquidator, where so provided in the articles of association,

(l) approval of the proposed distribution of the liquidation balance,

(m) approval of a transfer or a pledge of an enterprise or such a part thereof that would imply a significant change of the existing structure of the enterprise or a significant change in the objects or activity of the company,

(n) decisions to assume the effects of actions taken on behalf of the company before its incorporation,

(o) approval of a silent partnership agreement, including approval of its amendments and termination,

(p) any other decisions falling under the powers of the general meeting by virtue of this Act or of the articles of association.

(3) The general meeting may not reserve the decision-making authority in matters that do not fall under its powers pursuant to this Act or the articles of association.

#### Section 422

(1) The general meeting shall appoint its chairman, minute taker, minute verifier and scrutiniser(s). Until the chairman is appointed, the general meeting shall be chaired by the person who convened the general meeting or by a person appointed by him or her. The same shall apply where no chairman of the general meeting was elected. Where no minute taker, minute verifier and scrutiniser were elected, they shall be determined by the person who convened the general meeting. The general meeting may decide that the chairman of the general meeting and the minute verifier shall be the same person.

(2) The general meeting may decide that the chairman of the general meeting shall also scrutinise votes provided that it does not jeopardise the due and proper course of proceedings of the general meeting.

#### Section 423

(1) The minutes of the general meeting shall be drawn up by the minute taker within 15 days after its end. The minutes shall be signed by the minute taker, the chairman of the general meeting or by the person who convened the general meeting and the minute verifier(s).

(2) The minutes shall include:

- (a) the company's trade name and registered office,
- (b) the venue and time of the general meeting,
- (c) the name of the chairman, minute taker, minute verifier and scrutiniser(s),
- (d) a description of the discussions concerning the particular items included in the agenda of the general meeting,
- (e) resolution(s) of the general meeting with an indication of the voting results and
- (f) contents of the objection raised by a shareholder, a member of the board of directors or of the supervisory board concerning a resolution of the general meeting, if the person who raised the objection requested so.

(3) Any submitted proposals, declarations as well as the attendance list shall be attached to the minutes.

#### Section 424

(1) A shareholder cannot claim the invalidity of a resolution of the general meeting, if no objection was raised against such resolution of the general meeting, unless an objection raised was not recorded by a mistake of the minute taker or by the chairman of the general meeting or unless the petitioner was not present at the general meeting or, as appropriate, the reasons for invalidity of the resolution of the general meeting could not be established at that general meeting.

(2) In case of doubt as to whether an objection was raised, it shall be deemed to have been raised.

#### Section 425

(1) A shareholder may request the board of directors to make him a copy of the minutes or a part thereof at any time during the existence of the company. Where the minutes or a part thereof are not disclosed within the period of time referred to in Section 423(1) on the company's website, their copies shall be made at the expense of the company.

(2) The minutes, the invitations to the general meeting and the attendance lists shall be stored by the company throughout its existence.

#### Section 426

A shareholder shall not exercise his or her voting right:

- (a) if he or she is in default with the fulfilment of the contribution obligation, to the extent of the default,
- (b) if the decision to be taken by the general meeting concerns his or her contribution in kind,
- (c) if the general meeting is to decide on whether the shareholder or a person acting in concert with the shareholder should be relieved of the fulfilment of an obligation, and/or the shareholder should be recalled from office as a member of a company body for violating an obligation in the performance of his or her office,
- (d) in other cases provided for in this Act or in another legal regulation.

#### Section 427

(1) The restriction concerning the execution of the voting right pursuant to Section 426(b) to (d) shall also apply to shareholders who act in concert with the shareholder who may not exercise his or her voting right.

(2) The restriction concerning the execution of the voting right pursuant to Section 426(b) to (d) shall not apply if all shareholders act in concert.

#### Section 428

### **Invalidity of a resolution of the general meeting**

(1) Every shareholder, member of the board of directors, member of the supervisory board or the liquidator may claim the invalidity of a resolution of the general meeting pursuant to the provisions of the Civil Code on the invalidity of a resolution adopted by the members' meeting of an association, on the grounds of it being contrary to law or to the articles of association.

(2) Violation of good manners shall also constitute grounds for invalidity of a resolution of the general meeting.

#### Section 429

(1) Where a decision was taken outside of the general meeting, the right to file a petition shall expire 3 months after the date when the petitioner became aware or could have become aware of the adoption of the decision pursuant to Section 420, but no later than 1 year after the adoption of the decision. The same shall apply if the decision was taken by a sole



member acting as the general meeting.

(2) If the right referred to in Section 428 was not exercised within the statutory period of time or, where appropriate, the petition to declare the resolution invalid was not granted, the validity of the resolution of the general meeting can no longer be reviewed in any way, unless provided otherwise in another legal regulation.

#### Section 430

(1) The invalidity of decisions taken by other company bodies may be claimed by the persons referred to in Section 428 only if such decisions were taken by a body exercising the powers of the general meeting; the provisions of Sections 428 and 429 shall apply *mutatis mutandis*.

(2) If a shareholder's right was seriously violated by the company when convening or in the course of the general meeting, the shareholder shall be entitled to just satisfaction in accordance with the provisions of the Civil Code governing the right of an association member to just satisfaction.

### **Amendments of the articles of association resulting from a company decision or legal facts**

#### Section 431

(1) Where the general meeting decides to split shares or merge multiple shares into a single share, to change the type or form of the shares and/or to restrict or modify the transferability of registered shares or book-entry shares, the relevant amendments of the articles of association shall become effective as of the date of registration of these facts in the commercial register.

(2) Other amendments of the articles of association which are decided on by the general meeting shall become effective as of the date when the decision is adopted, unless a later effective date is specified in the decision or in this Act.

#### Section 432

(1) A decision of the general meeting resulting in the amendment of the contents of the articles of association shall replace a decision to amend the articles of association. Such decision of the general meeting shall be certified with an authentic instrument.

(2) Unless it follows from the decision of the general meeting what amendments are to be made in the articles of association, their contents shall be modified by the board of directors in accordance with the decision of the general meeting. An authentic instrument shall be drawn up to certify the board of directors' decision regarding the modification of the contents of the articles of association.

#### Section 433

In case of any amendment or change to the contents of the articles of association, the board of directors shall draw up the full text of the articles of association without undue delay after any of its members became aware of about the amendment or change.

#### Section 434

(1) When changing the type or form of shares, the rights attached to the type or form of the shares shall be modified as of the effective date of the amendment of the articles of association, regardless of whether the shares are replaced.

(2) When transforming book-entry shares to shares and when transforming shares to book-entry shares, the legal position of a shareholder shall only be modified upon the exchange of the shares or upon the declaration of their invalidity.

(3) Where shares are admitted for trading on a European regulated market, the general meeting may decide to carry out a transformation referred to in subsection (2) only if such transformation does not result in an exclusion or withdrawal of the shares from trading at all European regulated markets where they are traded, unless it concurrently decides to withdraw the participating securities from trading on a European regulated market.

(4) Where the general meeting of a joint-stock company adopts a decision resulting in an exclusion or withdrawal of the company's participating securities from trading at all European regulated markets, the provisions of Section 333(1) and Sections 338 to 341 shall apply *mutatis mutandis*.

### **Division 3**

#### **Dualistic system**

#### **Subdivision 1**

#### **Board of directors**

#### Section 435

(1) The board of directors is the statutory body of a company.

(2) The board of directors shall be in charge of the management of the company's business.

(3) Nobody shall be entitled to instruct the board of directors regarding the management of the company's business; this shall be without prejudice to Section 51(1).

(4) The board of directors shall ensure the books are properly kept, and submit ordinary, extraordinary, consolidated and, where appropriate, interim financial statements to the general meeting for approval. In accordance with the articles of association, it shall also submit a proposal on profit distribution or coverage of loss.

#### Section 436

(1) Financial statements or the main facts shown therein, as provided for in a company's articles of association, shall be disclosed by the board of directors, in the manner prescribed by this Act and by the articles of association for convening the general meeting, at least 30 days before the date of the general meeting, including a specification of the time and place where the financial statements are available for review. Where a company's financial statements are posted on its website at least for a period of 30 days before the date of the general meeting and until 30 days after the approval or disapproval of the financial statements, the first sentence shall not apply.

(2) Together with the financial statements, a report on the company's business activities and on the state of its assets shall also be disclosed by the board of directors in the manner referred to in subsection (1). Such report shall form an integral part of the annual report pursuant to another legal regulation, where prepared. The second sentence of subsection (1) shall apply *mutatis mutandis*.

#### Section 437

The articles of association may provide for a different procedure for the board of directors to fulfil its obligations pursuant to Section 436, provided that such procedure does not limit the shareholders' right to the required information.

#### Section 438

(1) Members of the board of directors shall be elected and recalled by the general meeting, unless it is determined in the articles of association that the same falls within the powers of the supervisory board.

(2) Where members of the board of directors are elected by the supervisory board, the supervisory board shall also approve the executive service agreements concluded with the individual members of the board of directors.

#### Section 439

(1) Unless provided otherwise in the articles of association, the board of directors shall consist of 3 members.

(2) The board of directors shall appoint and recall its chairman.

(3) Where no term of office is specified in the articles of association or in the executive service agreement, a period of 1 year shall be conclusively presumed to have been agreed for each individual member of the board of directors. In case of any contradiction between the articles of association and the executive service agreement, the term of office agreed in the executive service agreement shall prevail.

#### Section 440

(1) The board of directors shall decide by a majority of votes of the present members, unless a higher majority is required in the articles of association. Each member of the board of directors shall have 1 vote.

(2) Minutes of meetings shall be drawn up and signed by the chairman and the minute taker to document the course of the board of directors' meetings and its decisions; the attendance list shall be attached to the minutes.

(3) The minutes of a meeting shall specify by name the members of the board of directors who voted against the particular decisions or abstained. Members not specified by name shall be deemed to have voted in favour of the relevant decision.

### **Ban on competition**

#### Section 441

(1) A member of the board of directors shall not conduct business in the objects of the company, including for the benefit of other parties, or mediate the company's transactions for other parties.

(2) In addition, a member of the board of directors may not be a member of the statutory body of another legal entity having the same or similar objects or a person in a similar position, unless they form a concern.

(3) A member of the board of directors shall not participate in the business carried out by another business corporation as a member with unlimited liability or as the controlling entity of another entity engaged in the same or similar sphere of activity.

#### Section 442

(1) If, upon the establishment of the company, the founders or the body competent to appoint a member of the board

of directors were explicitly notified by the member of the board of directors of any of the circumstances referred to in Section 441, or if such a circumstance occurred at a later point in time and the member of the board of directors notified it accordingly in writing, it shall be deemed that the activity under prohibition is not prohibited for this member of the board of directors. This shall not apply, if any of the founders or the body competent for his or her appointment expressed their disagreement with the member's activity referred to in Section 441 within one month after the date when they were notified accordingly of the circumstances referred to in Section 441.

(2) Where a member of the board of directors is elected by the general meeting, the notification referred to in subsection (1) shall be specified in the invitation to the general meeting, and voting on the possible disagreement pursuant to subsection (1) must be included as an item in the agenda of the general meeting.

(3) Additional restrictions may be provided for in the articles of association or in a decision of the general meeting.

#### Section 443

In the case of death, resignation or recall from office of a member of the board of directors and/or upon another termination of his or her office, a new member of the board of directors shall be appointed by the competent body within 2 months. Where the board of directors is unable to carry out its tasks for the reasons referred to in the first sentence, the missing members shall be appointed by a court, on the basis of a petition of a person having a legal interest, for a period of time until the missing member(s) is (are) properly elected; otherwise the court may, even *ex officio*, dissolve the company and order its liquidation.

#### Section 444

(1) The articles of association may provide that the board of directors, in which the number of members has not decreased by more than one half, may appoint substitute members until the next meeting of the body competent to appoint the members. The term of office of a substitute member of the board of directors shall not be applied towards the term of office of a member of the board of directors, unless provided otherwise in the articles of association.

(2) The articles of association may also provide for the appointment of substitutes who shall take up the vacant position of a member of the board of directors in the prescribed sequence.

#### Section 445

(1) If a legal entity which is a member of the board of directors is wound up with a legal successor, the legal successor shall become a member of the board of directors, unless provided otherwise in the articles of association.

(2) If a legal entity which is a member of the board of directors is wound up with liquidation, Sections 443 and 444 shall apply *mutatis mutandis*.

### Subdivision 2

#### Supervisory board

#### Section 446

(1) The supervisory board shall supervise the exercising of powers by the board of directors and the company's activities.

(2) The supervisory board shall adhere to the principles approved by the general meeting, unless these are in violation of this Act or of the articles of association. A violation of these principles shall not have any effect vis-à-vis third parties.

(3) Nobody shall be entitled to instruct the supervisory board regarding its statutory obligation to review the powers of the board of directors.

#### Section 447

(1) The supervisory board shall be entitled to review all documents and records concerning the company's activities and check whether the accounting records are kept properly and in accordance with reality, and whether the company's business or other activities are carried out in accordance with other legal regulations and with the articles of association.

(2) The authority referred to in subsection (1) may only be exercised by the members of the supervisory board on the basis of a decision by the supervisory board, unless the supervisory board is unable to carry out its tasks.

(3) The supervisory board shall review the ordinary, extraordinary, consolidated and, where appropriate, interim financial statements as well as a proposal on profit distribution or coverage of loss, and shall submit its opinions to the general meeting.

(4) The supervisory board shall appoint a member to represent the company in proceedings before courts and other authorities against a member of the board of directors.

#### Section 448

(1) Unless provided otherwise in the articles of association, the supervisory board shall consist of 3 members.

(2) Members of the supervisory board shall be appointed and recalled by the general meeting.

(3) The supervisory board shall appoint and recall its chairman.

(4) Where no term of office is specified in the articles of association or in the executive service agreement, a period of 3 years shall be conclusively presumed to have been agreed for each individual member of the supervisory board. In case of any contradiction between the articles of association and the executive service agreement, the term of office agreed in the executive service agreement shall prevail.

(5) A member of the supervisory board may not at the same time be a member of the board of directors or another person authorised to act on behalf of the company, based on the records in the commercial register.

#### Section 449

(1) Members of the supervisory board shall attend the general meeting and the appointed member of the supervisory board shall report to the general meeting the results of the supervisory board's activities. A member of the supervisory board shall be permitted to speak whenever he or she requests.

(2) The supervisory board shall decide by a majority of votes of the present members, unless a higher majority is provided for in the articles of association. Every member of the supervisory board shall have 1 vote.

#### Section 450

(1) Minutes of meetings shall be drawn up and signed by the chairman to document the course of the supervisory board's meetings and its decisions; the attendance list shall be attached to the minutes.

(2) The minutes of a meeting shall specify by name the members of the supervisory board who voted against the adoption of the particular decisions or abstained. Members not specified by name shall be deemed to have voted in favour of the respective decision.

(3) The views of the minority members shall also be included in the minutes if they request so.

#### Section 451

##### **Ban on competition**

(1) A member of the supervisory board shall not conduct business in the objects of the company, including for the benefit of other parties, or mediate the company's transactions for other parties.

(2) A member of the supervisory board may not be a member of the statutory body of another legal entity having similar objects or a person in a similar position, unless they form a concern.

(3) A member of the supervisory board shall not participate in the business carried out by another business corporation as a member with unlimited liability or as the controlling entity of another entity engaged in the same or similar sphere of activity.

#### Section 452

(1) If, upon the establishment of the company, the founders were explicitly notified by the member of the supervisory board of any of the circumstances referred to in Section 451, or if such a circumstance occurred at a later point in time and the member of the supervisory board notified it accordingly in writing, it shall be deemed that the activity under prohibition is not prohibited for this member of the supervisory board. This shall not apply, if any of the founders or the body competent for his or her appointment expressed their disagreement with the member's activity referred to in Section 451 within one month after the date when they were notified accordingly of the circumstances referred to in Section 451.

(2) Where a member of the supervisory board is elected by the general meeting, the notification referred to in subsection (1) shall be specified in the invitation to the general meeting, and voting on the possible disagreement pursuant to subsection (1) must be included as an item in the agenda of the general meeting.

(3) Additional restrictions may be provided for in the articles of association or in a decision of the general meeting.

#### Section 453

(1) In the case of death, resignation or recall from office of a member of the supervisory board and/or upon another termination of his or her office, a new member of the supervisory board shall be appointed by the competent body within 2 months. If the supervisory board is unable to carry out its tasks for this reason, the missing members shall be appointed by a court, on the basis of a petition of a person having a legal interest, for a period of time until the missing member(s) is (are) properly elected; otherwise the court may, even *ex officio*, dissolve the company and order its liquidation.

(2) The office of a member of the supervisory board shall also be terminated upon the election of a new member, unless implied otherwise from a decision of the general meeting.

#### Section 454

(1) The articles of association may provide that the supervisory board, in which the number of members has not decreased by more than one half, may appoint substitute members until the next meeting of the body competent to appoint the members. The term of office of a substitute member of the supervisory board shall not be applied towards the term of office of a

member of the supervisory board, unless provided otherwise in the articles of association.

(2) The articles of association may also provide for the appointment of substitutes who shall take up the vacant position of a member of the supervisory board in the prescribed sequence.

#### Section 455

(1) If a legal entity which is a member of the supervisory board is wound up with a legal successor, the legal successor shall become the member of the supervisory board, unless provided otherwise in the articles of association.

(2) If a legal entity which is a member of the supervisory board is wound up with liquidation, Sections 453 and 454 shall apply *mutatis mutandis*.

### Division 4

#### Monistic system

##### Section 456

(1) Wherever the board of directors is referred to in this Act, it shall mean the statutory manager or another company body with similar powers depending on the circumstances.

(2) Wherever the supervisory board is referred to in this Act, it shall mean the administrative board or the chairman of the administrative board and/or another body with a similar supervision authority, depending on the circumstances.

#### Administrative board

##### Section 457

Unless provided otherwise in the articles of association, the administrative board shall consist of 3 members.

##### Section 458

(1) The rules governing the convening a meeting of the administrative board shall be defined in the articles of association. The meetings of the administrative board shall be convened by its chairman.

(2) The statutory manager shall always be invited to attend the meetings of the administrative board.

##### Section 459

(1) Where no meeting of the administrative board has been convened for a period of more than 2 months, one third of its members may request the chairman to do so, with an agenda determined by these members.

(2) If the chairman fails to convene the administrative board without undue delay after the receipt of the request, it may be convened by the requesting members themselves; the associated expenses shall be borne by the company.

(3) The chairman shall also convene the administrative board upon a request of the statutory manager, with an agenda determined by the statutory manager. If the chairman fails to convene the administrative board without undue delay after the receipt of the request, it may be convened by the statutory manager himself; the associated expenses shall be borne by the company.

(4) The chairman of the administrative board shall not shorten the proposed agenda referred to in subsections (1) to (3) without the consent of those who requested the convening of the administrative board meeting.

##### Section 460

(1) The administrative board shall determine the basic orientation of the management of the company's business and shall supervise its proper execution.

(2) Any matter concerning a company shall fall within the powers of the administrative board, unless it falls under the competence of the general meeting by virtue of this Act.

#### Chairman of the administrative board

##### Section 461

(1) The administrative board shall appoint and recall its chairman. The term of office of the chairman may not exceed his or her term of office as a member of the administrative board.

(2) Only a natural person may be the chairman of the administrative board.

(3) Where the chairman is temporarily unable to perform the office, another member may be temporarily appointed by the administrative board to perform the office of the chairman; subsection (2) shall apply *mutatis mutandis*.

##### Section 462

(1) The chairman of the administrative board shall organise and manage its activities and shall supervise a proper implementation of the tasks assigned to the company bodies reporting to the administrative board. The chairman shall inform the general meeting about his or her findings and about the administrative board's activities.

(2) The chairman of the administrative board shall represent the company in proceedings before courts and other authorities against the statutory manager. Where the chairman of the administrative board is concurrently also a company's statutory manager, another member appointed by the administrative board shall represent the company.

#### Section 463

##### **Statutory manager**

(1) A statutory manager, appointed by the administrative board, shall be the company's statutory body. The executive service agreement of the statutory manager shall be approved by the administrative board.

(2) Only a natural person meeting the requirements under this Act which are applicable to membership in a board of directors may be a statutory manager.

(3) The chairman of the administrative board may also be the company's statutory manager. The provisions of this Act concerning the board of directors shall prevail regarding his or her position.

(4) The statutory manager shall be in charge of the management of the company's business.

### **Chapter 6**

#### **Changes in the registered capital**

##### **Division 1**

##### **Introductory provisions**

#### Section 464

(1) An increase of the registered capital shall be effective upon the registration of the new amount of the registered capital in the commercial register, unless the registered capital is increased by a company whose shares are admitted for trading on a European regulated market or must be issued in order to meet the last requirement for their admittance to a European regulated market.

(2) Where the registered capital is increased by a company whose shares are admitted for trading on a European regulated market or must be issued in order to meet the last requirement for their admittance to a European regulated market, the increase of the registered capital shall be effective upon the subscription of the shares and the payment of the prescribed part of their issue price, unless provided otherwise in the decision to increase the registered capital. However, the increase of the registered capital shall be effective no sooner than when the shares are subscribed, and no later than when the new amount of the registered capital is registered in the commercial register.

#### Section 465

(1) When an increase of the registered capital is registered in the commercial register, the subscriber shall fulfil his or her obligations even if the resolution of the general meeting to increase the registered capital or the subscription of shares would be invalid or ineffective. This shall not apply when the resolution of the general meeting to increase the registered capital is declared invalid by a court.

(2) A resolution of the general meeting to increase the registered capital shall be annulled, and the obligation to pay the issue price of the shares, if any, shall also cease to exist:

(a) where an application to register the increase of the registered capital in the commercial register is not filed within 2 months after the requirements for the registration of the increase of the registered capital in the commercial register were met,

(b) upon a court's ruling rejecting the application to register the increase of the registered capital in the commercial register becoming legally effective, or

(c) after 2 months from the date when the court's ruling rejecting the application to register the increase of the registered capital in the commercial register became legally effective, unless such application is filed again within the same period of time.

#### Section 466

(1) Where a resolution of the general meeting to increase the registered capital by subscription of shares was annulled pursuant to Section 465(2), or where a resolution of the general meeting to increase the registered capital by subscription of shares was declared invalid by a court, the issue price paid as well as the usual interest accrued shall be refunded by the company to the persons concerned without undue delay.

(2) In the procedure pursuant to subsection (1), the board of directors shall publish the court's ruling referred to in Section 465(2)(b) and (c) or the court's ruling declaring the invalidity of the resolution of the general meeting to increase the registered capital. If the increase of the registered capital by subscription of shares is already effective, the board of directors

shall at the same time publish an invitation for the creditors, whose receivables towards the company came into existence after the effective date of the increase of the registered capital, to submit their claims within 90 days after the publication. The provision of Section 518 shall apply *mutatis mutandis*.

(3) In the event that new shares were already issued to increase the registered capital or that a new par value was already marked on the existing shares, and the resolution of the general meeting to increase the registered capital is then declared invalid by a court or annulled pursuant to Section 465(2), the person concerned shall, upon an invitation by the company, return the shares issued for the purpose of such increase of the registered capital or present them to be replaced for shares with the initial par value and/or present the shares which were marked with the higher par value so that they can be marked with the initial par value. The provisions of Sections 537 to 541 shall apply *mutatis mutandis*.

(4) Where book-entry shares were issued by a company in the situation referred to in subsection (3), the company shall instruct, without undue delay, the person who keeps records in the book-entry securities register to cancel the shares issued for the purpose of the increase of the registered capital or to reduce the par value of the shares.

#### Section 467

(1) A decrease of the registered capital shall be effective upon the registration of the new amount of the registered capital in the commercial register.

(2) A decrease of the registered capital shall be registered by a court in the commercial register only if it has been:

(a) proven that the period set forth in Section 518(3) expired, provided that no creditor submitted its receivable within that period of time,

(b) proven that the receivable was settled or adequately secured, and/or that a company's agreement with the creditors pursuant to Section 518(3) entered into effect, or

(c) proven that adequate security was provided on the basis of a court ruling pursuant to Section 518(4).

(3) When a decrease of the registered capital is registered in the commercial register, it shall be carried out even if the decision to decrease the registered capital or the agreement giving rise to the withdrawal of the shares from circulation would be invalid or ineffective. This shall not apply when the resolution of the general meeting to decrease the registered capital is declared invalid by a court.

(4) The amount corresponding to the decrease of the registered capital may only be disposed of by the company once the decrease of the registered capital is registered in the commercial register.

(5) Where a court declares the resolution of the general meeting to decrease the registered capital invalid, the persons who received any consideration based on the decrease of the registered capital shall return such fulfilment to the company, while the company shall:

(a) return to these persons their shares withdrawn from circulation,

(b) issue new shares to these persons,

(c) withdraw the shares from circulation in order to replace them for shares with a higher par value or to mark a higher par value on them, or

(d) instruct the person who keeps records in the book-entry securities register to mark a higher par value on the shares or to issue book-entry shares.

(6) Sections 537 to 541 shall apply *mutatis mutandis* to the procedure referred to in subsection (5)(a) to (c).

#### **Exemptions from the obligation to have a contribution in kind valued by an expert when increasing the registered capital**

#### Section 468

Where a contribution in kind into a company consists of an investment security or a money market instrument pursuant to the Act on capital market undertakings and where so decided by the board of directors of the company, a weighted average of the prices realised in transactions with such a security or instrument carried out at one or more European regulated markets in the period of 6 months before the contribution shall be used to determine its price.

#### Section 469

(1) Where a contribution in kind into a company consists of assets than other those referred to in Section 468 and where so decided by the board of directors of the company, the fair value established by a generally recognised independent expert, using generally accepted standards and principles of valuation and no longer than 6 months before the contribution, shall be used to determine its price.

(2) Where a contribution in kind into a company consists of assets other than those referred to in Section 468 and where so decided by the board of directors of the company, if the subscriber recognises such assets at their fair value pursuant to another legal regulation, such fair value as shown in the financial statements for the previous accounting period before the general meeting deciding on the contribution, provided that they were certified by an auditor and received unqualified opinion, shall be used to determine the price of the contribution in kind.

#### Section 470

(1) Where the price of a contribution in kind referred to in Section 468 is influenced by exceptional circumstances that would significantly change the price as at the date when the contribution is paid, a new valuation shall be arranged by the company. The provision of Section 251 shall apply *mutatis mutandis*.

(2) Where new circumstances occurred that could significantly change the price of a contribution in kind determined in accordance with Section 469 as at the date when the contribution is paid, a new valuation shall be arranged by the company. The provision of Section 251 shall apply *mutatis mutandis*.

#### Section 471

(1) In the event that a new valuation of a contribution in kind is not carried out pursuant to Section 469, in situations where such valuation should have been carried out in accordance with Section 470(2), a shareholder or shareholders holding shares, the aggregate par value or the number of which at the time when the general meeting is deciding on an increase of the registered capital corresponds to at least 5% of the company's subscribed registered capital, may request that the company arranges for such valuation from the date when the general meeting decided on the contribution in kind until the date of its payment, provided that such shareholders continue to hold these shares at least in the same extent as at the date of the request.

(2) Where the board of directors fails to proceed in accordance with Section 251 within 14 days after the delivery of the request referred to in subsection (1), an expert may be appointed by the shareholders themselves.

(3) If the valuation under an expert opinion arranged for by the shareholders pursuant to subsection (2) is at least equal to its initial valuation, the company may request that the expenses associated with its preparation are reimbursed by these shareholders, unless a court decides that the same cannot be reasonably required from them.

#### Section 472

If the registered capital is to be increased by a contribution in kind and the price thereof was determined pursuant to Sections 468 and 469, a notification containing the particulars listed in Section 473 and the date of adoption of the decision to increase the registered capital shall also be published by the company before its payment. If this requirement has been met, the declaration referred to in Section 473 shall only include a statement that no new circumstances occurred since the publication of the notification pursuant to this provision.

#### Section 473

If the price of a contribution in kind was determined pursuant to Sections 468 and 469, a declaration containing the following information shall be filed by the company in the collection of instruments within 1 month after the contribution of the contribution in kind:

- (a) a description of the contribution in kind,
- (b) the price of the contribution in kind, the valuation approach and, where appropriate, the method(s) applied and a justification of how the expert came to this valuation,
- (c) information on whether the price of the contribution in kind corresponds at least to the number and the issue price of the shares that were issued for it, and
- (d) a statement that no exceptional or new circumstances occurred that could affect the initial valuation.

### Division 2

#### Increase of the registered capital

##### Subdivision 1

#### Increase of the registered capital by subscription of new shares

##### Section 474

(1) An increase of the registered capital by subscription of new shares shall only be permitted if the issue price of the previously subscribed shares has been paid up in full by the shareholders, unless the outstanding part of the issue price is negligible with regard to the amount of the registered capital and the general meeting agrees to such increase of the registered capital.

(2) The prohibition pursuant to subsection (1) shall not apply where only contributions in kind are contributed when increasing the registered capital.

##### Section 475

A resolution of the general meeting to increase the registered capital by subscription of new shares shall include:

- (a) the amount of increase of the registered capital, specifying whether a subscription of shares above or below the proposed



amount is possible and, where appropriate, up to what maximum amount,

(b) the number, par value and type of the shares to be subscribed, their form or an indication that they will be issued as book-entry securities,

(c) information concerning the exercise of the preferential right to subscribe for shares referred to in Section 485(1), unless all shareholders waived their preferential right no later than before the voting on the increase of the registered capital or unless the registered capital is to be increased by the agreement of the shareholders pursuant to Section 491,

(d) an indication of whether the shares not subscribed for under the preferential right will be subscribed, in whole or in part, by an agreement of the shareholders pursuant to Section 491, or whether they will be offered to a selected interested party or parties, specifying these parties and/or the method of their selection,

(e) an indication of whether the shares or a part thereof will be subscribed for in a public offering pursuant to Sections 480 to 483,

(f) where the shares are subscribed for by a securities trader pursuant to Section 489(1), information referred to in Section 485(1), the place and the period for the exercise of the right specified therein by the entitled person and the price for which he or she is entitled to purchase the shares or the method of its determination. This shall not apply when all shareholders waived their preferential right no later than before the voting on the increase of the registered capital or when the registered capital is to be increased by virtue of a decision taken by another body,

(g) where appropriate, information about the exclusion or restriction of the preferential right to subscribe for shares,

(h) where the shares are subscribed for without the exercise of the preferential right, the subscription period and the proposed issue price or, if the issue price is to be paid in cash, a justified method of its determination and/or information that the board of directors will be given authorisation to determine the issue price, including a specification of the lowest possible amount at which the issue price may be determined. The issue price or the method of its determination must be the same for all subscribers,

(i) the bank account and the period of time in which the issue price or a part thereof must be paid by the subscriber or, as the case may be, the place and the period for the contribution of a contribution in kind,

(j) where a contribution in kind is to be approved, its description and the amount of its valuation carried out in accordance with this Act and the issue price, par value and type of shares to be issued for such contribution in kind, their form or an indication that they will be issued as book-entry securities,

(k) where subscription of shares above the proposed amount of the increase of the registered capital is possible, specification of the company body competent to decide the definitive amount of the increase,

(l) where a receivable towards the company may be set off against a receivable from the payment of the issue price, the rules governing the procedure to conclude a set-off agreement, specification of the receivable to be set-off including its amount and its creditor. If the set-off is the sole form of payment of the issue price, the information referred to in paragraph (h) shall not be included.

#### Section 476

Where new shares are to be subscribed for in a public offering pursuant to Section 475(e), the resolution of the general meeting referred to in Section 475 shall also include:

(a) a specification of the period of time in which the public offering referred to in Section 480 must be disclosed by the board of directors; the period may not exceed 2 years,

(b) the subscription period for the shares, which may not be less than 2 weeks,

(c) the procedure for subscribing for the shares and for determining the part of the issue price which the company requires to be paid at the time of registration in the list of subscribers,

(d) the rules governing the subscription of shares above the proposed increase of the registered capital.

#### Section 477

(1) The board of directors shall file an application to register the resolution of the general meeting in the commercial register without undue delay.

(2) The application to register the resolution of the general meeting may be combined with the application to register the new amount of the registered capital in the commercial register.

#### Section 478

(1) The provisions of this Act concerning the issue price and the establishment of a company shall apply *mutatis mutandis* to the subscription of shares when increasing the registered capital and to the payment of the issue price. An expert to value a contribution in kind shall be selected by the board of directors from the list of experts kept pursuant to another legal regulation.

(2) An agreement to set off a receivable towards a company against a subscriber's obligation to pay the issue price or a part thereof shall be concluded before the relevant application is filed to register the new amount of the registered capital in

the commercial register.

#### Section 479

A predetermined interested party or a sole shareholder shall subscribe for shares on the basis of a written agreement concluded with the company; the signatures shall be certified. Such agreement shall also include:

- (a) information that the other shareholders waived their preferential right for subscription or have already exercised such right or, as appropriate, the conditions under which they have done so, unless the shares are subscribed for by a sole shareholder,
- (b) the type, number and par value of the shares to be subscribed, their form or an indication that they will be issued as book-entry securities,
- (c) the issue price and the deadline for its payment and, where appropriate, the bank account number for the payment of cash contributions, and
- (d) a description of a contribution in kind, if contributed, and the amount of its valuation carried out in accordance with this Act and, where appropriate,
- (e) the number of the asset account to which the book-entry shares are to be issued.

#### **Subscription of shares in a public offering**

#### Section 480

(1) The subscription of shares in a public offering shall be governed by the provisions of another legal regulation concerning a public offering of investment securities and a securities prospectus, while the provisions of this Act concerning the procedure to subscribe for shares in a public offering shall only be used when not in conflict with the former.

(2) The subscription can also be carried out by electronic means.

(3) Any increase of the registered capital by subscription of new shares where the party or parties interested in the subscription as provided in Section 475(d) is not indicated shall be deemed to constitute an increase of the registered capital by subscription in a public offering.

#### Section 481

(1) Shares shall be subscribed for in a public offering upon their registration in the list of subscribers.

(2) The registration shall include the type, number and par value of the subscribed shares, their form or an indication that they will be issued as book-entry securities, the issue price, the name and place of residence or registered office of the subscriber, the number of the asset account to which the book-entry shares are to be issued, and the signature; otherwise the registration shall be conclusively presumed to not have taken place.

(3) Upon the registration and payment of the part of the issue price in accordance with Section 476(c), a company shall issue a written certificate to the subscriber specifying the type, number and par value of the subscribed shares, their form or an indication that they will be issued as book-entry securities, the total amount for the issue price of the subscribed shares and the extent in which it has been paid up.

#### Section 482

Where the resolution of the general meeting pursuant to Section 475 does not include any rules governing the subscription of shares above the proposed increase of the registered capital, such manner of subscription for shares shall be conclusively presumed impossible.

#### Section 483

(1) If shares, the par value of which is equivalent to the required increase of the registered capital or the intended number of no par value shares, were not subscribed for within the period of time set in the resolution of the general meeting referred to in Section 475, the resolution of the general meeting to increase the registered capital shall be annulled and the contribution obligation shall cease to exist, unless:

(a) the missing part is subscribed for within 1 month by the existing shareholders according to the proportion of their business shares, or

(b) the registered capital is only increased within the scope of the subscribed shares, where this is permitted under the resolution of the general meeting referred to in Sections 475 and 476.

(2) In the event that shares were not subscribed for in a public offering, the paid issue price shall be refunded by the company to the entitled persons without undue delay.

#### **Shareholders' preferential right to subscribe for new shares**

#### Section 484

(1) Each shareholder shall have a preferential right to subscribe for a part of a company's new shares to be

subscribed in order to increase the registered capital to the extent of his or her business share, where their issue price is to be paid in cash.

(2) Unless provided otherwise in the articles of association, every shareholder shall also have a preferential right to subscribe for shares, which were not subscribed for by another shareholder in accordance with this Act.

#### Section 485

(1) A communication containing at least the following information shall be sent by the board of directors to the shareholders in the manner prescribed by this Act and by the articles of association for convening the general meeting, and be published at the same time:

(a) information about the place and the period of the exercise of the preferential right, which may not be less than 2 weeks after the delivery, indicating how the commencement of this period will be notified to the shareholders, unless it is already included in the communication,

(b) the number of new shares that may be subscribed for one existing share of a certain par value or what portion in one new share corresponds to one existing share of a certain par value, on the understanding that only full shares may be subscribed,

(c) the par value, number and type of shares to be subscribed under the preferential right, their form or an indication that they will be issued as book-entry securities, and their issue price or the method of determining the issue price, and/or authorisation of the board of directors to determine the issue price. The issue price shall be determined in a manner so as to ensure that it is the same for all shares which may be subscribed for under the preferential right; however, it can vary from the issue price of shares subscribed in a different way, and

(d) the relevant date to exercise the preferential right where book-entry shares were issued by a company; in such case, the relevant date shall be the date when the preferential right could have been exercised for the first time.

(2) Subsection (1) shall not apply where the registered capital is increased without the possibility of exercising the preferential right or where all shares are to be subscribed for by a sole shareholder.

#### Section 486

(1) The preferential right shall be separately transferrable as of the date when the general meeting decided to increase the registered capital.

(2) Where shares are subject to restrictions of transferability, the same restrictions shall also apply to the transferability of the preferential right. In the event that one existing share does not correspond to one new share, the preferential right shall always be freely transferrable.

### **Restriction of the preferential right**

#### Section 487

The preferential right cannot be restricted or excluded in the articles of association.

#### Section 488

(1) A preferential right can only be restricted or excluded by a resolution of the general meeting when it is in an important interest of the company.

(2) The restriction or exclusion of the preferential right must apply for all shareholders to the same extent.

(3) The relevant resolution of the general meeting shall be filed in the collection of instruments.

(4) A written report shall be presented by the board of directors to the general meeting which is to decide on the restriction or exclusion of the preferential right, indicating the reasons for its restriction or exclusion, the proposed issue price or the method of its determination and, where appropriate, a proposal to authorise the board of directors to determine the issue price.

#### Section 489

(1) A situation where, in accordance with a decision of the general meeting, all shares are to be subscribed for by a securities trader based on an agreement to procure the issue of securities, shall not be considered as a restriction or exclusion of the preferential right provided that such agreement also contains the obligation of the securities trader to sell the subscribed shares to the persons having a preferential right, at their request, for a specified price and in a specified period of time, to the extent of their preferential right.

(2) Sections 484 to 486 shall apply *mutatis mutandis* to the procedure when shares are sold by a securities trader to the shareholders.

#### Section 490

### **Expiry and waiver of the preferential right**

(1) A preferential right shall expire by lapse of the period set for its exercise.

(2) A shareholder may also waive his or her preferential right before the decision to increase the registered capital, in written form with a certified signature or by an oral declaration made at the company's general meeting; the declaration shall be included in the authentic instrument on the decision of the general meeting and shall also be effective vis-à-vis every following acquirer of such shareholder's shares.

#### Section 491

##### **Increase of the registered capital by agreement of all shareholders**

(1) Based on a decision of the general meeting, all shareholders may agree on the extent of their participation in the increase of the registered capital for the amount set in the decision of the general meeting; such agreement shall require the form of an authentic instrument.

(2) The agreement shall also include:

(a) a declaration that the shareholders waive their preferential right, unless they have already waived it previously or have already exercised it,

(b) a specification of the number, type, par value and issue price of the shares to be subscribed for by each shareholder, the form of the shares or the information that the shares will be issued as book-entry securities,

(c) where the issue price is to be paid in cash, the deadline and method of its payment,

(d) where a contribution in kind is to be contributed, its description and the amount of its valuation carried out in accordance with this Act and, where appropriate,

(e) the number of the asset account to which the book-entry shares are to be issued.

##### **Registration of the new amount of registered capital in the commercial register**

#### Section 492

(1) The board of directors shall file an application to register the new amount of registered capital without undue delay after the subscription of shares corresponding to the scope of the increase and after at least 30% of their par value was paid up, unless a higher amount of paid-up shares including a share premium, if any, is required under the resolution of the general meeting to increase the registered capital where cash contributions are concerned, and after all contributions in kind were contributed.

(2) A person who subscribed for shares to increase the registered capital shall be entitled to exercise the shareholder's rights to the extent of the subscribed shares as of the effectiveness of their subscription, even if the increase of the registered capital is not yet effective, unless the resolution of the general meeting to increase the registered capital is annulled pursuant to Section 465(2) or Section 493 and/or the resolution of the general meeting to increase the registered capital is declared invalid by a court. This shall be without prejudice to any previously exercised shareholder's rights.

#### Section 493

The resolution of the general meeting to increase the registered capital shall be annulled and the contribution obligation shall cease to exist if shares in the scope required for the increase of the registered capital were not effectively subscribed for within the period of time set forth in the resolution of the general meeting. The provision of Section 465(2) shall apply *mutatis mutandis*.

#### Section 494

The right to a profit share from the shares issued in connection with an increase of the registered capital shall arise if a net profit was generated in the year when the registered capital was increased, unless provided otherwise in the articles of association.

## Subdivision 2

##### **Increase of the registered capital from own resources**

#### Section 495

(1) The general meeting may decide to increase the registered capital from the company's own resources shown as part of the company's equity in the approved ordinary, extraordinary or interim financial statements, unless these resources are earmarked for specific purposes and the company is not entitled to modify their purpose. Net profit may not be used to increase the registered capital based on interim financial statements.

(2) An increase of the registered capital may not exceed the difference between the amount of equity and the sum of the registered capital and other own resources that are earmarked for specific purposes and the company is not entitled to modify their purpose.

#### Section 496

(1) Shareholders shall participate in an increase of the registered capital according to the proportion of the par values of their shares. The company's own shares held by a company increasing its registered capital as well as that company's shares held by an entity controlled by that company, or a person controlled by such a controlled entity, shall also participate in the increase of the registered capital. Where no par value shares were issued, the shareholders shall participate in an increase of the registered capital according to the proportion of the number of no par value shares held by them.

(2) The new amount of the registered capital shall be registered in the commercial register at the same time as the resolution to increase the registered capital referred to in Section 495(1).

#### Section 497

(1) An increase of the registered capital from the company's own resources shall only be possible if the financial statements on the basis of which the general meeting is to decide on an increase were certified by an auditor and received an unqualified opinion.

(2) An auditor shall certify the financial statements for the purpose of the decision referred to in subsection (1) based on the information established no more than 6 months before the date when the general meeting is to decide on the increase of the registered capital from the company's own resources.

(3) If the interim financial statements show a decrease of the company's own resources, the auditor shall build on these interim financial statements rather than use information from the ordinary or extraordinary financial statements.

#### Section 498

A resolution of the general meeting to increase the registered capital from the company's own resources shall include:

- (a) the amount of the increase of the registered capital,
- (b) an indication of the own resource or resources to be used to increase the registered capital, broken down by the equity structure as shown in the financial statements,
- (c) information on whether the par value of the shares will be increased, specifying the amount of such increase, or the book value of no par value shares will be increased, or whether new shares will be issued, specifying their number and par value, unless they will be no par value shares, and
- (d) if the registered capital is to be increased by increasing the par value of the shares, also the period to present the shares; the commencement of this period may not precede the date when the new amount of the registered capital is registered in the commercial register.

#### Section 499

An increase of the registered capital shall be carried out either by issuing and distributing new shares among the shareholders free of charge, or by increasing the par value of the existing shares.

#### Section 500

(1) The par value of the shares shall be increased by replacing them or by marking a higher par value on the existing shares, to be accompanied with a signature of the member(s) of the board of directors.

(2) Shareholders shall be invited by the board of directors in the manner prescribed by this Act and by the articles of association for convening the general meeting to present their shares within the period of time set by the general meeting, so that they can be replaced or marked with a higher par value.

(3) If a shareholder fails to present the shares within the prescribed period of time, he or she shall not exercise the shareholder's rights until their presentation, while the procedure pursuant to Sections 537 to 541 shall be applied by the board of directors.

#### Section 501

An increase of the par value of book-entry shares shall be carried out by changing the record of the par value in the book-entry securities register based on an instruction given by the company; the company's instruction shall be accompanied by an extract from the commercial register proving the registration of the new amount of the registered capital.

#### Section 502

Where new shares are issued, the board of directors shall invite the shareholders without undue delay after the registration of the new amount of the registered capital in the commercial register and in the manner prescribed by this Act and by the articles of association for convening the general meeting, to come to collect them.

#### Section 503

(1) An invitation to the shareholders referred to in Section 502 shall include at least:

- (a) the scope of increase of the registered capital,
- (b) the ratio for the distribution of the shares among the shareholders,

(c) a notification that the company is entitled to sell the new shares if a shareholder fails to collect them within 1 year after the delivery of the invitation.

(2) Following the expiry of the period referred to in subsection (1), the procedure pursuant to Section 539 shall be applied *mutatis mutandis* by the board of directors.

#### Section 504

Where new book-entry shares are to be issued, the board of directors shall, without undue delay after the registration of the new amount of the registered capital in the commercial register, instruct the person authorised to keep the book-entry securities register to issue such shares.

### Subdivision 3

#### Conditional increase of the registered capital

#### Section 505

(1) Where the general meeting adopts a resolution to issue convertible or preferential bonds, it shall simultaneously adopt a resolution to increase the company's registered capital in the extent in which the exchange rights or preferential rights from these bonds may be exercised ("conditional increase of the registered capital"), unless the bonds are to be exchanged for shares already issued.

(2) An increase to the extent in which creditors may, in accordance with the rules defined in the decision of the general meeting and in a credit agreement or other similar agreement concluded with the company, exercise their exchange rights or preferential rights arising from such agreement shall also be deemed to constitute a conditional increase of the registered capital. This shall only apply if it is simultaneously decided by the general meeting to restrict the shareholders' preferential right pursuant to Sections 487 to 489.

#### Section 506

A conditional increase of the registered capital pursuant to Section 505(2) shall only be possible if previously permitted under the articles of association and provided that the articles of association contain specific conditions under which a preferential or exchange right arising from a credit agreement or other similar agreement may be exercised.

#### Section 507

A resolution of the general meeting on a conditional increase in a company's registered capital shall include:

- (a) the reasons for the increase of the registered capital,
- (b) a specification of whether the increase of the registered capital is intended for the exercise of the exchange rights or preferential rights from the bonds and/or the exercise of equivalent rights arising from a credit agreement or other similar agreement,
- (c) the scope of increase of the registered capital, the type, number and par value of shares that may be issued to increase the registered capital, their form or information that they will be issued as book-entry securities, and
- (d) the proposed issue price or a justified method of its determination and/or information that the board of directors will be given authorisation to determine the issue price, including a specification of the lowest possible amount at which the issue price may be determined. The issue price or the method of its determination must be the same for all subscribers.

#### Section 508

(1) The board of directors shall file an application to register the resolution of the general meeting in the commercial register without undue delay.

(2) The application to register the resolution of the general meeting may be combined by the application to register the new amount of the registered capital in the commercial register.

#### Section 509

(1) An exchange right shall be exercised by delivering a request to exchange bonds for shares. The delivery of such an exchange request shall replace the subscription and payment of a share. In order for a request to be effective, where book-entry shares are to be issued, the number of the asset account to which the book-entry shares are to be issued shall also be specified in the request.

(2) A preferential right shall be exercised by subscribing for a company's shares. The provisions of this Act concerning the subscription of shares when establishing a company and the issue price shall apply *mutatis mutandis* to the subscription of shares. Sections 476, 480 and 481 shall apply *mutatis mutandis* to the subscription of shares in a public offering to all holders of the bonds.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* to a creditor's exchange rights or preferential right arising from a credit agreement or other similar agreement.

#### Section 510

(1) The board of directors shall file an application to register the new amount of the registered capital in the commercial register without undue delay following the expiry of the period for the exercise of the exchange rights or preferential rights and only in the scope of the exercised exchange rights or preferential rights.

(2) Upon the registration of the new amount of the registered capital in the commercial register, the company shall issue shares in the scope of the exercised convertible and preferential rights. Sections 503 and 504 and Sections 537 to 541 shall apply *mutatis mutandis* when exchanging bonds for shares.

### Subdivision 4

#### **Increase of the registered capital by decision of the board of directors**

##### Section 511

(1) The general meeting may authorise the board of directors or the administrative board to increase, under the conditions provided for in this Act and in the articles of association, the registered capital by subscription of new shares, through a conditional increase of the registered capital or from the company's own resources except for retained profits by no more than one half of the existing amount of the registered capital at the time of the authorisation.

(2) The authorisation referred to in subsection (1) shall replace a decision of the general meeting to increase the registered capital and shall determine:

(a) the par value and type of shares to be issued in order to increase the registered capital, their form or an indication that they will be issued as book-entry securities, and

(b) which company body is to decide on the valuation of a contribution in kind on the basis of an expert opinion, where the board of directors is authorised to increase the registered capital.

##### Section 512

(1) The board of directors may increase the registered capital repeatedly within the authorisation, provided that the total amount does not exceed the prescribed limit.

(2) The authorisation referred to in Section 511(1) may be granted for a period of no more than 5 years after the date of the resolution of the general meeting on the authorisation, and may be granted repeatedly.

##### Section 513

The board of directors shall file an application to register the resolution of the general meeting on the authorisation in the commercial register without undue delay.

##### Section 514

The authorisation referred to in Section 511(1) can also be contained in the articles of association. In such case, a decision of the general meeting shall not be required and Sections 511 to 513 shall apply *mutatis mutandis*.

##### Section 515

(1) A decision of the board of directors to increase the registered capital shall be certified with an authentic instrument and registered in the commercial register.

(2) An application to register the board of directors' decision may be combined with the application to register the new amount of the registered capital in the commercial register.

(3) The provisions of this Act concerning an increase of the registered capital by subscription of new shares, a conditional increase of the registered capital or increase of the registered capital from the company's own resources, shall apply *mutatis mutandis* when the registered capital is increased by the board of directors, taking into account the selected manner of increase of the registered capital.

### Division 3

#### **Decrease of the registered capital**

##### Section 516

A resolution of the general meeting to decrease the registered capital shall include at least:

(a) the reasons for and the purpose of the proposed decrease of the registered capital,

(b) the scope and the method of the proposed decrease,

(c) information about how the amount corresponding to the decrease will be used,

(d) the rules for drawing lots and the amount of consideration to the shares drawn or the method of its determination where the registered capital is to be decreased by withdrawing shares from circulation on the basis of drawing lots,

(e) where the registered capital is being decreased based on a petition of shareholders, information on whether the petition suggests that the shares should be withdrawn from circulation free of charge or against consideration and, where a withdrawal of the shares from circulation against consideration is suggested, the amount of that consideration or the rules for its determination,

(f) if the company's shares are to be presented as a result of the decrease of the registered capital, the deadlines for their presentation.

#### Section 517

(1) A company's registered capital may not fall below the level provided for in this Act as a result of a decrease of registered capital.

(2) A decrease of the registered capital shall not impair the collectability of the creditors' receivables.

#### **Protection of creditors**

#### Section 518

(1) Within 30 days after the date when a decision of the general meeting to decrease the registered capital became effective vis-à-vis third parties, the decision to decrease the registered capital shall be notified in writing by the board of directors to those known creditors, whose receivables towards the company came into existence before effective date of the decision of the general meeting to decrease the registered capital. The notification shall also include an invitation for the creditors to submit their receivables pursuant to subsection (3).

(2) After its registration in the commercial register, the resolution of the general meeting to decrease the registered capital shall be published by the board of directors at least twice with a time interval of thirty days; the published information shall also include an invitation for the creditors to submit their receivables pursuant to subsection (3).

(3) Within 90 days after they received the notification of the decrease of the registered capital or, failing that, within 90 days after the second publication of the information referred to in subsection (2), a company's creditors referred to in subsection (1) may request that the fulfilment of their receivables which were not due and payable at the time of delivery of the invitation or at the time of the second publication should be adequately secured or settled and/or an agreement should be concluded to provide another solution. This shall not apply unless the decrease of the registered capital impairs the collectability of the receivables towards the company.

(4) If the creditors and the company cannot reach an agreement on how to secure the receivables, or if a creditor believes that the collectability of his or her receivables was impaired, a court shall determine a sufficient security, taking into account the type and amount of the receivable.

#### Section 519

(1) The board of directors shall file an application to register the resolution of the general meeting in the commercial register without undue delay.

(2) The application to register the resolution of the general meeting may be combined with the application to register the new amount of the registered capital in the commercial register.

#### Section 520

(1) Until a decrease of the registered capital becomes effective and until the obligations pursuant to Section 518 are fulfilled or a court ruling referred to in Section 518 is delivered, it is not possible to provide consideration to the shareholders on the grounds of the decrease of the registered capital or, on the same grounds, to relieve them from the payment of or reduce the outstanding part of the issue price of the shares.

(2) Members of the board of directors shall be liable to the company and to the creditors for any damage caused by a violation of subsection (1); they may not be relieved of this liability.

#### **Methods of decreasing the registered capital**

#### Section 521

(1) A company's own shares in its possession shall be used by the company for a mandatory decrease of the registered capital. In other cases, its own shares in its possession shall be first used by a company to decrease its registered capital.

(2) Other methods of decreasing the registered capital can only be applied if the procedure referred to in subsection (1) is not sufficient to decrease the registered capital in the scope determined by the general meeting or if such procedure would not serve the purpose of the decrease of the registered capital.

(3) When the registered capital is being decreased using only a company's own shares in its possession, the provisions of this Act concerning a separate voting by the type of shares shall not apply.



#### Section 522

A company using its own shares to decrease the registered capital shall destroy such shares or, in case of book-entry shares, instruct the person authorised to keep the book-entry securities register to cancel such shares.

#### Section 523

(1) A company that does not have its own shares in its possession, or a company whose own shares in its possession used in accordance with Section 521 are insufficient to decrease the registered capital, shall decrease the par values of the shares or withdraw the shares from circulation and/or waive the issue of outstanding shares.

(2) Shares shall be withdrawn from circulation on the basis of drawing lots or on the basis of a public bid to the shareholders. Shares may be withdrawn from circulation on the basis of drawing lots only if this option was permitted under the articles of association at the time when the shares were subscribed for. The rules governing the withdrawal of the shares from circulation shall be defined in the articles of association and by the general meeting when adopting a decision to decrease the registered capital.

(3) If a company issued no par value shares, the registered capital can also be decreased without withdrawing shares from circulation.

### **Decrease of the par value of shares or interim certificates**

#### Section 524

The par value of shares shall be decreased for all of the company's shares proportionally, unless the purpose of the decrease of the registered capital is a relief from the payment of an outstanding part of the issue price of the shares.

#### Section 525

The par value of shares or interim certificates shall be decreased by replacing the shares or interim certificates with shares or interim certificates of a lower par value or by marking a lower par value on the existing shares or interim certificates, to be accompanied with the signature of the member(s) of the board of directors.

#### Section 526

Shareholders holding the shares or interim certificates shall be invited by the board of directors in the manner prescribed by this Act and by the articles of association for convening the general meeting to present their shares or interim certificates within the period of time set in the decision of the general meeting in order to apply the methods referred to in Section 525. A shareholder who is in default with the presentation of the shares or interim certificates within the prescribed period of time shall not exercise the shareholder's rights attached to them until their proper presentation, while the procedure pursuant to Sections 537 to 541 shall be applied by the board of directors.

### **Withdrawal of shares from circulation on the basis of drawing lots**

#### Section 527

(1) If book-entry shares were issued by a company, the company shall, before the drawing of lots, instruct the person authorised to keep the book-entry securities register to number the shares. At the same time, the company shall request an extract from the register, which must also include the numbers of the shares.

(2) The right to dispose of the shares shall be suspended for the period of time when the shares are being numbered.

(3) The drawing of lots in relation to book-entry shares shall take place no later than 10 days after the date when the instruction for the numbering was given.

#### Section 528

(1) The course and the outcome of the drawing of lots, including a list of the numbers of the shares drawn, shall be certified with an authentic instrument.

(2) The outcome of the drawing of lots shall be notified by the board of directors in the manner prescribed by this Act and by the articles of association for convening the general meeting.

(3) Such notification shall include at least:

(a) the numbers of the shares drawn,

(b) the period in which the shares drawn will be paid out by the company; such deadline may not precede the effective date of the decrease of the registered capital and may not exceed 3 months after the effective date of the decrease of the registered capital, unless defined otherwise in an agreement with the shareholder,

(c) the amount of consideration for the shares drawn,

(d) identification data of the shareholder whose shares were drawn, if the company issued registered shares or book-entry shares, and

(e) the period in which the shares drawn must be presented to the company.

#### Section 529

A shareholder who is in default with the presentation of the shares drawn within the prescribed period of time shall not exercise the shareholder's rights attached to them until their proper presentation, and the board of directors shall apply the procedure pursuant to Sections 537 to 541.

#### Section 530

Adequate consideration for the value of the shares drawn shall be paid by the company to the shareholders; the adequacy of the consideration shall be documented with an expert opinion.

#### Section 531

(1) The board of directors of a company which issued book-entry shares shall notify the person authorised to keep the book-entry securities register of the outcome of the drawing of lots and shall instruct the person to cancel the numbering of the shares not drawn, which must be documented with an authentic instrument certifying the outcome of the drawing of lots.

(2) After the effective date of the decrease of the registered capital, the board of directors shall instruct the person authorised to keep the book-entry securities register to cancel the drawn shares. Such instruction shall be documented with an extract from the commercial register proving the registration of the decrease of the registered capital in the commercial register.

### **Withdrawal of shares from circulation on the basis of a public bid**

#### Section 532

(1) If shares are being withdrawn from circulation on the basis of a public bid, a decision of the general meeting may determine that the registered capital:

- (a) will be decreased in the scope corresponding to the par values of the shares, which will be withdrawn from circulation, or
- (b) will be decreased by a fixed amount.

(2) Shares may be withdrawn from circulation on the basis of a public bid free of charge or against consideration; the provisions of Section 322(1) and (2), Sections 323 to 325 and Section 329 shall apply *mutatis mutandis*.

#### Section 533

(1) The purchase price shall be due and payable no later than 3 months after the effective date of the decrease of the registered capital. The due date for the purchase price and the deadline for the presentation of the shares to the company may not precede the effective date of the decrease of the registered capital.

(2) As from the effective date of the decrease of the registered capital, a shareholder shall not exercise the shareholder's rights attached to the shares referred to in subsection (1), while the procedure pursuant to Sections 537 to 541 shall be applied by the board of directors.

#### Section 534

Without undue delay after the effective date of the decrease of the registered capital, the board of directors shall instruct the person who keeps records in the book-entry securities register to cancel the book-entry shares purchased by the company on the basis of a public bid. Such instruction shall be documented with an extract from the commercial register proving the registration of the decrease of the registered capital and with a letter of acceptance of the public bid.

#### Section 535

(1) Where the registered capital is being decreased in accordance with the procedure referred to in Section 532(1)(a), the resolution of the general meeting shall also include an authorisation for the board of directors to file an application for the registration of the amount of the registered capital in the commercial register to the extent in which the public bid will be accepted by the shareholders.

(2) In the event that the sum of the par values of the shares to be withdrawn from circulation pursuant to Section 532(1)(b) does not amount to the required amount of decrease of the registered capital, the general meeting may decide to decrease the registered capital in accordance with the procedure set forth in Section 532(1)(a) or by another method provided for in this Act.

#### Section 536

### **Refraining from the issue of shares**

(1) The general meeting may decide to decrease the registered capital by refraining from the issue of shares to the extent in which the subscribers are in default with the payment of the par value of the shares, unless the company excludes the shareholder in default from the company.

(2) If a company issued interim certificates for outstanding shares, the issue of the outstanding shares shall be

refrained by means of a call by the board of directors inviting the shareholder who is in default with the payment of the issue price or a part thereof to return his or her interim certificate within the period set by the general meeting, due to the fact that the shares that are substituted by such interim certificate will not be issued by the company. The issue price paid so far, after a set-off of any receivables towards the subscriber, shall be refunded to the subscriber without undue delay after the effective date of the decrease of the registered capital.

(3) A shareholder who is in default with the presentation of his or her interim certificate within the prescribed period of time shall not exercise the shareholder's rights attached to the interim certificate until its proper presentation, while the procedure pursuant to Sections 537 to 541 shall be applied by the board of directors.

#### **Procedure for a failure to return or collect shares**

##### Section 537

If shareholders are in default with the presentation of the shares to be withdrawn from circulation by the company so that they can be replaced, marked with a new par value or destroyed, or with the collection of new shares when the registered capital is being increased, the board of directors shall invite the shareholders, in the manner prescribed by this Act and by the articles of association for convening the general meeting, to do so within a reasonable period of time granted to them to this end, noting that otherwise any shares not presented to the company will be declared invalid or any shares not collected will be sold.

##### Section 538

Shares that were not returned within the additional period of time despite the invitation to do so shall be declared invalid by the board of directors; such declaration shall be notified by the board of directors, without undue delay and in the manner prescribed by this Act and by the articles of association for convening the general meeting, to the shareholders whose shares are affected by the invalidity (the "person concerned"), and be published at the same time.

##### Section 539

(1) New shares to be issued to replace the shares that were declared invalid or shares that were not collected by the shareholders within the additional reasonable period of time upon an increase of the registered capital pursuant to Section 500 shall be sold by the board of directors without undue delay through a securities trader on a European regulated market on the account of the person concerned; otherwise they shall be sold in a public auction.

(2) The venue, time and subject-matter of the auction shall be published by the board of directors at least 15 days before the date of the auction where the value of the shares to be auctioned is below CZK 100,000 and at least 30 days before the date of the auction where the value of the shares is above that threshold. Within the same period of time, a notification of the upcoming public auction shall also be sent by the board of directors to the person concerned, where he or she is known to the board of directors.

(3) The proceeds from the sale, after a set-off of any receivables of the company towards the person concerned in connection with having to declare his or her shares invalid or having to sell such shares, as the case may be, shall be paid by the company to the person concerned without undue delay.

##### Section 540

(1) If the shares to be withdrawn from circulation are not to be replaced with new shares, the declaration of invalidity of such shares shall be without prejudice to the right of the person concerned to a payment of their purchase price or to a refund of the paid issue price or a part thereof.

(2) Any receivables of the company towards the person concerned in connection with having to declare his or her shares invalid may be set-off by the company against the receivable of the person concerned arising from the payment in consideration of their purchase price or from the refund of the paid issue price or a part thereof.

(3) The difference shall be paid by the company to the person concerned without undue delay after the set-off or, otherwise, after the shares or the interim certificates were declared invalid.

##### Section 541

The returned shares or interim certificates shall be destroyed by the company without undue delay after the effective date of the decrease of the registered capital.

##### Section 542

In case of any change in the information specified on the shares, a company may invite the shareholders, based on a decision of the general meeting, to present the shares within a period of time set by the company so that they can be replaced or so that the new information can be marked on them. The provisions of Sections 537 to 541 shall apply *mutatis mutandis*.

##### Section 543

(1) A shareholder may ask a company to replace a share that is damaged to the extent that certain information marked on the share is illegible, provided that there is no doubt as to the authenticity of the share.

(2) The company shall replace the share without undue delay after its presentation. The returned share shall be destroyed by the company, while indicating on the new share that it is a duplicate of the destroyed share.

### **Simplified decrease of the registered capital**

#### Section 544

(1) The provisions of this Division concerning the protection of creditors shall not apply where a company:

(a) is decreasing the registered capital to cover losses, or

(b) is decreasing the registered capital to make a transfer to the reserve fund and cover a future loss, provided that the transferred amount does not exceed 10% of the decreased registered capital.

(2) The fulfilment of the requirements referred to in subsection (1) shall be documented by the company to the commercial register court when filing an application to register the decrease of the registered capital in the commercial register. In such cases, the resolution of the general meeting to decrease the registered capital shall be registered together with the registration of the new amount of the registered capital.

(3) To the extent created pursuant to subsection (1)(b), the reserve fund can only be used to cover a company's loss or to increase its registered capital. A special reserve fund for its own shares shall be disregarded.

#### Section 545

(1) No consideration of any kind may be provided to the shareholders in connection with a decrease of the registered capital pursuant to Section 544.

(2) A consideration provided in violation of subsection (1) shall be returned by the shareholder to the company. Members of the board of directors shall be jointly and severally liable for complying with this obligation.

### **Concurrent decrease and increase of the registered capital**

#### Section 546

The general meeting may decide to concurrently decrease and increase the registered capital only if the registered capital is being decreased under the conditions provided for in Section 536 or Section 540(1).

#### Section 547

In the procedure pursuant to Section 546, a company may only proceed with the increase of the registered capital after the decrease of the registered capital becomes effective.

#### Section 548

(1) Where the registered capital is being decreased in order to adjust the par value of the existing shares traded on a European regulated market to their price on a European regulated market, in connection with an increase of the registered capital by subscription of new shares, and provided that the conditions referred to in Section 544 were met, the general meeting may decide to concurrently decrease and increase the registered capital; the provisions of Sections 546 and 547 shall not apply.

(2) In its decision on the concurrent decrease and increase of the registered capital, the general meeting can determine the scope of the decrease of the registered capital by determining the method of calculating the amount of decrease depending on the issue price of new shares, which will be fixed at a later point in time, and authorise the board of directors at the same time to notify the shareholders without delay of the amount of decrease of the registered capital and of the corresponding new par value of the company's existing shares, in the manner prescribed by this Act and by the articles of association for convening the general meeting.

## **Chapter 7**

### **Liquidation of a joint-stock company**

#### Section 549

(1) The right to a share in the liquidation balance shall be separately transferable as of the date when a company enters into liquidation, unless provided otherwise in the articles of association.

(2) In the event that the liquidation balance is not sufficient to cover the par value of shares, it shall be divided into a part pertaining to the holders of preference shares and a part pertaining to the holders of other shares, in the extent provided for in the articles of association. Where there are multiple types of shares with a preferential position related to the liquidation balance, the liquidation balance shall also be divided into a part pertaining to the holders of such shares.

(3) The parts of the liquidation balance shall be distributed among the shareholders according to the proportion of the paid par value of their shares.

#### Section 550

(1) The right to the payment of the share in the liquidation balance shall arise upon the return of the shares to the company, at the liquidator's request.

(2) If a shareholder fails to return the shares at the liquidator's request, the procedure pursuant to Sections 537, 538 and 540 shall be applied *mutatis mutandis* by the liquidator.

(3) The returned shares shall be destroyed by the liquidator without delay.

#### Section 551

Where book-entry shares were issued, the beneficiary's right to the payment of a share in the liquidation balance shall arise as of the date when the company's shares are cancelled in the book-entry securities register on the basis of an instruction given by the liquidator.

## TITLE VI

### COOPERATIVE

#### Chapter 1

##### General provisions concerning a cooperative

##### Division 1

##### Basic provisions

#### Section 552

(1) A cooperative shall be a community of an indefinite number of persons, established for the purpose of mutual support of its members or third parties or, where appropriate, for the purpose of doing business.

(2) A cooperative shall have at least 3 members.

(3) The trade name shall include the word "družstvo".

#### Section 553

The articles of association of a cooperative shall also include:

- (a) the trade name of the cooperative,
- (b) the objects or activities,
- (c) the amount of a basic membership contribution or an entry membership contribution, as the case may be,
- (d) the method of payment and period for the payment of the share by a joining member,
- (e) the method of convening the members' meeting and the rules governing its decisions,
- (f) the number of members of the board of directors and of the auditing committee and their terms of office,
- (g) the conditions for the acquisition of membership in the cooperative and
- (h) the rights and duties of a member of the cooperative (the "member") and of the cooperative.

#### Section 554

(1) An amendment to the articles of association shall become effective on the date of its approval by the members' meeting, unless the resolution of the members' meeting implies that the amendment is to become effective at a later point in time.

(2) Where the articles of association are amended on the basis of a legal fact, the board of directors of the cooperative shall draw up the full text of the articles of association without undue delay after any of the members of the board of directors became aware of such a circumstance.

##### Division 2

##### Establishment of a cooperative

#### Section 555

(1) In addition to adopting the articles of association, the foundation meeting of a cooperative (the "foundation meeting") shall elect the members of the bodies of the cooperative and approve the method of fulfilment of the basic

membership contribution and the entry membership contribution, as the case may be.

(2) The draft articles of association shall be prepared by the convener, which is a natural person commissioned in writing to do so, by the persons interested in establishing a cooperative.

(3) The convener shall summon the persons interested in establishing a cooperative, in an appropriate manner, to attend the foundation meeting.

#### Section 556

(1) A foundation meeting may be attended by any person who filed an application for membership in the cooperative to be established, addressed for the attention of the convener, and has not withdrawn this application before the commencement of the foundation meeting, as well as by other persons, where appropriate, unless such persons were prohibited from participating in the foundation meeting.

(2) Where a foundation meeting is attended by an agent, he or she may not represent more than 1 person who filed an application.

#### Section 557

(1) The convener or a person authorised by the convener shall open the foundation meeting. He or she shall inform the foundation meeting about the number of participants based on the attendance list, which he or she verified for correctness and completeness before opening the meeting by comparing it with the applications, and shall brief the foundation meeting about any acts that were already taken by the convener. In addition, he or she shall propose to the foundation meeting the rules of procedure and election of its chairman.

(2) Before any further discussion, the foundation meeting, on the basis of a petition of the convener or a person authorised by the convener, shall approve the admission of the applications filed by the individual persons interested in establishing the cooperative, on the understanding that the persons whose applications were approved shall be entitled to participate in the discussion of the foundation meeting.

(3) At a foundation meeting, resolutions shall be adopted by a majority of votes of the participants at the time of voting.

#### Section 558

(1) A person who filed an application for membership in a cooperative shall be entitled to withdraw the application before the commencement of the foundation meeting; this shall be without prejudice to the provisions of Section 559.

(2) Every person entitled to participate in the foundation meeting pursuant to Section 557(2) shall have 1 vote at the foundation meeting. Voting on the articles of association shall always be open.

#### Section 559

(1) A founder of a cooperative shall be a person who filed an application for membership in the cooperative to be established before the commencement of the foundation meeting, has not withdrawn the application, whose application was approved pursuant to Section 557(2) and has met the requirements for membership and its acquisition, except for the fulfilment of the contribution obligation or the commencement of an employment relationship, as the case may be.

(2) A person who did not vote in favour of the adoption of the articles of association may withdraw his or her application immediately after the voting results are announced, otherwise the withdrawal of the application shall be disregarded; in such a case, the person shall not become a founder. The withdrawal of an application shall be included in the authentic instrument certifying the course of the foundation meeting.

(3) Upon the approval of the articles of association, a list of founders shall be approved by the foundation meeting and attached to the authentic instrument referred to in Section 560.

#### Section 560

(1) The course of the foundation meeting and the decision to adopt the articles of association shall be certified with an authentic instrument, which must include the approved text of the articles of association and be accompanied by the list of founders and a written declaration of the founders on the assumption of the contribution obligation related to the basic membership contribution, unless such declaration by the founders is already certified in the authentic instrument which certifies the course of the foundation meeting.

(2) If a founder is unable to attend the foundation meeting for serious reasons, the certificate of assumption of the contribution obligation referred to in subsection (1) made in the form of an authentic instrument, or the written declaration on the assumption of this obligation in the form of an authentic instrument or with a certified signature, may be delivered by the founder to the statutory body of the established cooperative within 15 days after the date of the foundation meeting.

#### Section 561

A founder shall fulfil the contribution obligation related to the basic membership contribution or the entry membership contribution within 15 days after the date of the foundation meeting which decided on the establishment of the cooperative; otherwise the founder shall not become a member.

## Section 562

### **Notice board**

(1) A cooperative shall set up a notice board in its registered office. The notice board shall be accessible to all members every working day during standard business hours.

(2) Where so provided in the articles of association, the notice board shall be made accessible online to the members of the cooperative.

## **Division 3**

### **Membership contributions**

## Section 563

(1) Every member shall participate on the registered capital of the cooperative with his or her membership contribution.

(2) Where so provided in the articles of association, a member may participate in the registered capital with one or more additional membership contributions. The amount of additional members' shares can vary for different members.

(3) A membership contribution shall be constituted by the sum of the basic membership contribution and all additional membership contributions.

## Section 564

(1) A written declaration referred to in Section 560(1) or (2) and the fulfilment of the contribution obligation related to the basic membership contribution shall be a pre-condition for the acquisition of membership, unless this Act provides that the commencement of an employment relationship is also required for the acquisition of membership. The articles of association may provide that only the fulfilment of the contribution obligation related to the entry membership contribution in the amount provided for in the articles of association shall be a precondition for the acquisition of membership; the entry membership contribution shall be a part of the basic membership contribution.

(2) The amount of the basic membership contribution shall be the same for all members of the cooperative.

(3) The contribution obligation in the extent of the difference between the basic membership contribution and the entry membership contribution must be fulfilled within the period of time set in the articles of association, which may not exceed 3 years.

## Section 565

The basic membership contribution or a part thereof cannot be refunded throughout the duration of the membership; this shall not apply if the basic membership contribution has been decreased.

### **Increase in the basic membership contribution**

## Section 566

(1) An increase in the basic membership contribution through an extra payment by the members shall be possible if so provided in the articles of association. The basic membership contribution may be increased through extra payments by the members only once every 3 years to a level not exceeding three times the existing amount.

(2) A period of at least 90 days must pass between the adoption of the decision to amend the articles of association, allowing an increase in the basic membership contribution through an extra payment by the members, and the adoption of the decision to increase the basic membership contribution.

## Section 567

(1) The members' meeting may decide that the basic membership contribution will be increased proportionally for all members from the cooperative's own resources.

(2) An increase in the basic membership contribution from own resources shall only be possible if the financial statements on the basis of which the members' meeting is to decide on an increase were certified by an auditor and received an unqualified opinion.

(3) A reserve fund, if established pursuant to another legal regulation or to the articles of association, other funds created for purposes other than an increase in the basic membership contribution, or own resources which are earmarked for specific purposes and which the cooperative is not entitled to modify their purpose, cannot be used to increase the basic membership contribution.

(4) An increase of the registered capital may not exceed the difference between the equity and the sum of the existing registered capital and other own resources which are earmarked for specific purposes and the purpose of which the cooperative is not entitled to modify.

## **Decrease of the basic membership contribution**

### **Section 568**

(1) A decision of the members' meeting to decrease the basic membership contribution and the amount of the basic membership contribution shall be published by the board of directors within 15 days after its adoption, doing so twice with a time interval of 30 days.

(2) Together with the publication, the board of directors shall invite in writing all known creditors of the cooperative, whose receivables towards the cooperative came into existence before the adoption of the members' meeting resolution to decrease the basic membership contribution, to submit their receivables towards the cooperative within 90 days after the publication of the last notice, unless the basic membership contribution is being decreased in order to cover losses.

### **Section 569**

(1) Where a receivable towards a cooperative was submitted in time by a creditor, the cooperative shall provide adequate security to the creditor for such receivable or settle such receivable, unless agreed otherwise with the creditor. The conclusion of such an agreement shall be documented by the cooperative when filing an application to register the decrease of the basic membership contribution in the commercial register.

(2) The obligation referred to in subsection (1) shall not apply, unless the decrease of the basic membership contribution impairs the collectability of receivables towards the cooperative.

(3) Where a creditor believes that the collectability of his or her receivables was impaired, which the cooperative denies, a court shall decide on an adequate security pursuant to Section 571.

### **Section 570**

If a cooperative reaches an agreement with all its creditors concerning the securing or settlement of all their receivables, the period referred to in Section 568(2) does not have to be complied with; such agreement shall be documented by the cooperative when filing an application to register the decrease of the basic membership contribution in the commercial register.

### **Section 571**

If a cooperative and a creditor cannot reach an agreement on how to secure a receivable, a court shall decide on the adequate security, taking into account the type and amount of the receivable; the court's ruling shall be proved by the cooperative to the commercial register court when filing an application to register the decrease of the basic membership contribution in the commercial register.

### **Section 572**

## **Additional membership contribution**

(1) A cooperative and its member shall conclude a written agreement concerning the assumption of the obligation to pay an additional membership contribution. The agreement shall include information about the amount of a cash contribution or about the item constituting a contribution in kind and its valuation, the method of its valuation and the deadline for the fulfilment of the contribution obligation.

(2) Unless the settlement of the additional membership contribution during membership is agreed in the agreement on an additional membership contribution, the additional membership contribution or a part thereof cannot be refunded or otherwise settled throughout the duration of the membership.

## **Contribution in kind**

### **Section 573**

(1) A contribution in kind shall be valued by an expert selected from the list of experts kept pursuant to another legal regulation, to be determined by agreement between the cooperative and the contributor or, where the cooperative has not yet been incorporated, by agreement between the founders.

(2) A contribution in kind shall not be applied towards the membership contribution in a higher amount than it has been valued.

(3) A contribution in kind shall be approved by the members' meeting or the foundation meeting before it is contributed to the cooperative.

### **Section 574**

Where so provided in the articles of association, a contribution in kind may also consist of the performance of work(s) or provision of service(s) by a member.

## **Division 4**

## **Members' rights and duties**



## Subdivision 1

### Basic provisions

#### Section 575

(1) By law and in accordance with the articles of association, a member shall especially have the right to:

- (a) vote and be elected for a body of the cooperative,
- (b) participate in the management and decision-making within the cooperative,
- (c) share the benefits provided by the cooperative.

(2) A member shall particularly be obliged to:

- (a) comply with the articles of association,
- (b) respect the decisions taken by a body of the cooperative.

#### Section 576

(1) If the articles of association or a resolution of the members' meeting provide that a member's rights, or some of them, shall be determined based on the duration of his or her membership in the cooperative, the duration of membership of every member shall be calculated from the acquisition of membership by his or her legal predecessor who acquired membership earliest.

(2) The duration of membership referred to in subsection (1) shall also include the period in which a member or his or her legal predecessor was a member or a partner in a business corporation that was a legal predecessor of the cooperative.

## Subdivision 2

### Acquisition of membership

#### Section 577

(1) Membership in a cooperative shall only be acquired when all the conditions prescribed by this Act and by the articles of association have been met:

- (a) when a cooperative is being established, on the date of incorporation of the cooperative,
- (b) on the date when the competent body of the cooperative decided to admit a member or on a later date specified in such a decision, or
- (c) upon the transfer or passing of the cooperative share.

(2) Both the application of the candidate member and the decision of the cooperative on his or her admission must be in written form and always include the trade name of the cooperative, name and place of residence or registered office of the candidate member and a definition of his or her cooperative share.

(3) The board of directors or other body of the cooperative designated in the articles of association, except for the auditing committee, shall decide on the admission of a candidate member to the cooperative.

(4) Membership in a cooperative shall be acquired for an indefinite period of time.

#### Section 578

The membership of a spouse in a cooperative does not give rise to the membership of the other spouse.

#### Section 579

(1) Where, pursuant to the articles of association, the acquisition of membership is conditional upon the member's employment relationship with the cooperative, only a person having a capacity to conclude an employment contract may become a member of the cooperative.

(2) Where, pursuant to the articles of association, a member's employment relationship with the cooperative is a precondition for his or her membership in the cooperative, the membership in the cooperative shall be acquired on the commencement date of the employment, and shall terminate on the termination date of the employment; the articles of association may provide that the membership shall not be terminated upon the termination of the employment relationship.

### Register of members

#### Section 580

(1) A cooperative shall keep a register of members.

(2) The following information shall be recorded in the register of members:

(a) the name and place of residence or registered office and, where appropriate, a different service address determined by the member,

(b) the date and method of membership acquisition and termination, and

(c) the amount of the membership contribution and the scope of fulfilment of the contribution obligation related to the membership contribution.

(3) A member shall notify and document to the cooperative any change in the information recorded in the register of members without undue delay after such circumstance has occurred. The cooperative shall register the circumstances to be recorded without undue delay after the change has been documented.

#### Section 581

(1) A member shall have the right to review the register of members and request the issue, free-of-charge, of a certificate of his or her membership and of the contents of his or her record in the register of members. The articles of association may provide that a member who requests the issue of such a certificate more than once a year shall pay to the cooperative the expenses reasonably incurred in this connection.

(2) The information recorded in the register of members can only be used by the cooperative for internal use in relation to the members of the cooperative. Its use for other purposes shall only be possible with the consent of the members concerned by the data.

#### Section 582

(1) A copy of the list of all the members or of a requested part thereof shall be issued by a cooperative to every member, at his or her written request and against the reimbursement of expenses, without undue delay after the receipt of such request.

(2) The board of directors shall permit every person to review the respective part of the list provided that the person proves that he or she has a legal interest in such review or submits a written consent of the member concerned by the record; the member's signature must be certified.

#### Section 583

Where a member is no longer a member of the cooperative, this fact shall be marked by the cooperative in the register of members without undue delay. Only a former member concerned by the record and his or her legal successor shall be permitted by the board of directors to review that part of the register of members. The information recorded in the register of members shall only be provided to third parties by a cooperative under the conditions prescribed by the Act on capital market undertakings for information to be provided by the person keeping an investment instruments register.

### Subdivision 3

#### Subject-matter of membership

#### Section 584

##### Action by a member

(1) Every member shall be entitled to claim, on behalf of the cooperative, compensation of damage caused to the cooperative by a member of the cooperative's bodies, or the fulfilment of their obligations arising from an agreement pursuant to Section 53(3). The same shall apply *mutatis mutandis* to the subsequent enforcement of the ruling.

(2) A member shall not be entitled to claim compensation of damage referred to in subsection (1) if such compensation was decided on pursuant to Section 53(3).

#### Section 585

(1) Before exercising the right pursuant to Section 584(1) against a member of the board of directors, a member of the cooperative shall notify the auditing committee, if established; where the exercise of the right is directed against a member of a different body of the cooperative, the member of the cooperative shall notify the board of directors.

(2) The notified body shall exercise the right to compensation of damage without undue delay after having received the information referred to in subsection (1); otherwise the member shall be entitled to exercise the right pursuant to Section 584(1) himself or herself on behalf of the cooperative.

#### Section 586

##### Member's profit share

(1) The articles of association may provide that a member or some members are entitled to receive a profit share

under the conditions provided for therein.

(2) If the articles of association do not provide for the method of determining a member's share of the profit to be distributed among the members, it shall be determined in the proportion of the member's fulfilled contribution obligation related to the membership contribution to the paid-up registered capital of the cooperative. In the case of a member whose membership in the relevant year lasted for a part of the accounting period only, the profit share shall be reduced proportionally.

## Subdivision 4

### **Member's contribution obligation to cover the loss of a cooperative**

#### Section 587

If so provided in the articles of association, the members' meeting can impose upon the members a contribution obligation to cover the loss of a cooperative (the "contribution obligation").

#### Section 588

(1) The contribution obligation provided for in the articles of association shall be the same for all individual members and shall not exceed three times the amount of the basic membership contribution.

(2) For all or some of the members of the board of directors and of the auditing committee, the contribution obligation may be set at up to ten times the amount of the basic membership contribution, provided that this option was included in the articles of association as at the commencement date of their office in the board of directors or in the auditing committee.

#### Section 589

The contribution obligation may be imposed repeatedly. If the aggregate amount of a member's contribution obligation throughout the duration of his or her membership in the cooperative reaches the threshold determined pursuant to Section 588, the contribution obligation can no longer be imposed upon that member.

#### Section 590

A contribution obligation can also be imposed only upon those members of the cooperative who caused or significantly contributed to the loss of the cooperative.

#### Section 591

The provisions of the articles of association governing the contribution obligation or any changes thereto shall only be effective for the accounting period following the accounting period in which the provisions of the contribution obligation were introduced or changed in the articles of association.

#### Section 592

A person who has been a member of the cooperative only for a part of the accounting period in which the cooperative generated a loss, shall only fulfil a proportionate part of the contribution obligation for the relevant part of the accounting period.

#### Section 593

A contribution obligation may be imposed if:

- (a) the loss of the cooperative was determined in the ordinary or extraordinary financial statements,
- (b) the ordinary or extraordinary financial statements were discussed at the members' meeting,
- (c) retained profits from previous years as well as the reserve fund and other funds, if established, which may be used to cover a loss in accordance with the articles of association, were used to cover the loss, and
- (d) the decision of the members' meeting on the contribution obligation of the members was adopted within 1 year after the last day of the accounting period in which the loss to be covered by the contribution obligation was generated.

#### Section 594

(1) The extent of a contribution obligation imposed upon the members may not exceed the actual amount of loss generated by the cooperative.

(2) Any difference between the amount paid by a member to fulfil his or her contribution obligation and the amount that was to be paid pursuant to subsection (1) shall be refunded within 3 months after the date when the difference was identified.

## Subdivision 5

### **Cooperative share**

Section 595

(1) A cooperative share shall represent the rights and duties of a member arising from his or her membership in a cooperative.

(2) Each member may have 1 cooperative share only.

Section 596

A cooperative may not acquire its own cooperative shares, unless in the case of a transformation pursuant to another legal regulation.

Section 597

The articles of association may exclude co-ownership of cooperative shares.

Section 598

The transfer and passing of a cooperative share shall not be permitted where a member's employment relationship with the cooperative is a precondition for membership pursuant to the articles of association. This shall not apply if the transferee or heir of the cooperative share already is or becomes an employee of the cooperative.

**Transfer of a cooperative share**

Section 599

A cooperative share may only be transferred to a person who can become a member of the cooperative in accordance with the provisions of this Act or of the articles of association.

Section 600

A member can transfer his or her cooperative share to another member unless such transfer is prohibited by the articles of association, and to a person who is not a member if such transfer is permitted in the articles of association. The articles of association can make the transfer subject to the approval of the board of directors. An approval by the board of directors of the transfer of the cooperative share cannot be modified or withdrawn.

Section 601

(1) A transferor of the cooperative share shall be liable for any debt attached to the cooperative share.

(2) A transfer of the cooperative share shall be legally effective vis-à-vis the cooperative on the date when an effective agreement on the transfer of the cooperative share is delivered to the cooperative, unless a later effective date is provided in the agreement. The delivery of a declaration by the transferor and the transferee on the conclusion of such an agreement shall have the same effect as the delivery of the agreement.

**Passing of a cooperative share**

Section 602

A cooperative share shall pass to a member's legal successor under the conditions provided for in this Act or in the articles of association, unless such passing is excluded in the articles of association. The passing of the cooperative share cannot be excluded in a housing cooperative in the event that a member benefits from the right to lease or the right to conclude a lease agreement.

Section 603

(1) An heir of a cooperative share who does not wish to be a member of the cooperative shall be entitled to terminate his or her participation in the cooperative by notice, to be given without undue delay, but no later than within 1 month after the date when he or she became an heir; otherwise such termination notice shall be disregarded.

(2) The notice period shall be 3 months and, during such period, the heir is not entitled to participate in the cooperative's activities.

(3) Where an heir gives the notice referred to in subsection (1), he or she shall be conclusively presumed to not have become a member of the cooperative.

Section 604

(1) Unless the inheritance of cooperative shares is excluded in the articles of association, where the acquisition of membership in a cooperative is subject to approval by the board of directors, an heir shall not become a member before his or her application has been approved.

(2) If the board of directors has approved the acquisition of membership, the heir shall be considered to have been a member of the cooperative since the date of inheritance.

(3) If an heir has not been notified by the board of directors within 30 days after the date when the heir requested an

approval from the cooperative, the board of directors shall be conclusively presumed to have approved the acquisition of membership in the cooperative by the heir.

#### Section 605

(1) Upon the winding up of a legal entity which is a member of a cooperative, its cooperative share shall pass to its legal successor, provided that the legal entity has so requested before its winding-up and the board of directors gave its consent with the passing of the cooperative share before the legal entity was wound up.

(2) Where a legal entity has multiple legal successors, the divided cooperative share may be passed to more than one legal successor. If the passing of the cooperative share to more than one legal successor is approved by the board of directors, the board of directors shall be conclusively presumed to have also approved the division of the cooperative share.

#### Section 606

##### **Merger of cooperative shares**

If, throughout the duration of his or her membership in the cooperative, a member acquires another cooperative share, his or her cooperative shares shall be merged into a single cooperative share on the date of their acquisition by the member. However, where third-party rights are attached to each of the cooperative shares, these cooperative shares shall only be merged on the date when such third-party rights cease to exist, unless provided otherwise in an agreement between the member of the cooperative and such third party.

#### Section 607

##### **Division of a cooperative share**

If permitted under the articles of association, a cooperative share may be divided subject to the approval of the board of directors. A cooperative share cannot be divided in the event that, as a result of the division of the cooperative share, the participation of the transferor or transferee of the cooperative share in the cooperative would fall below the amount of the basic membership contribution.

##### **Financial assistance**

#### Section 608

Unless additional requirements are set forth in the articles of association, a cooperative may grant financial assistance if:

- (a) the financial assistance is granted under fair conditions,
- (b) the board of directors draws up a written report:
  1. giving a material justification of the financial assistance to be granted, including an indication of the related advantages and risks for the cooperative,
  2. specifying the terms and conditions under which the financial assistance will be granted, and
  3. giving reasons why the granting of the financial assistance is not in conflict with the cooperative's interest.

#### Section 609

(1) The report referred to in Section 608(b) shall be filed by the cooperative in the collection of instruments without undue delay after the financial assistance has been approved by the members' meeting. The report must be available to the members of the cooperative for review at the cooperative's registered office since the date the members' meeting was convened, and must be freely accessible to all members at that members' meeting.

(2) When granting financial assistance, subsection (1) and Section 608 shall not apply to banks and financial institutions, provided that the financial assistance is granted within the common limits of their main activity and does not result in a decrease of their equity below the subscribed registered capital increased with the funds which cannot be distributed among the members of the cooperative pursuant to this Act or the articles of association.

## Subdivision 6

### **Termination of membership**

#### **Methods for termination of membership**

#### Section 610

Membership in a cooperative shall terminate:

- (a) by agreement,
- (b) by the resignation of a member,
- (c) by the expulsion of a member,

- (d) by the transfer of a cooperative share,
- (e) by the passing of a cooperative share,
- (f) upon the death of a member of the cooperative,
- (g) upon the winding-up of the legal entity which is a member of the cooperative,
- (h) upon the declaration of bankruptcy against a member's assets,
- (i) upon the rejection of a petition for bankruptcy proceedings by reason of insufficiency of a member's assets,
- (j) upon the delivery of a notice of an unsuccessful repeated auction conducted under the enforcement proceedings for a ruling or under execution proceedings or, where the membership rights and duties are not transferable, legally effective enforcement order for a ruling against the membership rights and duties, or upon a writ of execution against the membership rights and duties becoming legally effective following the expiry of the period indicated in the call for fulfilment of the obligation under enforcement pursuant to a special legislative act and, where a petition to discontinue the execution was filed within such period, the relevant decision becoming legally effective,
- (k) upon the termination of the employment relationship referred to in Section 579(2), unless provided otherwise in the articles of association, or
- (l) upon the winding-up of the cooperative without a legal successor.

#### Section 611

A membership termination agreement and a letter of resignation of a member of a cooperative must be in written form.

#### Section 612

(1) The articles of association may provide for a notice period for the resignation from a cooperative, which must not exceed 6 months; any decision of the members' meeting violating this provision shall be disregarded.

(2) Where no notice period is provided for in the articles of association, the resigning member shall be entitled to determine, in his or her letter of resignation, a date other than the delivery date of the letter of resignation as the termination date of his or her membership in the cooperative. The interval between the delivery date of the letter of resignation and the membership termination date determined in the letter of resignation must not exceed 1 year.

#### Section 613

(1) Where a member resigns from the cooperative because of his or her disagreement with an amendment to the articles of association:

- (a) the amendment of the articles of association shall not be effective for the resigning member and the relationship between the member and the cooperative shall be governed by the existing articles of association,
- (b) the member shall specify that reason for resignation in his or her letter of resignation; otherwise his or her resignation shall not be treated as a resignation for reason of disagreement with the amendment to the articles of association,
- (c) the member shall deliver his or her letter of resignation to the cooperative within 30 days after the date of adoption of the members' meeting resolution to amend the articles of association; otherwise the member's right to resign from the cooperative by reason of disagreement with the amendment to the articles of association shall be disregarded, and
- (d) the membership of the resigning member shall terminate at the end of the calendar month in which the letter of resignation was delivered to the cooperative.

(2) Every member who did not vote in favour of the amendment of the articles of association at the members' meeting shall have the right to resign from the cooperative in accordance with the procedure referred to in subsection (1). Secret ballots shall be prohibited.

(3) Where an amendment to the articles of association, which the member of the cooperative disagrees with, was decided on at the assembly of delegates, every member shall have the right to withdraw from the cooperative within 1 month after the date when he or she became aware or could have become aware of the amendment, but no later than within 3 months.

### **Expulsion of a member from the cooperative**

#### Section 614

A member may be expelled from the cooperative, if he or she seriously or repeatedly breaches his or her membership duties, no longer meets the requirements for membership or for other important reasons specified in the articles of association.

#### Section 615

- (1) An expulsion decision shall be preceded by a written warning.

(2) A decision to give a warning shall be adopted by the board of directors or other body designated in the articles of association.

(3) The warning shall include the reason for it being given and shall draw the member's attention to the possibility of exclusion and invite the member to refrain from breaching the membership duties and remedy the consequences of his or her violations thereof. A reasonable period of time of at least 30 days shall be granted to the member to this end.

#### Section 616

The provisions of Section 615 shall not apply if the violation of the membership duties or other relevant reasons specified in the articles of association had consequences that cannot be remedied.

#### Section 617

(1) A decision to expel a member from the cooperative shall be adopted by the board of directors or other body designated in the articles of association.

(2) An expulsion decision must be taken no later than 6 months after the date when the cooperative learned about the reason for the expulsion, however, no later than within 1 year after the date when the reason for the expulsion occurred.

(3) An expulsion decision must be in written form. The decision shall also include advice on the rights of the expelled member referred to in Section 618.

#### Section 618

(1) A member may file substantiated objections against an expulsion decision to the members' meeting within 30 days after the delivery date of the notice of expulsion; the same shall also apply when the expulsion decision was adopted by the members' meeting. Objections filed in violation of this provision shall be disregarded.

(2) Where the expulsion was decided on by the members' meeting in accordance with the articles of association, the procedure pursuant to Sections 620 to 622 shall apply.

#### Section 619

The membership of the expelled person shall terminate following the expiry of the complaint period or on the date when the decision of the members' meeting rejecting the complaint was delivered to the expelled person.

#### Section 620

(1) A petition to declare the expulsion decision invalid may be lodged by the expelled person within 3 months after the delivery date of the decision to a court against the decision of the members' meeting:

(a) to reject the complaint, or

(b) to expel the person, where the expulsion was decided on by the members' meeting in accordance with the articles of association.

(2) No rights arising from the termination of membership may be exercised by a cooperative against a member before the expiry of the period for the lodging of the petition to a court or before the legally effective closure of the legal proceedings.

#### Section 621

The decision of the board of directors to expel a member and the decision of the members' meeting to reject the complaint and confirm the expulsion decision shall be sent to the expelled member by registered letter for personal delivery to the member's address specified in the register of members.

#### Section 622

(1) A cooperative may decide to cancel the expulsion decision; the decision to cancel an expulsion decision shall be taken by the body of the cooperative which is entitled to decide on the expulsion of a member.

(2) The expelled person must consent in writing to the cancellation of the expulsion. If the expelled person does not give his or her consent within 1 month after the date when the decision to cancel his or her expulsion was delivered to him or her, the decision to cancel his or her expulsion shall be disregarded. This shall not apply if such person has previously requested cancellation of the expulsion decision in writing.

(3) An expulsion decision can also be cancelled when the proceedings to declare a member's expulsion from the cooperative invalid are still pending.

(4) Where an expulsion decision was cancelled or where it was decided by the members' meeting or by a court that the member's complaint against the expulsion decision was well-founded, the membership in the cooperative shall be conclusively presumed to not have been terminated.

### Division 5

#### Settlement share

#### Section 623

(1) A settlement share shall be determined according to the proportion of the fulfilled contribution obligation in relation to the membership contribution of a member whose membership was terminated in the relevant accounting period, to the sum of the fulfilled contribution obligations in relation to the membership contributions of all the members as at the last day of that accounting period.

(2) When calculating the settlement share, the proportion referred to in subsection (1) shall be multiplied by the amount of the cooperative's equity after deducting the reserve fund, if established pursuant to another legal regulation or the articles of association, to the extent in which the reserve fund cannot be distributed among the members of the cooperative in accordance with the different legislative act or the articles of association, as shown in the financial statements prepared as at the last day of the accounting period in which the membership was terminated. Where the membership is terminated on or before 30 June of the relevant accounting period, the settlement share shall be determined based on the cooperative's equity as at the last day of the previous accounting period, if it is higher.

#### Section 624

The settlement share shall be due and payable within 3 months after the date when its amount was or could have been determined pursuant to Section 623.

#### Section 625

The provisions of Sections 623 and 624 shall apply unless provided otherwise in the articles of association. The period for the payment of the settlement share, to be determined in the articles of association, may not exceed 2 years after the membership termination date.

#### Section 626

Unless otherwise provided in the articles of association, the settlement share of an expelled member shall be due and payable within 1 year after the date when its amount was or could have been determined pursuant to Section 623, or when a court's ruling to close the proceedings for the declaration of invalidity of the expulsion decision became legally effective.

#### Section 627

(1) When bankruptcy proceedings against a member's assets were dismissed, his or her membership in the cooperative shall be restored. This shall not apply if the bankruptcy proceedings were dismissed after the fulfilment of the decree of distribution or for absolute inadequacy of the member's assets.

(2) The settlement share of the bankrupt shall be returned by the insolvency administrator to the cooperative within 30 days after the court's ruling on the bankruptcy dismissal becoming legally effective.

#### Section 628

(1) If the enforcement of a ruling or the execution proceedings in respect of a cooperative share were effectively suspended, the membership of the obliged person in the cooperative shall be restored.

(2) A person who accepted a paid settlement share of the obliged person shall return the paid settlement share of the obliged person to the cooperative within 30 days after the date when the court's decision to suspend the enforcement of a ruling or the execution proceedings became legally effective.

### **Division 6**

#### **Bodies of a cooperative**

##### **Subdivision 1**

#### **General provisions**

##### Section 629

A cooperative shall have the following bodies:

- (a) the members' meeting,
- (b) the board of directors,
- (c) an auditing committee and
- (d) other bodies established under the articles of association.

##### Section 630

Only a member of the cooperative may be a member of a body of the cooperative.



#### Section 631

Every member of a cooperative shall have 1 vote when voting in a body of the cooperative.

#### Section 632

The term of office shall not exceed 5 years. The term of office for members of an elected body shall expire at the same time for all its members; the same shall also apply to delegates.

#### Section 633

Any arrangements in the articles of association, resolutions of bodies of the cooperative and contractual arrangements granting votes to a member of the cooperative in violation of this Act shall be disregarded.

#### Section 634

(1) Minutes of meetings shall be drawn up to document the course of meetings of every body of the cooperative, by the person who convened the meeting of the respective body of the cooperative. The minutes shall include at least information about the meeting date, venue and agenda of the meeting, the resolutions adopted, the voting results and the objections raised by the members.

(2) The minutes shall be accompanied by a register of members of the body, indicating those who were absent, as well as by the invitation to the meeting and other materials that were submitted in relation to the matters discussed.

### Subdivision 2

#### Members' meeting

##### Section 635

#### Introductory provisions

(1) The members of a cooperative, the liquidator and the persons designated in another legal regulation shall have the right to participate at the members' meeting.

(2) A member shall participate at the members' meeting in person or by proxy. The power of attorney for the members' meeting must be granted in writing and clearly imply whether it was granted for representation at one or more members' meetings. No person participating at the members' meeting may act as agent for more than one-third of all members of the cooperative; otherwise such a person shall be conclusively presumed not to have been granted power of attorney to act at the members' meeting.

#### Convening the members' meeting

##### Section 636

(1) An invitation to the members' meeting shall be posted by the convener on the cooperative's website at least 15 days before the date of the members' meeting and, at the same time, sent to the members to their addresses indicated in the register of members. Upon the posting thereof, the invitation shall be deemed to have been delivered. The invitation must remain posted on the website until the time of the members' meeting.

(2) An invitation shall include at least:

(a) the trade name and registered office of the cooperative,

(b) the venue and the starting time of the members' meeting; the venue and the starting time of the members' meeting shall be determined in a manner so as to ensure that the possibilities for members to attend the meeting are restricted as little as possible,

(c) an indication of whether the members' meeting or a substitute members' meeting is being convened,

(d) the agenda of the members' meeting and

(e) the place where a member can review any underlying materials concerning the particular items in the agenda of the members' meeting, unless they are attached to the invitation.

##### Section 637

Where the articles of association are to be amended or a resolution resulting in an amendment to the articles of association is to be adopted, the text of the proposed amendments or the draft resolution shall also be attached to the invitation.

##### Section 638

(1) The members' meeting shall be convened by the board of directors within the periods provided for in the articles of association and at least once in every accounting period.

(2) The members' meeting which is to discuss the ordinary financial statements must take place no later than 6 months after the end of the accounting period reported in the ordinary financial statements.

#### Section 639

(1) The members' meeting shall be convened by the board of directors whenever this is in an important interest of the cooperative.

(2) The members' meeting shall also be convened by the board of directors without undue delay after becoming aware that:

(a) the loss of the cooperative reached such a level that, if covered from the cooperative's resources, the outstanding loss would or, in view of the circumstances, could be expected to amount to the registered capital, or

(b) the cooperative is in bankruptcy or imminent bankruptcy pursuant to another legal regulation, in which case the board of directors shall propose the necessary corrective measures for adoption by the members' meeting.

(3) The members' meeting shall be convened by the board of directors if so requested by the auditing committee or by at least 10% of the members of the cooperative holding at least one-fifth of all the votes, unless a lower number of entitled members or a lower number of votes required and/or a lower number of both entitled members and votes required is provided for in the articles of association.

#### Section 640

In the event that the board of directors should have convened the members' meeting in accordance with this Act or with the articles of association, but failed to do so without undue delay after being required to do so, the members' meeting can also be convened by one or more members of the board of directors, the liquidator or the auditing committee, at the request of the auditing committee or the members of the cooperative pursuant to Section 639(3) or in an important interest of the cooperative.

#### Section 641

(1) If the members' meeting is not convened by the board of directors so that it takes place within 30 days after the receipt of a request from the auditing committee or the members of the cooperative pursuant to Section 639(3), the members' meeting must be convened by the persons or the body referred to in Section 640.

(2) If the persons or the body referred to in Section 640 fail to do so within 10 days following the expiry of the period for the board of directors to convene the members' meeting, the members' meeting may be convened and all related acts may be made by a person authorised to do so in writing by all the members who requested the members' meeting to be convened.

#### Section 642

Where the members' meeting convened at the request of the auditing committee or the members of the cooperative pursuant to Section 639(3) does not have a quorum, the convener of the members' meeting shall convene a substitute members' meeting. This shall not apply if the request of the auditing committee or of the persons referred to in Section 639(3) was withdrawn.

#### Section 643

##### **Additional items in the members' meeting agenda**

(1) At a request of the members entitled to request the members' meeting to be convened, the board of directors shall include the item requested by them in the agenda of the members' meeting. Where such request is delivered only after the invitation has been sent, the board of directors shall accordingly inform the members of the cooperative who are present at the convened members' meeting. This shall be without prejudice to the obligation to convene a new members' meeting, unless the matter included in the request was discussed at the members' meeting in accordance with subsection (2).

(2) Any matters which were not included in the proposed agenda of the members' meeting can only be discussed if all members of the cooperative are present and agree to it.

##### **Quorum of the members' meeting**

#### Section 644

(1) The members' meeting shall have a quorum if a majority of all members holding a majority of all votes is present, unless the participation of members holding a higher number of votes is required under this Act or the articles of association.

(2) When establishing the quorum of the members' meeting and when adopting resolutions, the presence and the votes of the members who cannot exercise their voting right pursuant to Sections 660 to 662 shall be disregarded.

#### Section 645

The members' meeting shall adopt resolutions by a majority of votes of the members who are present, unless a higher number of votes is required under this Act or the articles of association.

#### Section 646

Where the members' meeting is to adopt a resolution concerning any of the matters referred to in Section 650(2), the members' meeting shall have a quorum if at least two-thirds of all the members are present, and the resolution must be adopted by a majority of at least two thirds of the members who are present.

#### **Substitute members' meeting**

##### Section 647

If the members' meeting does not have a quorum, the person who convened the initial members' meeting shall, if still necessary, convene a substitute members' meeting with the same agenda without undue delay, in the same manner as the initially convened members' meeting and through a separate invitation.

##### Section 648

(1) A substitute members' meeting shall have a quorum regardless of the number of the members present, unless provided otherwise in the articles of association.

(2) Any matters which were not included in the proposed agenda of the regular members' meeting may only be decided at the substitute members' meeting if all members of the cooperative are present and agree to it.

#### **Decision-making of the members' meeting**

##### Section 649

The members of the cooperative shall have the right to vote at the members' meeting.

##### Section 650

(1) When voting at the members' meeting, every member shall have 1 vote, unless the articles of association provide that a member has more votes.

(2) Every member shall have 1 vote where the members' meeting is to decide on:

- (a) an approval to grant financial assistance,
- (b) a contribution obligation,
- (c) the cooperative's dissolution with liquidation,
- (d) a transformation of the cooperative,
- (e) the issuance of bonds.

##### Section 651

A liquidator shall always be permitted to speak at the members' meeting before the voting whenever he or she requests.

#### **Decisions per rollam**

##### Section 652

(1) Where decisions per rollam are permitted under the articles of association of a cooperative, the cooperative or a person authorised to convene the members' meeting shall send a proposal of a decision to all members.

(2) Decisions per rollam cannot be used when the decision is to be taken by delegates.

##### Section 653

The proposal of a decision shall include:

- (a) the text of the proposed decision and its justification,
- (b) a deadline for the receipt of a member's opinion as determined in the articles of association or, failing that, 15 days; the date when the proposal was delivered to the member shall be relevant for the commencement of such period of time,
- (c) any documents required for its adoption, and
- (d) additional information where so provided in the articles of association.

##### Section 654

(1) Where a member fails to deliver his or her approval of the proposed decision to the cooperative within the period of time referred to in Section 653(b), such member shall be conclusively presumed to have disagreed with the proposal.

(2) If it is required under this Act that a decision of the members' meeting is certified with an authentic instrument, the member's decision shall have the form of an authentic instrument, which must also include the contents of the proposed decision of the members' meeting to which the statement is concerned.

(3) The decisive majority shall be calculated on the basis of the total votes of all members of the cooperative.

#### Section 655

The result of the decision-making procedure pursuant to Sections 652 to 654, including the date of adoption, shall be notified by the person authorised to convene the meeting to all members, without undue delay after the date of adoption and in the manner prescribed by this Act and by the articles of association for convening the members' meeting.

### **Powers of the members' meeting**

#### Section 656

The members' meeting shall have the power to:

- (a) amend the articles of association, unless they are amended on the basis of other legal facts,
- (b) appoint and recall members and substitute members of the board of directors and of the auditing committee, unless another legal regulation provides that one or more members of the auditing committee are to be elected by the employees of the cooperative,
- (c) determine the amount of remuneration for the board of directors, the auditing committee and the members of other bodies of the cooperative established under the articles of association, provided that the members' meeting is authorised under the articles of association to elect and recall such bodies and their members,
- (d) approve ordinary, extraordinary or consolidated financial statements and, where appropriate, interim financial statements,
- (e) approve executive service agreements pursuant to Section 59,
- (f) approve the granting of financial assistance,
- (g) decide on a member's complaint against a decision on his or her expulsion,
- (h) approve actions taken on behalf of the cooperative before its incorporation,
- (i) decide on the distribution of profit or coverage of loss,
- (j) decide on a contribution obligation,
- (k) decide on the use of the reserve fund,
- (l) decide on the issuance of bonds,
- (m) approve a transfer or a pledge of an enterprise or such a part thereof that would imply a significant change of the existing structure of the enterprise or a significant change in the objects or activity of the cooperative,
- (n) decide on a transformation of the cooperative,
- (o) approve a silent partnership agreement, including its amendments and termination,
- (p) approve an agreement on additional membership contributions, including its amendments and termination, unless it is provided in the articles of association that the approval of such agreement does not fall under the competence of the members' meeting,
- (q) decide to dissolve the cooperative with liquidation,
- (r) appoint and recall the liquidator and decide on his or her remuneration,
- (s) approve the liquidator's report on the use of the liquidation balance,
- (t) decide on any other matters falling within its powers by virtue of this Act or the articles of association.

#### Section 657

The members' meeting may reserve the decision-making authority in other matters that do not fall within its powers pursuant to this Act or the articles of association. This shall not apply to matters falling within the powers of the board of directors or the auditing committee of the cooperative by virtue of this Act.

#### Section 658

Where the members' meeting reserved the decision-making authority in a certain matter, such matter shall not be decided on at the same members' meeting which reserved the decision-making authority, unless all members of the cooperative are present at that members' meeting and they all agree to discuss the matter at that members' meeting.

#### Section 659

(1) The person who convened the members' meeting shall draw up minutes of the meeting to document the course of the meeting within 15 days after the date of the members' meeting. Every member shall be entitled to receive a copy of the minutes. Where so provided in the articles of association, the expenses reasonably incurred to make such a copy shall be reimbursed by the member to the cooperative. The minutes shall be signed by the person who convened the members' meeting and, if they were drawn up by another person, also by that person.

(2) A resolution of the members' meeting shall be certified with an authentic instrument if it concerns:

- (a) an amendment to the articles of association,
- (b) the cooperative's dissolution with liquidation,
- (c) a transformation of the cooperative,
- (d) an approval of a transfer or a pledge of an enterprise or such a part thereof that would imply a significant change of the existing structure of the enterprise or a significant change in the objects or activity of the cooperative.

#### Section 660

A member may not exercise his or her voting right at the members' meeting if:

- (a) he or she is in default with the fulfilment of his or her contribution obligation related to the membership contribution,
- (b) the members' meeting is to decide on the member's complaint against a decision to expel him or her from the cooperative,
- (c) the members' meeting is to decide on his or her recall from office as a member of a body of the cooperative,
- (d) the members' meeting is to decide on the approval of financial assistance in relation to the member.

#### Section 661

The restriction of the exercise of voting rights pursuant to Section 660 shall also apply to persons acting in concert with the member who may not exercise his or her voting right.

#### Section 662

The exercise of the voting right may only be restricted, excluded or suspended if so provided in this Act or in another legal regulation.

#### Section 663

##### **Invalidity of a resolution of the members' meeting**

(1) Every member of a cooperative, member of the board of directors or of the auditing committee or the liquidator may claim the invalidity of a resolution of the members' meeting pursuant to the provisions of the Civil Code on the invalidity of a resolution adopted by the members' meeting of an association, on the grounds of it being contrary to law or to the articles of association. Where a decision was taken outside the members' meeting, the right to file a petition shall expire 3 months after the date when the petitioner became aware or could have become aware of the adoption of the decision pursuant to Sections 652 to 655.

(2) If the right referred to in subsection (1) was not exercised within the statutory period of time or, where appropriate, the petition to declare the resolution invalid was not granted, the validity of the members' meeting resolution can no longer be reviewed in any way, unless provided otherwise in another legal regulation.

(3) The invalidity of decisions taken by other bodies of the cooperative may be claimed by the persons referred to in subsection (1) only if such decisions were taken by a body acting as the members' meeting; subsections (1) and (2) shall apply *mutatis mutandis*.

(4) The provision of the second sentence in subsection (1) shall apply *mutatis mutandis* to decisions taken at partial members' meetings, on the understanding that the period for the exercise of the right to file a petition shall commence on the date of the last partial members' meeting.

(5) Violation of good manners shall also constitute grounds for invalidity of a resolution of the members' meeting.

##### **Partial members' meeting**

#### Section 664

(1) The articles of association can provide that the members' meeting is to take place in the form of partial members' meetings. In such case, the articles of association shall define:

- (a) the rules for assigning members of the cooperative to the separate partial members' meetings,

(b) the period in which the separate partial members' meetings are to take place. The interval between the date of the first and the last partial members' meetings may not exceed 40 days; otherwise it shall be conclusively presumed that no resolution was adopted.

(2) Unless provided otherwise below, the provisions of this Act concerning the members' meeting shall apply *mutatis mutandis* to the partial members' meeting, its convening, powers, adoption of resolutions and invalidity of resolutions.

#### Section 665

(1) The agenda of all partial members' meetings must be identical. Including additional items in the agenda pursuant to Section 643 is not permitted.

(2) The quorum of the members' meeting shall be established on the basis of the grand total of votes of all members present at all the partial members' meetings.

(3) The adoption of a resolution shall be established on the basis of the grand total of all votes cast at all the partial members' meetings.

#### Section 666

Where the adoption of a decision by the members' meeting needs to be certified with an authentic instrument, the adoption of a decision at each of the partial members' meetings shall be certified with an authentic instrument.

#### Section 667

(1) Where the partial members' meetings are to decide on a matter which directly affects the legitimate interest of a member of the cooperative, particularly where a decision is to be taken on the member's complaint against the decision on his or her expulsion, the member concerned shall be invited to each of the partial members' meetings by a written invitation and shall have the right to attend a partial members' meeting for the part that concerns him or her.

(2) If the member requests to speak before the members are to vote in the matter that affects him or her, the member shall be given an opportunity to make a statement; in particular, he or she shall have an opportunity to defend himself or herself against a proposal which rejects his or her complaint and confirms the expulsion decision.

(3) The separate partial members' meetings referred to in subsection (1) shall be convened so as to ensure that the member concerned has a real possibility to attend each one of them.

#### Section 668

The outcomes of the discussions and all resolutions adopted by the partial members' meetings shall be disclosed, in full wording, by the board of directors without undue delay through a notice posted on the notice board of the cooperative for a period of at least 60 days after the date of the last partial members' meeting.

### **Assembly of delegates**

#### Section 669

(1) The articles of association may provide that the powers of the members' meeting are to be exercised, in whole or in part, by the assembly of delegates. In such case, the articles of association shall define:

(a) the powers of the assembly of delegates and

(b) the rules to assign all members of the cooperative to the particular election districts of the delegates (the "election district").

(2) If the powers of the assembly of delegates are not defined in the articles of association, the assembly of delegates shall be conclusively presumed to exercise the powers of the members' meeting in full, and the members' meeting shall not be convened.

#### Section 670

(1) A cooperative having less than 200 members shall be prohibited from establishing the assembly of delegates.

(2) After 90 days following the date when the number of members of a cooperative fell below the threshold referred to in subsection (1), the provisions of the articles of association concerning the assembly of delegates shall cease to be effective and the office of all the delegates shall terminate. At the next members' meeting convened pursuant to Sections 636 and 640 following the expiry of the period referred to in the first sentence, the articles of association shall be made consistent with this Act.

(3) Subsection (2) shall not apply if the decrease of the number of members below the threshold set out in subsection (1) lasted for a period of less than 90 days.

#### Section 671

(1) Election districts shall be established and cancelled by the board of directors in accordance with the rules defined in the articles of association.

(2) Every member of the cooperative shall be assigned to one of the election districts. Assignment to multiple election districts is not permitted.

(3) The method of assigning members to particular election districts shall be defined in the articles of association.

#### **Commencement and termination of office of a delegate**

##### **Section 672**

(1) One delegate shall be elected for every election district from among the members assigned to the respective election districts.

(2) A delegate shall be elected and recalled by the members assigned to the relevant election district. When electing and recalling a delegate, every member shall have 1 vote, unless the articles of association provide for a higher number of votes per member. The right to elect a delegate shall also pertain to a member of the cooperative who is in default with the fulfilment of the contribution obligation.

##### **Section 673**

(1) Upon the cancellation of an election district, the office of a delegate who was elected by the members assigned to the ceased election district shall terminate.

(2) Sections 631 to 634 shall apply *mutatis mutandis* to the election and recall of delegates.

(3) The board of directors shall ensure that elections of delegates are arranged for and organised.

##### **Section 674**

(1) The term of office of a delegate shall be provided for in the articles of association and shall not exceed 5 years.

(2) Where no term of office is specified in the articles of association in accordance with this Act, it shall be 5 years.

(3) The office of a delegate shall terminate upon the election of a new delegate, and no later than on the last day of his or her term of office.

##### **Section 675**

(1) A delegate may be recalled from his or her office at any time.

(2) A delegate can resign from his or her office by a written declaration. The office of the delegate shall terminate upon the delivery of the declaration to the registered office of the cooperative.

##### **Section 676**

A change in the number of members assigned to particular election districts shall not result in the termination of office of all existing delegates or in the need to hold a new delegate election.

##### **Section 677**

#### **Delegate's rights and duties**

(1) A delegate shall perform his or her function in person.

(2) A delegate shall act in accordance with the interests of the members assigned to the election district in which he or she was elected.

(3) A delegate shall inform the members about the convening of the assembly of delegates and the proposed agenda for the assembly of delegates, and shall request their instructions and act in accordance with the majority opinion of the members.

(4) A delegate shall inform the members on the course of, and the resolutions adopted by, every assembly of delegates, and shall provide them with all related underlying materials and information for review.

#### **List of delegates**

##### **Section 678**

(1) A cooperative shall keep a list of delegates.

(2) The following information shall be recorded in the list of delegates: name and place of residence of the delegate or another service address specified by the delegate, the date of commencement and the date and reason of termination of his or her office.

(3) A member shall have the right to review the list of delegates and make copies thereof and extracts therefrom.

##### **Section 679**

(1) A delegate shall have the right to review the list of delegates and request the issue, free-of-charge, of a certificate of his or her office and of the contents of his or her record in the list of delegates. The articles of association may provide that a delegate who requests the issue of such a certificate more than once a year shall pay to the cooperative the expenses reasonably incurred in this connection.

(2) The information recorded in the list of delegates can only be used by the cooperative for internal use in relation to the members of the cooperative. Its use for other purposes shall only be possible with the consent of the delegates concerned by the data.

#### Section 680

(1) A copy of the list of all delegates or of a requested part thereof shall be issued by a cooperative to every member, at his or her written request and against the reimbursement of expenses, without undue delay after the receipt of such a request.

(2) The board of directors shall allow every person to review the respective part of the list provided that the person proves that he or she has a legal interest in reviewing it, or submits a written consent of the delegate concerned by the record; the delegate's signature must be certified.

#### Section 681

The information included in the list of delegates, including any changes, shall be stored by the cooperative for a period of 10 years after the termination date of the office of the person concerned by the data.

#### Section 682

(1) The delegates and substitute delegates representing absent delegates shall be obliged to attend the assembly of delegates.

(2) In addition, members of the board of directors and of the auditing committee, the liquidator and the persons designated in another legal regulation or provided for in the articles of association shall have the right to attend the assembly of delegates.

(3) Upon request, any of the persons referred to in subsection (2) shall be permitted to speak before the voting.

#### Section 683

(1) Where the assembly of delegates is to decide on a matter which directly affects the legitimate interests of a member, particularly where a decision is to be taken on the member's complaint against the decision on his or her expulsion, the member concerned shall be invited to the assembly of delegates through a written invitation sent to the address of his or her place of residence or registered office indicated in the register of members. The member shall have the right to attend the assembly of delegates for the part that concerns him or her.

(2) If the member referred to in subsection (1) requests to speak before the delegates are to vote in the matter that affects him or her, the member shall be given an opportunity to make a statement; in particular, he or she shall have an opportunity to defend himself or herself against a proposal which rejects his or her complaint and confirms the expulsion decision.

#### Section 684

##### **Voting right**

(1) The right to vote at the assembly of delegates shall pertain only to the delegates and to the substitute delegates representing absent delegates.

(2) Unless provided otherwise in the articles of association, the number of votes held by every delegate shall be equal to the number of votes held in the discussions of the respective matter by the members assigned to the election district where the delegate was elected. The number of members assigned to the election district as at the seventh day preceding the date of the convened assembly of delegates shall be relevant in this procedure; any later changes in the number of members and their votes shall be disregarded.

##### **Convening the assembly of delegates**

#### Section 685

(1) The assembly of delegates shall be convened by the board of directors where so requested by the auditing committee or by at least 10% of elected delegates, whose office has not been terminated as at the date when the request was delivered to the board of directors, unless a lower number of entitled delegates is provided for in the articles of association.

(2) In the event that the board of directors should have convened the assembly of delegates, but failed to do so without undue delay after being required to do so, the assembly of delegates can also be convened by at least one-third of the members of the board of directors, the liquidator or the auditing committee, at the request of the auditing committee or the delegates referred to in subsection (1) or in an important interest of the cooperative.

#### Section 686



(1) If, at the request of the auditing committee or the delegates pursuant to Section 685(1), the assembly of delegates is not convened by the board of directors so as to ensure that it takes place within 30 days after the receipt of such request, the assembly of delegates must be convened by the persons or the body referred to in Section 685(2).

(2) If the persons or the body referred to in Section 685(2) fail to do so within 10 days following the expiry of the period for the board of directors to convene the assembly of delegates, the assembly of delegates may be convened and all related acts may be made by a person authorised to do so in writing by all the delegates who requested the assembly of delegates to be convened.

#### Section 687

Where the assembly of delegates convened at the request of the auditing committee or the delegates pursuant to Section 685(1) does not have a quorum, the person who convened the assembly shall be obliged to convene a substitute assembly of delegates. This shall not apply if the request of the auditing committee or of the delegates referred to in Section 665(1) was withdrawn.

#### Invitation to the assembly of delegates

#### Section 688

(1) The convening of the assembly of delegates shall be notified by the competent person or body through a written invitation sent to all delegates to the addresses of their place of residence indicated in the list of delegates.

(2) If a different service address was notified by a delegate in writing, the invitation shall be sent to him or her to such different service address.

(3) In addition, the invitation to the assembly of delegates shall be posted on the notice board of the cooperative; another appropriate method of disclosure may be provided for in the articles of association.

#### Section 689

(1) An invitation shall include at least:

(a) the trade name and registered office of the cooperative,

(b) the venue and start time of the assembly of delegates; the venue and the start time of the assembly of delegates shall be determined in a manner so as to ensure that the possibility for the delegate to attend the assembly is restricted as little as possible,

(c) an indication of whether the assembly of delegates or a substitute assembly of delegates is being convened, and

(d) the agenda of the assembly of delegates.

(2) The invitation shall be accompanied by all underlying materials related to the particular items in the agenda of the assembly of delegates.

(3) The cooperative shall be obliged to inform its members about the possibility to review all underlying materials related to the particular items in the agenda of the assembly of delegates.

#### Section 690

#### Additional items in the agenda of the assembly of delegates

(1) At a request of the body or the delegates entitled to request the assembly of delegates to be convened, the board of directors shall include the item requested by them in the agenda of the assembly of delegates. Where such a request is delivered only after the invitation has been sent, the board of directors shall accordingly inform the delegates who are present at the convened assembly of delegates. This shall be without prejudice to the obligation to convene a new assembly of delegates.

(2) Once the invitations are sent to the delegates, the agenda of the assembly of delegates cannot be modified.

#### Section 691

(1) When establishing the quorum of the assembly of delegates and determining the number of votes required for the adoption of a resolution, only the votes of the delegates who are still in office at the date of the assembly of delegates shall be counted.

(2) The quorum of the assembly of delegates shall not be affected by the fact that no delegate has been elected in one or more election districts as at the date of the assembly of delegates; this shall not apply if the board of directors knew that no delegate has been elected in one or more election districts and failed to inform the members assigned to these election districts accordingly.

#### Section 692

The assembly of delegates shall have a quorum if an absolute majority of the delegates holding together at least an absolute majority of the votes is present, unless the participation of delegates holding a higher number of votes is required

under this Act or the articles of association.

#### Section 693

The assembly of delegates shall adopt resolutions by a majority of votes of the delegates present, unless a higher number of votes is required under this Act or the articles of association.

#### Section 694

Where the assembly of delegates is to adopt a resolution concerning any of the matters referred to in Section 650(2), the assembly of delegates shall have a quorum if delegates representing at least two-thirds of the cooperative's members are present, and the resolution must be adopted by delegates representing at least two-thirds of the members represented at the assembly.

### **Substitute assembly of delegates**

#### Section 695

If the assembly of delegates does not have a quorum, the person who convened the initial assembly of delegates shall, if still necessary, convene a substitute assembly of delegates with the same agenda without undue delay, in the same manner as the initially convened assembly of delegates and through a separate invitation.

#### Section 696

A substitute assembly of delegates shall have a quorum if at least 10% of all elected delegates and no less than 5 delegates are present.

### **Meetings of the assembly of delegates**

#### Section 697

Every member shall be entitled to receive a copy of the minutes of the assembly of delegates including all schedules attached thereto and any underlying materials provided to the delegates. Where so provided in the articles of association, the expenses reasonably incurred to make such a copy shall be reimbursed by the member to the cooperative.

#### Section 698

The outcomes of the discussions and all adopted resolutions shall be disclosed, in full wording, by the board of directors without undue delay through a notice posted on the notice board of the cooperative for a period of at least 60 days after the date of the assembly of delegates.

### **Substitute delegate**

#### Section 699

The articles of association may provide that a substitute delegate shall also be elected in addition to a delegate. Only one substitute delegate may be elected for each delegate.

#### Section 700

(1) When exercising his or her office, a substitute delegate shall have the same rights and duties as the delegate. If a delegate cannot attend the assembly of delegates, his or her substitute may participate and vote at that assembly of delegates. The provisions of this Act concerning delegates shall apply *mutatis mutandis* to substitute delegates.

(2) A delegate who is unable to attend the assembly of delegates shall inform his or her substitute about the convened assembly of delegates.

(3) Where so provided in the articles of association, the substitute delegate must be informed about the convened assembly of delegates independently of the delegate.

#### Section 701

Upon the termination of office of a delegate, his or her substitute shall become a delegate for the remaining period of the term of office, for which the delegate was elected whose office was terminated.

### **Invalidity of a resolution of the assembly of delegates**

#### Section 702

(1) Every member, a liquidator or a member of the board of directors or of the auditing committee may claim the invalidity of a resolution adopted by the assembly of delegates pursuant to the provisions of the Civil Code on the invalidity of a resolution adopted by the members' meeting of an association, on the grounds of it being contrary to law or to the articles of association.

(2) If the right referred to in subsection (1) was not exercised within the statutory period of time or, where appropriate, the petition to declare the resolution invalid was not granted, the validity of the resolution of the assembly of delegates can no

longer be reviewed in any way, unless provided otherwise in another legal regulation.

(3) Violation of good manners shall also constitute grounds for invalidity of a resolution of the assembly of delegates.

#### Section 703

A resolution of the assembly of delegates shall not be invalid merely on the grounds that:

(a) the assignment of members to the election districts was carried out in violation of this Act or of the articles of association of the cooperative,

(b) no delegate or substitute delegate has been elected in one or more election districts as at the date of the assembly of delegates,

(c) a substitute delegate was unable to attend the assembly of delegates because the delegate who did not attend the assembly of delegates failed to inform him or her about the convened assembly, or

(d) a delegate acts in a way which is in breach of the resolutions adopted by the members assigned to the election district, for which he or she was elected.

#### Section 704

Section 44(1), Sections 637 to 639, Sections 656, 657 and 659 shall apply *mutatis mutandis* to the assembly of delegates.

### Subdivision 3

#### The board of directors

#### Section 705

The board of directors is the statutory body of a cooperative.

#### Section 706

(1) The board of directors shall be in charge of the management of a cooperative's business.

(2) The board of directors shall comply with the resolutions of the members' meeting, unless they are in violation of law.

#### Section 707

The board of directors shall ensure the books are properly kept, and submit ordinary, extraordinary, consolidated and, where appropriate, interim financial statements to the members' meeting for approval. In accordance with the articles of association, it shall also submit a proposal on profit distribution or coverage of loss.

#### Section 708

(1) The board of directors shall consist of 3 members, unless a higher number of members is provided for in the articles of association.

(2) The board of directors shall appoint its chairman and, where appropriate, one or more vice-chairmen, unless it is provided in the articles of association that these are to be elected by the members' meeting.

(3) The board of directors shall decide by a majority of votes of all its members, unless a higher number of votes is required under the articles of association.

#### Section 709

#### Minutes of the board of directors meeting

(1) Minutes of meetings shall be drawn up and signed by the chairman and the minute taker to document the course of the board of directors' meetings and its decisions; the attendance list shall be attached to the minutes.

(2) The minutes of a meeting shall specify by name the members of the board of directors who voted against the particular resolutions or abstained. Members not specified by name shall be deemed to have voted in favour of the relevant resolution.

(3) Every member of the board of directors shall be entitled to receive a copy of the minutes.

#### Section 710

#### Ban on competition applicable to members of the board of directors

(1) A member of the board of directors shall not conduct business in the objects of the cooperative, including for the benefit of other parties, or mediate the cooperative's transactions for other parties.

(2) A member of the board of directors may not be a member of the statutory body of another legal entity having the same objects or a person in a similar position, unless they form a concern, an association of unit owners or a cooperative having only other cooperatives as its members.

(3) A member of the board of directors may not at the same time be a member of the auditing committee of the cooperative or another person authorised to act on behalf of the cooperative, based on the records in the commercial register.

(4) Additional restrictions may be provided for in the articles of association or in a resolution of the members' meeting.

#### Section 711

(1) A member of the board of directors shall notify the cooperative in advance of the circumstances referred to in Section 710.

(2) If the founders, upon the establishment of the cooperative or the members' meeting at the time of the appointment of the member of the board of directors, were explicitly notified by the member of the board of directors of any of the circumstances referred to in Section 710 or if such a circumstance occurred at a later point in time and the member of the board of directors notified it accordingly in writing, it shall be deemed that the activity under prohibition is not prohibited for this member of the board of directors. This shall not apply, if any of the founders or the members' meeting expressed their disagreement with such activity of the member within one month after the date when they were notified accordingly of the circumstances referred to in Section 710.

#### Section 712

(1) The office of a member of the board of directors shall also be terminated upon the appointment of a new member, unless provided otherwise in a decision of the members' meeting.

(2) Upon the winding up of a legal entity which is a member of the board of directors with a legal successor, the legal successor shall become the member of the board of directors.

(3) Upon the winding up of a legal entity which is a member of the board of directors without a legal successor, Sections 713 and 714 shall apply *mutatis mutandis*.

#### Section 713

In the case of the death, resignation or recall from office of a member of the board of directors and/or upon another termination of his or her office, a new member of the board of directors shall be appointed at the next members' meeting. Where the board of directors is unable to carry out its tasks for a reason referred to in the first sentence, the missing member(s) shall be appointed by a court, on the basis of a petition of a person having a legal interest, for a period of time until the missing member(s) is (are) properly elected; otherwise the court may, even *ex officio*, dissolve the cooperative and order its liquidation.

#### Section 714

The articles of association may provide that the board of directors, in which the number of members has not decreased by more than one half, may appoint substitute members until the next members' meeting. The articles of association may also provide for the appointment of substitutes who shall take up the vacant position of a member of the board of directors in the prescribed sequence.

### Subdivision 4

#### **Auditing committee**

#### Section 715

(1) The auditing committee shall supervise all activities of the cooperative, deal with complaints of the members and may request any information and documents related to the management of the cooperative.

(2) When exercising its powers, the auditing committee shall be independent of other bodies of the cooperative.

#### Section 716

(1) The auditing committee shall deliver a written opinion on all financial statements, on a proposal on profit distribution or coverage of loss of the cooperative, and on a draft decision concerning the members' contribution obligation.

(2) The auditing committee shall report any identified shortcomings to the board of directors and monitor their rectification.

#### Section 717

The board of directors, other bodies of a cooperative and a corporate agent holder shall notify the auditing committee without undue delay of any circumstances which might have serious implications on the management or the position of the cooperative or its members.

#### Section 718

(1) A member of the auditing committee, if commissioned to do so, shall have the right to attend the meetings of the board of directors and of any other body of a cooperative established under the articles of association. Where no member of the auditing committee has been commissioned, its chairman shall have the right to attend the meetings of the board of directors or other body of a cooperative established under the articles of association.

(2) The auditing committee must be notified in advance by the board of directors of every meeting of the board of directors.

#### Section 719

Where necessary, the auditing committee shall appoint a member to represent the cooperative in proceedings before courts and other authorities against a member of the board of directors.

#### Section 720

(1) The auditing committee shall consist of 3 members, unless a higher number of members is provided for in the articles of association.

(2) The auditing committee shall appoint its chairman and, where appropriate, one or more vice-chairmen, unless the articles of association provide that these are to be elected by the members' meeting.

(3) The auditing committee shall decide by a majority of votes of all its members, unless a higher number of votes is required under the articles of association.

#### Section 721

##### **Minutes of the auditing committee's meetings**

(1) Minutes of meetings shall be drawn up and signed by the chairman and the minute taker to document the course of the auditing committee's meetings and its decisions; the attendance list shall be attached to the minutes.

(2) The minutes of a meeting shall specify by name the members of the auditing committee who voted against the particular resolutions or abstained. Members not specified by name shall be deemed to have voted in favour of the relevant resolution.

(3) Every member of the auditing committee shall be entitled to receive a copy of the minutes.

#### Section 722

##### **Ban on competition applicable to members of the auditing committee**

(1) The provisions of Section 710(1), (2) and (4) and Section 711 shall apply *mutatis mutandis* to members of the auditing committee. The articles of association may provide that the ban on competition shall not apply to all or some of the members of the auditing committee, or may provide a different ban on competition.

(2) A member of the auditing committee may not at the same time be a member of the board of directors of the cooperative or another person authorised to act on behalf of the cooperative, based on the records in the commercial register.

#### Section 723

(1) The office of a member of the auditing committee shall also be terminated upon the appointment of a new member of the auditing committee.

(2) Upon the winding up of a legal entity which is a member of the auditing committee with a legal successor, the legal successor shall become the member of the auditing committee.

(3) Upon the winding up of a legal entity which is a member of the auditing committee without a legal successor, Sections 724 and 725 shall apply *mutatis mutandis*.

#### Section 724

Upon the termination of office of a member of the auditing committee elected by the members' meeting, a new member of the auditing committee shall be elected at the next members' meeting.

#### Section 725

The articles of association may provide that an auditing committee in which the number of members has not decreased by more than one half may appoint substitute members until the next members' meeting. The articles of association may also provide for the appointment of substitutes who shall take up the vacant position of a member of the auditing committee in the prescribed sequence.

### Subdivision 5

## **Bodies of a small cooperative**

### **Section 726**

(1) In a cooperative having less than 50 members, the articles of association may provide that the board of directors shall not be established and that the president of the cooperative shall be the statutory body. The provisions of Sections 705 to 714 shall apply *mutatis mutandis*.

(2) An auditing committee shall not be established in a cooperative having less than 50 members, unless provided otherwise in the articles of association. Where no auditing committee has been established or unless provided otherwise in the articles of association, its powers shall be exercised by the members' meeting; every member of the cooperative shall have the same authority as the auditing committee vis-à-vis the statutory body of the cooperative.

(3) If the number of members rises above the threshold referred to in subsection (1), the cooperative shall be obliged to amend the articles of association and to appoint the board of directors and the auditing committee within 3 months after the date when the circumstance occurred; otherwise a court may dissolve the cooperative and order its liquidation. This shall not apply where, within the same period of time, the number of members of the cooperative falls back below the threshold referred to in subsection (1).

## **Chapter 2**

### **Housing cooperative**

#### **Basic provisions**

##### **Section 727**

(1) A housing cooperative may only be established for the purpose of securing the housing needs of its members.

(2) A housing cooperative may manage buildings with apartments and non-residential premises owned by other persons.

(3) Under the conditions provided in this Act, a housing cooperative may also carry out other activities provided that, by doing so, the cooperative does not jeopardise the housing needs of its members being met, and that such activities are only of a complementary or ancillary nature in relation to the activities referred to in subsections (1) and (2).

##### **Section 728**

The trade name shall include the words "bytové družstvo".

##### **Section 729**

#### **Cooperative apartment and cooperative non-residential premises**

(1) A cooperative apartment or cooperative non-residential premises (the "cooperative apartment") shall mean an apartment or non-residential premises which is located in a building owned or jointly owned by the housing cooperative, or which is owned or jointly owned by the housing cooperative, and which was rented by the housing cooperative to a member of the housing cooperative who, himself or through his or her legal predecessor, participated in its acquisition with a membership contribution.

(2) A cooperative apartment shall also include an apartment within an immovable owned by another person, where a member of the housing cooperative who is the tenant of this apartment, or his or her legal predecessor, participated in its acquisition with his or her membership contribution in the cooperative housing development pursuant to earlier legal regulations, and where the housing cooperative has a right equivalent to an easement pertaining to the apartment which gives the member a right to use the apartment under the conditions prescribed for the use of a cooperative apartment. The first sentence shall also apply when the right equivalent to an easement passed to the tenant as a result of the termination of membership in the housing cooperative.

##### **Section 730**

A housing cooperative may not change the sphere of its activities and become a cooperative other than a housing cooperative, unless no single member of the housing cooperative is a tenant in a cooperative apartment owned by this housing cooperative or no member, having met all the requirements, is entitled to conclude a lease agreement for a cooperative apartment pursuant to the articles of association.

##### **Section 731**

(1) In addition to the particulars specified in Section 553, the articles of association of a housing cooperative shall also include:

(a) the conditions under which a member of the housing cooperative shall enjoy the right to conclude a lease agreement for a cooperative apartment, and

(b) more detailed provisions concerning the rights and duties of a member of the housing cooperative attached to the right to

conclude a lease agreement for a cooperative apartment, and the rights and duties of a member of the housing cooperative attached to the use of a cooperative apartment. As at the date when they arise, these rights and duties shall become the member's rights and duties arising from the membership in the housing cooperative.

(2) The consent of all the members of the cooperative who have concluded a lease agreement for a cooperative apartment with the cooperative and who, under the current wording of the articles of association, are entitled to do so, shall be required in order to amend the provisions concerning the particulars included in the articles of association pursuant to subsection (1).

#### Section 732

### **Increase in the basic membership contribution in a housing cooperative through an extra payment by the members**

An increase in the basic membership contribution through an extra payment by the members shall only be possible in a housing cooperative if it was so decided by the members' meeting and all members of the housing cooperative who are tenants of cooperative apartments agree to it. A member's consent must be in written form with a certified signature.

### **Membership in a housing cooperative**

#### Section 733

(1) As a precondition for the acquisition of membership in a housing cooperative, the articles of association may provide that the contribution obligation related to an additional membership contribution must be assumed or fulfilled, the amount of which or the method of determination of which is provided for in the articles of association. In such a case, an agreement shall be concluded with the candidate member pursuant to Section 572(2).

(2) The rights and duties of a member of the housing cooperative arising from his or her membership in such a cooperative shall also include the right to conclude a lease agreement for a cooperative apartment under the conditions provided in the articles of association, as well as the rights and duties under such agreement.

#### Section 734

(1) A member of the housing cooperative or co-members of the housing cooperative, who have the lease of a cooperative apartment or a joint lease of a cooperative apartment attached to their membership, may be excluded from the cooperative:

(a) if the tenant grossly violated its duties under the lease arrangement or

(b) if the tenant was effectively convicted of a deliberate crime committed against the cooperative or against a person living in the building where the tenant's apartment is located, or against any third-party property located in that building.

(2) The provisions of the Civil Code on the termination of lease arrangement by notice shall not apply to the lease of a cooperative apartment.

(3) Upon the termination of membership in a housing cooperative, the right to conclude a lease agreement for a cooperative apartment or the lease of a cooperative apartment shall also be terminated. The termination of membership shall entail the extinction of the right of the housing cooperative to the fulfilment of the contribution obligation; this shall be without prejudice to the right to late payment interest. This shall not apply to a transfer or passing of a cooperative share.

#### Section 735

(1) The articles of association may restrict or exclude the membership of legal entities in a housing cooperative.

(2) Where the articles of association restrict or exclude the membership of a legal entity in a housing cooperative, such change will not result in the termination of membership of any legal entity which became a member of the housing cooperative before the change of the articles of association.

#### Section 736

### **Transfer of a cooperative share in a housing cooperative**

(1) The transferability of the cooperative share of a member of a housing cooperative cannot be restricted or excluded, if the intended transferee is a person meeting the requirements under the articles of association for admission as a member of the housing cooperative.

(2) Upon the transfer of a cooperative share associated with the lease of a cooperative apartment or the right to conclude a lease agreement for a cooperative apartment, the lease of the cooperative apartment and/or the right to conclude a lease agreement for a cooperative apartment shall be transferred, including all rights and duties attached thereto, namely including all the debts of the transferor owed to the housing cooperative and the debts of the housing cooperative owed to the transferor, which are related to the use of the cooperative apartment by the transferor and/or to the right to conclude a lease agreement for a cooperative apartment under the conditions provided in the articles of association.

#### Section 737

### **Passage of a cooperative share in a housing cooperative**

(1) The renting of a cooperative apartment or the right to conclude a lease agreement, including the rights and duties attached thereto, shall pass to the heir(s) of the cooperative share.

(2) A cooperative share which was a part of community property shall pass to the surviving spouse; this shall be taken into account in the inheritance settlement.

#### Section 738

##### **Division of a cooperative share in a housing cooperative**

(1) The division of a cooperative share in a housing cooperative may not be restricted or excluded in the articles of association of the housing cooperative.

(2) A cooperative share in a housing cooperative may be divided only if the member is a tenant of at least two cooperative apartments; the provision of Section 601 shall apply *mutatis mutandis*. The division of a cooperative share shall be effective no sooner than upon the fulfilment of the contribution obligation related to the basic membership contribution by the person acquiring the divided cooperative share.

(3) When dividing a cooperative share and when transferring or passing cooperative shares formed by the division referred to in subsection (2), it must be made clear which of the cooperative apartments will be attached to which of the new cooperative shares.

##### **Joint membership of spouses in a housing cooperative**

#### Section 739

(1) Joint membership of spouses in a housing cooperative shall arise where a cooperative share is part of their community property.

(2) Joint membership of spouses shall terminate upon the settlement of the community property or upon the expiry of the period for its settlement pursuant to the Civil Code.

#### Section 740

A decision to expel co-members shall be delivered separately to each of the spouses. Each of the co-members shall have the right to object to the decision, regardless of the will of the other spouse.

##### **Renting of a cooperative apartment and cooperative non-residential premises**

#### Section 741

(1) Unless provided otherwise below, the provisions of the Civil Code on the lease of an apartment and of non-residential premises shall apply to the lease of a cooperative apartment.

(2) The conditions applicable to the conclusion of a lease agreement for a cooperative apartment pursuant to the Civil Code or to the articles of association shall also apply to the members whose membership in the housing cooperative was acquired upon the transfer of the cooperative share.

#### Section 742

A member of the housing cooperative shall, in particular, have the right to:

(a) conclude a lease agreement for a cooperative apartment for an indefinite period of time where the member himself or his or her legal predecessor participated in its acquisition with an additional membership contribution, provided that he or she meets all other requirements provided for in this Act and in the articles of association, and

(b) determine the amount of rent associated with the use of the cooperative apartment pursuant to Section 744.

#### Section 743

A housing cooperative shall conclude a lease agreement for a cooperative apartment with a member who has met all the requirements for membership in the housing cooperative provided for in this Act and in the articles of association and who is not in default with the fulfilment of his or her duties in relation to the housing cooperative, and shall make it possible for such member to use the cooperative apartment within 30 days after the date when the certificate of practical completion for the use of the building where the cooperative apartment is located was delivered to the housing cooperative.

#### Section 744

The rent paid by the members who are tenants of cooperative apartments to the housing cooperative shall include only the expenses reasonably incurred by the housing cooperative in relation to the management of these cooperative apartments, including the costs for repairs, refurbishment and reconstruction of the buildings where they are located and contributions to create long-term financial resources for the repairs of and investments in these cooperative apartments.

#### Section 745

Where the right to conclude a lease agreement for a cooperative apartment is attached to a cooperative share which



is a part of community property, it shall mean the right to conclude a joint lease agreement for the spouses. Where the lease of a cooperative apartment is attached to a cooperative share which is a part of community property, it shall mean joint renting by the spouses.

#### Section 746

In the event that the joint membership of spouses was transformed to a sole membership of one of the spouses, this shall not affect their joint right to lease.

#### Section 747

Where one of the spouses is a sole member of a housing cooperative, both spouses shall have the joint right to lease pursuant to the Civil Code, derived from the right to lease of the spouse who is a sole member of the cooperative. If the membership of the spouse whose right to lease gave rise to the derived joint right to lease is terminated, the right to lease of the other spouse shall also be terminated.

### **Settlement share of a member of a housing cooperative**

#### Section 748

(1) The settlement share provided for in the articles of association may not be lower than the amount corresponding to the scope of the contribution obligation fulfilled by a member in the housing cooperative.

(2) Where the method of calculation of the settlement share is not defined in the articles of association, the settlement share shall be equal to the amount of the fulfilled membership contribution.

(3) The settlement share shall be paid in cash, unless provided otherwise in the articles of association.

#### Section 749

(1) The settlement share of a member who was a tenant of a cooperative apartment and failed to vacate the apartment shall be due and payable within 3 months after the date the cooperative apartment where the former member was a tenant was vacated, or within 3 months after the date when the amount of the settlement share was or could have been determined pursuant to Section 623, whichever occurs later. In case of a member not living in the apartment, the settlement share shall be due and payable within 3 months after the date when its level was or could have been determined pursuant to Section 623.

(2) Where a member was expelled from the housing cooperative, the period referred to in subsection (1) shall only commence following the expiry of the period to file a petition to declare the expulsion invalid or after the date when a court's ruling terminating the proceedings for invalidity of an expulsion decision became legally effective.

### **Restrictions on financial management of a housing cooperative**

#### Section 750

The profit of a housing cooperative may only be used to accommodate the housing needs of its members and for further development of the housing cooperative.

#### Section 751

(1) A housing cooperative shall not transfer the ownership of cooperative apartments or of the buildings with the cooperative apartments or of the built-up land factually related to such buildings, unless all members of the housing cooperative who are tenants of these cooperative apartments and all members of the cooperative who, in accordance with the applicable wording of the articles of association, have the right to conclude a lease agreement for a cooperative apartment, have given their prior consent to the transfer terms and conditions.

(2) The consent referred to in subsection (1) must be in written form with a certified signature. Once granted, the consent shall also be binding on the legal successor of the person who granted it.

(3) Subsections (1) and (2) shall not apply if the transfer concerns cooperative apartments and cooperative non-residential premises which are to be transferred to the ownership of the members of the housing cooperative who are their tenants.

#### Section 752

(1) A housing cooperative shall not pledge or otherwise burden cooperative apartments or buildings with the cooperative apartments or the built-up land factually related to such buildings, unless at least two-thirds of the members of the housing cooperative who are tenants of these cooperative apartments have given their prior consent.

(2) The consent referred to in subsection (1) must be in written form with a certified signature. Once granted, the consent shall also be binding on the legal successor of the person granting it.

### **Self-governing unit of a housing cooperative**

#### Section 753

The self-governing unit is an organisational unit of the housing cooperative where the members of the housing cooperative are organised in order to ensure that their membership rights and duties are efficiently exercised.

#### Section 754

Where a housing cooperative decides to establish one or more self-governing units, the articles of association shall also provide:

- (a) the scope of powers of the self-governing unit,
- (b) the detailed rules of organisation and operation of the self-governing units, and particularly the assignment of the members to the individual self-governing units, and
- (c) whether the members assigned to the individual self-governing units can appoint bodies of the housing cooperative which ensure the operation of the self-governing units, as well as the powers and competences of such bodies.

#### Section 755

##### **Members' meeting of a housing cooperative**

(1) When voting at the members' meeting, every member of a housing cooperative shall have 1 vote; the provision of Section 650(1) shall not apply. Co-members shall have 1 common vote.

(2) Where so provided in the articles of association, the members of a housing cooperative who are tenants of cooperative apartments can have a higher number of votes at the members' meeting.

##### **Dissolution and winding-up of a housing cooperative**

#### Section 756

(1) A member's share in the liquidation balance shall be equal to the fulfilled contribution obligation related to the membership contribution. The share in the liquidation balance shall be paid in cash. Where the rights of all members cannot be satisfied in full, they shall be satisfied proportionally.

(2) Where undistributed funds are still available upon the satisfaction of all members' rights to a share in the liquidation balance, they shall be distributed equally among the members, unless provided otherwise in the articles of association.

#### Section 757

A court may, even *ex officio*, dissolve a housing cooperative and order its liquidation if the housing cooperative:

- (a) seriously violates the provisions of this Act concerning the management of its assets, or
- (b) conducts activities in breach of Section 727.

### **Chapter 3**

#### **Social cooperative**

##### **Basic provisions**

#### Section 758

A social cooperative shall mean a cooperative which continuously carries out activities for public benefit, aimed at supporting social cohesion in order to ensure labour and social integration of disadvantaged groups into the society, preferably by meeting the needs and using the resources local to the registered office and sphere of activities of the social cooperative, particularly in the areas of job creation, social services and health care, education, housing and sustainable development.

#### Section 759

The trade name shall include the words "sociální družstvo".

#### Section 760

- (1) A social cooperative shall not change the sphere of its activity in violation of Section 758.
- (2) The transformation of a social cooperative to a cooperative other than a social cooperative shall be prohibited.

#### Section 761

Where a social cooperative carries out activities for the public benefit in favour of disadvantaged persons only by meeting their housing needs, these persons must at the same time be members of the social cooperative.

#### Section 762

In addition to the particulars specified in Section 553, the articles of association of a social cooperative shall also include:

- (a) the objectives and conditions of operation of the social cooperative in accordance with its role of social integration and support for local development, and
- (b) detailed conditions on the use of its profits, in accordance with the aim of the activities of the social cooperative.

#### Section 763

(1) A natural person may be a member of a social cooperative only if:

- (a) he or she works for the social cooperative on the basis of an employment relationship,
- (b) he or she works for the social cooperative without remuneration, above and beyond an employment relationship and on a voluntary basis, or
- (c) he or she is a beneficiary of the services provided under the public benefit activities of the social cooperative.

(2) The transfer and passing of cooperative shares in a social cooperative shall be prohibited.

#### Section 764

(1) Where a member referred to in Section 763(1)(a) and (b) no longer meets the requirements specified therein for a period of more than 90 days, the board of directors may decide to terminate his or her membership in the social cooperative as at the last day of that period. A member whose membership was terminated by such a decision may appeal against the decision to the members' meeting within 1 month after the date of its delivery. The decision of the members' meeting shall be final.

(2) Accident insurance and professional liability insurance for damage caused to third parties shall be taken out by a social cooperative for the members who work for the social cooperative in accordance with Section 763(1)(b).

### **Restrictions on financial management of a social cooperative**

#### Section 765

A social cooperative shall not:

- (a) issue bonds,
- (b) ensure the fulfilment of obligations for third parties,
- (c) be a member with unlimited liability in a corporation, or directly or indirectly participate in the business activities of third parties, unless the members' meeting of the social cooperative gives its previous consent,
- (d) be a party to a silent partnership agreement and
- (e) transfer, pledge or rent an enterprise or a branch or a part thereof; this shall not apply where the other party is also a social cooperative.

#### Section 766

(1) If permitted under the articles of association, a social cooperative may distribute not more than 33% of its available profit among its members.

(2) The available profit can only be distributed in accordance with subsection (1) after a contribution to the reserve fund and other profit-based funds, if established, were paid by the social cooperative from that part of the profit.

### **Settlement share in a social cooperative**

#### Section 767

The settlement share shall be equal to the fulfilled contribution obligation related to the membership contribution. Where the equity of a cooperative is lower than its registered capital, the settlement share shall be decreased proportionally.

#### Section 768

(1) The period for the payment of a settlement share shall be 1 year after the date the membership in the social cooperative terminates, unless a shorter period of time is provided for in the articles of association.

(2) The termination of membership shall entail the extinction of the right of the social cooperative to the fulfilment of the contribution obligation.

### **Members' meeting of a social cooperative**

#### Section 769

(1) When voting at the members' meeting, every member of a social cooperative shall have 1 vote.

(2) The articles of association can provide that a member who is a natural person or a legal entity may hold up to 10% or 25%, respectively, of all votes in the social cooperative; this shall be without prejudice to the provision of Section 650(2).

(3) In a social cooperative which only meets the housing needs of its members, every member shall always have 1 vote.

#### Section 770

(1) Within a social cooperative, it is not permitted to take decisions at partial members' meetings.

(2) A social cooperative shall not be permitted to establish the assembly of delegates.

### **Dissolution and winding-up of a social cooperative**

#### Section 771

(1) The share in the liquidation balance shall be equal to the fulfilled contribution obligation related to the membership contribution.

(2) The share in the liquidation balance shall be paid in cash.

(3) Where the rights of all members cannot be satisfied in full, they shall be satisfied proportionally.

#### Section 772

(1) Based on a decision of the members' meeting, the liquidation balance remaining upon the satisfaction of all members' rights to a share in the liquidation balance shall be passed to another social cooperative, subject to the consent of its members' meeting.

(2) If there is no social cooperative that would accept the liquidation balance, it shall be passed to the municipality where the registered office of the wound-up social cooperative is located.

(3) Other methods for disposing the liquidation balance shall not be permitted.

#### Section 773

A court may, even *ex officio*, dissolve a social cooperative and order its liquidation if the social cooperative:

(a) carries out activities in breach of Section 758,

(b) uses its profit in breach of Section 766 and to the articles of association, or

(c) does not meet the requirement referred to in Section 761 for a period of more than 12 months.

## **PART TWO**

### **FINAL AND TRANSITIONAL PROVISIONS**

#### TITLE I

##### Section 774

This Act transposes the relevant legislation of the European Union<sup>1</sup>.

#### TITLE II

### TRANSITIONAL PROVISIONS

##### Section 775

This Act shall govern the rights and duties arising as from the effective date hereof.

##### Section 776

(1) The obligation to publish the data and circumstances prescribed in this Act shall be met upon their publication in the Commercial Bulletin. The rules for issuing and keeping the Commercial Bulletin shall be governed by existing legislative acts.

(2) For the purposes of this Act, an authentic instrument shall also mean a notarial deed.

(3) For the purposes of this Title, articles of association and a memorandum of foundation shall mean the articles of

association.

#### Section 777

(1) Any provisions in a memorandum of association which are in conflict with the mandatory provisions hereof shall be repealed when this Act comes into effect.

(2) The authentic instruments referred to in subsection (1) shall be adapted by the business corporations according to the provisions of this Act within 6 months after this Act comes into effect, and shall be delivered to the collection of instruments. If a business corporation fails to do so, the commercial register court shall invite the business corporation to do so and shall grant an additional reasonable period of time for the fulfilment of this obligation. Following the expiry of the additional period, a court, on the basis of a petition of the commercial register court or of a person having a legal interest, shall dissolve the business corporation and order its liquidation.

(3) The provisions in executive service agreements and remuneration agreements shall be adapted to this Act within 6 months after this Act came into effect; otherwise the office shall be conclusively presumed to be exercised for free.

(4) The memorandum of association of business corporations, which were incorporated before the effective date of this Act, shall be deemed to also include the existing provisions of the Commercial Code governing members' rights and duties, provided that they are not in conflict with the mandatory provisions hereof or that the members did not derogate from them in the memorandum of association.

(5) No later than 2 years after the effective date of this Act, the business corporations referred to in subsection (4) may submit to this Act as a whole by amending their memorandum of association. This fact shall be registered by the business corporation in the commercial register. In such cases, the amendment to the memorandum of association shall only enter into effect upon the publication of the registration of the submission to this Act as a whole in the commercial register.

#### Section 778

All deadlines and periods which commenced before the date when this Act entered into effect, as well as the deadlines and periods for the exercise of rights governed by existing legal regulations, although commenced after this Act came into effect, shall continue to be governed by the existing legal regulations until their expiry.

#### Section 779

(1) If proceedings for the incorporation of a business corporation in the commercial register were initiated before the effective date of this Act, the proceedings shall be completed in accordance with existing legal regulations; however, where a foundation legal act made before this Act came into effect is in conflict with existing legal regulations, it shall be deemed valid provided that it is in compliance with the provisions of this Act.

(2) If a legal act resulting in a decision taken by a body of a business corporation was made before this Act came into effect, such initiated process shall be completed in accordance with existing legal regulations.

(3) Where an obstruction for the exercise of an office occurred pursuant to [Section 38l of the Commercial Code](#), such obstruction shall also continue after the effective date of this Act.

#### Section 780

(1) Controlling agreements and profit transfer agreements concluded before this Act came into effect shall cease to be effective on the last day of the binding accounting period of the controlling entity which follows immediately after six months after this Act came into effect, unless such agreements cease to be effective earlier in another manner.

(2) The provision of subsection (1) shall be without prejudice to the rights and duties arising under the agreements referred to therein and under the legal regulations governing such agreements before the effective date of this Act which were concluded before they ceased to be effective pursuant to subsection (1).

#### Section 781

(1) Cooperatives having only legal entities as members, which were incorporated before this Act came into effect, do not have to meet the requirement of the minimum number of members pursuant to Section 552(2). Where such a cooperative which has only legal entities as members has less than five members, the decision-making process and the statutory body may continue to be determined in the articles of association of the cooperative.

(2) Additional participation of members of the cooperative in the business activities shall be governed by existing legal regulations and the articles of association of the cooperative.

#### Section 782

(1) Where a minimum mandatory amount of the registered capital of a cooperative to be registered in the commercial register is provided for in another legal regulation, it shall mean the minimum mandatory amount of the registered capital of a cooperative as from the date this Act came into effect, on the understanding that the provisions of the different legislative act concerning the amount of the registered capital to be registered in the commercial register shall be disregarded.

(2) Any provisions of the articles of association of a cooperative and of agreements concluded between a cooperative and a member or between a cooperative and a candidate member, which are in conflict with Section 650(2) after this Act came into effect, shall cease to be legally effective as of the effective date hereof.

### Section 783

(1) Where the term “membership interest” is used in a different legal act, it shall mean a “cooperative share” or a “membership contribution” depending on the nature of the situation.

(2) Where the terms “transfer of membership rights and duties” or “transfer of membership” are used in a different legal act, they shall mean a “transfer of a cooperative share”.

(3) Where the terms “passing of membership rights and duties” or “passing of membership” and/or “passing of a membership interest” are used in a different legal act, they shall mean “passing of the cooperative share”.

### Section 784

Within 3 months after this Act came into effect, a cooperative shall file an application to delete the record concerning the funds transferred to the indivisible fund pursuant to [Section 18\(2\) and \(3\) of Act No. 42/1992 Coll.](#), on the regulation of property relations and the settlement of property claims in cooperatives, as amended, from the commercial register.

### Section 785

(1) A cooperative which is not a housing cooperative pursuant to existing legal regulations or pursuant to this Act and which has settled all its obligations imposed by Act No. [42/1992 Coll.](#), on the regulation of property relations and the settlement of property claims in cooperatives, as amended, may adapt its trade name according to the Civil Code and its articles of association, and its internal structure according to this Act and may become a social cooperative, if all its members give their consent.

(2) A member's consent referred to in subsection (1) must be in written form with a certified signature.

## **PART THREE**

### **EFFECTIVENESS**

### Section 786

This Act shall enter into effect on 1 January 2014.

**Němcová in own hand**

**Klaus in own hand**

**Nečas in own hand**

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1) Second Council Directive [77/91/EEC](#) of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

Eleventh Council Directive [89/666/EEC](#) of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.

Council Directive [92/101/EEC](#) of 23 November 1992 amending Directive [77/91/EEC](#) on the formation of public limited- liability companies and the maintenance and alteration of their capital.

Directive [2003/58/EC](#) of the European Parliament and of the Council of 15 July 2003 amending Council Directive [68/151/EEC](#), as regards disclosure requirements in respect of certain types of companies.

Directive [2006/68/EC](#) of the European Parliament and of the Council of 6 September 2006 amending Council Directive [77/91/EEC](#) as regards the formation of public limited liability companies and the maintenance and alteration of their capital.

Directive [2007/36/EC](#) of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

Directive [2009/101/EC](#) of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent.

Directive [2009/102/EC](#) of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies.