

Ministerio de Justicia



Corporate Enterprises Act

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ROYAL LEGISLATIVE DECREE 1/2010, OF 2 July, APPROVING THE CONSOLIDATED TEXT OF THE CORPORATE ENTERPRISES ACT (LEY DE SOCIEDADES DE CAPITAL)

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PREAMBLE

I

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

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

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

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

II

Parliament defined both the method for and the scope of the task entrusted to the Executive: the sole legal text ensuing from the exercise was to be the result of the regularisation, clarification and harmonisation of the many legal texts mentioned above. The new version was not to be a mere juxtaposition of sections, but would entail assuming the complexity involved in achieving the aforementioned threefold objective that underlies the respective

legal decision, adopted in the public interest. In drafting the consolidated text, the Government has not limited its action to reproducing the legislation that had to be consolidated, but instead has had to engage in intricate redrafting to scrupulously perform the task entrusted to it.

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

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

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

III

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

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

IV

Theoretically speaking, the distinction between joint stock companies and limited liability companies hinges on a twofold characteristic: while the former are naturally open organisations, limited liability companies are essentially closed; while the former are enterprises with a rigid system for defending share capital, an established asset retention value and, therefore, guarantees for the company's creditors, the latter sometimes replace those defence mechanisms (at times more formal than effective) with liability systems, whereby the governing legislation is more flexible. While forecasts about the future of share capital as a technique for protecting third party interests (an issue that can only be addressed properly within the supranational framework of the European Union) are not in order here, it is interesting to note that this conflict between open and closed enterprises is not absolute, because in actual fact, the by-laws of the vast majority of Spanish joint stock companies (with the obvious exception of listed

companies) contain clauses limiting the free transferability of shares. The underlying legal model is out of step with reality, a circumstance that Spanish lawmakers have taken into account and that had to be taken into consideration when drafting the consolidated text. This situation has generated a *de facto* overlapping of corporate forms, for to meet the same needs (i.e., needs specific to closed companies), individuals can choose between two different corporate forms, designed with differing requisites and obligations, although the reason for that duality is not always clearly visible. Consequently, the question about what kind of relationship ought to exist in the future between the two main types of corporate enterprises remains unanswered, as does the question about whether the move from one to another must conform to the requirements established for conversion or whether it ought to be facilitated through more flexible and simpler techniques. The essential distinction would appear to lie in whether companies are listed or otherwise, rather than in the narrow consideration of corporate form. The key role that listed companies play on capital markets calls for public intervention in business activity, firstly to protect investors and secondly to ensure the stability, efficiency and sound operation of financial markets.

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

V

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

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

Sole Section. *Approval of the consolidated text of the Corporate Enterprises Act*

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

Single repealing provision. *Repeal of regulations*

The following provisions are hereby repealed:

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

Final provision one. *Competence*

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

Final provision two. Ministry of Justice authorisation

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

Final provision three. Entry into force

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

CONSOLIDATED TEXT OF THE CORPORATE ENTERPRISES ACT

TITLE I

General provisions

CHAPTER I

Corporate enterprises

Section 1. Corporate enterprises

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

Section 2. Commercial nature

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

Section 3. Legal system

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

Section 4. Minimum capital

1. In limited liability companies the capital shall be at least three thousand euros and denominated in that currency.
2. In joint stock companies the share capital shall be at least sixty thousand euros and denominated in that currency.

Section 5. Prohibition on capital under the legal minimum

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

CHAPTER II

Name, nationality and registered office

SUB-CHAPTER ONE. NAME

Section 6. Specification of the type of corporate body

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

Section 7. Prohibition of identical names

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

SUB-CHAPTER TWO. NATIONALITY

Section 8. Nationality

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

SUB-CHAPTER THREE. REGISTERED OFFICE

Section 9. Registered office

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

Section 10. Discrepancy between registered office and actual headquarters

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

Section 11. Branches

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

CHAPTER III

Single member companies

SUB-CHAPTER ONE. SINGLE MEMBER COMPANIES

Section 12. Types of single member corporate enterprises

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

- a) a company formed by a sole partner, whether an individual or body corporate
- b) a company formed by two or more partners when all stakes or shares come to be owned by a sole partner. Stakes or shares owned by single member companies are deemed to be owned by their sole partner.

Section 13. Public disclosure of single member status

1. The establishment of a single member company, the assumption of such status as a result of the take-up of all stakes or shares by only one partner, the loss of such status or a change in the identity of the single partner as a result of the transfer of some or all of the stakes or shares shall be recorded in a public instrument entered in the Mercantile Registry. The entry shall necessarily state the identity of the sole partner.
2. Whilst a company maintains its single member status, it shall expressly record such status in all documentation, correspondence, purchase orders and invoices, as well as in all announcements that must be made pursuant to legal or statutory provisions.

Section 14. Consequences of single member status

1. Should single member status fail to be entered with the Mercantile Registry within six months of the acquisition thereof, the sole partner shall be held personally, unlimitedly and jointly and severally liable for any company debt incurred while such situation persists.
2. Once single member company status is registered, the sole partner shall not be answerable for debts incurred subsequent to registration.

SUB-CHAPTER TWO. PROVISIONS GOVERNING SINGLE MEMBER COMPANIES

Section 15. Single member decisions

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

Section 16. Agreements concluded by and between the sole partner and the single member company

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

Section 17. Special provisions for publicly owned single member companies

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

CHAPTER IV

Corporate groups

Section 18. Corporate groups

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

TITLE II

Formation of corporate enterprises

CHAPTER I

General provisions

Section 19. Company formation

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

Section 20. Public instrument and registration

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

CHAPTER II

Deed of incorporation

Section 21. Formalisation of deed of incorporation

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

Section 22. Deed of incorporation: contents

1. The deed of incorporation of any corporate enterprise shall include at least the items listed below.
 - a) The identity of the partner or partners.
 - b) The aim to form a corporate enterprise, specifying the type of body corporate.
 - c) The contributions made or, in the case of joint stock companies, committed to by each partner, as well as the numbers of the stakes or shares attributed thereto as consideration.
 - d) Company by-laws.
 - e) The identity of the person or persons initially entrusted with company management and representation.
2. In the event of limited liability companies, the deed of incorporation shall determine the specific arrangements to be adopted for company management, if the by-laws envisage several options.
3. In the event of joint stock companies, the deed of incorporation shall also state the full amount of the start-up expenses, at least as estimated, including both outlays and costs anticipated up to and including registration.

Section 23. By-laws

The by-laws governing corporate enterprises shall the items listed below.

- a) Company name.
- b) Corporate purpose, specifying the activities included thereunder.
- c) Registered office.
- d) Capital, and the stakes or shares into which it is divided, specifying their par value and consecutive numbering.

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

In joint stock companies, mention shall be made of the share class and series, as appropriate, specifying: the portion of the par value outstanding, payment method and deadline, and whether the shares are represented by certificates or book entries. Where share certificates are issued, they shall specify whether they represent registered or bearer shares and whether the issue of multiple share certificates is envisaged.
- e) In limited liability companies, the governance arrangements. In joint stock companies, the structure of the body to which company governance is entrusted.

The by-laws shall also specify the number of directors or at least the minimum and maximum number thereof, as well as their term of office and the remuneration scheme, as appropriate; and in limited liability companies, the identity of the general partners.
- f) The manner in which the company's authorised administrative bodies conduct their discussions and adopt their decisions

Section 24. Operational start-up

1. Unless otherwise indicated in the by-laws, company operations shall begin on the date of formalisation of the deed of incorporation.
2. Company by-laws may not establish a start-up date prior to the date of formation, except in the event of conversions.

Section 25. Duration

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

Section 26. Financial year

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

Section 27. Benefits for the founders of joint stock companies

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

Section 28. Independence of intent

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

Section 29. Reserved agreements

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

Section 30. Founder liability

1. The founders shall be held jointly and severally liable by the company, its shareholders and third parties for the inclusion in the deed of incorporation of the items required by law, for the accuracy of any statements made therein and the due investment of the funds paid to cover start-up expenses.
2. Founder liability shall extend to any persons in whose stead or on whose behalf they may act.

CHAPTER III

Registration in the Mercantile Registry

SUB-CHAPTER ONE. REGISTRATION

Section 31. Legal capacity to register documents

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

Section 32. Legal obligation to submit documents for registration

1. The founding partners and directors must submit the deed of incorporation for entry in the Mercantile Registry within two months of the date of formalisation thereof and shall be held jointly and severally liable for any damages caused by failure to comply with this obligation.
2. The deed of incorporation and all other company-related matters may be registered upon substantiation of the payment of all the respective taxes, or of application for such payment.

Section 33. Consequences of registration

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

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

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

Section 35. Public disclosure

Company registration shall be published in the Official Journal of the Mercantile Registry, which shall include the information on the deed of incorporation specified by law.

SUB-CHAPTER TWO. COMPANIES IN THE PROCESS OF FORMATION

Section 36. Actors' liability

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

Section 37. Liability of companies in the process of formation

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

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

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

Section 38. Liability of registered companies

1. Once registered, companies shall be bound to perform all the acts and conclude all the agreements referred to in the preceding section, as well as any it may perform or conclude within three months of registration.

2. In both cases, partners', directors' and representatives' joint and several liability, as laid down in the two preceding sections, shall expire.

3. If the sum of company equity and the expenses necessarily incurred in its registration is lower than company capital, the partners shall be obliged to defray the difference.

SUB-CHAPTER THREE. COMPANIES IN IRREGULAR SITUATIONS

Section 39. Companies in irregular situations

1. Once the intention to refrain from registering a company has been confirmed and, in any event, when no application for registration is filed within one year of the date of formalisation of the deed, it shall be governed by the rules for general partnerships or, as appropriate, non-mercantile organisations, if the company in the process of formation has undertaken or continued operations.

2. In the event of subsequent registration, the provisions of paragraph two of the preceding section shall not apply.

Section 40. Partners' rights to file for company wind-up

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

CHAPTER IV

Formation of publicly subscribed joint stock companies (successive formation)

Section 41. Scope

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

Section 42. Formation programme

1. In publicly subscribed companies, the promoters shall inform the National Securities Market Commission of the proposed issue and prepare the formation programme containing all information deemed appropriate, and necessarily the items listed below.

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

Section 43. Programme submission for custody

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

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

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

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

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

Section 44. Share subscription and payment

1. Share subscription, which may not modify the terms of either the formation programme or the issue prospectus, must be made within the term as stipulated or extended, as appropriate, subsequent to payment of at least twenty-five per cent of the par value of each share. Such payments must be deposited in an account in the company's name at the financial institution or institutions so designated. Non-cash contributions, as appropriate, shall be made as stipulated in the formation programme.

2. Within one month as of the subscription deadline, the promoters shall formalise the final list of subscribers before a notary public, specifying the par value, number, class and series (in the event of several) of shares owned by each, as well as the financial institution or institutions where the total subscriber outlays are deposited. All of the foregoing shall be duly substantiated upon submission to the notary public for legalisation.

Section 45. Non-drawability of contributions

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

Section 46. Subscription form

1. Share subscriptions shall be recorded in a document explicitly containing the words "subscription form", issued in duplicate and containing at least the items listed below.

- a) Name of the future company and reference to the National Securities Market Commission and the Mercantile Registry where the formation programme and prospectus are custodied, as well as to the Official Journal of the Mercantile Registry containing the summary thereof.
- b) Subscriber's first and last or company name, nationality and address.
- c) Number of shares subscribed, par value of each, class and series, where there are several.
- d) The amount paid up against the par value.
- e) The subscriber's explicit acceptance of the contents of the formation programme.
- f) The identity of the financial institution, if any, where subscriptions are certified and the amounts specified in the subscription form are deposited.

- g) Date and subscriber's signature.
2. One copy of the subscription form shall be kept by the promoters while the second, bearing the signature of at least one of the promoters or of the financial institution authorised thereby to accept subscriptions, shall be delivered to the subscriber.

Section 47. Call to the incorporation meeting

1. Within no more than six months of the date of deposit of the formation programme and prospectus with the Mercantile Registry, the promoters shall convene all subscribers to the incorporation meeting by registered letter addressed to each at least fifteen days in advance of such meeting. The items to be discussed in particular are listed below.
- a) Approval of actions taken to date by the promoters.
 - b) Approval of the by-laws.
 - c) Approval of the non-cash contribution valuations, as appropriate.
 - d) Approval of specific benefits reserved for promoters, if any.
 - e) Appointment of persons in charge of company management.
 - f) Appointment of the person or persons entrusted with formalising the company's deed of incorporation.
2. The agenda for the meeting must contain at least all the abovementioned items. In addition, the meeting announcement must be published in the Official Journal of the Mercantile Registry.

Section 48. Incorporation meeting

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

Section 49. Adoption of decisions

1. Subscribers' voting rights shall be proportional to their respective contributions.
2. Decisions shall be adopted when approved by at least one-fourth of the subscribers attending the meeting, representing at least one-fourth of the subscribed capital.
- Where proposals involve the approval of non-cash contributions or the reservation of special rights for promoters, the parties concerned may not vote. In either case, a majority of the remaining votes shall suffice to adopt decisions.
3. The formation programme may not be amended except as unanimously approved by all attending subscribers.

Section 50. Minutes of incorporation meeting

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

Section 51. Deed and registration with the Mercantile Registry

1. In the month following the date of the meeting, the persons appointed to this end shall formalise the company's deed of incorporation, subject to the decisions adopted by the meeting and all other substantiating documentation.
2. The appointees shall be vested with sufficient powers to submit the deed to the Mercantile, Property and Moveable Estate Registries, and to apply for or proceed to settle and pay the respective taxes and expenses.
3. The deed shall be submitted for registration with the Mercantile Registry serving the place where the company's registered office is located within two months of formalisation thereof.

Section 52. Liability of the parties formalising the deed

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

Section 53. Obligations prior to registration

1. The promoters shall be held jointly liable for any obligations with third parties assumed to form the company.
2. Once registered, the company shall assume all obligations lawfully undertaken by the promoters and shall reimburse them for any expenses defrayed, provided their involvement is approved by the incorporation meeting and the expenses deemed to be necessary.
3. The promoters may not demand such liability of mere subscribers, except in the event of negligence or fraud.

Section 54. Promoters' liability

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

Section 55. Consequences of non-registration

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

CHAPTER V

Nullity

Section 56. Causes for nullity

1. Once the company has been registered, it may only be declared null and void on the grounds listed below.
 - a) Non-concurrence during the formalisation of company formation by at least two founding partners, where there are several, or by the founding partner in single member companies.
 - b) Incapacity of all founding partners.
 - c) Failure to include partners' contributions in the deed of incorporation.
 - d) Failure to include the company name in the deed of incorporation.
 - e) Failure to include the corporate purpose in the by-laws, or the inclusion of a purpose that is unlawful or incompatible with law and order.
 - f) Failure to include the sum of the capital and partners' contributions in the by-laws.
 - g) In limited liability companies, failure to pay up the capital in full; and in joint stock companies, failure to lay out the legal minimum.
2. Companies may not be declared to be non-existent, null and void or extinct for reasons other than mentioned in the preceding paragraph.

Section 57. Consequences of declaration of nullity

1. A ruling declaring the nullity of a company shall constitute the first step in liquidation proceedings, which shall be conducted pursuant to the procedure laid down hereunder for wind-up.
2. Nullity shall not affect the validity of any obligations or debt owed by or to the company, and both one and the other shall be subject to the liquidation proceedings.
3. When a limited liability company is declared null and void due to the failure to pay up the capital in full, the partners shall be bound to furnish the amount outstanding. In joint stock companies declared null and void and required to honour the obligations undertaken by the company with third parties, the partners shall be required to pay up any sums outstanding.

TITLE III

Capital contributions

CHAPTER I

Capital contributions

SUB-CHAPTER ONE. GENERAL PROVISIONS

Section 58. Nature of contributions

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

Section 59. Validity of contributions

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

Section 60. Ownership status of contributions

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

SUB-CHAPTER TWO. CASH AND NON-CASH CONTRIBUTIONS

Part 1. Cash contributions

Section 61. Cash contributions

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

Section 62. Substantiation of contributions

1. Cash contributions must be substantiated before the notary public legalising the deed of incorporation or instrument on capital increase, or in joint stock companies, the instruments formalised on the occasion of successive payments. Such substantiation, which shall consist of a document certifying the deposit of the respective funds in the company's favour at a financial institution, shall be attached by the notary public to the deed or instrument. Otherwise, contributions shall be presented to the notary public for deposit in the company's favour.
2. The aforementioned certificate of payment shall expire two months after the date of issue.
3. Up to and including the expiry date, return of the certificate to the financial institution in question shall be requisite to cancellation of the deposit by the party concerned.

Part 2. Non-cash contributions

Section 63. Non-cash contributions

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

Section 64. Contribution of real or movable property

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

Section 65. Contribution of loans

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

Section 66. Contribution of a company

1. Companies or business concerns constituting contributions must be disencumbered as a whole by contributors, if the vice or encumbrance involved affects the whole or any component thereof essential for normal company operation.
2. They shall likewise proceed to individually disencumber any company components that are vital to its equity value.

CHAPTER II

Valuation of non-cash contributions in joint stock companies

Section 67. Expert report

1. Non-cash contributions, irrespective of the nature thereof, made on the occasion of joint stock company formation or capital increases subsequent thereto shall constitute the object of a report prepared by one or several independent professionals. Such experts must be duly qualified and appointed to this end pursuant to the applicable regulations by the mercantile registrar serving the place where the company's registered office is located.
2. The report shall contain a description of the contribution, registry data as appropriate, the valuation of the contribution and whether it concurs with the par value and, if applicable, the value of the issue premium of the shares issued in exchange therefor.
3. The value attributed to the contribution in the deed of incorporation shall not be higher than the value estimated by the experts.

Section 68. Expert liability

1. Experts shall be held liable by the company, its shareholders and creditors for any damages resulting from the valuation and shall be exonerated if they can provide evidence of having acted with due diligence and pursuant to the standards associated with the task entrusted thereto.
2. The right to file claims in this regard shall lapse after four years of the date of the report.

Section 69. Non-requirement of report

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

- a) When the non-cash contribution consists of money market instruments or movable assets listed on an official secondary market or any other regulated market. Such assets shall be valued at the average weighted trading price on one or various regulated markets during the quarter immediately preceding the date of actual contribution, in accordance with the certification issued by the governing body of the official secondary or regulated market in question.
If such price has been impacted by exceptional circumstances that may have significantly modified the value of the assets on the actual date of contribution, the company directors shall lodge a request for the appointment of an independent expert to prepare a report.
- b) When the contribution consists of assets other than mentioned in the preceding paragraph, whose fair value was determined within six months prior to the date of the actual contribution by an independent professional with the necessary expertise not appointed by the parties concerned, in accordance with generally accepted rules and principles for the valuation of such assets.
If new circumstances ensue that might significantly alter the fair value of the assets on the date of contribution, the company directors must lodge a request for the appointment of an independent expert to prepare a report. If the directors fail to appoint an expert where bound to do so, any shareholder or shareholders representing at least five per cent of the share capital may ask the mercantile serving the place where the registered office is located to appoint an expert, at the company's expense, to value the assets involved. That request may be lodged up to the date of the actual contribution, provided the shareholders concerned continue to represent at least five per cent of the company's share capital at the time the request is made.

Section 70. Directors' substitute report

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

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

Section 71. Public disclosure of reports

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

Section 72. Onerous acquisitions

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

CHAPTER III

Liability for non-cash contributions

SUB-CHAPTER ONE. LIABILITY IN LIMITED LIABILITY COMPANIES

Section 73. Joint and several liability

1. The founders, the partners at the time a capital increase is approved and anyone acquiring a stake paid in the form of a non-cash contribution, shall be held jointly and severally liable to the company and company creditors for such contributions and the value attributed thereto in the respective instrument.
Founder liability shall extend to the persons in whose behalf they may have acted.
2. If a contribution is made in exchange for a capital increase, partners recording their objection to the decision or to the valuation of the contribution in the minutes shall be exempt from such liability.
3. In the event of a capital increase charged to non-cash contributions, in addition to the persons mentioned in paragraph one above, the directors shall also be held jointly and severally liable for any difference between the valuation provided and the true value of the contributions.

Section 74. Legal capacity to bring action for liability

1. Action for liability shall be brought by company directors or liquidators. No prior company decision is required to bring such action.
2. Action for liability may also be brought by any partner voting against the decision, provided he/she holds at least five per cent of the capital, or by any creditor in the event of company insolvency.

Section 75. Limitation of action

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

Section 76. Exclusion from legal liability

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

SUB-CHAPTER TWO. LIABILITY IN JOINT STOCK COMPANIES

Section 77. Joint and several liability

The founders shall be held jointly and severally liable by the company, its shareholders and third parties for the material existence of company contributions to the share capital and the valuation of non-cash contributions. Founder liability shall extend to the persons on whose behalf they may act.

CHAPTER IV

Capital outlays

SUB-CHAPTER ONE. GENERAL RULES

Section 78. Payment of par value of company shares

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

Section 79. Minimum outlay against share par value

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

Section 80. Deferred non-cash contributions

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

SUB-CHAPTER TWO. PAYMENTS OUTSTANDING

Section 81. Payments outstanding

1. In joint stock companies, shareholders must pay the portion of outstanding capital into the company in the manner and within the deadline stipulated in the by-laws.
2. Notice of the sums payable shall be served upon the shareholders concerned or an announcement to that effect shall be published in the Official Journal of the Mercantile Registry. Notices or announcements must be issued at least one month in advance of the payment deadline.

Section 82. Shareholders in arrears

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

Section 83. Consequences of arrears in contribution payments

1. Shareholders in arrears of payment of sums outstanding may not vote. The value of the respective shares shall be deducted from the share capital when calculating a quorum.
 2. Shareholders in arrears shall also be deprived of their right to dividends as well as their pre-emptive right to subscribe new shares or convertible bonds.
- After paying the sums owed, together with the interest accruing, shareholders may demand payment of any unexpired dividends, but not pre-emptive rights if the deadline for their exercise has lapsed.

Section 84. Company claim for payment

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

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

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

CHAPTER V

Ancillary commitments

Section 86. Inclusion in the by-laws

1. The by-laws of corporate enterprises may include stipulations on ancillary commitments in addition to contributions, describing the specific content thereof and establishing whether they are to be provided cost-free or remunerated, as well as any penalty clauses for non-compliance.
2. Under no circumstances shall ancillary commitments form part of the capital.
3. The by-laws may make such commitments mandatory for all or some of the partners, or the ownership of one or several specific stakes or shares contingent upon provision thereof.

Section 87. Remunerated ancillary commitments

1. Where ancillary commitments are to be remunerated, the by-laws shall determine the sums to be received by the shareholders concerned.
2. The amount of the remuneration shall under no circumstances exceed the value of support furnished.

Section 88. Transfer of shares subject to ancillary commitments

1. The voluntary *inter vivos* transfer of stakes or shares owned by a shareholder who is personally bound by ancillary commitments, as well as the transfer of specific stakes or shares so conditioned, shall be subject to company authorisation.
 2. Unless otherwise indicated in the by-laws, in limited liability companies such authorisation shall be granted by the general meeting, and in joint stock companies by the directors.
- In any event, if the company fails to reply to a request for authorisation within two months of the date thereof, authorisation shall be deemed to be granted.

Section 89. Modification of ancillary commitments

1. Ancillary commitments shall be created, amended and, as appropriate, extinguished in advance in accordance with the provisions on amendment of the by-laws and shall also require the individual consent of the parties so bound.
2. Unless otherwise established in the by-laws, stake or shareholder status shall not be forfeited as a result of the involuntary failure to honour ancillary commitments.

TITLE IV

Stakes and shares

CHAPTER I

General provisions

Section 90. Stakes and shares

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

Section 91. Stake and shareholder status

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

Section 92. Shares as transferable securities

1. Shares may be represented by certificates of title or book entries. In both instances they shall be regarded to be transferable securities.
2. Stakes in limited liability companies may not be represented by certificates or book entries, nor be called shares, and under no circumstances shall be regarded to be securities.

CHAPTER II

Partners' rights

SUB-CHAPTER ONE. PARTNERS' RIGHTS

Section 93. Partners' rights

Pursuant to the terms of this act, subject to the exceptions provided for hereunder, partners shall be entitled to the rights listed below.

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

Section 94. Diversity of rights

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

Partners may be attributed different rights by stakes and shares. Shares associated with the same rights form part of the same class. When a class is divided into several series, all shares in any given series shall have the same par value.

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

Section 95. Privilege in the distribution of company earnings

1. When the privilege consists of a preference dividend, the profit for the financial year in question may not be distributed among other stakes or shares until the preference dividend for such year has been paid.
2. Unless otherwise indicated in the by-laws, the company shall be bound to approve the distribution of such dividend whenever distributable earnings are forthcoming.
3. The by-laws shall establish the consequences of failure to pay preference dividends in whole or in part, determine whether unpaid dividends are cumulative, and define the rights of the holders of such stakes or shares vis-à-vis the dividends payable to other stake or shareholders.

Section 96. Prohibitions in matters of privilege

1. The creation of stakes or the issue of shares entitled to collect interest shall not be valid, irrespective of the manner in which it is determined.
2. The issue of shares that may either directly or indirectly alter the proportionality between par value and voting or pre-emptive rights shall not be allowed.
3. The creation of stakes that either directly or indirectly alter the proportionality between par value and voting or pre-emptive rights shall not be allowed.

Section 97. Equal treatment

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

SUB-CHAPTER TWO. NON-VOTING STAKES AND SHARES

Section 98. Creation or issue

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

Section 99. Preference dividend

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

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

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

Section 101. Liquidation privileges

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

Section 102. Other rights

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

Section 103. Detrimental amendment of by-laws

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

CHAPTER III

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

SUB-CHAPTER ONE. STAKEHOLDERS' LEDGER

Section 104. Stakeholders' ledger

1. Limited liability companies shall keep a stakeholders' ledger containing records of the original stakes and subsequent voluntary or obligatory stake transfers, as well as the creation of rights *ad rem* or other encumbrances thereon.
2. Only the parties entered in such ledger shall be acknowledged by the company to be partners.
3. Each entry shall indicate the identity and address of the holder of the stake or of the right or lien thereon.
4. The contents of the ledger may only be rectified by the company if no objection is raised by the parties concerned of the intention to proceed to such rectification within one month of service of notice by a reliable method. Partners' personal data may be modified at their request, the effect on the company being nil until that time.

Section 105. Examination and certification

1. Any partner may examine the stakeholders' ledger, which shall be kept and custodied by the governing body.
2. Stakeholders and the holders of rights *ad rem* or of encumbrances on stakes shall be entitled to obtain a certificate of the stakes, rights or encumbrances recorded in their names.

SUB-CHAPTER TWO. TRANSFER OF STAKES

Section 106. Record of transfers

1. Stake transfers, as well as the creation of pledges thereon, shall be recorded in a public document. The creation of rights *ad rem* other than those referred to in the preceding paragraph on stakes must be recorded in a public instrument.
2. The buyer of stakes may exercise partnership rights in respect of the company as soon as the latter is aware of the transfer or creation of the encumbrance.

Section 107. Voluntary inter vivos transfers

1. Unless otherwise indicated in the by-laws, voluntary *inter vivos* transfers of stakes may be freely transacted among partners or in favour of partners' spouses, ascendants or descendants or companies belonging to the same group as the transferor. In all other cases, transfers shall be subject to the rules and limitations established in the by-laws or, wanting that, in this act.
2. Where not regulated in the by-laws, voluntary *inter vivos* transfers of stakes shall be governed by the rules set out below.
 - a) Any partner wishing to transfer his/her stake or stakes must inform the directors in writing, specifying the number and characteristics of the stakes involved, the identity of the transferee and other terms and conditions of transfer.
 - b) The transfer shall be subject to company authorisation, granted under a decision of the Annual General Meeting adopted by ordinary majority vote as established by law, provided the item is included on the agenda.
 - c) The company may only withhold its consent if it serves a notarised notice upon the transferor, specifying the identity of one or several partners or third parties interested in acquiring all the stakes for sale. No notice need be served upon the transferor if he/she attended the Annual General Meeting where such arrangements were approved. Partners attending the General Meeting shall have purchase priority. If several attendees express an interest in the stakes in question, they shall be distributed among them all in proportion to their existing stakes in the company capital.

If one or several partners or third party purchasers of all the shares cannot be identified, the General Meeting may decide that the company itself should acquire the shares that are not acquired by any partner or third party accepted by the meeting, pursuant to the provisions of Section 140.
 - d) The price of the shares, the payment method and other terms and conditions of the transaction shall be as agreed to by the transferor and disclosed to the company. If the payment of all or part of the price is deferred in the proposed transfer, payment of the amount deferred must be guaranteed by a financial institution prior to the purchase of the shares.

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

determined by an auditor other than the company's auditor, appointed for this purpose by the company's directors.

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

- e) The public instrument on transfer must be formalised within one month of the date of disclosure by the company of the identity of the purchasing party or parties.
 - f) The partner may transfer the shares under the terms and conditions contained in the notice initially served upon the company if, three months after such notice, the company fails to furnish the identity of the purchasing party or parties.
3. The by-laws may not vest the auditor of the company's accounts with responsibility for establishing the value of stakes for the intents and purposes of transfer thereof.

Section 108. By-laws: clauses prohibited

1. Clauses in the by-laws allowing voluntary *inter vivos* transfer of stakes to be transacted virtually freely shall be null and void.
2. Clauses in the by-laws by which the partner offering all or part of his stakes is bound to transfer a number other than offered shall be null and void.
3. Clauses forbidding the *inter vivos* voluntary transfer of stakes shall only be valid if the by-laws acknowledge partners' right to exit the company at any time. The inclusion of such clauses in the company by-laws shall be subject to the consent of all partners.
4. Notwithstanding the provisions of the foregoing paragraph, the by-laws may prevent the voluntary *inter vivos* transfer of shares or the exercise of exit rights for no longer than five years from the date of company formation, or in respect of stakes resulting from a capital increase, five years from the date of formalisation of the respective public instrument.

Section 109. Mandatory transfer

1. The seizure of stakes in the company on the occasion of proceedings for collection must be immediately reported to the company by the judge or authority ordering such attachment, identifying the lienor and the shares subject to lien. The company shall record the seizure in the stakeholders' ledger and immediately forward a copy of the notice received to all partners.
2. Approval of the sale and the award of the stakes subject to lien shall remain outstanding after the auction or, in any other mandatory alienation arrangements provided by law, prior to the adjudication. The judge or administrative authority shall forward a literal transcript of the auction or adjudication to the company, along with the adjudication requested by the creditor. The company shall send copies of such transcripts to all partners within five days of receipt thereof.
3. The decision on the sale or award of the stakes to the creditor shall be final one month after the company receives the abovementioned transcripts. Before the decision is final, the partners or, lacking that if and only if the by-laws establish a right of pre-emption in its name, the company, may be subrogated to the rights of the awardee or creditor, providing they or it explicitly accept all the terms of the auction and full appropriation of the sum involved or, as appropriate, of the adjudication to the creditor and all expenses incurred. If several partners undertake subrogation, the stakes shall be distributed in proportion to the holding of each in company capital.

Section 110. Transfers mortis causa

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

Section 111. General provisions on transfers

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

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

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

CHAPTER IV

Proof of share ownership and share transfers

SUB-CHAPTER ONE. PROOF OF SHARE OWNERSHIP

Part 1. Share certificates

Section 113. Share certificates

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

Section 114. Share certificates

1. Irrespective of their class, share certificates shall be numbered consecutively and issued in chequebook form. They may cover one or more shares of the same series and shall contain at least the information listed below.
 - a) The company's name and address, Mercantile Registry entry details and tax identification number.
 - b) Par value of the share, its number and series and, in the event of preference shares, the special rights they may carry.
 - c) Share registered or bearer status.
 - d) Restrictions to free transferability, if any.
 - e) The amount paid up or statement to the effect that the share has been fully paid up.
 - f) Ancillary commitments, where any are attached thereto.
 - g) The signature of one or several directors, which may be reproduced mechanically. In such case a notarised instrument shall be issued attesting to the identity between the signatures reproduced automatically and the signatures affixed to the respective record in the presence of the notary public. Such instrument must be deposited with the Mercantile Registry before the certificates are released.
2. Certificates for non-voting shares shall clearly specify such circumstance.

Section 115. Provisional receipts

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

Section 116. Ledger of registered shares

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

Section 117. Replacement of share certificates

1. Whenever the replacement of share or any other type of certificates issued by the company is in order, the company may cancel any certificates not submitted for exchange within the deadline laid down in the Official Journal of the Mercantile Registry and in one of the daily newspapers most widely circulated in the province where the company's registered office is located. The deadline in question may not be less than one month after publication of the respective announcement.
2. The cancelled certificates shall be replaced by others whose issue shall likewise be announced in the Official Journal of the Mercantile Registry and in the newspaper that carried the initial announcement. Registered shares shall be delivered or forwarded to the person whose name appears thereon or his/her successors, subject to substantiation of their right of succession.

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

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

The net proceeds from the sale of the shares shall be deposited at the Bank of Spain or the National Trust Bank for withdrawal by the parties concerned.

Part 2. Book entries

Section 118. Proof by book entries

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

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

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

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

Section 119. Modification of book entries

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

SUB-CHAPTER TWO. SHARE TRANSFERS

Section 120. Share transfers

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

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

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

Registered shares may also be transferred by endorsement, in which case and insofar as they are compatible with the nature of share certificates, Sections 15, 16, 19 and 20 of the Act on Negotiable Instruments shall apply. Transfers shall be substantiated by displaying the certificate to the company. After confirming the validity of the chain of endorsements, the directors shall enter the transfers in the ledger of registered shares.

Section 121. Creation of limited rights ad rem on shares

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

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

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

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

Section 122. Shareholder credentials

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

Section 123. Restrictions on free transfer of shares

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

When limitations are established by amendment to the by-laws, shareholders who are affected but voted against

such amendment shall not be subject thereto for three months from the publication of the decision in the Official Journal of the Mercantile Registry.

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

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

Unless otherwise provided in the by-laws, it shall be incumbent upon company directors to grant or deny authorisation. In any event, if the company fails to reply to a request for authorisation within two months of the date of submission, the authorisation shall be regarded to have been granted.

Section 124. Transfers mortis causa

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

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

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

Section 125. Mandatory transfers

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

CHAPTER V

Co-ownership and ad rem rights on stakes or shares

Section 126. Joint ownership of stakes or shares

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

Section 127. Usufruct over stakes or shares

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

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

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

Section 128. Rules for termination of usufruct

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

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

3. Should the parties fail to reach an agreement on the amount to be paid in the cases envisaged in the two preceding paragraphs, the sum due shall be determined, at the behest of either party and the expense of both, by an auditor other than the company's auditor who shall be appointed to this end by the Mercantile Registry.

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

Section 129. Usufruct and pre-emptive rights

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

2. If the rights to acquire or subscribe stakes or shares are alienated either by the owner or the usufructuary, the usufruct shall extend to the sum ensuing from such alienation.
3. If the new stakes are acquired or new shares subscribed either by the owner or the usufructuary, the usufruct shall extend to the stakes or shares that could have been paid up with the total theoretical value of the rights used for acquisition or subscription. The remaining stakes acquired or shares subscribed shall be owned absolutely by the party paying the amount due thereon.
4. If company capital is increased against profits or reserves generated during the usufruct, the new stakes or shares shall belong to the owner but subject to the usufruct.
5. The instrument granting the usufruct over stakes may establish rules other than laid down forth in the foregoing paragraphs.
6. In joint stock companies, the usufructuary shall be entitled to the above rights over bonds convertible into company stocks.

Section 130. Usufruct over non-paid up shares

1. When the usufruct applies to shares that are not fully paid up, the owner shall be the party bound to pay the amount outstanding to the company. Once payment is made, the owner may demand interest at the legal rate from the usufructuary on the amount invested, up to the sum of the earnings.
2. If the obligation to complete payment on the shares is outstanding five days before the established deadline, payment may be made by the usufructuary, without prejudice to the owner's obligation to do so upon expiry of the usufruct.

Section 131. Payment of compensation

1. The amounts outstanding by virtue of Section 128 may be settled either in cash or in the form of stakes or shares of the same class as subject to usufruct. The value shall be computed in accordance with the company's most recently approved balance sheet.
2. When the usufruct involves shares, the same rules shall apply to the sums payable pursuant to Sections 129 and 130. When the usufruct involves stakes, the sums payable to the usufructuary by the owner under Section 129 shall be paid in cash.

Section 132. Pledge of stakes or shares

1. Unless otherwise indicated in the by-laws, if stakes or shares are pledged, partner's rights shall be exercised by the owner.
The secured creditor shall be bound to enable the owner to exercise such rights.
2. If the stakes pledged are attached, the rules laid down in Section 109 on mandatory transfer shall apply.
3. In joint stock companies, if owners fail to comply with their obligation to pay in the sums outstanding, the secured creditor may assume this obligation or proceed to attach the pledged shares.

Section 133. Seizure of stakes or shares

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

CHAPTER VI

Transactions involving the company's own stakes or shares

SUB-CHAPTER ONE. ORIGINAL ACQUISITION

Section 134. Prohibition

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

Section 135. Original acquisition by limited liability companies

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

Section 136. Original acquisition by joint stock companies

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

stock company.

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

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

Section 137. Acquisition through intermediaries

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

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

Section 138. Exemption from liability

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

Section 139. Consequences of infringement

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

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

3. If the company fails to reduce the share capital within two months of the end of the alienation deadline, any party concerned may ask the commercial court with jurisdiction in the place where the registered office is located to reduce company capital. If the meeting decides not to reduce the company's share capital or where such reduction cannot be attained, the directors shall be bound to apply for a court ruling in this regard.

4. Stakes or shares in the parent company shall be alienated by court order at the behest of any party concerned.

SUB-CHAPTER TWO. DERIVATIVE ACQUISITION

Part 1. Derivative acquisition by limited liability companies

Section 140. Derivative acquisitions allowed

1. Limited liability companies may only purchase their own stakes or parent company stakes or shares under the circumstances listed below.

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

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

c) When the company's own stakes are acquired under the circumstances established in [Section 109.3](#).

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

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

Section 141. Amortisation or alienation

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

2. If the stakes are not alienated within the period established above, the company shall immediately approve their redemption and capital reduction. Should the company fail to take such steps, any party concerned may apply to the judicial authority to do so. The directors of the purchasing company shall be bound to ask the court to adopt such measures when, for whatsoever reason, no decision on redemption and capital reduction can be adopted.

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

Section 142. Stakes and parent company stakes or shares

1. Whilst in the possession of the purchasing company, all rights pertaining to treasury stakes and parent company stakes or shares shall be suspended.
2. The net equity on the balance sheet shall include a reserve account for the amount of the stakes or shares purchased, booked under assets, which must be maintained until the stakes or shares are alienated.

Section 143. Transactions forbidden to limited liability companies

1. Limited liability companies may not accept its own stakes or stakes or shares created or issued by any company belonging to its group by way of a pledge or any other form of security.
2. Limited liability companies may not advance funds, grant loans or provide financial assistance for the acquisition of its own shares or stakes created or shares issued by any company belonging to its group.

Part 2. Derivative acquisitions by joint stock companies

Section 144. Unrestricted acquisition

Joint stock companies may acquire their own shares, or the shares or stocks of their parent company, in any of the cases listed below.

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

Section 145. Mandatory alienation

1. Stakes and shares acquired in accordance with the provisions of paragraphs b) and c) of the preceding section must be alienated within three years of the date of acquisition, unless they are redeemed prior to that date by a reduction in share capital. Shares already owned by the purchasing company and its subsidiaries or the parent company and its subsidiaries, as appropriate, need not be alienated if they account for no more than twenty per cent of the share capital.
2. Should alienation not materialise within the period referred to in the preceding paragraph, the provisions of paragraphs 2 and 3 of Section 139 shall apply.

Section 146. Conditioned derivative acquisitions

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

- a) The acquisition is authorised by the general meeting, which shall establish the terms of the purchase, the maximum number of stakes or shares to be purchased, the minimum and maximum price in onerous acquisitions, and the term of the authorisation, which shall not exceed five years.
When the object of the acquisition consists of parent company stakes or shares, purchase must also be authorised by that company's general meeting.

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

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

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

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

Section 147. Consequences of infringement

Where derivative acquisitions are made by joint stock companies in breach of the provisions of the preceding

section, Section 139 shall apply.

Section 148. Treasury shares and parent company stakes or shares

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

a) Voting rights and all other political rights attached to treasury shares and parent company stakes or shares shall be suspended.

Financial rights inherent in treasury shares, with the exception of the cost-free award of new shares, shall be allocated in proportion to all remaining shares.

b) Treasury shares shall be counted in the share capital for the intents and purposes of calculating the quorum for the general meeting and defining the majority for the adoption of decisions.

c) Company equity shall include a restricted reserve equal to the sum of parent company stakes or shares booked under assets. This reserve shall be maintained until such stakes or shares are alienated.

d) The acquiring company's and, as appropriate, its parent company's, management report shall make reference to at least the items set out below.

1. Reasons for any acquisitions or alienations undertaken during the financial year.
2. Number and par value of the stakes or shares acquired and alienated during the year and the proportion of the share capital represented thereby.
3. Consideration paid for the stakes or shares, if any.
4. Number and par value of the total sum of stakes and shares acquired and held in the company's or intermediary's portfolio and the proportion of share capital represented thereby.

SUB-CHAPTER THREE. ACCEPTANCE AS SECURITY AND FINANCIAL ASSISTANCE IN JOINT STOCK COMPANIES

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

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

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

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

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

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

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

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

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

SUB-CHAPTER FOUR. CROSS SHAREHOLDINGS

Section 151. Cross shareholdings

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

Section 152. Consequences of infringement

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

2. The reduction referred to in the preceding paragraph must be effected within one year of the date of the notice. Voting rights pertaining to any holdings in excess of the ten per cent ceiling shall be suspended in the interim.

When shares acquired under any of the circumstances described in Section 144, the reduction must be effected

within three years.

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

Section 153. Cross shareholding reserve

The net equity of the company bound to reduce its holding shall include a reserve equal to the sum of the cross shareholdings in excess of ten per cent of the investee company's capital, booked under assets.

Section 154. Exclusion from the cross shareholding provisions

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

Section 155. Notice

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

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

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

SUB-CHAPTER FIVE. PROVISIONS APPLYING TO BOTH LIMITED LIABILITY AND JOINT STOCK COMPANIES

Section 156. Intermediaries

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

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

Section 157. Penalties

1. Failure to meet the obligations or breach of the prohibitions established for joint stock companies in paragraphs one and three above and Part 2 of Sub-chapter 2 of this chapter shall be deemed to constitute violations.

Breach of the prohibitions established for limited liability companies in Sub-chapter 1 and Part 1 of Sub-chapter 2 of this Chapter shall be deemed to constitute a violation.

2. The aforementioned violations shall be penalised by fines of up to the par value of the stakes taken or shares subscribed, acquired or accepted as security by the company or acquired by a third party with financial assistance provided by the company or, as appropriate, stakes or shares neither alienated nor redeemed. Failure to fulfil the alienation amortisation obligations shall be regarded to be a separate violation.

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

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

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

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

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

Section 158. Application to foreign companies

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

TITLE V

Annual general meeting

CHAPTER I

Annual general meeting

Section 159. Annual general meeting

1. The partners, assembled in an annual general meeting, shall adopt decisions on the matters whose competence is reserved to the general meeting by majority vote as defined by law or in the by-laws.
2. All partners, including any dissenting and any not attending the meeting, are bound by general meeting decisions.

CHAPTER II

Powers reserved to the general meeting

Section 160. Powers reserved to the general meeting

The general meeting is vested with the power to discuss and decide on the matters listed below.

- a) Approval of the financial statements, the distribution of earnings and the approval of corporate governance.
- b) Appointment and dismissal of directors, liquidators and, where necessary, auditors, and the institution of liability action against any of these persons.
- c) Amendment of the by-laws.
- d) Capital increase and reduction.
- e) Removal or limitation of the pre-emptive rights to take stakes or subscription shares.
- f) Conversion, merger, spin off or global assignment of assets and liabilities and the transfer of the registered office abroad.
- g) Winding-up of the company.
- h) Approval of the final liquidation balance sheet.
- i) Any other matters stipulated by law or the by-laws.

Section 161. General meeting intervention in management affairs

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

Section 162. Loans and security for partners and directors

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

CHAPTER III

Types of annual general meetings

Section 163. Types of annual general meetings

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

Section 164. Ordinary general meetings

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

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

Section 165. Extraordinary general meetings

Any shareholders' meeting not held as provided in the preceding section shall be regarded to be an extraordinary general meeting.

CHAPTER IV

Convening general meetings and meeting notices

Section 166. Power to convene meetings

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

Section 167. Obligation to convene meetings

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

Section 168. Minority request to convene a meeting

The directors must convene a general meeting when so requested by one or several partners representing at least five per cent of the capital, who must specify the matters to be addressed in the request. In this case, the general meeting must be convened in time to be held during the month following the date on which the directors receive the notarised request to that effect, and the agenda must include the matters specified therein.

Section 169. Meetings convened by the court

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

Section 170. Regulations for court convening of meetings

1. When the meeting has to be convened by the court, the respective ruling must be forthcoming within one month of the date the request is filed, and if the request is granted, the judge shall freely designate the chairperson and secretary of the meeting.
2. Court orders to convene a general meeting shall not be subject to appeal.
3. The expenses incurred when meetings are convened by the court shall be defrayed by the company.

Section 171. Special circumstances for convening meetings

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

Section 172. Supplementary notice of meeting

1. In joint stock companies, shareholders representing at least five per cent of the share capital may request the publication of a supplementary notice of a general meeting which shall include one or more additional agenda items. This right must be exercised by service of notification by a reliable method, providing it is received at the registered office within five days of the date of publication of the initial notice.
2. The supplementary notice must be published at least fifteen days before the date of the meeting. Failure to publish the supplementary notice within the deadline established by law shall be grounds for the cancellation of the meeting.

Section 173. Form of the notice

1. General meetings shall be convened by announcement in the Official Journal of the Mercantile Registry and in one of the daily newspapers most widely circulated in the province where the registered office is located.

2. In lieu of the foregoing, the by-laws of limited liability companies may provide for convening general meetings by announcements published in a daily newspaper distributed in the municipal district where the registered office is located, or by any written, individually addressed notice forwarded in a manner that guarantees receipt by all the partners at the address designated thereby for that purpose or at the address listed in the stakeholders' ledger. The by-laws may further stipulate that partners living abroad need only be convened individually if the address designated thereby for notifications is on Spanish soil.

Section 174. Contents of the notice of meeting

1. Notices of meetings shall specify the company name and the date and time of the meeting, and contain the agenda listing the items to be discussed.
2. In limited liability companies, written, individually addressed notices shall also specify the name of the person or persons convening the meeting.

Section 175. Place

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

Section 176. Advance notice

1. In joint stock companies, general meetings must be convened at least one month in advance of the date they are to be held, and fifteen days in advance in limited liability companies, without prejudice to the provisions on supplementary notices.
2. Where partners are convened individually, advance notice shall be calculated from the date on which it was sent to the last partner.

Section 177. Second call

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

CHAPTER V

Universal shareholders' meeting

Section 178. Universal shareholders' meeting

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

CHAPTER VI

Attendance, representation and voting

Section 179. Right of attendance

1. In limited liability companies, all shareholders are entitled to attend the general meeting. The by-laws may not make attendance at general meetings contingent upon ownership of a minimum number of stakes.
2. In joint stock companies, the by-laws may subject eligibility to attend the general meeting to ownership of a minimum number of shares, irrespective of class or series. Under no circumstances, however, may the number required be greater than one-thousandth of the share capital.
3. In joint stock companies, the by-laws may subject shareholders' right to attend the general meeting to advance proof of their eligibility. Nonetheless, under no circumstances may the by-laws restrict that right for holders of registered shares or shares represented by book entries that have been entered in the ledgers five days in advance of the date of the meeting, nor for holders of bearer shares who, likewise five days in advance, deposit their shares

or the certificate substantiating their deposit in an authorised institution, in the manner specified in the by-laws. If the by-laws contain no provisions in this regard, the shares or certificate may be deposited at the registered office. The document substantiating fulfilment of these requirements shall be nominative and shall be accepted by the company as effective proof of the holder's legitimate rights.

Section 180. Directors' mandatory attendance

Company directors must attend general meetings.

Section 181. Authorisation to attend

1. The by-laws may authorise or require the attendance of directors, managers, technicians and others involved in the proper handling of company affairs.
2. The person chairing the general meeting may authorise anyone else he/she deems appropriate to attend the meeting, although the meeting may revoke such authorisation.
3. The provisions of the preceding paragraph shall apply to limited liability companies except as their by-laws provide otherwise.

Section 182. Virtual attendance

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

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

1. Partners may only be represented at general meetings by their spouses, ascendants or descendants, another shareholder or by a person holding a general power of attorney by virtue of a public document vesting him/her with powers to administer all the assets that the principal owns on Spanish soil. Representation by other persons may be authorised in the by-laws.
2. Proxies must be given in writing. If not recorded in a public document, they must be issued specifically for the general meeting in question.
3. Proxies shall cover all the stakes owned by the principal.

Section 184. Voluntary representation at general meetings of joint stock companies

1. Any shareholder entitled to attend may be represented at the general meeting by a proxy, who need not be a shareholder. This right may be limited in the by-laws.
2. Proxies shall be given in writing or by remote means of communication that comply with the requirements established in this act for the exercise of distance balloting and must be issued specifically for each general meeting.

Section 185. Proxy revocability

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

Section 186. Public request for representation in joint stock companies

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

Section 187. Inapplicability of restrictions

The legal restrictions laid down in Sections 184 and 186 shall not apply when the proxy is the principal's spouse or

ascendant or descendant, nor when he/she holds a notarised general power of attorney vesting him/her with powers to administer all the assets owned by the principal on Spanish soil.

Section 188. Right to vote

1. In limited liability companies, unless specified otherwise in the corporate by-laws, each stake entitles its holder to the right to cast one vote.
2. Joint stock companies shall not be entitled to create shares that directly or indirectly alter the proportionality between the par value of each share and voting rights.
3. In joint stock companies, the by-laws may generally set the maximum number of votes that can be cast by any one shareholder or shareholder companies belonging to the same group, except as provided for listed companies.

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

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

Section 190. Conflict of interest in limited liability companies

1. In limited liability companies, partners shall not be entitled to exercise the right to vote associated with their shares when the issue at hand calls for a company decision on the authorisation of the transfer of shares in their possession; their exclusion from the company or release from an obligation; allocation of a right or advancement of funds in their favour; credits, loans, security or financial assistance likewise to their benefit; and for directors, waiver of the non-competition clause or of the prohibition to establish a relationship with the company involving the provision of any kind of works or services.
2. The stakes of partners affected by any of the conflicts of interest referred to in the preceding paragraph shall be deducted from the capital for the purposes of calculating the majority vote required in each case.

CHAPTER VII

Quorum and adoption of decisions

SUB-CHAPTER ONE. QUORUM

Section 191. General meeting officers

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

Section 192. Attendance list

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

Section 193. Quorum in joint stock companies

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

Section 194. Stricter quorum requirements in special cases

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

Section 195. Extension of meetings

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

SUB-CHAPTER TWO. RIGHT TO INFORMATION

Section 196. Right to information in limited liability companies

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

Section 197. Right to information in joint stock companies

1. Shareholders may ask the directors to provide any information or clarification that they deem necessary about the items on the agenda, or pose any questions they deem appropriate, in writing up until the seventh day before the date on which the meeting is scheduled to be held.
The directors shall be bound to furnish the information in writing by the date of the general meeting.
2. During the general meeting, the company's shareholders may verbally request any information or explanations that they deem necessary with respect to the items on the Agenda, and whenever their queries cannot be immediately answered, the directors shall be obliged to provide the information in writing no more than seven days after the general meeting.
3. The directors shall be bound to furnish the information requested pursuant to the provisions of the two preceding paragraphs except in cases where, in the chairperson's opinion, disclosing the information requested may be detrimental to the company's interests.
4. Information may not be withheld when requested by shareholders representing at least one-fourth of the share capital.

SUB-CHAPTER THREE. ADOPTION OF DECISIONS

Part 1. Voting in limited liability companies

Section 198. Plurality

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

Section 199. Majority and qualified majority

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

- a) Increases or reductions in capital and amendments to the by-laws shall require an aye response from over half of the votes associated with the stakes into which the capital is divided.

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

Section 200. Qualified majority required in the by-laws

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

Part 2. Voting in joint stock companies

Section 201. Majorities

1. In joint stock companies, corporate decisions shall be adopted by a majority of the votes of the shareholders present in person or by proxy.
2. Adoption of the decisions referred to in section 194 shall require a two-thirds majority of the share capital present or represented at the meeting when, at second call, at least twenty-five but less than fifty per cent of the subscribed capital with voting rights is in attendance.
3. The by-laws may call for larger majorities than specified in the preceding paragraphs.

CHAPTER VIII

Minutes

Section 202. Minutes

1. All corporate decisions must be recorded in the minutes.
2. The minutes shall be approved by the general meeting at the end of the meeting or within fifteen days thereof by the Chairman and two auditors, one representing the majority and the other the minority opinion.
3. Corporate decisions may be implemented from the date of approval of the minutes in which they are recorded.

Section 203. Notarised minutes

1. The directors may ask a notary public to attend the general meeting and take the minutes and shall be obliged to do so when requested by shareholders representing at least one per cent of the company's capital, in joint stock companies, or five per cent in limited liability companies. Such requests must be lodged five days before the date scheduled for the meeting. In the event, decisions shall only be effective if recorded in the notary public's minutes.
2. The minutes taken by a notary public, which shall not be subject to the approval procedure, shall constitute the minutes of the meeting and the decisions recorded therein may be implemented from the date of issue.
3. The notary public's fees shall be paid by the company.

CHAPTER IX

Challenging decisions

Section 204. Decisions subject to challenge

1. Corporate decisions that are contrary to law or the by-laws or detrimental to corporate interests to the benefit of one or various partners or of third parties shall be subject to challenge.
2. Decisions that are contrary to law shall be null and void. The others decisions referred to in the preceding paragraph shall be voidable.
3. Corporate decisions that are withdrawn or superseded may not be challenged.

Section 205. Expiry of action for challenge

1. Action to challenge null decisions must be lodged within one year. This shall not apply to decisions whose

consideration or content runs counter to law and order.

2. Challenges to annullable decisions must be lodged within forty days.

3. The deadlines set forth in the preceding paragraphs shall be calculated from the date of adoption of the decision and, if subject to registration, from the date of their publication in the Official Journal of the Mercantile Registry.

Section 206. Legal capacity to challenge decisions

1. All partners, directors and any third party that accredits a legitimate interest shall be legally capacitated to challenge annullable decisions.

2. Partners attending the meeting at which the decision was adopted and who had their opposition thereto recorded, partners not attending and those unlawfully deprived of their suffrage, as well as directors, shall be legally capacitated to challenge annullable decisions.

3. Actions for challenge shall be brought against the company.

When the claimant holds exclusive powers to represent the company and the meeting has no other designee, the judge shall appoint its representative in the proceedings from among the partners voting in favour of the decision challenged.

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

Section 207. Challenge procedure

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

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

Section 208. Ruling in favour of the challenger

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

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

TITLE VI

Corporate governance

CHAPTER I

General provisions

Section 209. Governing body competence

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

Section 210. Organisational arrangements

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

Section 211. Determination of the number of directors

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

CHAPTER II

Directors

Section 212. Subjective requirements

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

Section 213. Prohibition

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

Section 214. Appointment and acceptance

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

Section 215. Registration of appointment

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

Section 216. Deputy directors

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

Section 217. Directors' remuneration

1. Directors positions are unremunerated, unless the company by-laws provide otherwise and establish the remuneration scheme.
2. In limited liability companies, when remuneration is not based on a share in the profits, directors' remuneration for each financial year shall be determined by a decision of the general meeting pursuant to the provisions of the by-laws.

Section 218. Remuneration via a share in profits

1. In limited liability companies, when remuneration is based on a share in the profits, the corporate by-laws shall specify the maximum participation or percentage therein, which may under no circumstances exceed ten per cent of the profits set aside for distribution among partners.
2. In joint stock companies, when remuneration consists of a share in the profits, it may only be drawn from net earnings and only after provisioning the legal reserve, any other reserve described in the by-laws and a four-per cent dividend (or higher if provided in the by-laws) has been earmarked for shareholders.

Section 219. Remuneration in the form of company shares

1. In joint stock companies, any remuneration consisting of shares or options thereon or that is linked to the value of shares shall be explicitly mentioned in the by-laws, and application of such provisions shall be subject to a general meeting decision.
2. The general meeting shall specify, as appropriate, the number of shares to be granted, the option exercise price, the value of the shares taken as a reference and the term of this remuneration scheme.

Section 220. Provision of services by directors

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

Section 221. Term of office

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

Section 222. Expiry

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

Section 223. Director dismissal

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

Section 224. Special cases of dismissal of joint stock company directors

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

CHAPTER III

Directors' duties

Section 225. Due diligence

1. Directors shall perform their duties with the diligence of an orderly businessman.
2. Each director shall remain diligently abreast of company progress.

Section 226. Loyalty

Directors shall act as loyal representatives in defence of the corporate interest, understood to be the interest of the company, and shall perform any duties laid down by the legislation or the by-laws.

Section 227. Prohibition to use the company name or invoke directorship

Directors shall not use the name of the company nor invoke their capacity as directors thereof when conducting operations for their own account or for the account of affiliates.

Section 228. Prohibition to take advantage of business opportunities

Directors may not invest, for their own benefit or the benefit of affiliates, in any operations relating to company assets of which they may become aware by reason of their position, when such investment or operation is offered to the company or the company has an interest therein, unless the company has ruled out the investment or operation in a decision not influenced by the director.

Section 229. Conflict of interest

1. Directors shall inform the board of directors or, in the absence thereof, the other directors or in the event of a sole director, the general meeting, of any situation that may involve a conflict between their own and the company's interests.

Directors in such situations shall refrain from taking part in decisions relative to the operation around which the conflict has arisen.

2. Furthermore, directors shall inform the company of the direct or indirect stake they and their affiliates as defined in Section 231 may have in a company with the same, analogous or similar corporate purpose, and the positions or duties they perform therein.

3. The conflicts of interest described in the preceding paragraphs shall be included in the notes to the financial statements.

Section 230. Prohibition of competition

1. Directors may not, for their own account or the account of others, engage in a business that is the same as or analogous or supplementary to the business constituting the corporate purpose, without explicit authorisation from the general meeting. To obtain such authorisation they shall provide the information described in the preceding section.

2. In limited liability companies, any partner may request the commercial court with jurisdiction in the place where the registered office is located to remove any director in breach of the above prohibition.

3. In joint stock companies, at the behest of any shareholder, the general meeting shall decide on the dismissal of directors who are also directors of a competing company.

Section 231. Directors' affiliates

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

- a) The director's spouse or persons with an analogous relationship.
 - b) The director's or his/her spouse's parents, children and siblings.
 - c) The spouses of the director's parents, children and siblings.
 - d) Companies with which the director, directly or by proxy, is affiliated in any of the manners described in Section 42, paragraph one of the Commercial Code.
2. When directors are bodies corporate, their affiliates shall be the persons listed below.
- a) Partners who are affiliated with such body corporate in any of the manners described in Section 42, paragraph one of the Commercial Code.
 - b) *De jure* or *de facto* directors, liquidators, and attorneys with general powers of attorney in the company's body corporate director.
 - c) Companies forming part of the same group and their partners.
 - d) Persons who, pursuant to the provisions of the preceding paragraph, qualify as affiliates in respect of the above body corporate's representative.

Section 232. Secrecy

1. Directors, even after severance, shall keep all confidential information secret, and shall be bound to honour the non-public nature of information, data, reports or precedents of which they may become aware by reason of their position and refrain from their disclosure to third parties or the public at large where the consequences may be detrimental to the corporate interest.
2. The duty described in the preceding paragraph shall not apply to cases in which, pursuant to the legislation, such information may be conveyed or disclosed to third parties or where, as appropriate, it is required by or must be sent to the respective supervisory authorities, in which case the information shall be conveyed in accordance with legal provisions.
3. When the director is a body corporate, the duty of secrecy shall be incumbent upon its representative, without prejudice to compliance with the obligation to report thereto.

CHAPTER IV

Company representation

Section 233. Attribution of power of representation

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

Section 234. Scope of representative powers

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

Section 235. Notices intended for the company

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

CHAPTER V

Directors' liability

Section 236. Circumstances where liability is incurred

1. *De jure* or *de facto* directors shall answer to the company, its partners and creditors for any damage caused by their acts or omissions where contrary to law or the by-laws or by any performed or omitted in breach of the duties inherent in their position.
2. Under no circumstances shall the adoption, authorisation or ratification of the act in question by the general meeting release them from their liability.

Section 237. Joint and several liability

All members of the governing body adopting the detrimental decision or performing the respective act shall answer

jointly and severally, unless they prove that having taken no part in its adoption or implementation, they were unaware of its existence or, if aware, took all reasonable measures to prevent the damage or at least voice their objection thereto.

Section 238. Corporate action to demand liability

1. Action to demand director liability shall be brought by the company pursuant to a general meeting decision, which may be adopted at the behest of any shareholder even where not included on the agenda. The by-laws may not require a qualified majority for the adoption of such decisions.
2. The general meeting may reach a settlement in or waive such action at any time, unless an objection is raised thereto by partners representing five per cent of the capital.
3. The decision to bring action or reach a settlement shall entail dismissal of the directors concerned.
4. Approval of the financial statements shall not preclude action for liability nor constitute a waiver of the action agreed or brought.

Section 239. Subsidiary capacity of the minority

1. Partners representing at least five per cent of the capital may request a general meeting to decide whether to bring action for liability.
2. They may also jointly bring action for liability to defend the corporate interest when the directors fail to convene the general meeting requested, when the company fails to bring such action within one month of the date of adoption of the respective decision, or when the meeting decides not to claim liability.

Section 240. Creditors' subsidiary capacity to bring corporate action

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

Section 241. Individual action for liability

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

CHAPTER VI

Board of directors

Section 242. Membership

1. The board of directors shall have no less than three members. The by-laws may establish the exact or a minimum and maximum number of members for the board of directors. In the latter case the general meeting shall determine the exact number.
2. In limited liability companies, the board of directors, if any, may have no more than twelve members.

Section 243. Proportional representation

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

Section 244. Cooptation

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

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

1. In limited liability companies the by-laws establish the organisational arrangements and *modus operandi* of the board of directors, which shall include at least the rules on convening its meetings and the quorum required, as well as the manner in which it shall co
2. In joint stock companies, unless otherwise specified in the by-laws, the board of directors may designate its chairman, regulate its own *modus operandi* and accept the resignation of directors.

Section 246. Convening board meetings

In joint stock companies, meetings of the board of directors shall be convened by the chairperson or acting chairperson.

Section 247. Quorum for board of directors' meetings

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

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

1. In joint stock companies, board of directors' decisions shall be adopted by the majority of directors attending.
2. In joint stock companies, voting in writing outside meetings shall only be accepted when no director objects to this procedure.

Section 249. Delegation of powers by the board of directors

1. Unless otherwise provided in the corporate by-laws, the board of directors may designate from among its members an executive committee or one or several managing directors, without prejudice to the powers that may be vested in any person whatsoever.
2. Reporting on corporate governance, the submission of financial statements to the general meeting and the powers vested thereby in the board may not be delegated except where explicitly authorised by the general meeting.
3. The permanent delegation of board of directors' powers to the executive committee or managing director and the appointment of the directors nominated to these positions shall require the favourable vote of two-thirds of the board members and shall not take effect until registered in the Mercantile Registry.

Section 250. Minutes of board of directors' meetings

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

Section 251. Challenging board of directors' decisions

1. Directors may challenge null and annulable decisions adopted by the board of directors or any other governing body within thirty days of their adoption. Similarly, such decisions may be challenged by partners representing five per cent of the capital no more than thirty days after they became aware thereof and provided less than one year has elapsed since their adoption.
2. Challenges shall be subject to the same proceedings as challenges to general meeting decisions.

CHAPTER VII

Administration of limited partnerships

Section 252. Administration of limited partnerships

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

TITLE VII

Financial statements

CHAPTER I

General provisions

Section 253. Issue of the financial statements

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

Section 254. Contents of the financial statements

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

Section 255. Separate items

1. In the documents that form the financial statements, the items listed in the statutorily approved models shall be displayed separately, in the order indicated therein.
 2. These items may be subdivided to furnish further detail, provided the structure of the established models is maintained.
- New items may also be added where their contents are not included in any of the items included in the models.

Section 256. Grouping of items

Certain items listed in the documents forming the financial statements may be grouped when the amount involved is irrelevant for the purposes of presenting a true and fair view of the company's net worth, financial position and net income, or for purposes of clarity, provided that the grouped items are discussed separately in the notes to the financial statements.

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

1. Companies may prepare an abridged balance sheet and statement of changes in net worth if, on the closing date of two consecutive financial years, they meet at least two of the circumstances listed below.
 - a) Total assets not over two million eight hundred and fifty thousand euros.
 - b) Net annual turnover not over five million seven hundred thousand euros.
 - c) Average headcount during the financial year not over fifty employees.Companies no longer meeting any two of the circumstances referred to in the preceding paragraph for two consecutive years shall forfeit this privilege.
2. In the first financial year after their formation, conversion or merger, companies may issue an abridged balance sheet and statement of changes in net worth if, at the end of that financial year, they meet at least two of the three circumstances listed in the preceding paragraph.
3. Companies entitled to issue an abridged balance sheet and statement of changes in net worth shall not be bound to issue a cash flow statement.

Section 258. Abridged income statement

1. Companies may prepare an abridged income statement if they meet at least two of the circumstances listed below on the closing date of two consecutive financial years.
 - a) Total assets not over eleven million four hundred thousand euros.
 - b) Net annual turnover not over twenty two million eight hundred thousand euros.
 - c) Average headcount during the financial year not over two hundred fifty employees.Companies no longer meeting any two of the circumstances referred to in the preceding paragraph for two consecutive years may not prepare an abridged income statement.

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

CHAPTER II

Notes to the financial statements

Section 259. Purpose of the notes

The notes shall complete, extend and comment on the contents of the other documents that form the financial statements.

Section 260. Contents of the notes

In addition to the information specifically indicated by the Commercial Code and this act and the regulations enlarging thereon, the notes shall contain at least the items listed below.

One. The valuation criteria applied to the items in the financial statements and the methods for calculating valuation corrections.

If any items on the financial statements are expressed in a currency other than the euro either initially or in the target year, the notes shall describe the procedure used to calculate the euro exchange rate.

Two. The registered name, registered office and legal status of the companies in which: the company is a general partner, directly or indirectly holds a stake of no less than twenty per cent of the capital, or exercises a significant influence, while holding less than a twenty per cent stake.

The report shall specify the company's stake in the capital and the percentage of its voting rights over the total, as well as the investees' total equity in their last financial year.

Three. Where the company has several classes of shares, the number and par value of the shares in each class.

Four. The existence of preference or convertible bonds or similar securities or rights, specifying their number and the extent of the rights conferred.

Five. The amount of the company's debts with a residual term exceeding five years, and of all debts secured by collateral, specifying their form and nature.

This information shall be given separately for each debt item.

Six.

a) The overall sum of third party commitments, without prejudice to their inclusion as a balance sheet liability when the actual compliance of an obligation is likely to derive therefrom.

Pension- and group company-related commitments shall be mentioned clearly and separately.

b) The nature and purpose of the transactions in the company's off-balance sheet agreements and their financial impact, provided this information has a material effect on and is needed to determine the company's financial position.

c) Significant transactions between the company and related third parties, indicating the nature of the relationship, the amount and any other information about the transactions that is needed to determine the company's financial position.

Seven. The distribution of the net turnover from the company's ordinary business operations by category of operations and geographical markets, where from the standpoint of the organisation of product sales, service provision or other income from the company's ordinary business operations, such categories and markets differ substantially. Companies entitled to issue abridged income statements may omit such information.

Eight. The average headcount throughout the financial year, by category, as well as personnel expenses for the financial year, separating wages and salaries from social security costs. Sums relating to pensions shall be listed separately if not so shown on the income statement.

The year-end distribution by gender of the company's personnel, broken down into a sufficient number of categories and levels, including senior management and directors.

Nine. The salaries, daily subsistence allowances and remuneration of any kind accruing throughout the financial year to senior management and members of the board of directors, for any reason, and the amount of any pension or life insurance premium-related obligations incurred with respect to former and current board members and senior management personnel. If the board members are bodies corporate, the foregoing requirements shall refer to the natural persons representing them.

This information may be given globally by category of remuneration.

Ten. The sum of any advances or loans granted to senior management and members of the governing bodies, specifying the interest rate, their essential characteristics and any amounts repaid, as well as the obligations accepted on their behalf as security. If board members are bodies corporate, the foregoing requirements shall refer to the individuals representing them.

This information may be given globally by category.

Eleven. The itemised sum of the fees for auditing the accounts and other services rendered by the auditor, as well

as the fees paid to persons or entities related thereto, in accordance with the regulations governing accounts auditing.

Twelve. The group to which the company belongs, if any, and the Mercantile Registry where the consolidated financial statements are filed or, as appropriate, the circumstances allowing for release of the obligation to issue consolidated financial statements.

Thirteen. When the company has greater assets than any of the other group companies based in Spain that form part of the same decision-making unit because they are controlled by whatsoever means by one or several individuals or bodies corporate, acting together but not bound to issue consolidated financial statements; or because they are under single management as a result of corporate decisions or clauses in the by-laws, the notes must include a description of the aforementioned companies, specifying the reason that they form part of the same decision-making unit. They shall also report the aggregate amount of the assets, liabilities, total equity, turnover and earnings of the aforementioned companies.

The company with the greatest assets is understood to be the company which, when joining the decision-making unit, has the highest total assets on its balance sheet, as per the model.

The other companies that form part of a decision-making unit shall specify in their financial statements the decision-making unit to which they belong and the Mercantile Registry where the company's financial statements are filed and the information referred to in the first paragraph of this item is recorded.

Section 261. Abridged notes to financial statements

Companies that are entitled to issue an abridged balance sheet and statement of changes in net worth may omit from the notes to their financial statements any information specified by law, although they must furnish the information required in items one, two, three, nine and ten of the preceding section. The notes shall also contain the aggregate values described in item five of the preceding section.

CHAPTER III

Management report

Section 262. Content

1. The management report shall contain a true and fair description of the company's business and situation, and of the main risks and uncertainties to be confronted.

The description must be a balanced and comprehensive analysis of the variations in and results of the company's business and position, consistent with its size and complexity.

To the extent necessary for an understanding of company trends, performance or position, this analysis must cover financial and other key performance indicators and, as appropriate, non-financial indicators relevant to the specific business activity, including information on environmental- and employee-related matters. Companies that are entitled to issue abridged income statements shall be released from the obligation to include non-financial information.

On providing this analysis, the management report shall, as appropriate, include references and additional explanations about the sums shown on the financial statements.

2. It shall also report on any material post-balance sheet events, the foreseeable evolution of such events, any research and development-related activities and, in the terms set forth hereunder, the acquisition of the company's own shares.

3. Companies that issue an abridged balance sheet and statement of changes in net worth shall not be required to issue a management report. In that case, if the company acquires its own shares or shares in its controlling company, the notes to the financial statements shall include at least the information required in letter d) of [Section 148](#).

4. Whenever the use of financial instruments by the company is relevant for measuring its assets, liabilities, financial position or earnings, the management report shall include the information listed below.

a) Company financial risk management objectives and policies, including hedging against each significant type of planned transaction for which hedge accounting is used.

b) Company exposure to price risk, credit risk, liquidity risk and cash flow risk.

5. Under no circumstances shall the information contained in the management report justify the absence of such information from the financial statements when this information must be included therein pursuant to the provisions of the preceding sections and the provisions elaborating thereon.

CHAPTER IV

Financial statement audit

Section 263. Auditor

1. The financial statements and, as appropriate, the management report must be reviewed by an auditor.
2. Companies that are entitled to issue abridged balance sheets shall be released from this obligation.

Section 264. Appointment by the general meeting

1. The person responsible for conducting the audit shall be appointed by the general meeting before the end of the financial year to be audited, for an initial period that must not be less than three nor more than nine years, calculated from the starting date of the first financial year to be audited. Auditors may be re-elected by the general meeting at the end of the initial term for periods of no more than three years.
2. The general meeting may appoint one or several individuals or bodies corporate who shall act jointly. When the appointees are individuals, the general meeting shall appoint both principal and substitute auditors.
3. The general meeting may not dismiss auditors without just cause before the end of the initial period for which they were appointed, or before the end of each of the periods for which they are hired after the end of the initial period.

Section 265. Appointment by the mercantile registrar

1. When the general meeting is bound to appoint the auditor before the end of the financial year to be audited and fails to do so, or the appointee fails to accept the commission or is unable to perform the respective duties, the directors and any shareholder may ask the mercantile registrar serving the place where the registered office is located to appoint a person or persons to conduct the audit, pursuant to the provisions of the Mercantile Registry Regulations.

In joint stock companies, the request may also be filed by the representative of the bondholders' syndicate.

2. In companies that are not bound to have their financial statements audited, shareholders representing at least five per cent of the share capital may apply to the mercantile registrar serving the place where the registered office is located to appoint an auditor to, at the company's expense, audit the financial statements for a given financial year within the three months following the end of such financial year.

Section 266. Appointment by the court

Whenever there is just cause, the company's directors and parties with legal capacity to request the appointment of the auditor may apply to the courts for revocation of the appointment made by the general meeting or the mercantile registrar and appointment of another auditor.

Section 267. Auditor's remuneration

1. Auditors' remuneration shall be established in accordance with the provisions of the Spanish Auditing Act.
2. The auditor shall receive no other remuneration or benefit from the company audited for performing this duty.

Section 268. Object of the audit

The auditor shall verify whether the financial statements present a true and fair view of the net worth, financial position and earnings of the company, and as appropriate, the consistency between the management report and the financial statements for the financial year.

Section 269. Auditor's report

The auditors shall issue a detailed report on the result of their audit, in accordance with auditing regulations.

Section 270. Deadline for issuing the report

1. Auditors shall be given at least one month from the date of receipt of the accounts signed by the directors in which to submit their report.
2. If, as a result of the report, the directors must alter the financial statements, the auditor shall extend his/her report and add the changes made.

Section 271. Corporate action for liability. Legal capacity

The legal capacity to hold the auditor liable to the company shall be governed by the provisions on company directors.

CHAPTER V

Financial statement approval

Section 272. Financial statement approval

1. The financial statements shall be approved by the general meeting.
2. After the general meeting has been convened, any shareholder may apply to the company to obtain, immediately and cost-free, the documents that have to be submitted to the general meeting for approval, and, as appropriate, the management and auditor's reports.

Mention of this right shall be included in the notice of the meeting.

3. Unless specified otherwise in the by-laws, during that same period of time, any partner or partners of limited liability companies representing at least five per cent of the capital, may alone or in the company of an expert accountant repair to the registered office to examine the documents substantiating the financial statements and used as a basis for their formulation.

The provisions of the preceding paragraph do not preclude or limit the right of the minority to appoint an auditor at the company's expense.

Section 273. Distribution of earnings

1. The general meeting shall decide on the distribution of the earnings for the financial year as shown on the approved balance sheet.
2. Dividends may only be drawn on the year's profits or freely available reserves after meeting the requirements laid down by law and in the by-laws, and if the value of the corporate equity is not, or as a result of such distribution would not be, less than the company's capital. For these purposes, any profit directly allocated to total equity may not be distributed either directly or indirectly.

In the event of losses in preceding years that reduce corporate equity to less than the company's capital, profits shall be used to offset such losses.

3. Profit distribution shall likewise be prohibited if the amount of the distributable reserves comes to less than the sum of the research and development expenses shown as assets on the balance sheet.
4. In any case, the company shall provision a restricted reserve equivalent to the goodwill booked as an asset on the balance sheet, and must earmark to this end a portion of its profits representing at least five per cent of the amount of such goodwill. If no profit or insufficient profit is earned, the unrestricted reserves shall be used for this purpose.

Section 274. Legal reserve

1. An amount equal to ten per cent of the profit for the year shall in any event be earmarked for the legal reserve until such reserve represents at least twenty per cent of the capital.
2. The legal reserve may not be used to offset losses unless it exceeds twenty per cent of the capital and no other sufficient reserves are available for such purpose.

Section 275. Distribution of dividends

1. In limited liability companies, unless specified otherwise in the by-laws, the dividends shall be distributed to the partners in proportion to their stakes in the company capital.
2. In joint stock companies, the dividends shall be distributed to the ordinary shareholders in proportion to the capital paid up.

Section 276. Date and method of dividend payments

1. In its decision on distribution of dividends, the general meeting shall determine the date and method of payment.
2. If no stipulation is made in this regard, the dividend shall be payable at the registered office from the day after the day on which the decision is adopted.

Section 277. Interim dividends

The distribution of interim dividends among shareholders shall only be approved by the general meeting or by the directors where the conditions set out below are met.

- a) The directors shall prepare a statement of accounts confirming the existence of sufficient liquidity to pay the interim dividend. This statement must be subsequently included in the notes to the financial statements.
- b) The amount to be distributed shall not exceed the amount resulting from deducting from the earnings booked since the end of the last year, the sum of previous years' losses, the amounts earmarked for the reserves required by law or the by-laws, and the estimated tax due on the aforesaid earnings.

Section 278. Dividend reimbursement

Any distribution of dividends or interim dividends that breaches the provisions of this act must be reimbursed by the recipient shareholders, including any legal interest as appropriate, when the company proves that such recipients were aware, or under the circumstances could not have been unaware, of the undue distribution of the dividends.

CHAPTER VI

Filing and public disclosure of the financial statements

Section 279. Filing of the financial statements

Within one month of the approval of the financial statements, the following documents shall be submitted for filing in the Mercantile Registry serving the place where the registered office is located: certificates of the general meeting's decisions approving the financial statements and the distribution of profits, and attached thereto a copy of each statement, the management and the auditors' report, for companies bound to be audited or audited at the behest of the minority. The certificate shall specify whether any of the financial statements are issued in abridged format and explain the reason in such case.

Section 280. Registry acceptance

1. Within fifteen days of the date of the submission entry, the registrar, under his/her responsibility, shall determine whether the documents submitted are compliant with the existing legislation, duly approved by the general meeting and signed as required. If no defects are detected, the registrar shall accept the documents as filed and include the respective entry in the accounts filing ledger and on the company's page in the registry. Otherwise, he/she shall proceed as stipulated in respect of faulty documents.
2. The Mercantile Registry shall keep the filed documents for a period of six years.

Section 281. Publication of filing information

1. On the first business day of each month, mercantile registrars shall send the Central Registry a list of the companies complying during the previous month with the obligation to file their financial statements. The Official Journal of the Mercantile Registry shall publish an announcement listing the companies that have complied with the obligation to file their financial statements.
2. Information contained in any and all documents on file may be requested by any party.

Section 282. Denial of registration

1. If the governing body fails to meet its obligation to file the documents referred to in this chapter by the established deadline, no company-related documents shall be registered while such obligation remains outstanding.
2. This shall not apply to documents relating to the dismissal or resignation of directors, managers, directors general or liquidators, or to the withdrawal or waiver of powers, the winding-up of the company and appointment of liquidators or the entries that must be made by order of the competent judicial or administrative authority.

Section 283. Penalties

1. Governing body failure to file the documents referred to in this chapter within the established deadline shall also give rise to a fine imposed by the Spanish Institute of Accounting and Auditing for an amount ranging from 1,200 to 60,000 euros, further to preliminary proceedings conducted in accordance with the regulatory procedure established in the Act on Public Administration and Common Administrative Procedures. When the company or, as appropriate, the corporate group has an annual turnover exceeding 6,000,000 euros, the ceiling for the fine per each year of arrears shall be 300,000 euros.
2. The fine to be imposed shall be determined on the grounds of company size, defined in terms of total assets and turnover in the last financial year for which returns were filed with the tax authority. The company must furnish this information to the official conducting the inquiry; failure to do so shall be taken into consideration for the purposes of calculating the fine. If such information is not available, the amount of the fine shall be calculated in accordance with company capital, which shall be requested from the respective Mercantile Registry for these intents and purposes.
3. If the documents referred to in this chapter are filed prior to the institution of disciplinary proceedings, the company shall be fined at fifty per cent of the minimum rate.
4. The breaches referred to in this section lapse after three years.

Section 284. Public disclosure

If the documents filed in the Mercantile Registry are made public, they must bear an indication of whether they are

full or abridged versions. If full, the text of the documents filed in the Mercantile Registry must be accurately reproduced, and always include the full version of the auditors' report. If abridged, reference shall be made to the Mercantile Registry where the documents are on record. While the auditor's report may be omitted in this case, mention must be made of whether or not any reservations were raised therein.

TITLE VIII

Amendments to the by-laws

CHAPTER I

Amendments to the by-laws

SUB-CHAPTER ONE. GENERAL PROVISIONS

Section 285. Competence

1. By-laws may only be amended by the general meeting.
2. Notwithstanding the provisions of the preceding paragraph, unless otherwise provided in the by-laws, the governing body shall be competent to relocate the registered office

Section 286. Proposals for amendment

The directors or, as appropriate, the partners authoring the proposal, shall draft the wording of the proposed amendment in full and, in joint stock companies, they shall also draft a written report justifying the proposal.

Section 287. Notice of the general meeting

The notice convening the general meeting shall contain explicit reference, with the necessary clarity, to the points to be amended and to partners' right to examine the full wording at the registered office and, in joint stock companies, to the respective report, and to request cost-free copies of such documents, whether received in hand or forwarded to their address.

Section 288. Decision to amend by the by-laws

1. In limited liability companies, decisions to amend the by-laws shall be subject to approval by the qualified majority defined in section 199.
2. In joint stock companies and limited partnerships, decisions to amend the by-laws shall be subject to approval by the majority defined in Sections 194 and 201.

Section 289. Public disclosure of certain decisions to amend the by-laws

In joint stock companies, decisions to change company denomination, registered office, or replace or otherwise amend the corporate purpose shall be announced in two newspapers widely circulated in the respective province or provinces. If not so publicly disclosed, the decisions shall not be registered in the Mercantile Registry.

Section 290. Instrument and registration of amendment

1. Decisions to amend the by-laws shall be laid down in a public instrument to be registered in the Mercantile Registry and published in the Official Journal of the Mercantile Registry.
2. After the change in company denomination is entered in the Mercantile Registry, it shall be recorded at other Registries in the form of marginal notes.

SUB-CHAPTER TWO. SPECIAL RULES ON LEGAL PROTECTION FOR PARTNERS

Section 291. New obligations for partners

When an amendment to the by-laws entails new obligations for partners, its adoption shall be contingent upon the consent of the parties concerned.

Section 292. Individual protection of partners' rights in limited liability companies

When amendments refer to the individual rights of partners in limited liability companies, their adoption shall be contingent upon the consent of the parties concerned.

Section 293. General protection of the rights of shareholders in joint stock companies

1. Amendments to the by-laws that directly or indirectly affect the rights of a specific class of shares shall only be

valid when adopted by the general meeting in compliance with the requirements laid down in this act and approved by a majority of the shares pertaining to the class in question. When several classes are involved, a separate decision shall be required for each.

2. When the amendment affects only part of the shares in a given class and discriminates between them, for the purposes of this section, the affected and unaffected shares shall be deemed to constitute separate classes, and a separate decision shall therefore be required for each.

3. The decision by the shareholders affected shall be subject to approval by the majority required in this act for amending the by-laws, either at a special meeting or by a separate vote at the general meeting, and shall be explicitly included in the notice of that meeting.

4. The provisions of this act for the general meeting shall apply to special meetings.

Section 294. Individual protection of general partners in a limited partnerships

When a proposal to amend the by-laws of a limited partnership refers to the appointment of directors, a change in the arrangements for company administration or corporate purpose, or extension of the life of the company beyond the term established in the by-laws, the decision must be adopted by the general meeting in compliance with the requirements laid down in this act, and its validity shall be contingent upon the consent of all the general partners.

CHAPTER II

Capital increases

SUB-CHAPTER ONE. TYPES OF INCREASE

Section 295. Types of increase

1. Company capital may be increased by either creating new stakes or issuing new shares or by increasing the par value of the existing stakes or shares.

2. In both cases the capital increase may be booked against new cash or non-cash contributions to the company equity, including credits held against the company, or charged to profits or reserves shown on the last approved balance sheet.

SUB-CHAPTER TWO. DECISION TO INCREASE CAPITAL

Section 296. Decision on capital increase

1. Decisions to increase company capital must be adopted by the general meeting and shall be subject to approval by the majority required in this act for amending the by-laws.

2. Adoption of decisions to increase capital by raising the par value of stakes or shares shall be contingent upon the consent of all partners, unless the increase is fully charged to profits or reserves shown on the last approved balance sheet.

3. In joint stock companies, at least one-fourth of the value of all company shares must be paid up after the capital increase.

Section 297. Power vested in directors

1. In joint stock companies, the general meeting may adopt decisions to vest the directors with the powers listed below, which shall be subject to approval by the majority required in this act for amending the by-laws.

a) The power to set the date on which the decision to increase capital by the sum agreed will be implemented and to establish whatsoever terms and conditions were not determined by the meeting. The term in which this power must be exercised may not exceed one year, except as regards convertible bonds.

b) The power to increase company capital in one or several stages up to the sum specified, when and for the amounts deemed appropriate, without consulting the general meeting. Such increases may under no circumstance involve over half the company capital at the time the authorisation is forthcoming and must be implemented in the form of cash contributions within no more than five years of the meeting's decision.

2. By virtue of the foregoing, the directors are vested with the power to redraft the section of the by-laws on share capital after the increase is adopted and implemented.

Section 298. Increases with premiums

1. In capital increases, stakes may be created and shares issued with a premium.

2. The premium must be fully paid up when the new stakes are taken or new shares are subscribed.

Section 299. Increases charged to cash contributions

1. In joint stock companies, except insurance companies, capital increases booked against new cash contributions to the company equity may not be made until all previously issued shares are fully paid up.
2. Notwithstanding the provisions of the preceding paragraph, if the amount outstanding does not exceed three per cent of the share capital, the increase may be effected.

Section 300. Increases charged to non-cash contributions

1. Where increases consist of non-cash contributions, along with the summons of the meeting, partners must be provided with a directors' report containing a detailed description of the planned contributions, their valuation, the persons expected to make them, the number and par value of the stakes or shares to be created or issued, the amount of the capital increase and the security established to render the increase effective in keeping with the nature of the assets comprising such contribution.
2. The notice of the general meeting shall inform all partners of their right to examine the report at the registered office, as well as to request cost-free copies of such document to be received in hand or forwarded to their address.

Section 301. Increases to offset loans

1. When limited liability companies increase their capital by offsetting loans, such loans must be fully liquid and receivable. When joint stock companies increase their capital by offsetting loans, at least twenty-five per cent thereof must be liquid, mature and receivable, and none of the remaining loans may mature in over five years.
2. At the same time as the general meeting is convened, the partners shall be given access to a report at the registered office, prepared by the company's governing body, on the nature and characteristics of the loans to be offset, the identity of contributors, the number of stakes or shares to be created or issued and the amount of the increase, explicitly confirming the concurrence between the data on the loans and company accounts.
3. In joint stock companies, at the same time as the general meeting is convened, shareholders shall have access, at the registered office, to a certificate issued by the auditor confirming that his/her verification of the company accounts found the information provided by the directors on the loans in question to be accurate. If the company has no auditor, the certificate shall be issued by an auditor appointed by the Mercantile Registry at the behest of the directors.
4. The notice convening the general meeting must inform all partners of their right to examine the directors' report and, in the case of joint stock companies, the auditor's certificate, at the registered office, as well as to request cost-free copies of such documents to be received in hand or forwarded to their address.
5. The directors' and, in joint stock companies, the auditor's reports, shall be attached to the public instrument on the capital increase.

Section 302. Increases by converting bonds

When the capital is increased by converting bonds into shares, the provisions of the bond issue agreement shall apply.

Section 303. Increases charged to reserves

1. When capital increases are charged to reserves, the reserves that may be earmarked for this purpose include unrestricted reserves and reserves constituted with new partner stake or share premiums. In limited liability companies, the legal reserve in full and in joint stock companies, the sum in the reserve in excess of ten per cent of the share capital after the increase, may also be used for this purpose.
2. The operation shall be based on a balance sheet approved by the general meeting as of a date no more than six months prior to the decision to increase capital, or by an auditor appointed by the Mercantile Registry at the behest of the directors, in companies not obliged to audit their accounts.

SUB-CHAPTER THREE. IMPLEMENTATION OF DECISION TO INCREASE CAPITAL

Section 304. Pre-emptive right

1. In capital increases involving the issue of new ordinary or preference stakes or shares, posted against cash contributions, partners shall be entitled to take or subscribe a number of stakes or shares in proportion to the par value of their holdings prior to the increase.
2. Pre-emptive rights shall not be in order when the capital increase is the result of the takeover of another company or of all or part of the equity spun off from another company or the conversion of bonds into shares.

Section 305. Term for the exercise of the pre-emptive right

1. In limited liability companies, pre-emptive rights shall be exercised within the term specified in the respective decision. In joint stock companies, pre-emptive rights shall be exercised within the term established by the directors.

2. The term for the exercise of such rights may not be less than one month counting from the date of publication of the announcement of the offering for new stakes or shares in the Official Journal of the Mercantile Registry.
3. When all limited liability company stakes or all joint stock company shares are registered, in lieu of publishing an announcement, the governing body may send a written notice to all partners and, as appropriate, usufructuaries entered in the stakeholders' ledger or the ledger of registered shares. The term for taking new stakes or subscribing new shares shall begin on the date such notice is sent.

Section 306. Transfer of pre-emptive rights

1. In limited liability companies, the pre-emptive right to take new stakes may be the object of voluntary *inter vivos* transfer to parties who, in accordance with this act or the company by-laws, may freely acquire the stakes. The by-laws may likewise allow the transfer of this right to other parties, subjecting such transfer to the conditions established for the *inter vivos* transfer of stakes, with the exception, as appropriate, of the term established therefor, which may be modified.
2. In joint stock companies, the transfer of pre-emptive rights shall be subject to the same conditions as transfer of the shares to which they refer.

Where capital increases are charged to reserves, the aforementioned rule shall be applicable to the right to cost-free allocation of new shares.

Section 307. Pre-emptive right: second round

1. In limited liability companies, unless otherwise stipulated in the by-laws, stakes not taken up during the term for the exercise of the pre-emptive right shall be offered by the governing body to the partners who exercised such right, for take-up and settlement in no more than fifteen days of the first round deadline. If several partners are interested in the offer, the stakes shall be allocated in proportion to each partner's existing stake in the company.
2. For fifteen days after the end of the above period, any shares not taken up may be awarded by the governing body to third parties.

Section 308. Suspension of the pre-emptive right

1. If deemed to be in the company's best interests, the general meeting, when approving the capital increase, may decide to wholly or partially waive partners' pre-emptive subscription right.
2. The pre-emptive right may be waived where the conditions listed below are met.
 - a) The directors prepare a report specifying the value of the stakes or shares in the company and justifying the proposal in detail, along with the price to be paid for the new stakes or shares. Such report shall also list the parties to whom the new holdings are to be attributed. In joint stock companies, an auditor other than the company auditor appointed by the Mercantile Registry for this purpose must prepare a second report, under his/her responsibility, on the fair value of the company shares, the theoretical value of the pre-emptive right partially or wholly waived and the soundness of the data contained in the directors' report.
 - b) The notice of the meeting includes the proposal to waive the pre-emptive right, the manner in which new stakes are to be created or new shares issued and information on partners' right to examine the report or reports referred to in the preceding paragraph at the registered office, as well as to request cost-free copies of such documents to be received in hand or forwarded to their address.
 - c) The par value of the new stakes or shares plus, as appropriate, the minimum premium, are in line with the fair value allocated to the shares in the directors' report, in limited liability companies, or the auditor's report in joint stock companies.

Section 309. Share subscription form

1. In joint stock companies, when shares are publicly offered for subscription, the offer shall be subject to the requirements laid down by the securities market regulations and shares shall be subscribed under cover of a document entitled 'share subscription form' that shall be issued in duplicate and contain at least the data listed below.
 - a) Company name and address, along with the data identifying its entry in the Mercantile Registry.
 - b) Subscriber name and surname or company name, and nationality and address.
 - c) Number of shares subscribed, the par value and series, where more than one is offered, and the type of issue.
 - d) The amount paid by the subscriber specifying, as appropriate, the portion of the par value already paid up and the sum corresponding to the issue premium.
 - e) The identity of the financial institution where the subscription will materialise and payment will be made of the sums shown on the form.
 - f) The date as of which the subscriber may claim the refund of any monies paid in the event of failure to register the formalisation of the capital increase in the Mercantile Registry.
 - g) The date and the subscriber's or his/her representative's signature, and the signature of the person receiving payment.
2. All subscribers shall have be entitled to receive a signed copy of the subscription form.

Section 310. *Incomplete take-up in limited liability companies*

1. When limited liability company capital increases are not fully paid up within the established deadline, the company capital shall be increased by the amount paid up, unless according to the terms of the decision the increase is to be declared null and void if not completely taken up.
2. If the capital increase is rendered null and void, the governing body shall refund the contributions made within one month of the payment deadline. In the event of cash contributions, the refunds may be made by deposit of the respective amounts in an account in the name of the contributors at a financial institution in the place where the registered office is located. The parties concerned shall be notified in writing of the date of payment and the financial institution where the sums are deposited.

Section 311. *Incomplete take-up in joint stock companies*

1. When joint stock company capital increases are not fully paid up within the payment deadline, the capital shall only be increased by the amount of the payments made, if the conditions of the issue explicitly envisage such possibility.
2. If the capital increase is rendered null and void, the governing body shall publish an announcement to this effect in the Official Journal of the Mercantile Registry and, within one month of the subscription deadline, shall refund all contributions made. In the event of cash contributions, the refunds must be paid to the contributors directly or by deposit of the respective amounts in their name at the Bank of Spain or the Official Deposit Fund.

Section 312. *Payment in capital increases*

Parties taking new stakes or subscribing new shares shall be bound to make payment upon subscription.

SUB-CHAPTER FOUR. REGISTRATION OF CAPITAL INCREASES

Section 313. *Directors' powers*

After the decision to increase capital is implemented, the directors must redraft the by-laws to reflect the new sum. They shall be understood to be empowered to do so by virtue of the aforementioned decision.

Section 314. *Formalisation of capital increases*

Documents formalising capital increases must specify the assets or rights contributed and, in the event of limited liability companies and unlisted joint stock companies, whether the increase involves the creation of new stakes or the issue of new shares, the identity of the persons to whom they are allocated, the numbers of the stakes or shares, and the governing body's confirmation that stake or share ownership has been recorded in the stakeholders' ledger or that registered share ownership has been entered in the ledger of registered shares.

Section 315. *Registration of capital increases*

1. The decision to increase capital and its implementation must be entered simultaneously in the Mercantile Registry.
2. Notwithstanding the provisions of the preceding paragraph, the decision to increase joint stock company capital may be entered in the Mercantile Registry prior to its formalisation when the two conditions listed below are met.
 - a) The capital increase agreement explicitly envisages subscription of less than the full offering.
 - b) The issue of new shares is authorised or verified by the National Securities Market Commission.

Section 316. *Right to refund*

1. If the documents substantiating implementation of the capital increase are not submitted for entry in the Mercantile Registry within six months of the beginning of the period for exercising pre-emptive rights, all stake takers or share subscribers may request cancellation of their obligation to make contributions and demand the refund of any made.
2. If the failure to present such documents for registration is attributable to the company, interest at the legal rate may also be claimed.

CHAPTER III

Capital reductions

SUB-CHAPTER ONE. TYPES OF REDUCTION

Section 317. Types of reduction

1. Capital reductions may seek to re-establish the balance between the company's capital and its equity, which may have declined as a result of losses, the creation or provisioning of legal or voluntary reserves or the refund of contributions. In joint stock companies, capital reductions may also aim to cancel the amounts due on outstanding contributions.
2. Reductions may be effected by lowering the par value of stakes or shares, or redeeming or grouping these equities.

Section 318. Decision to reduce share capital

1. Decisions to reduce share capital must be adopted by the general meeting and shall be subject to approval by the majority laid down for amending the by-laws.
2. The general meeting's decision shall specify at least the amount of the reduction, its purpose, how it shall be implemented and the term for its implementation. It shall also indicate the amount to be paid, if any, to partners.

Section 319. Public disclosure of the decision to reduce capital

The decision to reduce joint stock company capital must be published in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the province where the company has its registered office.

SUB-CHAPTER TWO. REDUCTION TO REFLECT LOSSES

Section 320. Principle of equal treatment

When a reduction seeks to re-establish the balance between a company's capital and its equity, adversely impacted by losses, it must affect all stakes or shares in equal proportion to their par value, while respecting any privileges in this regard that may have been granted to certain stakes or shares by law or the by-laws.

Section 321. Prohibitions

Capital reductions resulting from losses may not under any circumstance entail refunds to partners or, in the case of joint stock companies, the cancellation of sums owed on outstanding contributions.

Section 322. Condition for non-admissibility of capital reductions

1. Limited liability companies may not reduce their capital to reflect losses when they have any manner of reserves.
2. Joint stock companies may not reduce their capital to reflect losses whilst the company has any manner of voluntary reserves or if the legal reserve, after the reduction, is greater than ten per cent of the capital.

Section 323. Balance sheet

1. The balance sheet showing the losses to be reflected in the capital reduction shall be formulated for a date no more than six months prior to the respective decision, be verified by the company's auditor and approved by the general meeting. When the company's financial statements are not subject to mandatory audit, the auditor shall be appointed by the directors.
2. The balance sheet and audit report must be attached to the public document formalising the decision to reduce capital.

Section 324. Public disclosure of the decision to reduce capital

The general meeting's decision to reduce capital as a reflection of losses and the public announcement thereof must explicitly state the purpose of such reduction.

Section 325. Application of surplus

In joint stock companies, any surplus in assets over liabilities resulting from the capital reduction to reflect losses must be used to provision the legal reserve, which may not as a result exceed one-tenth of the reduced share capital.

Section 326. Condition for distribution of dividends

Companies that have reduced their capital may not distribute dividends until their legal reserve amounts to ten per cent of their capital.

Section 327. Mandatory reduction

Joint stock companies shall be bound to reduce their capital when their losses lower their equity to under two-thirds of their capital and no recovery in equity is forthcoming for one full financial year.

SUB-CHAPTER THREE. REDUCTION TO PROVISION THE LEGAL RESERVE

Section 328. Reduction to provision the legal reserve

The provisions of Sections 322 to 326 shall apply to the constitution of or additions to the legal reserve.

SUB-CHAPTER FOUR. REDUCTION TO REFUND CONTRIBUTIONS

Section 329. Decision to reduce capital. Pre-requisites

When not all stakes or shares are equally impacted by a decision to reduce capital with a view to refunding contributions, in limited liability companies the individual consent of the stakeholders affected, and in joint stock companies the agreement of a majority of the shareholders affected, reached in the manner defined in Section 293, shall be requisite to such decision.

Section 330. Pro rata rule

Partners' contributions must be refunded in proportion to the amount paid for the stakes or shares, unless other arrangements are unanimously approved.

SUB-CHAPTER FIVE. CREDITOR PROTECTION

Part 1. Protection for limited liability company creditors

Section 331. Joint and several liability of limited liability company partners

1. Shareholders whose contributions have been refunded in full or in part shall be held jointly and severally liable to one another and the company for the payment of company debt acquired prior to the date on which the reduction became effective in respect of third parties.
2. The liability of each shareholder shall be limited to the amount refunded thereto.
3. Shareholder liability shall lapse five years after the date when the reduction became effective in respect of third parties.
4. The Mercantile Registry entry recording the implementation of the decision to reduce capital shall specify the identity of the persons whose contributions were refunded in full or in part or, as appropriate, the governing body's statement to the effect that the reserve referred to below has been created.

Section 332. Exception to joint and several liability

1. If the decision to reduce capital to refund all or part of the value of the contributions is attendant upon the use of profits or unrestricted reserves to provision a reserve for an amount equal to the sums refunded, partner joint and several liability shall not be in order.
2. Such reserve shall remain restricted for a period of five years from publication of the capital reduction in the Official Journal of the Mercantile Registry, unless all company debt acquired before the date on which the reduction became effective in respect of third parties is repaid prior thereto.

Section 333. Inclusion in the by-laws of creditors' right to challenge reductions

1. In limited liability companies, the by-laws may provide that the implementation of decisions to reduce capital to refund partners' contributions shall be subject to a three-month delay counting from the date of the notice served on creditors.
2. Such notice shall be served upon each creditor individually. If one or more creditors' address is unknown, announcements shall be published in the Official Journal of the Mercantile Registry and in a daily newspaper widely circulated in the province where the company is located.

3. During said delay, ordinary creditors may challenge the implementation of the decision to reduce capital if their receivables are not honoured or if the company fails to provide security.
4. Refunds paid prior to end of the three-month period or despite challenges lodged by any creditor in due time and manner shall be null and void.
5. Partners' contributions must be refunded in proportion to the stakes held, unless other arrangements are unanimously approved.

Part 2. Protection for joint stock company creditors

Section 334. Joint stock company creditors' to challenge reduction

1. Joint stock company creditors whose receivables from the company are dated prior to the last announcement of the decision to reduce capital and mature on a date subsequent thereto shall be entitled to challenge the reduction until such time as the debt is secured.
2. Creditors whose receivables are sufficiently secured shall not be so entitled.

Section 335. Exception to the right to challenge reductions

Creditors may not challenge capital reductions when any of the following ensue.

- a) When the sole aim of the capital reduction is to re-establish the balance between the company's capital and its equity, reduced as a result of losses.
- b) When the reduction aims to create or provision the legal reserve.
- c) When the reduction is charged to unrestricted profits or reserves by redeeming shares acquired free of charge by the company. In this case, the amount of the par value of the shares redeemed or of the reduction in their par value must be posted to a reserve whose drawdown shall be subject to the same requirements as set forth for reducing share capital.

Section 336. Term for exercising the right to challenge capital reductions

The right to challenge capital reductions must be exercised within one month of the date of the last announcement of the respective decision.

Section 337. Consequences of challenge

If the right to challenge capital reductions is exercised, the share capital may not be reduced until the company secures its debt to the satisfaction of the creditor or notifies such creditor of the creation of a joint and several performance bond at a financial institution with the capacity to secure the sum of the debt held by the creditor through the date when entitlement to claim settlement of such debt lapses.

SUB-CHAPTER SIX. REDUCTION THROUGH ACQUISITION OF OWN STAKES OR SHARES FOR REDEMPTION

Section 338. Requirements

1. When capital is reduced by purchase of the company's own stakes or shares for subsequent redemption, the buyback offer shall be made to all partners.
2. If the decision to reduce capital affects only one class of shares, it shall be contingent upon the separate consent of the majority of the shares in the class affected, adopted in the manner defined in [Section 293](#).

Section 339. Offer to acquire stakes or shares

1. In limited liability companies, the offer shall be sent to all partners by registered post with acknowledgement of receipt.
 2. In joint stock companies, the buyback proposal must be published for at least one month in the Official Journal of the Mercantile Registry and in a daily newspaper widely circulated in the province where the company has its registered office. Such announcement shall include all the information reasonably required by shareholders wishing to sell their shares and, as appropriate, shall specify the outcome if the number of shares offered fails to reach the amount established in the decision.
- When all shares are registered, the by-laws may provide for notifying shareholders of the offer by registered post with acknowledgement of receipt in lieu of publishing the respective announcement.

Section 340. Acceptance

1. The period for accepting the offer shall be counted from the date on which the notification was sent.

2. If more stakes or shares are offered for sale than established by the company for repurchase, the number offered by each partner shall be reduced in proportion to their respective holdings.
3. Unless otherwise provided in the decision of the general meeting or buyback proposal, when fewer stakes or shares are offered for sale than established, the capital shall be understood to be reduced by the amount of holdings repurchased.

Section 341. Founders' bonds

1. When capital is reduced to redeem shares, founders' bonds may be allocated to the holders of redeemed shares, in which case the decision to reduce capital shall specify the rights attached to such bonds.
2. Founders' bonds shall not carry voting rights.

Section 342. Mandatory redemption

Stakes acquired by the company must be redeemed within three years of the date of the repurchase offer. Shares acquired by the company must be redeemed within one month of the buyback offer deadline.

CHAPTER IV

Simultaneous capital reduction and increase

Section 343. Simultaneous capital reduction and increase

1. Decisions to reduce the share capital to zero or to below the legal minimum may only be adopted when a simultaneous decision is adopted to convert the company or increase its capital to an amount equal or above such minimum.
2. In any event, all partners' pre-emptive rights to take stakes or subscribe shares must be honoured.

Section 344. Conditioned effectiveness of decision to reduce capital

In the event of simultaneous capital reductions and increases, the effectiveness of the decision on capital reduction shall be subject, as appropriate, to implementation of the decision on capital increase.

Section 345. Simultaneous registration

The decision to reduce capital may not be entered in the Mercantile Registry unless submitted for registration simultaneously with the decision to convert the company or the decision and implementation thereof to increase its capital.

TITLE IX

Partner exit and exclusion

CHAPTER I

Exit

Section 346. Legal causes for exit

- Partners not voting in favour of the respective decision, including non-voting partners, shall be entitled to exit the company in any of the following circumstances:
 - supersession of the corporate purpose
 - extension of company term
 - company reactivation
 - creation, amendment or early cancellation of ancillary commitments, unless otherwise provided in the by-laws.
- In limited liability companies, partners not voting in favour of amendment of the arrangements for the transfer of stakes shall also be entitled to exit the company.
- In company conversions and relocations of the registered office abroad, partners shall be entitled to exit rights in the terms laid down in Act 3/2009 of 3 April on structural changes in companies.

Section 347. Causes for exit in the by-laws

- The by-laws may establish causes for exit other than provided in this act. In such event, they shall determine the procedure for accrediting existence of the cause and for exercising exit rights as well as the term for doing so.
- Amendment or removal of the provisions in the by-laws on the causes for exit shall be subject to the unanimous consent of all the partners.

Section 348. Exercise of the exit right

- Decisions giving rise to exit rights shall be published in the Official Journal of the Mercantile Registry. In limited liability companies and joint stock companies with registered shares only, in lieu of publication, the directors may serve notice on all partners not voting in favour of the decision.
- Exit rights shall be exercised in writing within one month of publication of the decision or receipt of the notification.

Section 349. Registration of the decision

The public document formalising decisions that generate exit rights may not be entered in the Mercantile Registry unless it, or a subsequent instrument, contains confirmation by the directors that no partner has exercised his/her exit rights within the established deadline, or that the company, acting on general meeting authorisation, has acquired the exiting partners' stakes or shares or reduced its capital.

CHAPTER II

Exclusion

Section 350. Legal causes for exclusion

Limited liability companies may exclude partners who voluntarily fail to honour their ancillary commitments, or managing partners who breach the prohibition on competition or are ordered in an unappealable court ruling to indemnify the company for damages deriving from acts that run counter to this act or the by-laws or from the absence of due diligence.

Section 351. Causes for exclusion of partners in the by-laws

In limited liability companies causes for exclusion may be added to the by-laws, or any such clauses included therein may be amended or removed, subject to the unanimous consent of all the partners.

Section 352. Exclusion procedure

- A decision of the general meeting shall be requisite to exclusion. The identity of partners who voted in favour of the decision shall be included in the minutes of the general meeting or in an appendix thereto.

2. With the exception of managing partners ordered by the court to indemnify the company, the exclusion of a partner with a holding greater than or equal to twenty-five per cent of the capital who disagrees with the decision adopted by the general meeting shall be subject not only to such decision, but also to an unappealable court ruling.
3. When the company fails to institute proceedings for exclusion within one month of the date of adoption of the respective decision, any partner who voted in favour of such decision shall be legally capacitated to do so in its name.

CHAPTER III

Rules common to partner exit and exclusion

Section 353. Valuation of the partner's stakes or shares

1. In the absence of an agreement between the company and the partner on the fair value of stakes or shares, the identity of their appraisers, or the procedure to be followed for their valuation, these holdings shall be valued by an auditor other than the company's auditor. Such expert shall be designated by the mercantile registrar serving the place where the company's registered office is located, at the behest of the company or of any of the partners owning the stakes or shares to be appraised.
2. Where shares are listed on an official secondary market, the value shall be the average quotation price for the last quarter.

Section 354. Auditor's report

1. The auditor may obtain any information or documents deemed useful from the company and shall proceed to any verifications regarded to be necessary for the performance of his/her duty.
2. The auditor's report shall be issued no later than two months after appointment and appended to a notarised notification served upon the company and all partners concerned. A copy shall also be filed in the Mercantile Registry.

Section 355. Auditor's remuneration

1. The auditor's remuneration shall be paid by the company.
2. In the event of exclusion, however, the company may deduct the sum found by applying the percentage of the partner's capital holding to the fees paid from the amount owed as reimbursement.

Section 356. Reimbursement

1. Within the two months of receipt of the valuation, the partners concerned shall be entitled to obtain the fair value of their partnership stakes or shares at the registered office as consideration for the price at which they are acquired or redeemed by the company.
2. By the aforementioned deadline, the directors shall deposit the respective amount in a financial institution engaging in business in the municipality where the registered office is located, in the name of the parties concerned.
3. Notwithstanding the provisions of the preceding paragraphs, whenever corporate enterprise creditors are acknowledged rights of challenge, partners may not be reimbursed until three months after the date that creditors are individually notified of the reduction or that the respective announcement is published in the Official Journal of the Mercantile Registry and one of the daily newspapers most widely circulated in the place where the registered office is located, and then only if no ordinary creditors have exercised such right. Otherwise, the provisions of Title VIII, Chapter III, Sub-chapter 5 shall apply.

Section 357. Protection of creditors of limited liability companies

Partners of limited liability companies whose redeemed stakes are reimbursed shall be subject to the provisions on liability for corporate debts established for capital reductions via refund of contributions.

Section 358. Public instruments formalising capital reductions

1. Unless the general meeting adopting the respective decision takes it upon itself to authorise acquisition by the company of stakes or shares from the partners concerned and order reimbursement thereof or deposit the sum involved, the directors, with no need for a specific decision from the general meeting, shall immediately formalise the capital reduction in a public instrument, specifying the stakes or shares redeemed, the date of reimbursement or deposit, and the amount by which the capital is reduced.
2. Where as a result of the reduction the capital amounts to less than the legal minimum, the provisions of this act on winding-up shall apply.

Section 359. Public instrument on acquisition

When the company acquires stakes or shares from its partners, after the price is paid or the respective sums deposited, the directors, with no need for a specific decision by the general meeting, shall formalise a public instrument on acquisition of the stakes or shares, for which the consent of excluded or exiting partners shall not be required. Such instrument shall specify the stakes or shares acquired, the identity of the partner or partners concerned, the cause for exit or exclusion, and the date of payment or deposit.

TITLE X

Winding-up and liquidation

CHAPTER I

Winding-up

SUB-CHAPTER ONE. WINDING-UP AS PER THE LAW

Section 360. Winding-up as per the law

1. Corporate enterprises shall be wound up as per the law in any of the circumstances listed below.
 - a) Expiry of the term of duration established in the by-laws, unless where explicitly renewed and where the renewal is registered in the Mercantile Registry prior to the expiry date.
 - b) Lapse of one year after adoption of the decision to reduce capital to below the legal minimum in compliance with the legislation, where no entry has been recorded in the Mercantile Registry on company conversion or wind-up or reflecting an increase in its capital to a sum greater than or equal to the legal minimum.

Where no entry is recorded on company conversion or wind-up or on an increase in its capital within one year, the directors shall answer personally, jointly and severally to one another and the company for corporate debts.
2. The registrar, *ex officio* or at the behest of any party concerned, shall include an entry on the company's page in the Registry reflecting its winding-up as per the law.

Section 361. Winding-up and insolvency

1. The institution of insolvency proceedings in respect of a corporate enterprise shall not, *per se*, constitute a cause for winding-up.
2. The initiation of the liquidation phase in insolvency proceedings shall entail company winding-up as per the law. In such event, the insolvency judge shall take note of the existence of winding-up proceedings in the ruling on the initiation of liquidation.

SUB-CHAPTER TWO. WINDING-UP FOR CAUSES PROVIDED BY LAW OR IN THE BY-LAWS

Section 362. Winding-up for causes provided by law or in the by-laws

Corporate enterprises shall be wound up due to the existence of causes provided for by law or in the by-laws and duly identified in a decision of the general meeting or a court ruling.

Section 363. Causes for winding-up

1. A corporate enterprise shall be wound up:
 - a) upon termination of the mission that constitutes its corporate purpose
 - b) where achievement of the corporate purpose is manifestly impossible
 - c) due to governing body standstill, rendering it impossible to conduct business
 - d) due to losses that reduce its equity to an amount lower than one half of the capital, except where the capital is increased or decreased as required, and provided application for insolvency proceedings is not in order
 - e) due to a capital reduction to a sum below the legal minimum, except as in compliance with a legal provision
 - f) because the par value of non-voting stakes or shares exceeds one half of the paid-up capital and the due proportion is not recovered within two years
 - g) for any other cause established in the by-laws.
2. Limited liability companies shall also be wound-up where they fail to conduct the business that comprises their corporate purpose for three consecutive years.
3. Limited partnerships shall also be wound up due to the death, dismissal or incapacity of all their general partners, or commencement of liquidation in insolvency proceedings, unless a new general partner joins the company or the company is converted into another type of enterprise within six months and the by-laws amended accordingly.

Section 364. Winding-up decisions

In any of the circumstances described in the preceding section, winding-up of the company shall be subject to a decision adopted by the general meeting. In limited liability companies, such decision shall require the plurality vote and quorum provided in Section 198, and in joint stock companies, the majority votes laid down in Sections 193 and 201.

Section 365. Obligation to convene the general meeting

1. The directors shall convene the general meeting within two months to adopt the decision on winding-up or, in the event of company insolvency, to institute insolvency proceedings. Any partner may call upon the directors to convene a general meeting if, in his/her opinion, a cause for winding-up exists or the company is insolvent.
2. The general meeting may adopt the decision on winding-up or, if included on the agenda, the decision or decisions necessary to remedy the cause.

Section 366. Winding-up under court ruling

1. If the general meeting is not convened, is not held, or none of the decisions described in the preceding section are adopted, any party concerned may apply to the judge of the commercial court with jurisdiction in the place where the company's registered office is located to wind the company up. The action for winding-up shall be brought against the company.
2. The directors shall be bound to apply to the court for company winding-up when the company decides against winding-up or its decision cannot be implemented. The application shall be submitted within two months of the date scheduled for the general meeting if not held, or from the day of the meeting, when the decision was against winding-up or no decision was adopted.

Section 367. Joint liability of the directors

1. Directors who fail to convene the mandatory general meeting within two months to adopt the decision on winding-up, as appropriate, shall answer jointly and severally for corporate obligations incurred after the legal cause for winding-up is forthcoming. Directors who fail to apply for a court ruling to wind up the company or, as appropriate, to institute insolvency proceedings within two months of the date scheduled for the meeting, when it was not held, or from the day of the meeting, when the winding-up proposal was defeated, shall be equally liable.
2. In such cases, corporate obligations constituting the object of claims shall be regarded to be subsequent to the legal cause for winding up the company unless the directors can substantiate that they are dated prior thereto.

SUB-CHAPTER THREE. WINDING-UP BY MERE DECISION OF THE GENERAL MEETING

Section 368. Winding-up by mere decision of the general meeting

A corporate enterprise may be wound up by mere decision of the general meeting adopted pursuant to the requirements established for amendment to the by-laws.

SUB-CHAPTER FOUR. COMMON PROVISIONS

Section 369. Public disclosure of winding-up

Winding-up of corporate enterprises shall be registered in the Mercantile Registry and published in the Official Journal of the Mercantile Registry and, where joint stock companies are concerned, in one of daily newspapers most widely circulated in the place where the registered office is located.

Section 370. Reactivation of a wound-up company

1. The general meeting may agree to restore a wound-up company to active life provided the cause for which it was wound up is remedied, book equity is not lower than company capital and no surplus after liquidation has been paid to partners. Reactivation decisions may not be made where winding-up was instituted as per the law.
2. The decision on reactivation shall be adopted pursuant to the requirements established for amendment to the by-laws.
3. Partners not voting in favour of reactivation shall be entitled to exit the company.
4. Corporate creditors may challenge the decision on reactivation under the same conditions and with the same consequences as described in this act for capital reductions.

CHAPTER II

Liquidation

SUB-CHAPTER ONE. GENERAL PROVISIONS

Section 371. Company in liquidation

1. Winding-up initiates the liquidation period.
2. Wound up companies shall retain their legal personality during the liquidation proceedings and shall add the expression "in liquidation" to their denomination throughout that period.
3. During the liquidation period, the provisions in the by-laws on convening and holding general meetings shall be observed, and the liquidators shall report thereto on liquidation progress to determine the most suitable action for the common interest. All other provisions in this act that are not incompatible with those established in this chapter shall continue to apply to the company.

Section 372. Special nature of liquidation in insolvency proceedings

Where liquidation is instituted in insolvency proceedings, it shall be conducted pursuant to the provisions of Title V, Chapter II of the Insolvency Act.

Section 373. Government intervention in joint stock companies

1. When the Government, at the behest either of shareholders representing at least one-fifth of the share capital or of company personnel deems continuation of the joint stock company to be in the interest of the national economy or socially beneficial, it may so rule by royal decree, specifying how the company is to subsist and the consideration payable to shareholders deprived of their right.
2. In any event, the royal decree shall reserve shareholders, assembled in a general meeting, the right to extend the life of the company and continue operations, provided the decision is adopted within three months of publication of the royal decree.

SUB-CHAPTER TWO. LIQUIDATORS

Section 374. Dismissal of directors

1. Upon institution of liquidation proceedings, the directors shall be dismissed from their positions and their powers to represent the company shall be terminated.
2. Former directors, if so required, shall cooperate in liquidation proceedings.

Section 375. Liquidators

1. Upon institution of liquidation proceedings, the liquidators shall assume the duties established in this act and ensure the integrity of corporate equity through conclusion of liquidation and distribution of any liquidation dividend among partners.
2. The rules established for directors that are not incompatible with the provisions of this chapter shall apply to liquidators.

Section 376. Appointment of liquidators

1. In limited liability companies, the liquidators shall be the company's directors at the time of winding-up, unless as otherwise stipulated in the by-laws or by the general meeting in its winding-up decision.
2. In joint stock companies, when no rules for the appointment of liquidators are laid down in the by-laws, they shall be appointed by the general meeting. There must be an odd number of liquidators at all times.
3. Where winding-up is a consequence of the institution of liquidation for companies engaged in insolvency proceedings, no liquidators shall be appointed.

Section 377. Filling of vacancies

1. In the event of death or dismissal of the sole liquidator, all joint and several liquidators, any of the liquidators acting jointly, or the majority of liquidators acting collegiately, and in the absence of deputies, any partner or party with a legitimate interest may apply to the judge of the commercial court with jurisdiction in the place where the company's registered office is located to convene the general meeting for the appointment of liquidators. Any of the remaining liquidators may also convene the general meeting for this sole purpose.

2. When the meeting convened pursuant to the preceding paragraph fails to appoint liquidators, any party concerned may ask the judge of the commercial court with jurisdiction in the place where the company's registered office is located to appoint them.

Section 378. Term of office

Unless otherwise provided in the by-laws, liquidators shall be appointed for an indefinite tenure.

Section 379. Representation

1. Unless otherwise provided in the by-laws, each liquidator shall represent the company individually.
2. Liquidators' power of representation shall extend to all operations necessary for company liquidation.
3. Liquidators may appear in court on the company's behalf and agree to transactions and arbitration when in the corporate interest.

Section 380. Dismissal of liquidators

1. Liquidators not appointed by the court may be dismissed by the general meeting, even where no item in this regard is included on the agenda. Where liquidators are designated in the corporate by-laws, the decision shall be adopted pursuant to the requirements respecting the majority vote and, in the case of joint stock companies, the quorum, established for amendment to the by-laws. Joint stock company liquidators may also be dismissed by court decision, for just cause, at the behest of shareholders representing one-twentieth of the share capital.
2. Liquidators appointed by the judge shall be dismissed thereby, at the duly reasoned behest of anyone substantiating a legitimate interest.

Section 381. Comptrollers

1. In the event of liquidation of joint stock companies, shareholders representing one-twentieth of the share capital may apply to the judge of the commercial court with jurisdiction in the place where the company's registered office is located for designation of a comptroller to supervise liquidation operations.
2. If the company has issued bonds that are in circulation, the bondholders' syndicate may also appoint a comptroller.

Section 382. Government auditing in liquidation of joint stock companies

In joint stock companies, when substantial assets are to be liquidated and distributed, a large number of shareholders or bondholders are involved, or where otherwise warranted by the importance of the liquidation proceedings, the Government may appoint an auditor to control and supervise company liquidation, ensuring compliance with the laws and corporate by-laws.

SUB-CHAPTER THREE. LIQUIDATION OPERATIONS

Section 383. Initial duty of the liquidators

Within three months of the institution of liquidation proceedings, the liquidators shall prepare a company inventory and balance sheet as of the winding-up date.

Section 384. Corporate operations

The liquidators shall finalise any operations outstanding and conduct new transactions as necessary for company liquidation.

Section 385. Collection of receivables and payment of corporate debts

1. It shall be incumbent upon liquidators to receive corporate credits and pay corporate debts.
2. In joint stock companies and limited partnerships, the liquidators shall receive the sums outstanding on shares agreed to upon the initiation of liquidation proceedings. They may also call for other amounts outstanding, completing the par value of the shares as required to pay creditors.

Section 386. Duties to keep and custody accounts

The liquidators shall keep company accounts and custody its books, documentation and correspondence.

Section 387. Duty to alienate corporate assets

1. The liquidators shall alienate corporate assets.
2. In joint stock companies, real estate shall necessarily be sold at public auction.

Section 388. Duty to report to partners

1. The liquidators shall periodically notify partners and creditors of liquidation progress by the means regarded to be most effective in each case.
2. If liquidation lasts beyond the deadline established for the approval of the financial statements, in the first six months of each financial year the liquidators shall submit an annual statement of accounts and a detailed report with an accurate description of the company's situation and liquidation progress to the general meeting. Such statement shall also be published in the Official Journal of the Mercantile Registry.

Section 389. Court ruling to replace liquidators in unduly long liquidation proceedings

1. If, three years after the institution of liquidation proceedings, the final liquidation balance sheet has not yet been submitted to the general meeting for approval, any partner or person with a legitimate interest may ask the judge of the commercial court with jurisdiction in the place where the company's registered office is located to dismiss the liquidators.
2. The judge, after hearing the liquidators, shall order their dismissal unless the delay is justified, appoint such new liquidator or liquidators as he/she deems suitable, and determine their terms of reference.
3. The ruling on dismissal and appointment of liquidators shall not be subject to appeal.

Section 390. Final liquidation balance sheet

1. Upon completion of the liquidation proceedings, the liquidators shall submit a final balance sheet, a complete report on the operations performed and a proposal for distribution of the remaining assets among partners to the general meeting for approval.
2. The decision approving the balance sheet may be challenged by the partners not voting in favour thereof within two months of the date of its adoption. When accepting the challenge, the judge shall proceed *ex officio* to order entry of a caveat in this respect in the Mercantile Registry.

SUB-CHAPTER FOUR. DISTRIBUTION OF CORPORATE EQUITY

Section 391. Distribution of corporate equity

1. Any surplus corporate assets resulting from liquidation shall be distributed pursuant to the rules established in the by-laws or, in the absence thereof, established by the general meeting.
2. The liquidators shall not pay the partners their liquidation dividend until all creditors have been paid or the sum of the company debts is deposited at a financial institution in the place where the registered office is located.

Section 392. Right to the liquidation dividend

1. Unless otherwise provided in the corporate by-laws, partners' liquidation dividends shall be proportional to their participation in company capital.
2. In joint stock companies and limited partnerships, if all shares were not paid up in the same proportion, shareholders who paid up the highest amounts shall first be paid the surplus over the contribution on which they paid up the least, after which the remainder shall be distributed among shareholders in proportion to the par value of their shares.

Section 393. Right to payment of the liquidation dividend in cash or in kind

1. Unless the partners unanimously decide otherwise, they shall be entitled to receive their liquidation dividend in cash.
2. The by-laws may establish the right of some or any of the partners to receive their liquidation dividend via restitution of non-cash contributions or the allocation of other corporate assets, if any, which shall be appraised at their actual value at the time of approval of the proposed distribution of the surplus assets among partners. In such case, the liquidators shall first alienate all other corporate assets and if, after the creditors are paid, the surplus suffices to pay all partners their dividend, partners entitled to receive it in kind shall first pay all other partners the difference in cash.

Section 394. Payment of the liquidation dividend

1. If, after the deadline for challenging the final liquidation balance sheet lapses, no claims are brought or the ruling dismissing any challenge thereto is final, the partners shall be paid their liquidation dividend. Prior thereto, payment of amounts owed but not yet payable shall be secured.
2. Liquidation dividends that are not claimed within ninety days of the decision on payment shall be deposited at the Official Deposit Fund for drawdown by their legitimate owners.

SUB-CHAPTER FIVE. COMPANY TERMINATION

Section 395. Public instrument on company termination

1. The liquidators shall formalise the public instrument on company termination, which shall contain statements to the effects listed below.
 - a) The deadline for challenging the resolution on approval of the final balance sheet has expired and no challenge has been made or the ruling on dismissal thereof is final.
 - b) Creditors have been paid or the amounts owed have been deposited.
 - c) Partners have been paid their liquidation dividend or the amount thereof has been deposited.
2. The final liquidation balance sheet and the list of partners shall be included in the public instrument, specifying their identity and the sum of the liquidation dividend to which each is entitled.

Section 396. Cancellation of registrations

1. The public instrument on termination shall be registered in the Mercantile Registry.
2. The final liquidation balance sheet shall be transcribed in the records and the identity of partners and the sum of the liquidation dividend to which each one is entitled shall be specified. A note shall be added confirming that all entries relating to the company have been cancelled.
3. The liquidators shall deposit all the terminated company's books and documents in the Mercantile Registry.

Section 397. Liquidator liability after company cancellation

1. The liquidators of limited liability companies shall be liable to partners and creditors for damages incurred by the latter due to *mens rea* or negligence in the performance of the liquidator's duties.
2. The liquidators of joint stock companies shall be liable to shareholders and creditors for any damage incurred by the latter due to *mens rea* or negligence in the performance of the liquidator's duties.
3. Claims involving such liability shall be heard in ordinary proceedings.

SUB-CHAPTER SIX. EX POST FACTO ASSETS AND LIABILITIES

Section 398. Ex post facto assets

1. If corporate assets materialise after cancellation of entries on the company, the liquidators shall allocate any additional liquidation dividend to the former partners, after converting the assets into cash whenever necessary.
2. If the additional liquidation dividends are not allocated to the former partners six months after the liquidators were required to do so as provided in the preceding paragraph, or in the absence of liquidators, any party concerned may ask the judge with jurisdiction in the place where the last registered office was located to appoint a substitute to perform the respective duties.

Section 399. Ex post facto liabilities

1. Former partners shall answer jointly and severally for unpaid corporate debts up to the sum received from the liquidation dividends.
2. Partner liability shall be understood without prejudice to liquidator liability.

Section 400. Formalisation of legal acts after company cancellation

1. After cancellation of company registration, or whenever necessary, the former liquidators may formalise legal acts in the name of the terminated company for the intents and purposes of formal requirements in respect of legal acts subsequent to cancellation of company registration.
2. In the absence of liquidators, any party concerned may apply to the judge with jurisdiction in the place where the company's former registered office was located for such formalisation.

TITLE XI

Bonds

CHAPTER I

Bond issues

Section 401. Issuing company

1. Joint stock companies and limited partnerships may issue numbered series of bonds and other securities that acknowledge or create a debt.
2. Unless otherwise provided for in special laws, securities acknowledging or creating debt issued by joint stock companies shall be subject to the provisions on bonds under the present title.

Section 402. Legal prohibition

Limited liability companies may not issue bonds or other negotiable securities grouped by issues nor secure such operations.

Section 403. Conditions for bond issues

Requisite to the issue of bonds are the creation of a defence association or bondholder syndicate and the appointment by the company of its representative, known as the trustee, who must be in attendance during the formalisation of the issue agreement on behalf of the future bondholders.

Section 404. Security

1. The entire issue may be secured in favour of present and future holders of the securities, in particular as described below.
 - a) With a mortgage on chattel or real property.
 - b) With a pledge on securities, to be deposited at a financial institution.
 - c) With a non-possessory pledge.
 - d) With national, regional, provincial or local government backing.
 - e) With a joint and several bank guarantee.
 - f) With a joint and several guarantee from a mutual surety company registered at the Ministry of the Economy and Finance's special registry.
2. In addition to the abovementioned guarantees, bondholders may redeem their credits against the debtor institution's other assets, rights and securities.

Section 405. Ceiling amount

1. The total amount issued may not exceed the amount of paid up share capital plus reserves appearing in the last approved balance sheet or any accounts regularising or updating the balance sheet accepted by the Ministry of the Economy and Finance.
2. The aforementioned limit shall not be applied where bond issues are secured by mortgage, pledged securities, government endorsement or a joint and several guarantee from a financial institution.
3. Where the bond issue is secured by a joint and several guarantee from a mutual surety company, the limit and other conditions thereof shall be determined by the guarantee capacity of the company at the time the guarantee is issued, pursuant to the company's specific regulations.

Section 406. Powers attributed to the general meeting

Issue terms and conditions, as well as the company's capacity to formalise each bond issue, when not regulated by law, shall be subject to the clauses contained in the by-laws and the decisions adopted by the general meeting, subject to compliance with the quorum requirement laid down in Section 194 and the majority described in the second paragraph of section 201.

Section 407. Public instrument and registration

1. All bond issues shall be recorded in a public instrument, containing the following data:
 - a) name, capital, purpose and address of issuing company
 - b) conditions of the issue and the date of initiation and duration of the subscription period
 - c) bond par value, interest, term to maturity and premiums and lots, if any

- d) total amount and series of the securities to be released on the market
 - e) issue security
 - f) basic rules that shall govern the legal relationship between the company and the syndicate and the characteristics of the latter.
2. Bonds shall not be issued until the respective public instrument has been entered in the stipulated registries.

Section 408. Announcement

1. Prior to the bond subscription or release on the market, the issue must be announced by the company in the Official Journal of the Mercantile Registry, specifying at least the information listed in the preceding paragraph and the name of the trustee.
2. Directors of companies that fail to comply with the provisions of the preceding paragraph shall be held jointly and severally liable by the bondholders for any damages incurred as a result of error or negligence.

Section 409. Subscription

Bond subscription implies the full ratification of the issue agreement by each bondholder and his/her membership in the syndicate.

Section 410. Preference system

1. Preceding issues shall enjoy preference over subsequent issues with regard to the issuer's unencumbered equity, irrespective of subsequent variations in share capital.
2. The rights of bondholders with regard to other company creditors shall be governed by the general rules of preference and, as appropriate, by the provisions of the Insolvency Act.

Section 411. Reduction of capital and reserves

1. Unless the issue is secured by a mortgage, pledged securities, government endorsement or a joint and several guarantee from a financial institution, the consent of the bondholders' syndicate shall be required for reductions in share capital or company reserves that entail a reduction in the initial proportion between the total thereof and the amount of unredeemed bonds.
2. Bondholders syndicate consent shall not be required for simultaneous capital increases charged to balance sheet regularisation and updating accounts or to reserves.

CHAPTER II

Proof of bond ownership

Section 412. Proof of bond ownership

1. Bonds may be represented by certificates or book entries.
2. When represented by certificates, bonds may be registered or bearer securities and shall be enforceable and transferable subject to the provisions of the Commercial Code and applicable laws.
3. When represented by book entries bonds shall be governed by the securities market regulations.

Section 413. Bond certificate

Bond certificates must all be equal and include:

- a) specific designation
- b) the characteristics of the issuing entity and, specifically, the place where it shall make payment
- c) the date of the public instrument on the bond issue, the appointment of the notary public and respective record
- d) the amount of the issue in euros
- e) the number, par value, interest, premiums and lots, if any
- f) issue security
- g) the signature of at least one director.

CHAPTER III

Convertible bonds

Section 414. Issue requirements

1. Companies may issue convertible bonds, provided the general meeting determines conversion conditions and ratios and adopts a decision to increase the capital by the required amount.
2. Prior to convening the general meeting, the directors must draft a report explaining conversion conditions and ratios, to be submitted together with a report drafted by an auditor other than the company's own auditor, appointed for this purpose by the Mercantile Registry.

Section 415. Legal prohibitions

1. Convertible bonds may not be issued for an amount under their par value.
2. Convertible bonds may not be convertible into shares when their par value is below the share par value.

Section 416. Pre-emptive right

1. Company shareholders shall have a pre-emptive right to subscribe convertible bonds.
2. The pre-emptive right to subscribe convertible bonds shall be governed by the provisions of Sections 304 to 306.

Section 417. Waiver of pre-emptive right of subscription

1. When deciding to issue convertible bonds, the general meeting may, subject to the requirements for amendment of the by-laws, waive shareholders' pre-emptive right in full or in part where deemed to be in the company's best interests.
2. Waiver of the pre-emptive right shall be subject to meeting the requirements set out below.
 - a) The directors' report justifies the proposal in detail.
 - b) The auditor's report contains a technical opinion on the soundness of the data included in the directors' report and the suitability of the conversion rate and, as appropriate, any adjustment formulae designed to offset the possible dilution of shareholders' financial stakes.
 - c) The notice of the general meeting mentions the proposal for suspension of the pre-emptive right.

Section 418. Conversion

1. Unless otherwise agreed by the general meeting when deciding to issue bonds, the bondholders may request conversion at any time. In this case, in the first month of each half of the year, the directors shall issue the shares belonging to the bondholders who requested conversion during the half-year previous and in the following month shall register the resulting capital increase in the Mercantile Registry.
2. The general meeting must always specify the deadline for conversion.

Whenever possible, where capital is increased and charged to reserves or reduced due to losses, the bond-share conversion ratio must be modified in proportion to the amount of capital increase or reduction, ensuring that shareholders and bondholders are equally impacted.
3. The general meeting may not decide to reduce capital by reimbursing shareholders for their contributions or writing-off capital calls whilst convertible bonds are in circulation, unless conversion is previously offered to bondholders with all due guarantees.

CHAPTER IV

Bondholders' syndicate

Section 419. Creation of the syndicate

Once the public instrument on the bond issue has been registered, bond purchasers shall be deemed to join the bondholders' syndicate as they receive their bond certificates or their book entries are recorded.

Section 420. Syndicate expenses

Any normal expenses incurred to run the syndicate shall be borne by the issuer, and may under no circumstances exceed two per cent of the annual interest accruing on the bonds issued.

Section 421. General assembly of bondholders

Once the issue is subscribed, the trustee shall convene a general assembly of bondholders, which shall approve

syndicate governance or otherwise, confirm the trustee in the position or appoint a substitute, and establish the syndicate's rules of procedure, which must be consistent with the conditions laid down in the instrument on the bond issue.

Section 422. Power and obligation to convene the assembly

1. The general assembly of bondholders may be convened by the company directors or the trustee. The trustee must also convene the assembly whenever so requested by bondholders representing at least one-twentieth of the bonds issued and unredeemed.
2. The trustee may require the presence of the company directors, who may attend even if not convened.

Section 423. Method for convening bondholders

1. The general assembly shall be convened in a way that ensures bondholder awareness thereof.
2. When the assembly must discuss or decide on matters respecting the modification of loan conditions or other matters which in the trustee's opinion are of similar importance, it shall be convened as described hereunder for the general meeting of shareholders.

Section 424. Powers of the assembly

The bondholders' assembly, duly convened, shall be empowered to decide on any matters regarding the effective protection of bondholders' legitimate interests with respect to the issuer, the modification, in agreement with the issuer, of the security established, dismissal or appointment of the trustee, the institution, as appropriate, of legal action and approval of any expenses incurred in the defence of common interests.

Section 425. Assembly decisions

1. Any decisions passed by the assembly in the manner described in the instrument or by majority, with a quorum of two-thirds of the bonds issued, shall be binding on all bondholders, including any not in attendance or dissenting.
2. Where a quorum of two-thirds of the bonds issued is not reached, the assembly may be convened again one month later, at which decisions may be adopted by a majority of the attendees. Such agreements shall be binding on all bondholders pursuant to the provisions of the preceding paragraph.
3. Agreements reached in the assembly may, however, be challenged by bondholders as set out in this act on challenging general shareholders' meeting decisions.

Section 426. Individual action

Legal action or out-of-court proceedings brought by bondholders may be instituted individually or separately when they are consistent with syndicate decisions, fall within its competence and compatible with the powers granted thereto.

Section 427. Trustee

1. The trustee shall be the chairperson of the bondholders' syndicate and, in addition to the powers vested therein under the instrument on the bond issue and any granted by the general assembly of bondholders, he/she shall act as the syndicate's legal representative and may engage in the actions attributed thereto.
2. The trustee shall liaise between the company and the syndicate and, in that capacity, may attend but not vote at the issuer's general shareholders' meetings, inform the issuer of any decisions adopted by the syndicate and call for any reports from the issuer which, in his/her opinion, or in the opinion of the bondholders, are of interest thereto.
3. The trustee shall attend any drawings held for the allocation or redemption of bonds, and shall oversee the payment of interest and principal, if any, and in general, safeguard the common interests of all bondholders.

Section 428. Control

1. If bonds are issued with none of the security alternatives listed in Section 404, the trustee shall be entitled to examine the company books directly or through a third party, and to attend, but not vote at, the meetings of the company's board of directors.
2. If the company postpones payment of interest due or capital redemptions for over six months, the trustee may raise a proposal to the board to suspend any of its directors and convene a general shareholders' meeting, if not already convened, to dismiss such directors.

Section 429. Foreclosure

If the issue is secured by a mortgage or a pledge and the company postpones interest payment for over six months, the trustee, subject to a decision adopted by the general bondholders assembly, may foreclose on the assets constituting the security to make payment of the principal and interest due.

CHAPTER V

Bond repurchase and redemption

Section 430. Redemption

The company may buy back the bonds issued in any of the manners laid down below.

- a) Redemption or early payment, further to the terms of the instrument on the bond issue.
- b) Agreements by and between the company and the bondholders' syndicate.
- c) Purchase on the stock exchange, for redemption thereof.
- d) Conversion into shares, by agreement with the holders.

Section 431. Repetition of interest

Interest on redeemed bonds collected by bondholders in good faith may not be subject to repetition by the issuer.

Section 432. Reimbursement

1. The company must pay the amount of the bonds within the term stipulated, together with the premiums, lots and benefits established in the instrument on the bond issue.

2. The company shall likewise be bound to hold drawings from time to time in the terms and manner set forth in the redemption schedule, with the participation of the trustee and in the presence of a notary public, who shall issue a record of the proceedings.

Failure to fulfil this obligation shall authorise creditors to claim early redemption of the bonds.

Section 433. Cancellation of security

1. Where bonds are represented by certificates, the certificates must be presented to be stamped or rendered invalid as a requisite to cancellation of issue security in whole or in part. Such certificates must be replaced by others in accordance with the provisions regarding the replacement of certificates in Section 117, if the debt remains live but unsecured.

If the bonds are represented by book entries, the certificates issued by the entities responsible for book entries must be returned, and the entry in the accounting record in question amended accordingly.

2. Where redemption is the result of agreements between the company and the bondholders' syndicate, if the cancellation agreement is reached by majority vote and the syndicate is unable to present all the certificates, the preceding provisions shall not apply.

TITLE XII

New business concerns

CHAPTER I

General provisions

Section 434. Legal status

New business concerns are regulated hereunder as a special instance of limited liability companies.

Section 435. Registered name

1. The company name shall comprise one of the founding members' two surnames and given name, followed by an alphanumerical code for unequivocal and unique identification. The procedure for code allocation shall be regulated by a Ministry of the Economy and Finance order.
2. The company name must necessarily include the indication "New Limited Business Concern" («*Sociedad Limitada nueva empresa*») or its acronym «SLNE».
3. The company name shall be immediately added to a special subsection of the Names Section in the Central Mercantile Registry and duly recorded in a certificate issued to that end. Certificates accrediting the name of the new limited business concern may be requested either by a shareholder or a third party in his/her name. The beneficiary for whom the certificate is issued shall necessarily be the founding member whose name appears in the company name.

Section 436. Corporate purpose

1. The corporate purpose of new business concerns shall include all or some of the following activities, which shall be literally transcribed in the by-laws: agriculture, livestock, forestry, fishing, manufacturing, construction, retailing, tourism, transport, communications, brokering, professional services or services in general.
2. Moreover, founding members may include in the corporate purpose any singular activity other than enumerated above. If the inclusion of a singular activity leads to rejection of the company's deed of incorporation by the mercantile registrar, entry in the Registry shall not be suspended, but rather shall be effected excluding the activity in question, provided this arrangement is explicitly accepted by the founding members either in the deed of incorporation or subsequent thereto.
3. Under no circumstance may the corporate purpose include activities that require joint stock company status or business engagement that entails a sole, exclusive purpose.

Section 437. Subjective requirements

1. Only natural persons may be members of new business concerns.
2. At the time of the company is formed, these concerns may have no more than five partners.

Section 438. Single membership

1. Any person who is a single member of one new business concern may not be the single member of a second new business concern. To this end, deeds of incorporation of single member new business concerns or instruments on acquisition of such status must contain a statement to the effect that the single member is not the single member of any other new business concern.
2. The new business concern's single membership status may be recorded in the same instrument from which such status derives.

CHAPTER II

Formation requirements

Section 439. Procedures for company formation

1. The procedures for the formalisation and registration of deeds of incorporation for new business concerns may be conducted using digital information and communications technologies.

2. Notaries public's and mercantile registrars' correspondence and notices shall be signed electronically.

Section 440. Deed of incorporation

1. Further to the legislation on the incorporation of information and communications technologies to preventive legal security, only notaries public may forward a legalised copy of the company's deed of incorporation to the Mercantile Registry or, as appropriate, to other registries or public authorities, as needed.

Notwithstanding the provisions of the preceding paragraph, founding members may, prior to formalisation of the deed of incorporation, release the notary public from the obligations laid down in this section and appoint a representative to conduct the procedures for company formation pursuant to the general rules or express their intention to do so themselves. In such case, the notary public must issue a legalised first copy on hard media within twenty-four hours of formalisation of the company's deed of incorporation.

2. Pursuant to legislation on company registration, the notary public formalising the company's deed of incorporation shall ensure that no other company exists with a name identical to the name of the company to be incorporated. Thereafter, the notary public shall proceed immediately to formalise the deed.

3. Once the deed has been formalised, the notary shall immediately send it, along with the single electronic document, to the competent tax authority to obtain the company's tax identification number; as appropriate and in accordance with tax legislation, the notary public shall likewise submit to the competent authority substantiation of payment of any taxes levied on company formation and shall send the legalised copy of the deed to the Mercantile Registry for entry.

Section 441. Company registration

1. Irrespective of the procedure adopted, and provided the official model by-laws are used, the mercantile registrar shall assess and enter the deed of incorporation, as appropriate, within twenty-four hours of submission or, in the event of a rectifiable defect, of the time of submission of the rectified documents. The entry shall be recorded in a special section created for this purpose.

2. If the mercantile registrar denies registration of the deed submitted, the notary public formalising the document, as well, as appropriate, as the company representative appointed by the founding partners, shall be notified thereof within twenty-four hours. The respective tax authority shall likewise be notified.

If the nature of the defect is such that it can be rectified by the notary public *ex officio*, and the notary public agrees to the registrar's assessment, he/she shall rectify the defect within twenty-four hours of the time of notification of rejection by the mercantile registrar, and inform the founding partners or their agents of such rectification.

Section 442. Post-registration formalities

1. Immediately following registration, the mercantile registrar shall inform the notary public of the registration data for inclusion in the original and any subsequent copies, and shall forward to the notary public the part of the single electronic document to which the company's registration data were added.

The notary public shall issue a legalised hard copy of the company's deed of incorporation within twenty-four hours of the notification of the registration data by the mercantile registrar. This copy shall include the company's tax identification number and substantiation of transmission of a copy of the deed of incorporation and the single electronic document to the tax authorities, to enable them to proceed to inform the founding partners of the company's permanent tax identification number. Similarly, at the behest of the founding partners, the notary public shall forward the documents needed to meet all social security-related obligations.

2. Once the company has been registered, the mercantile registrar shall transfer the data on company formalisation to the Central Mercantile Registry in the manner and within the term provided in the regulations. Likewise at the behest of the founding partners or their representatives, the registrar shall serve any other pertinent notifications.

CHAPTER III

Share capital and stakes

Section 443. Share capital

1. The share capital of the new business concern may not be less than three thousand and twelve euros nor more than one hundred and twenty thousand two hundred and two euros.

2. The share capital may only be paid up in cash contributions.

Section 444. Subjective requirements in stake transfers

1. New business concerns may comprise more than five partners as a result of stake transfers.

2. Voluntary *inter vivos* transfers of stakes may only be transacted between natural persons.

If stakes are acquired by a corporate body, they must be sold to individuals within three months of the date of

acquisition. The result of failure to do so shall be that the company shall become subject to the general regulations on limited liability companies, without prejudice to directors' liability if the decision to adapt the by-laws accordingly is not reached.

Section 445. Proof of partner status

1. No shareholders' ledger shall have to be kept, inasmuch as the public instrument certifying acquisition shall constitute sufficient proof of partner status.
2. The governing body shall be notified of the transfer of partner status and the creation of limited rights *ad rem* on the stakes via receipt of the public instrument in which such transactions are recorded.
3. The governing body must notify all other partners of the transfer, the creation of rights *ad rem* or the seizure of stakes as soon as it becomes aware thereof, and shall be held liable for any damages ensuing from the failure to meet this obligation.

CHAPTER IV

Governing bodies

Section 446. Annual general meeting

The new business concern's general meeting may be convened by registered mail with acknowledgement of receipt sent to the address specified by partners for this purpose, as well as by any electronic or digitised method for transmitting information informing partners of the notice, and reliably confirming the transmission of electronic message convening the meeting or providing for acknowledgement of receipt from the partners themselves. In such cases, no announcement in the Official Journal of the Mercantile Registry or in the press shall be necessary.

Section 447. Governing body structure

1. Company governance may be entrusted to a single or a multiple member body, whose members shall act jointly or jointly and severally. When governance is entrusted to a multiple member body, such body shall not under any circumstance adopt the form or operating arrangements of a board of directors.
2. In the event of a single director, company representation and certification of its decisions shall be incumbent thereon; in the event of various joint and several directors, on one of them; and in the event of various joint directors, on any two.

Section 448. Directors

1. Directors must be a company partners.
2. Directors may be remunerated in the manner and for the amounts established by the general meeting.
3. Directors shall be appointed indefinitely. Nevertheless, after the company is formed, the general meeting may appoint directors for a specific period of time.

Section 449. Dismissal of directors

1. Dismissal of directors shall be subject to a decision adopted by the general meeting, which may be reached, even if not included on the agenda for the meeting, by the plurality vote defined in Section 198; the by-laws may not require more than a two-thirds majority of the votes corresponding to the stakes into which the capital is divided for such decisions.
2. The partner affected by dismissal as director may not cast the votes attached to his stakes, which shall be deducted from the total capital to calculate the majority vote.

CHAPTER V

Amendments to the by-laws

Section 450. Amendments to the by-laws

1. In new business concerns, amendments may only be made to the company's name or registered office and, within the scope defined hereunder, its capital.
2. The provisions of the preceding paragraph shall not apply if the new business concern is converted into a limited liability company, pursuant to the provisions hereunder.

Section 451. Registered name

1. Pursuant to the legislation on company registration, the notary public formalising the instrument on the change of registered name shall ensure that no other company exists with a name identical to the name proposed. To this end, the notary public shall attach to the instrument on amendment of the registered name the automated registered name certification issued by the Central Mercantile Registry over the registrar's electronic signature. The amendment shall be recorded as laid down in section 113.1 of Act 24/2001 of 27 December.
2. If the partner whose name and surname appear in the company name forfeits partner status, the company shall be bound to immediately amend its registered name.

Section 452. Increase of company capital in excess of the ceiling

If the partners decide to increase the capital to an amount in excess of the limit established hereunder, they must also decide whether they wish to convert the new business concern to a different corporate typology or continue to conduct business as a limited liability company.

CHAPTER VI

Winding-up

Section 453. Winding-up

1. New business concerns shall be wound up for the reasons defined hereunder for limited liability companies as a result of losses that lower their equity to less than half of the capital for at least six months, unless the equity is re-established during that period.
2. In any case, the provisions of Sections 364 to 367 shall apply.

CHAPTER VII

Conversion to limited liability company

Section 454. Continuing business as a limited liability company

1. New business concerns may continue to operate as limited liability companies, subject to a general meeting decision in this regard and adaptation of their by-laws accordingly. A plurality vote shall suffice for both.
2. The instrument formalising the adaptation of the company's by-laws must be submitted for registration in the Mercantile Registry within two months of the date of the general meeting's decision.

TITLE XIII

European joint stock company

CHAPTER I

General provisions

Section 455. European joint stock companies. Definition and status

European Companies (SE) with registered offices in Spain shall be governed by the provisions of Council Regulation (EC) 2157/2001 of 8 October 2001, the provisions of this title and the law regulating worker involvement in European companies.

Section 456. Prohibition of concurrent company names

A European joint stock company planning to locate in Spain may not be registered in the Mercantile Registry under a name that is identical to pre-existing Spanish company.

Section 457. Registration and public disclosure of proceedings involving European joint stock companies

1. European joint stock companies planning to locate in Spain shall file a draft deed of incorporation with the Mercantile Registry.
2. Company formation and other proceedings subject to registration by European joint stock companies with registered offices in Spain shall be entered in the Mercantile Registry in accordance with the provisions for joint stock companies.
3. The data of and proceedings engaged in by European joint stock companies with registered offices in Spain must be the object of public disclosure under the circumstances and in the manner stipulated in the general provisions applicable to joint stock companies.

CHAPTER II

Registered office and transfer to another Member State

Section 458. Registered office

European joint stock companies must establish their registered offices in Spain when their headquarters is located on Spanish soil.

Section 459. Discrepancy between registered office and actual address

The situation arising when a European joint stock company having its registered office in Spain moves its headquarters outside the country must be remedied within one year, either by relocating the headquarters in Spain or by moving the registered office to the Member State where such headquarters is sited.

Section 460. Regularisation procedure

European joint stock companies whose circumstances are as described in the preceding section and which fail to regularise their situation within one year must be wound up pursuant to the general provisions contained hereunder; the Government may appoint a person responsible for controlling and supervising the liquidation procedure and ensuring compliance with the laws and by-laws.

Section 461. Exit right

If a European joint stock company with a registered office in Spain decides to move such office to another European Union Member State, shareholders voting against such decision may exit the company as provided hereunder for shareholder exit.

Section 462. Creditor's right to challenge

Company creditors holding debt created prior to the date of publication of the company's proposed relocation in another Member State shall be entitled to challenge such relocation as provided hereunder for creditor challenge.

Section 463. Certification prior to relocation

The mercantile registrar, in light of the data recorded in the Registry and in the public instrument on change of address submitted, shall certify compliance with all proceedings and procedures to be conducted by the company prior to the change.

Section 464. Challenge to relocation to another Member State

1. If the relocation of a European joint stock company with registered office on Spanish soil involves a change in the applicable legislation, the change shall not be effective if the Government, at the behest of the Ministry of Justice or the autonomous community where the joint stock company has its registered office, challenges such change in the defence of the public interest.

When European joint stock companies are subject to supervision by a supervisory authority, that authority shall also be capacitated to challenge relocation.

2. Within five days of the date the entry is deemed to be made, the mercantile registrar shall inform the Ministry of Justice, the autonomous community where the joint stock company has its registered office and, as appropriate, any supervisory authority concerned, of the submission of a proposed change of address by a European joint stock company.

3. The decision to challenge the change of registered office must be formulated within two months of the publication of the proposed relocation. That decision may be appealed to the competent judicial authority.

CHAPTER III

Formation

SUB-CHAPTER ONE. GENERAL PROVISIONS

Section 465. Participation of other companies in the formation of a European joint stock company

In addition to the companies defined in Regulation (EC) 2157/2001, companies whose central administrations are not located in the European Union but are nonetheless incorporated in accordance with the laws of a Member State, have their registered office in that Member State and maintain an effective and ongoing relationship with its economy, may participate in the incorporation of a European joint stock company planning to establish its registered office in Spain.

An effective relationship is deemed to exist when the company has offices in the Member State, from which it manages its operations and conducts its business.

Section 466. Challenge to the formation of a European joint stock company via merger involving a Spanish company

1. For reasons of public interest, the Government, at the behest of the Ministry of Justice or the autonomous community where the joint stock company has its registered office, may challenge the proposed formation of a European joint stock company in another Member State via merger involving a Spanish company.

When the Spanish company participating in the formation of a European joint stock company via merger is subject to supervision by a supervisory authority, the challenge to its participation may also be lodged by that authority.

2. After entering the merger proposal, the mercantile registrar shall inform the Ministry of Justice, the autonomous community where the joint stock company has its registered address and, as appropriate, the respective supervisory authority of the proposed merger, enabling them to lodge a challenge thereto, as appropriate.

3. The challenge must be lodged prior to the issue of the certificate referred to in [Section 469](#). Appeals against such challenges may be lodged with the competent judicial authority.

SUB-CHAPTER TWO. INCORPORATION VIA MERGER

Section 467. Appointment of an expert or experts to report on the merger proposal

If one or more Spanish companies participate in the merger or when the European joint stock company undertakes to establish its registered office in Spain, the mercantile registrar, as the competent authority for this purpose, shall appoint one or several independent experts to draft the single report set forth in Article 22 of Regulation (EC) 2157/2001, at the joint request of the companies planning the merger.

Section 468. Shareholder exit right

Shareholders of Spanish companies voting against a merger that entails the formation of a European joint stock

company with its registered office in another Member State may exit the company as provided for hereunder for cases of shareholder exit. The same right shall be acknowledged to shareholders of Spanish companies taken over by a European joint stock company with a registered office in another Member State.

Section 469. Certification for the company taking part in the merger

The mercantile registrar serving the place where the company's registered office is located shall, in light of the data on record in the Registry and the public instrument on merger submitted, certify compliance by the Spanish joint stock company involved with all proceedings and procedures prior to the merger.

Section 470. Registration of the company ensuing from the merger

If the European joint stock company resulting from the merger establishes its registered office in Spain, the mercantile registrar serving the place where such office is located shall verify the existence of the certificates issued by the authorities in the countries where the registered offices of the foreign companies taking part in the merger are located and attest to the legality of the procedures in respect of the merger and formation of the European joint stock company.

SUB-CHAPTER THREE. FORMATION VIA HOLDING

Section 471. Public disclosure of draft deed of formation

1. The directors of a Spanish company or companies participating in the formation of a European joint stock holding company must file the company's draft deed of incorporation with the respective Mercantile Registry. Once the deed has been filed, the registrar shall inform the central mercantile registrar of the entry and the date on which it is made, for immediate publication in the Official Journal of the Mercantile Registry.
2. The general meeting responsible for adopting a decision on the operation may not meet until one month after the date of publication referred to in the preceding paragraph.

Section 472. Appointment of an expert or experts to report on the draft deed of incorporation

1. The competent authority responsible for appointing the independent expert or experts referred to in paragraph 4 of Article 32 of Regulation (EC) 2157/2001 shall be the mercantile registrar serving the places where the Spanish companies promoting the formation of a European joint stock holding company, or the future European joint stock company, have their registered offices.
2. The request for appointment of an independent expert or experts shall be lodged as laid down in the provisions of the Mercantile Registry Regulations.

Section 473. Protection for shareholders of companies participating in European company formation

The shareholders of companies promoting the formation of a European joint stock holding company voting against the respective decision may exit the company as described in the provisions of this act on shareholder exit.

SUB-CHAPTER FOUR. FORMATION VIA CONVERSION

Section 474. Conversion of an existing joint stock company into a European joint stock company

If a European joint stock company is formed as a result of the conversion of a Spanish joint stock company, the directors shall prepare a conversion proposal as provided in Regulation (EC) 2157/2001 and a report explaining and justifying the legal and financial aspects of the conversion. Such report shall address the implications for the shareholders and employees of converting to a European joint stock company. The conversion proposal shall be filed with the Mercantile Registry and published pursuant to Section 471.

Section 475. Expert certification

Before the general meeting to approve the conversion proposal and the by-laws of the European joint stock company is convened, one or more independent experts, appointed by the mercantile registrar serving the place where the company to be converted has its registered office, shall certify that such company has sufficient net assets to meet European joint stock company capital and reserves requirements.

CHAPTER IV

Governing bodies

SUB-CHAPTER ONE. GOVERNANCE ARRANGEMENTS

Section 476. By-law options

European joint stock companies with registered offices in Spain may opt for one-or two-tier governance, as defined in their by-laws.

Section 477. One-tier system

If a one-tier administration system is chosen, the provisions of this act for directors of joint stock companies shall apply to the governing body, insofar as they are not inconsistent with the provisions of Regulation (EC) 2157/2001 or the act on employee involvement in European joint stock companies.

SUB-CHAPTER TWO. TWO-TIER SYSTEM

Section 478. Bodies in the two-tier system

Where a two-tier system is chosen, the company shall have directors and a supervisory board.

Section 479. Directors' powers

1. Directors shall be vested with company representation and management.
2. Any limitation to the powers of European joint stock company directors, even if registered in the Mercantile Registry, shall be ineffective in respect of third parties.
3. The possession and scope of directors' powers of representation shall be governed by the provisions of this act on directors.

Section 480. Organisational arrangements for the directors

1. Depending on the provisions of the by-laws, company management may be entrusted to a single director or any number of directors acting jointly or jointly and severally, or to a board of directors.
2. When management is jointly entrusted to more than two people, they shall constitute a board of directors.

Section 481. Board of directors membership

The board of directors shall have no less than three and no more than seven members.

Section 482. Determination of number of board members

If the company by-laws may specify an exact number of board members or the minimum and maximum number and the rules for determining the exact number.

Section 483. Board of directors organisation, modus operandi and decision-making

Except as otherwise provided in Regulation (EC) 2157/2001, board of directors organisation, *modus operandi* and decision-making shall be governed by the provisions of the by-laws and, wanting that, the provisions hereunder on joint stock companies' boards of directors.

Section 484. Limit to term of supervisory board members on board of directors to fill vacancies

Pursuant to Article 39.3 of Regulation (EC) 2157/2001, the term of the appointment of a Supervisory Board member to fill a board of directors vacancy shall not exceed one year.

Section 485. Supervisory board operation

The provisions of this act regarding the operation of the management board, insofar as they are not inconsistent with the provisions of Regulation (EC) 2157/2001, shall apply to the supervisory board.

Section 486. Appointment and dismissal of the members of the supervisory board

Supervisory board members shall be appointed and dismissed by the general meeting, without prejudice to the

provisions of Regulation (EC) 2157/2001, the act regulating employee involvement in European joint stock companies and Section 243 hereunder.

Section 487. Company representation to the board of directors

The supervisory board shall represent the company before the board of directors.

Section 488. Board of director presence at supervisory board meetings

The supervisory board may, at its discretion, convene the members of the board of directors to attend but not vote at its meetings.

Section 489. Operations subject to supervisory board authorisation

The supervisory board may decide to make certain board of directors operations subject to its prior authorisation. The absence of such prior authorisation shall be ineffective in respect of third parties, unless the company can prove that the third party acted fraudulently or in bad faith to the detriment of the company.

Section 490. Governing body member liability

The provisions on liability established for the directors of corporate enterprises shall be applicable to the management, board of directors and board of supervisors within the scope of their respective duties.

Section 491. Challenging governing body decisions

The members of each board may challenge any null or annulable decisions of the board on which they sit within one month of adoption of the decision in question. Shareholders representing at least five per cent of the share capital may also challenge decisions within one month of their awareness thereof, provided less than a year has lapsed since the decision was adopted.

SUB-CHAPTER THREE. ANNUAL GENERAL MEETING

Section 492. Convening the general meeting in the two-tier system

1. In the two-tier governance system, the board of directors is vested with the power to convene the general meeting. The board of directors shall convene the general meeting when requested to do so by shareholders that account for at least five per cent of the share capital.
2. Should the meetings not be convened within the periods provided in Regulation (EC) 2157/2001 or the by-laws, they may be called by the supervisory board or, at the behest of any shareholder, by the judge of the commercial court with jurisdiction in the place where the company's registered office is located, as provided hereunder in respect of general meetings.
3. The supervisory board may convene the general meeting whenever it is deemed to be in the company's interest.

Section 493. Deadline for the notice of the general meeting

The notice convening European joint stock companies' general meetings must be sent at least one month prior the date scheduled for the meeting.

Section 494. Inclusion of new items on the agenda

Minority shareholders holding at least five per cent of the share capital may request the inclusion of items on the agenda of a general meeting after it is convened, or ask to have an extraordinary general meeting convened, further to the provisions of this act. The supplementary notice must be published at least fifteen days before the date scheduled for the meeting.

TITLE XIV

Publicly listed companies

CHAPTER I

General provisions

Section 495. Definition

1. Listed joint stock companies are companies whose shares are traded on an official secondary securities market.
2. In all matters not covered herein, listed companies shall be governed by the provisions laid down for joint stock companies, in addition to any other regulations that may apply.

CHAPTER II

Special provisions on shares

SUB-CHAPTER ONE. PROOF OF SHARE OWNERSHIP

Section 496. Proof of share ownership in listed companies.

1. Shares and bonds that aim to be listed or continue to trade on an official secondary securities market must be represented by book entries.
2. When securities are represented by a book entry, the certificates formerly accrediting ownership shall be cancelled as per the law, and such annulment shall be published in notices in the Official Journals of the Mercantile Registry and the Stock Exchanges and in three daily newspapers with large nation-wide circulations.
3. The Government, further to a report from the National Securities Market Commission, shall establish the deadlines and procedures for the representation of listed shares by means of book entries.
its shareholders.

Section 497. Right to know shareholder identity¹

Institutions which, pursuant to securities market regulations, must keep account of securities records by means of a book entry system, shall be bound to provide the issuer with the data required to identify its shareholders, regardless of whether the issuer is or is not subject to legislation requiring registration of its shares. The information to be provided shall include the addresses and any contact details at the avail of the institution enabling the issuer to correspond with its shareholders. The technical and formal arrangements through which the issuer may exercise this right may be laid down in the respective regulations.

SUB-CHAPTER TWO. PREFERENCE SHARES

Section 498. Obligation to decide on the distribution of preference dividends

When the preference granted by shares issued by listed companies consists of the right to obtain a preference dividend, the company shall be bound to proceed to distribute such dividends where distributable profits are earned, and the by-laws may not stipulate otherwise.

Section 499. Preference dividends

1. The provisions governing dividends for preference shares issued by listed companies shall be as laid down for non-voting shares in Title IV, Chapter II, Sub-chapter II.
2. The provisions of the by-laws shall apply to the pre-emptive right of subscription for the holders of non-voting shares, as well as to recovery of their voting rights where the minimum dividend is not paid and to the non-cumulative nature of that dividend.

1. Draft accordin to the law 2/ 2011, 4 March

SUB-CHAPTER THREE. REDEEMABLE SHARES

Section 500. Issue of redeemable shares

1. Listed joint stock companies may issue shares that are redeemable at the request of the issuer, the holders or both, for a par value not exceeding one quarter of the share capital. The issue agreement shall establish the terms for the exercise of the right of redemption.
2. Redeemable stocks must be fully paid up when subscribed.
3. If the right of redemption is granted exclusively to the company, it may not be exercised until after three years of the share issue.

Section 501. Redemption of redeemable shares

1. The redemption of redeemable shares must be charged to unrestricted profits or reserves or to the proceeds from a new share issue approved by the general meeting to fund the redemption operation.
2. If share redemption is charged to unrestricted profits or reserves, the company must create a reserve for an amount equal to the par value of the redeemed shares.
3. If unrestricted profits or reserves are insufficient or no new shares are to be issued to fund the operation, redemption shall be subject to a capital reduction and share buyback.

SUB-CHAPTER FOUR. SHARES SUBJECT TO USUFRUCT

Section 502. Calculation of the value of new shares subject to usufruct

1. When new shares are subscribed either by the owner or the usufructuary, the usufruct shall extend to the shares whose price can be determined from the average price at which the shares traded during the subscription period.
2. The amounts to be paid in the event of termination of the usufruct or due to non-exercise by the owner of the pre-emptive right of subscription in capital increases shall be calculated from the average price at which the shares traded in the preceding quarter.

CHAPTER III

Special provisions on share subscription

Section 503. Minimum term for the exercise of the right of subscription

In listed companies, pre-emptive subscription rights shall be exercised within the period granted by the directors of the company, which shall not be less than fifteen days from the date of publication of the announcement of the new share offering in the Official Journal of the Mercantile Registry.

Section 504. General system of waiver of the pre-emptive subscription right

1. In listed companies, waiver of the pre-emptive subscription right shall be subject to the provisions of Section 308.
2. Fair value shall be understood to be market value. Except where other arrangements can be justified, market value shall be presumed to be the securities exchange listing.

Section 505. Special system of waiver of pre-emptive subscription right

1. Notwithstanding the provisions of the second paragraph of the preceding section, once the general meeting has received the directors' and the auditor's report stipulated in Section 308, it may decide to issue new shares at any price higher than their net value as established in the auditor's report. The meeting may also limit its decision to establishing the procedure for determining the price.
2. The director's and the auditor's reports must specify the net value of the shares to enable the general meeting to adopt the decision referred to in the preceding paragraph.
3. The auditor shall determine the net value of the shares on the basis of the company's most recent audited annual accounts or, if subsequent thereto, its most recent audited financial statements as described in Section 254, prepared in both cases by the directors in accordance with accounting principles contained in the Commercial Code. The closing date of these accounts or statements may not be more than six months prior to the date on which the general meeting decides to increase capital, provided no significant transactions are conducted in the interim. The value must be calculated taking into consideration any reservations to the accounts or statements expressed by the auditor.
4. For listed companies that are group parent companies, equity shall be determined on the basis of the data shown

for the company in the consolidated group accounts.

5. Operations shall be posted in accordance with the accounting rules and principles established in the Commercial Code.

Section 506. Delegation of the power to waive the pre-emptive subscription right in the event of new share issues

1. In listed companies, whenever the general meeting delegates the power to increase the share capital to company directors, it may also vest them with the power to waive the pre-emptive subscription right for the share issues approved under such delegation, where deemed to be in the company's best interests.

2. The notice of the general meeting, including the proposal to vest the directors with the power to increase the share capital, must also make explicit mention of the proposal on waiver of the pre-emptive subscription right. From the time the general meeting is convened, the shareholders shall have access to a report prepared by the directors justifying the delegation of such power.

3. In capital increases approved in the exercise of the powers granted by the general meeting, the directors' and the auditor's reports must refer to each specific increase.

4. The par value of the shares to be issued plus the amount of the issue premium, if any, must match the fair value taken from the auditor's report. Such reports shall be made available to the shareholders and presented at the first general meeting held after the capital increase agreement.

Section 507. Incomplete subscription of new shares

Whenever the National Securities Market Commission intervenes in the initial verification of a listed company's capital increase operation with the issue of new shares, the whole or partial failure of the operation in the form of incomplete subscription must be reported to the Commission.

Section 508. Right to contribution refund

1. Where the issue of new shares by a listed company is authorised or verified by the National Securities Market Commission, if the instrument on implementation of the decision is not presented in the Mercantile Registry within one year of the subscription deadline, the registrar may, *ex officio*, or at the behest of any interested party, cancel registration of the decision to increase capital. This action shall be the object of a certificate sent to the company and to the National Securities Market Commission.

2. Once the registration of the increase has been cancelled, the holders of the newly issued shares shall be entitled to claim refund of the contributions paid up. If the cause for cancellation is attributable to the company, they may also claim interest at the legal rate.

CHAPTER IV

Treasury share ceiling

Section 509. Treasury share ceiling

Except where the company's own shares are acquired cost-free, in listed companies the par value of treasury shares acquired directly or indirectly by the company, added to any already owned by the acquiring company and its subsidiaries or, if applicable, by the parent company and its subsidiaries, may not exceed ten per cent of the capital subscribed.

CHAPTER V

Bonds

Section 510. Bond issues

The maximum legal limit for bond issues shall not be applicable to listed joint stock companies.

Section 511. Delegation of the power to waive the pre-emptive subscription right in convertible bond issues

1. In listed companies, whenever the general meeting delegates the power to issue convertible bonds to directors, the meeting may also grant them the power to waive the pre-emptive subscription right for convertible bonds issued under delegated powers, if in the company's best interests.

2. The notice of the general meeting that includes the proposal to vest the power to issue convertible bonds in the

directors shall also contain explicit mention of the proposal to waive the pre-emptive subscription right. A directors' report justifying such waiver proposal shall be made available to the shareholders when the general meeting is convened.

3. In capital increases approved in the exercise of the powers granted by the general meeting, the directors' and the auditor's reports must refer to each specific increase.

Such reports shall be made available to the shareholders and presented at the first general meeting held after the date of the decision to increase capital.

CHAPTER VI

Special provisions on the general shareholders' meeting

Section 512. Mandatory nature of general meeting regulations

The general meeting of a joint stock company with shares admitted to trading on an official secondary securities market, in the presence of the quorum provided in Section 193 or higher if so stipulated in the by-laws, shall approve specific regulations for the general meeting. These regulations shall govern all general meeting-related matters and must be consistent with the law and the company by-laws.

Section 513. Public disclosure of the regulations

1. The regulations for listed companies' general meetings shall be submitted to the National Securities Market Commission, together with a copy of any related documentation.

2. After submission of a report to that Commission on the matter, such regulations shall be entered in the Mercantile Registry in accordance with the general rules and, once registered, shall be published by the National Securities Market Commission.

Section 514. Directors' voting rights and public request for representation

1. When the directors of a listed company, or any other person on their behalf or in their interest, issue a public request to represent shareholders, the directors obtaining such representation may not exercise the voting rights attached to the shares represented in any of the items on the agenda that may entail a conflict of interest and in particular respecting:

- a) their own appointment or ratification as directors
- b) their own dismissal, forced separation or removal from their position
- c) the institution of liability action against them by the company
- d) the approval or ratification, as appropriate, of company transactions with them, companies controlled or represented by them or persons acting on their behalf.

2. The law also allows the proxy to cover items discussed at the meeting but not on the agenda attached to the notice thereof, in which case the restriction set out in the preceding paragraph shall also apply.

3. The foregoing is also applicable to the members of supervisory boards of European joint stock companies with registered offices in Spain opting for a two-tier system.

Section 515. Nullity of the clauses restricting voting rights

In listed joint stock companies, clauses in the by-laws that directly or indirectly establish a general ceiling on the number of votes that can be cast by a single shareholder or companies belonging to the same group shall be null and void.

Where a company whose by-laws contain clauses restricting the maximum number of votes is newly listed on an official secondary securities market, it must adapt its by-laws accordingly, removing such clauses within no more than one year of the date listed. If the company fails to submit the instrument on amendment of its by-laws in the Mercantile Registry within one year, the clauses restricting the maximum number of votes shall be rendered ineffective.

CHAPTER VII

Special provisions on governance

Section 516. Board of directors' rules of procedure

In listed joint stock companies, the board of directors shall adopt rules of procedure for its own internal purposes, informing the general meeting thereof. Such rules must be consistent with the law and the by-laws, which shall contain specific measures designed to ensure good company governance.

Section 517. Public disclosure of the rules of procedure

1. The National Securities Market Commission shall be notified of adoption of the rules and receive a copy thereof.
2. After such notification, the rules shall be entered in the Mercantile Registry pursuant to the Registry's general procedures and subsequently published by the National Securities Market Commission.

CHAPTER VIII

Shareholders' agreements subject to public disclosure

Section 518. Shareholders' agreements in listed companies

1. For the present intents and purposes, shareholders' agreements are understood to be agreements that regulate the exercise of voting rights at general meetings or restrict or condition the free transferability of shares in listed joint stock companies.
2. The provisions hereunder shall also be applicable to agreements with the same aims referring to convertible or exchangeable bonds issued by listed joint stock companies.

Section 519. Public disclosure of shareholders' agreements

1. The adoption, extension or amendment of shareholders' agreements on voting rights in general meetings or that restrict or condition the free transferability of shares or convertible or exchangeable bonds in listed joint stock companies must be immediately reported to the company itself and to the National Securities Market Commission. Attached to such notice shall be a copy of the clauses of the document containing the provisions that affect the right to vote or restrict or condition the free transferability of shares or convertible or exchangeable bonds.
2. After the notice is served, the document containing the shareholders' agreement must be filed with the Mercantile Registry where the company is registered.
3. The shareholders' agreement must be made public as relevant information.

Section 520. Legal capacity to publicly disclose shareholders' agreements

1. Any of the signatories of the shareholders' agreement shall be capacitated to serve the abovementioned notices and deposit the agreement, even where the agreement itself stipulates that such measures are to be taken by one of them or a third party.
2. In shares held in usufruct or pledged, whoever holds the right to vote shall also be capacitated to publicly disclose the foregoing in respect thereof.

Section 521. Consequences of failure to publicly disclose shareholders' agreements

Until the respective notices are served, entry in the Registry effected and the announcement as relevant information published, the shareholders' agreement shall have no effect whatsoever on the matters in question.

Section 522. Shareholders' agreements between partners in companies controlling a listed company

The provisions of the preceding sections shall apply to shareholders' agreements between partners or members of a company that exercises control over a listed company.

Section 523. Temporary exemption from the public disclosure obligation

Where public disclosure may be severely detrimental to the company, the National Securities Market Commission, at the behest of the parties concerned, may deliver a ruling, in which it must lay out the reasons for its decision, to the effect that the shareholders' agreement in question, or part thereof, will not be the object of public disclosure. Such ruling shall specify that the parties concerned are exempted from the obligation to notify the company itself of

the agreement, deposit the respective document in the Mercantile Registry and publish it as relevant information. The Commission shall also establish the duration of such confidentiality arrangements.

CHAPTER IX

Corporate information

SUB-CHAPTER ONE. SPECIAL PROVISIONS ON FINANCIAL STATEMENTS

Part 1 Financial statements

Section 524. Prohibition of abridged financial statements

Companies whose shares are traded on a regulated market in any European Union Member State may not issue abridged versions of their balance sheets, statements of changes in net equity or income statements.

Part 2. Special provisions on the notes to the financial statements

Section 525. Obligation to provide additional information

Companies issuing shares traded on a regulated market in any European Union Member State and which, pursuant to the existing legislation, need only present individual financial statements, shall be bound to include information in the notes thereto on the main variations in their equity or income statement if the international financial reporting rules set out in the European Union Regulations had been applied, and specify as well the valuation criteria used.

Part 3. Special provisions on the management report

Section 526. Inclusion of the corporate governance report in the management report

Companies issuing shares traded on a regulated market in any European Union Member State shall include their corporate governance reports in a separate section of their management reports.

SUB-CHAPTER TWO. SPECIAL RIGHT TO INFORMATION

Section 527. Special right to information

Up to the seventh day prior to the date of the general meeting, shareholders of listed companies, in addition to exercising their right to information on the matters to be discussed at the meeting, may request information or clarification or submit written questions on the publicly accessible information furnished by the company to the National Securities Market Commission since the preceding general meeting.

SUB-CHAPTER THREE. SPECIAL INFORMATION INSTRUMENTS

Section 528. Special information instruments

1. Listed joint stock companies must meet their information obligations using electronic or digitised methods, without prejudice to shareholders' right to request information on hard copy.
2. Listed joint stock companies must have a website where shareholders may exercise their right to information, and to disclose any relevant information required by securities market legislation. The website must include a duly protected shareholders' electronic forum, accessible by individual shareholders and any voluntary associations established thereby, designed to furnish information prior to general meetings. The forum may include motions to be tabled in addition to the agenda announced in the meeting notice, requests for support for such motions, initiatives to gain sufficient percentage to exercise the minority voting right established by law, as well as offers or requests for voluntary representation.
3. The board of directors must establish the information to be provided on the website, pursuant to the provisions

laid down by the Ministry of the Economy and Finance or, where explicitly empowered thereby, the National Securities Market Commission.

4. The shareholders of listed companies may create specific and voluntary associations for the exercise of their rights and the defence of their common interests. Shareholder associations must be entered in a special registry created to this end by the National Securities Market Commission. The provisions governing such associations shall also be established including, at least, the requirements for and limits to creation thereof, the essential features of their organisational structure, rules of procedure and any pertinent rights or obligations, especially in respect of the listed company.

5. Moreover, the Government or, as appropriate, the Ministry of Economy and Finance and when explicitly empowered thereby, the National Securities Market Commission, may establish any necessary technical or legal stipulations relating to the provisions of this section.

Additional provision one. *Prohibition to issue bonds*

Bonds and other negotiable instruments grouped by issues may not be issued or secured by individuals or general or limited partnerships.

Additional provision two. *Taxation on share transfers*

Share transfers shall be taxed as provided for the transfer of securities in Section 108 of Act 24/1988 of 28 July on the Securities Exchange.

Additional provision three. *Single electronic document (DUE)*

1. The single electronic document (*documento único electrónico*, DUE) is a document including all data referring to new business concerns which, further to the existing legislation, must be furnished to legal registries and public authorities as a requisite to forming such companies and meeting all the tax- and social security-related obligations inherent in their start-up.

Outgoing and incoming DUEs shall be restricted to the data required for the proceedings conducted by the authority in question.

Where provided by the regulations or, as appropriate, by special agreements reached with the respective public authorities, new data may be included in the DUE to comply with procedures, communications and obligations other than those described above. Specifications and conditions shall also be laid down for the use of the DUE to form any manner of company, as well as to meet any tax- or social security-related obligations inherent in company start-up. Any such specifications and conditions shall be fully consistent with all substantive legislation and rules on public disclosure regulating these corporate typologies and with the regulations listed in paragraph 6 of additional provision four.

2. The DUE shall be sent by electronic or digitised methods pursuant to the rules for the use of such methods, as well as with the provisions of specific legislations.

3. Further to the provisions of the second sub-paragraph of the first paragraph in Section 440, the founding partners of new business concerns may inform the notary public, prior to formalisation of the deed of incorporation, of their intention to conduct the procedures and transmit the data included in the DUE directly or via an appointed representative, in which case the provisions of this additional provision shall not be applicable.

4. The DUE must be approved by the Council of Ministers at the behest of the Minister of the Economy and Finance, who shall submit a report thereon to all the other ministries involved in light of the subject matter addressed. Such report shall be made available in all of Spain's official languages.

5. The Central Government, via the Ministry of the Economy and Finance, may conclude agreements with other public authorities or public or private entities to establish entrepreneurial advisory and start-up counters (*puntos de asesoramiento e inicio de tramitación*, PAIT) for new business concerns. Such counters shall consist of offices where the company name referred to in the second paragraph of Section 440 can be reserved, and where entrepreneurs can seek advice and services relating to the definition of and administrative procedures in connection with their business initiatives both at the outset and during the first few years of activity. DUE proceedings should be initiated at these counters. Such agreements shall specify the information, advisory and procedural assistance services that must be provided free of charge and any additional services that may be provided for a fee.

The one-stop window business centres created under the Protocol of 26 April 1999 and the respective legal instruments for cooperation with autonomous communities and local corporations may provide the guidance, procedural and advisory services established in this act for the creation and development of new business concerns. The criteria for including the technological facilities required to implement PAIT entrepreneurial advisory and start-up counters in the one-stop window business centres shall be laid down in an order prepared by the Ministry for the Presidency in conjunction with the Ministry of the Economy and Finance.

6. The public authorities shall establish the electronic procedures required for the necessary data interchange.

Additional provision four. *Social collaboration*

1. The tax authorities may implement the social collaboration provided in Section 92 of General Tax Act 58/2003 of 17 December, and legislation elaborating thereon, for the submission of tax returns, notifications and other

documents associated with starting up and engaging in commercial activities by new business concerns, through agreements concluded with the General Board of Notaries Public, the Chartered Institute of Property, Chattels and Mercantile Registrars of Spain and other chartered institutes, as well as chambers of commerce and the entrepreneurial advisory and start-up counters (PAIT).

2. The tax authority may also establish mechanisms for adhering to such agreements by notaries public, mercantile registrars and other members of chartered institutes to implement such social collaboration. These agreements shall be binding on the members of the corporate organisations mentioned in the preceding paragraph when so provided in tax regulations. The tax authority may also establish mechanisms to adhere to such agreements by members of chartered institutes with a view to implementing such social collaboration.

3. The Ministry of Economy and Finance shall issue an order establishing the circumstances and conditions under which the entities concluding such agreements and the notaries public, mercantile registrars and members of other chartered institutes adhering thereto must present tax returns, notifications and other documents on behalf of third parties by electronic or digitised methods.

4. The Ministry of Labour and Immigration shall establish the means for the electronic or digitised handling of notifications and other documents related to the formation or start-up of new business concerns submitted to the bodies and services under its aegis, via agreements concluded with the General Board of Notaries Public, the Chartered Institute of Property, Chattels and Mercantile Registrars of Spain and other chartered institutes.

5. The Ministry of Labour and Immigration shall issue an order establishing the circumstances and conditions under which the entities concluding such agreements and the notaries public, mercantile registrars and members of other chartered institutes adhering thereto must submit tax returns, notifications and other documents on behalf of third parties by electronic or digitised methods.

6. All the provisions of the preceding paragraphs shall apply notwithstanding any regulations specific to the inclusion of electronic or digitised methods for transmitting information in the public administration and the preventive legal security scheme.

Additional provision five. *Appeals against the results of assessment of deeds of incorporation for new business concerns*

If the mercantile registrar delivers a negative assessment on the deed of incorporation for a new business concern, the provisions of Sections 322 to 329 of the consolidated text of the Mortgage Act, approved by Decree on 8 February 1946, re-drafted pursuant to the provisions of the regulations introduced in Act 24/2001 of 27 December on tax, administrative and social measures, shall apply, except with respect to the time allowed for rulings, which in this case shall be 45 days.

Additional provision six. *Taxation measures applicable to the new limited business concern*

1. The tax authority, at the behest of new limited business concerns, shall grant postponement of payment of the transfer tax and stamp duty in connection with corporate operations, levied on the formation of these concerns. Postponement shall be for one year and shall not be subject to the provision of security of any kind whatsoever.

The tax authority, likewise at the behest of new limited business concerns shall also grant postponement of the corporation tax on earnings during the first two financial years after formation, for which no security shall be required. Payment of the tax liability for the first and second financial years must be made 12 and 6 months, respectively, after of the deadline for filing the respective tax returns.

The tax authority may further grant, at the behest of new business concerns, the postponement of payment or instalment payment of income tax withholdings or advances accruing during the first year after formation. Such benefits may or may not be subject to providing security.

The amounts postponed or paid by instalment pursuant to the provisions of this paragraph shall bear delayed payment interest.

2. For the first two financial years after formation, new business concerns shall not be bound to make the advance payments on the corporation tax referred to in Section 45 of the consolidated text of the Corporation Tax Act, approved by Royal Legislative Decree 4/2004 of 5 March.

Additional provision seven. *Supervisory powers of the National Securities Market Commission*

The provisions contained in Sections 512 to 514 inclusive, 516 to 523 inclusive and Section 528 under Title XIV of this consolidated text, form part of the regulatory and disciplinary rules governing the securities exchange, whereby any breaches thereof are subject to penalisation in accordance with the provisions of Title VIII of Act 24/1988 of 28 July on the Securities Exchange.

The National Securities Market Commission shall be empowered to initiate and commence disciplinary proceedings stemming from the breach of any of the obligations set forth under Title XIV, further to the provisions of Sections 95 *et seq.* of Securities Exchange Act 24/1988 of 28 July.

Final provision one. *Pool of company names, model by-laws and fast-track registration*

1. The Government is hereby authorised to regulate a Pool of Company Names, including reservation services.

2. Model by-laws for limited liability companies may be approved by an order issued by the Minister of Justice.

3. If the deed of incorporation of a limited liability company contains the aforementioned model by-laws and its

formation involves no non-cash contributions, the mercantile registrar must register the company within forty-eight hours, subject to payment of the transfer tax and stamp duty under the terms set forth in the respective regulations.

Final provision two. *Modification of category ceilings and amounts of fines*

The Government is hereby authorised to approve any of the following by royal decree.

1 The limits specified in this act below which corporate enterprises are allowed to issue abridged financial statements, which may be aligned with the criteria laid down in European Union directives.

2 The amounts of the fines specified in the Commercial Code and in this act, which may be adjusted to changes in the cost of living.

