Section I. – **General provisions**

Art. 1.

Commercial companies are those companies the object of which is to conduct commercial activities.

They shall be governed by the agreements between the parties, the laws and specific practices relating to commerce and civil law.

They shall be divided into commercial companies in the strict sense and commercial associations.

(Law of 18th September, 1933)

«**Art. 2.**

The law recognises six types of commercial companies in the strict sense:

the *société en nom collectif*	(general corporate partnership / unlimited company)
the *société en commandite simple*	(limited corporate partnership);
the *société anonyme*	(public company limited by shares);
the *société en commandite par actions*	(corporate partnership limited by shares);
the *société à responsabilité limitée*	(private limited liability company);
the *société coopérative*	(co-operative society)»

(Law of 31st May, 1999)

«The domicile of a commercial company is located at its principal establishment. Until evidence to the contrary shall have been finally brought, the principal establishment of a company is deemed to be its registered office.»

(Law of 18th September, 1933)

«Each of them shall constitute a legal person separate from its members. The acquisition of a participation in any of the above companies shall not of itself constitute a commercial activity.

The authorisation granted by a husband to his wife to acquire a participation in any of the above companies or in a civil company which has retained its original character shall *ipso jure* extend to all administration actions to be taken by her in her capacity as member.[1]

Commercial associations shall be subdivided into temporary commercial associations (*associations momentanées*) and commercial associations by participation (*associations en participation*).

They shall not constitute a legal person separate from that of their members.»

(Law of 18th September, 1933)

Art. 3.

«Companies the object of which is civil [*i.e. not commercial*] and which subject themselves to the rules of article 1832 et seq. of the Civil Code without prejudice to the amendments made thereto by this Appendix[2] shall similarly constitute a legal person separate from that of their members, and the service of any process on behalf of or upon such companies shall be valid if made in the name of, or against, the company alone.

The rules laid down in paragraphs 3 to 6 inclusive of Article 181 shall apply to them.[3]

However, companies the object of which is civil may be incorporated in the form of any of the six types of commercial companies listed in the preceding Article. However, in such case, those companies and any transactions undertaken by them shall be commercial and subject to the laws and practices of commerce.

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1 This provision is implicitly repealed by the provisions of article 488 of the Civil Code as enacted pursuant to the law of 12th December, 1972.
See in the Civil Code:
Art. 223. *(Law of 12th December, 1972)* «Each spouse has the right to exercise a profession or have an industrial activity or a business without consent of the other spouse.
However, if the spouse is of the view that this activity is of a nature such that will cause serious damage to his/her non-monetary or monetary interests or those of the underage children, he/she has an action before the district court.
The provisions of the preceding paragraph do not apply to the exercise of public services or elected offices.
If the profession, industrial activity or business are not yet undertaken on the day of the application, the spouse cannot begin such activity before the ruling of the court thereon, unless otherwise decided by the president of the court sitting in urgency matters.»

2 i.e. by the law of 1933.

3 Read 2 to 5, as paragraph 2 has been abrogated by the law of 28th December, 1992.

Civil companies, regardless of the date of their incorporation and provided that no provision of their constitutive contract prohibits the same, may also be converted into commercial companies by resolution of a general meeting specifically convened for that purpose. Said meeting shall approve the articles of the company. Its resolution shall be valid only if approved by the vote of holders of corporate units representing at least three-fifths of the corporate units of the company.

Finally, any of the six companies listed in Article 2, irrespective of the original nature of their object or the date of their incorporation and provided that no provision of their constitutive contract prohibits the same, may be converted into a company of one of the five other types provided for in that Article.»

(Law of 7th September, 1987)

«In all the cases referred to in paragraphs 4 and 5, the conversion shall not give rise to new legal entity.»

(Law of 18th September, 1933)

«The rights of third parties are reserved.»

(Law of 23rd November, 1972)

[68/151/EEC art. 10]

«Art. 4.

Sociétés en nom collectif, sociétés en commandite simple, sociétés coopératives and civil companies shall, on pain of nullity, be established by means of a special notarial deed or by private instrument, conforming in the latter case to article 1325 of the Civil Code. Two originals shall be sufficient for civil companies and *sociétés coopératives*.

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

Art. 5.

Extracts of the deeds or instruments establishing *sociétés en nom collectif* and *sociétés en commandite simple* shall be published at the expense of the company.

Art. 6.

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

a precise designation of the members who are jointly and severally liable;

the firm name of the company, its object and the place where its registered office is located; the designation of the managers and the nature of, and limits to, their powers;

the amount of the corporate capital and details of the assets contributed or to be contributed to a *société en commandite simple* by the unlimited (general) members, with details of the corporate capacity in which they have been contributed or promised;

a precise designation of the limited members who must contribute assets, with details of the obligations of each of them;

the date on which the company commences and the date on which it ends.

Art. 7.

The extract of company instruments shall be signed: in the case of notarial deeds, by the notary who retains the complete deed and, in the case of private instruments, by all members who are jointly and severally liable.

(Law of 23rd November, 1972)

[60/151/EEC art. 2.1]

«Art. 8.

The constitutive instruments of *sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés coopératives* and civil companies shall be published in their entirety. Powers of attorney, irrespective of whether they are in the form of a public deed or private instrument, which are annexed thereto, are not required to be published in the *Mémorial*.

By way of derogation from the first paragraph, in the case of civil companies which are to be regarded as family companies within the meaning of Article III of the law of 18th September, 1933 providing for *sociétés à responsabilité limitée* and making certain changes to the legal and tax regime applicable to commercial

and civil companies, the publication of the constitutive instruments thereof may be made in the form of an extract to be signed by the managers, failing whom by all the members, which must contain the following particulars, failing which the penalties laid down in Article 10 apply:

a precise designation of the members;

the denomination of the company, its object and the place where its registered office is located;

a designation of its managers and the nature of, and limits to, their powers;

details of the assets contributed or to be contributed by each of the members, with an accurate valuation of any contributions in kind;

the date when the company commences and the date when it ends.»

Art. 9.

(Law of 8th August, 1985)

[60/151/EEC art. 3]

«§ 1. Instruments, extracts therefrom or information the publication of which is provided for by law shall within one month after the date of the finalised instrument be lodged with the «register of commerce and companies»[4]. A receipt shall be issued in respect thereof. Documents so lodged shall be placed in a file kept for each company.»

(Law of 23rd November, 1972)

«The original or a notarised copy of the powers of attorney, whether in the form of a public deed or private instrument and which are annexed to the constitutive instrument of *sociétés anonymes, sociétés en commandite par actions, sociétés coopératives, sociétés à responsabilité limitée* and civil companies, shall be filed at the same time as the documents to which they relate.

§ 2. Any person may, without charge, examine documents lodged in respect of a specific company and obtain, even by a request sent in writing, a full or partial copy thereof, the only payment required being that of the «administrative costs as determined by grand-ducal regulation»[4, 5].

Such copies shall be certified true copies unless the applicant waives certification.»

(Law of 8th August, 1985)

«§ 3. Publication shall be made in the «*Mémorial C, Recueil des Sociétés et Associations*»[6]; the published documents shall be sent to the «register of commerce and companies»[4] where they may be examined by any person free of charge and they shall be collected in a *Recueil Spécial* (Special Register).

Publication must take place «within two months»[4] of lodgement.»

(Law of 2nd December, 1993)

«The publication in the «*Mémorial C, Recueil des Sociétés et Associations*»[6] of annual accounts, consolidated accounts and all other documents and informations relating thereto and the publication of which is required by law shall be made by means of a reference to the lodgement of such documents at the «register of commerce and companies»[4].»

(. . .) *(abrogated by the law of 19th December, 2002)*

(Law of 23rd November, 1972)

«§ 4. Documents and extracts of documents will only be valid vis-à-vis third parties from the day of their publication in the «*Mémorial C, Recueil des Sociétés et Associations*»[6] unless the company proves that the relevant third parties had prior knowledge thereof. Third parties may however rely upon documents or extracts thereof which have not yet been published.

With regard to transactions taking place before the sixteenth day following the day of publication, these documents or extracts of documents will not be valid vis-à-vis third parties who prove that it was impossible for them to have had knowledge thereof.

In the event of any discrepancy between the document filed and the document published in the «*Mémorial C, Recueil des Sociétés et Associations*»[6], the latter is not valid vis-à-vis third parties. Third parties may however rely upon the same unless the company proves that they had knowledge of the text of the document filed.»

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[4] Modified by the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A - 149 of 31st December, 2002, p. 3630; doc. parl. 4581).

[5] Grand-Ducal Regulation of 23rd January, 2003 enforcing the law of 19th December, 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (Mém. A - 15 of 30th January, 2003, p. 248).

[6] The denomination of the *Recueil Spécial des Sociétés et Associations* has been changed by Grand-Ducal Regulation of 23rd December, 1994 amending the Grand-Ducal Regulation of 9th January, 1961 on the three publications of the *Mémorial* (Mém. A - 116 of 24th December, 1994, p. 2735).

Art. 10.

(Law of 24th August, 1983)

«If a document is not lodged within the time limit prescribed in the foregoing article, the *receveur de l'Enregistrement* (the collector of registration duties) shall collect a fine equal to one per thousand of the capital of the company, which may however not amount to less than «twenty-five euros»[7] nor exceed «two hundred and fifity euros»[7]. This fine shall be payable upon registration of the documents lodged out of time and shall be imposed by the collector *ex offico*.»

(Law of 23rd November, 1972)

The fine shall be payable, in respect of public deeds, by the notary or notaries jointly and severally and, in respect of private instruments, by those members who are jointly and severally liable, or, in the absence thereof, by the founder members, and, likewise jointly and severally, by all persons legally obliged to lodge the relevant documents.

Any court action brought by a company whose constitutive instrument has not been published in the «*Mémorial C, Recueil des Sociétés et Associations*»[8], in accordance with the foregoing Articles, shall be inadmissible.»

(Law of 23rd November, 1972)

[68/151/EEC art. 10]

«Art. 11.

Any contractual amendment to the instrument of a company must, on pain of nullity, be made in the form required for the constitutive instrument of the company.»

(Law of 23rd November, 1972)

[68/151/EEC art. 2.1]

«Art. 11bis.

§ 1. The following shall be lodged and published in accordance with the foregoing Articles:

1) documents required by law to be published in the «*Mémorial C, Recueil des Sociétés et Associations*»[8], with the exception of convening notices, the lodgement of which is not compulsory;
2) instruments amending provisions which are required by law to be lodged and published;
3) extracts of any instrument relating to the appointment or termination of the appointment of
   a) directors, managers and statutory auditors of *sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée* and civil companies;
   b) the persons appointed for day-to-day management of *sociétés anonymes*;
   c) liquidators of companies which have legal personality;»

   (Law of 31st May, 1999)

   «The extract shall include a precise indication of the first and last names and of the private or professional address of the persons referred to therein.»

(Law of 23rd November, 1972)

«4) extracts of any instrument providing for the manner of liquidation and the powers of the liquidators if said powers are not exclusively and expressly defined by law or by the articles of the company;
5) extracts of any court decision which has become final or which is enforceable on a provisional basis which rules that a company is dissolved or that its constitution is void or that amendments to the articles thereof are void.

   Such extract shall contain:
   a) the firm name or the denomination of the company and the registered office thereof;
   b) the date of the decision and the court which issued it;
   c) where applicable, the appointment of the liquidator or liquidators.

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

8 The denomination of the *Recueil Spécial des Sociétés et Associations* has been changed by Grand-Ducal Regulation of 23rd December, 1994 (Mém. A - 116 of 24th December, 1994, p. 2735).

§ 2. The following shall be the subject of a declaration signed by the persons or corporate bodies with authority to do so on behalf of the company:

1) dissolution of the company by reason of expiry of its term or for any other reason;

2) the death of any of the persons mentioned in §1, 3) of this Article;

3) in *sociétés à responsabilité limitée* and civil companies, any changes of membership.

The said declarations shall be lodged and published in accordance with the foregoing Articles.

§ 3. The full text of the articles of incorporation, in an updated version after each amendment thereof, of *sociétés anonymes, sociétés en commandite par actions* and *sociétés à responsabilité limitée* shall be lodged in accordance with the foregoing Articles.

A notice in the «*Mémorial C, Recueil des Sociétés et Associations*»[9] published in accordance with the foregoing Articles, shall indicate the subject matter and the date of the instruments the lodgement of which is provided for by this paragraph.

§ 4. The instruments and information the publication of which is provided for by the foregoing paragraphs are valid vis-à-vis third parties in accordance with the conditions laid down in Article 9, § 4.»

(Law of 23rd November, 1972)

[68/151/EEC art. 8]

«Art. 12.

Companies shall act through their managers or directors, the powers of which shall be determined by law or by the constitutive instrument and by instruments adopted subsequently in accordance with the constitutive instrument.

Upon completion of the publication formalities regarding those persons who, as a corporate body, are empowered to commit a company, no irregularity in their appointment may be relied upon vis-à-vis third parties, unless the company proves that the said third parties had knowledge thereof.»

(Law of 23rd November, 1972)

[68/151/EEC art. 7]

«Art. 12bis.

Any person who enters into a commitment of any kind, including by acting as surety or *gestator rerum* (agent without formal authority), in the name of a company which is in the process of formation and has not yet acquired legal personality, shall be personally and jointly and severally liable therefor, subject to any agreement to the contrary, if the said commitments are not assumed by the company within two months of its incorporation, or if the company is not incorporated within two years after the commitment was entered into.

Where such commitments are taken over by the company, they shall be deemed to have been contracted by the company from the outset.»

(Law of 24th April, 1983)

[68/151/EEC art. 11.2]

«Art. 12ter.

A *société anonyme*, a *société en commandite par actions* and a *société à responsabilité limitée* may be declared void only in the following cases:

1) if the constitutive instrument is not drawn up in the form of a notarial deed;

2) if such instrument does not state the name of the company, the corporate object, the capital contributions or the amount of capital subscribed for;

3) if the corporate object is unlawful or contrary to public policy;

4) if there is not at least one founder who is validly committed.

If the clauses of the constitutive instrument regarding the distribution of profits or the apportionment of losses are contrary to article 1855 of the Civil Code, those clauses shall be deemed excluded, without prejudice to other sanctions; the same shall apply to any other provision which is contrary to a mandatory rule or to public policy or moral standards.»

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[9] The denomination of the *Recueil Spécial des Sociétés et Associations* has been changed by Grand-Ducal Regulation of 23rd December, 1994 (Mém. A - 116 of 24th December, 1994, p. 2735).

(Law of 23rd November, 1972)

[68/151/EEC art. 11.1 and 12]

«Art. 12quater.

§ 1. The avoidance of a company vested with legal personality must be declared by court order.

Such avoidance shall have effect as from the date of the order declaring it.

However, it will be valid against third parties only from the date of publication of the order as provided for by Article 11bis, § 1.,5) in accordance with the conditions set out in Article 9.

§ 2. The avoidance of a company vested with legal personality, on grounds of formal irregularities, in application of Article 4 or Article 12ter, 1st paragraph, 1) or 2), may not be relied upon by the company or by any member vis-à-vis third parties, even as a defence, unless it has been ordered by a court decision published in accordance with §1.

§ 3. §§s 1 and 2 shall apply to the avoidance of contractual amendments to the constitutive instruments of companies pursuant to article 11bis.»

(Law of 23rd November, 1972)

[68/151/EEC art. 12.2 and 12.3]

«Art. 12quinquies.

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

The avoidance shall not of itself affect the validity of the company's commitments or of commitments entered into in favour of the company, without prejudice to the consequences deriving from the fact that the company is in liquidation.

The courts may determine the method of liquidation and appoint the liquidators.»

(Law of 23rd November, 1972)

[68/151/EEC art. 12.1]

«Art. 12sexies.

No third party objections against a court order which declared that a company vested with legal personality is void or that a contractual amendment to the instruments governing the said company is void shall be admissible upon the expiry of a period of six months from publication of the court order in accordance with Article 11bis, § 1.5).»

Art. 13.

Associations momentanées and *associations en participation* shall not be subject to the formalities applicable to commercial companies in the strict sense.

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

Section II. – **Sociétés en nom collectif**

(Unlimited Companies)

Art. 14.

A *société en nom collectif* is a company operating under a firm name in which all the members are jointly and severally liable without limitation for all the obligations of the company.

Art. 15.

Only the names of the members may be included in the firm name.

Section III. – **Sociétés en commandite simple**

(Limited corporate partnerships)

Art. 16.

A *société en commandite simple* is a company entered into by one or more unlimited members with unlimited and joint and several liability for all the obligations of the company, and one or more limited members, who are only liable for the debts and losses of the company up to the amount of the funds which they have promised to contribute thereto.

Art. 17.

A limited member may be forced by third parties to repay any interest and dividends which he has received if they have not been paid out of real profits of the company and, in such case, if there has been fraud, bad faith or gross negligence by the manager, the limited member may bring an action against him to recover the amount he had to so repay.

Art. 18.

The firm name must include the name of one or more unlimited members.

The name of a limited member may not be included in the firm name.

Art. 19.

A limited member shall be prohibited, even pursuant to a power of attorney, to carry out any act of management.

A limited member is not bound as a result of his advice or consultation, the carrying out of any control or supervisory measures or the giving of any authorisation to the managers for acts outside their powers.

Art. 20.

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

He shall also be jointly and severally liable to third parties for commitments in which he did not participate, if he has regularly managed the business of the company or has allowed his name to appear in the firm name.

Art. 21.

The assignment of corporate units or interests authorised by the corporate contract or subsequently consented to by all the members may only be made in accordance with the procedures laid down by civil law; no such assignment shall affect any of the corporate commitments before publication thereof.

Art. 22.

In the event of the death of the manager, or if he becomes subject to legal incapacity or is otherwise unable to act, and if it has been provided that the company is to continue to exist, the president of the «*Tribunal d'Arrondissement* dealing with commercial matters»[10] may, if the articles of the company do not otherwise provide therefor, at the request of any interested party, appoint a limited member or some other person as administrator who shall take all urgent and purely administrative measures for such period as may be determined in the court order, which period may not exceed one month.

The temporary administrator shall be liable only in respect of the performance of his mandate.

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

Section IV. - **Sociétés anonymes**

(Public companies limited by Shares)

§ 1. On the nature and classification of sociétés anonymes

Art. 23.

A *société anonyme* is one in which each of the members is only contributing a specific amount.

Art. 24.

A *société anonyme* has no firm name; it does not bear the name of any member thereof.

Art. 25.

A *société anonyme* shall be described by a particular corporate denomination or by the designation of the object of its undertaking.

The said denomination or designation must be different from that of any other company.

If it is identical, or if the similarity thereof can lead to error, any interested party may cause it to be changed and may, as the case may be, claim damages.

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

§ 2. The incorporation of sociétés anonymes

Art. 26.

(Law of 24th April, 1983)

[77/91/EEC art. 6 and art. 9.1]

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

1) there must be at least two members;
2) the capital must be at least «30,986.69 euros»[11]; however, that amount may be increased by Grand-Ducal regulation to be adopted upon consultation of the *Conseil d'Etat* in order to take into account either variations in national currency in relation to the unit of account or changes in Community regulations;
3) the capital must be subscribed for in its entirety;
4) at least one fourth of each share must be paid-up in cash or by means of contributions other than cash.

(2) The notary, drawing up the instrument, shall verify that these conditions have been satisfied and shall expressly ascertain compliance therewith.»

(Law of 24th April, 1983)

[77/91/EEC art. 9.2]

Art. 26-1.

(1) Any shares issued against contributions other than cash must be paid-up within a period of five years after the time of incorporation.»

(Law of 28th June, 1984)

[77/91/EEC art. 10]

«(2) Contributions other than cash shall, prior to the incorporation, be reported upon by a *réviseur d'entreprises* who shall be appointed by the founders among the members of the *Institut des réviseurs d'entreprises*.»

(Law of 24th April, 1983)

[77/91/EEC art. 10]

«(3) This report must give a description of each of the proposed contributions as well as of the methods of valuation used and shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value, or, in the absence of a nominal value, the accounting par value and, where applicable, the share premium of the shares to be issued in consideration thereof. The report shall remain annexed to the instrument provided for in Article 27 or the draft instrument provided for in Article 29. The conclusions thereof must be reproduced in the above-mentioned documents.

(4) Paragraphs (2) and (3) are not applicable where 90% of the nominal value or accounting par value of all the shares are issued against contributions other than cash made by one or more companies and where the following requirements are met:

a) with regard to the company to which the contributions are made, the natural or legal persons referred to in Article 27 have agreed to dispense with the expert's report;
b) a record of the dispense remains annexed to the instrument;
c) the companies making such contributions have reserves which under law or their articles may not be distributed and which are at least equal to the nominal value, or in the absence of a nominal value, the accounting par value, of the shares issued against contributions other than cash;
d) the companies making such contributions guarantee, up to an amount equal to that indicated in c), the debts of the recipient company arising between the time the shares are issued against contributions other than cash and one year after publication of that company's annual accounts for the financial year during which those contributions were made. Any transfer of these shares is prohibited within this period;

[11] Implicitly modified by the law of 1st August, 2001 on euro conversion (Mém. A - 117 of 18th September, 2001, p. 2440; doc. parl. 4722).

e) the guarantee referred to under d) must be given in an annex to the instrument provided for in Article 27;

f) the companies making these contributions shall place a sum equal to that indicated in c) into a reserve which may not be distributed until three years after publication of the annual accounts of the recipient company for the financial year during which the contributions were made or, where applicable, until such later date as all the claims relating to the guarantee referred to in d) which are submitted during that period shall have been settled.»

(Law of 24th April, 1983)

[77/91/EEC art. 11]

«Art. 26-2.

(1) The acquisition by a company, within the two years following its incorporation, of any asset belonging to a natural or legal person, by whom or on whose behalf the constitutive instrument was signed, for a consideration of not less than one tenth of the subscribed capital, shall be subject to a verification and publication in the manner provided by Article 26-1 and shall be subject to approval by the general meeting of shareholders.» *(Law of 8th March, 1989)* «The *réviseur d'entreprises* is appointed by the board of directors.»

(Law of 24th April, 1983)

«(2) Paragraph (1) shall not apply to acquisitions made in the normal course of the company's business nor to acquisitions made at the instance or under the supervision of an administrative or judicial authority or to stock exchange acquisitions.»

(Law of 24th April, 1983)

[77/91/EEC art. 7]

«Art. 26-3.

The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of these assets.»

(Law of 24th April, 1983)

[77/91/EEC art. 12]

«Art. 26-4.

Subject to the provisions concerning the reduction of the subscribed capital, shareholders may not be released from their obligation to pay-up their contribution.»

(Law of 24th April, 1983)

[77/91/EEC art. 8]

«Art. 26-5.

(1) Shares may not be issued for an amount lower than their nominal value or, in the absence of a nominal value, their accounting par value;

(2) However, those persons who, professionally, undertake the placing of shares, may, with the consent of the company, pay less than the total amount of the shares subscribed by them during such a transaction.

(3) The minimum amount to be paid by such subscribers shall be fixed by Grand-Ducal regulation.»

(Law of 24th April, 1983)

[77/91/EEC art. 2 and 3]

«Art. 27.

The instrument constituting the company shall indicate:

1) the identity of the natural or legal persons by whom or on whose behalf it has been signed;
2) the form of the company and its denomination;
3) the registered office;
4) the corporate object;
5) the amount of the subscribed capital and, where applicable, of the authorised capital;
6) the amount of the subscribed capital initially paid-up;

7) the classes of shares, where several classes exist, the rights attaching to each class, the number of shares subscribed to and, in the case of an authorised capital, the shares to be issued in each such class and the rights concerning each class, as well as:
   - the nominal value of the shares or the number of shares for which no nominal value is specified;
   - any special conditions restricting the transfer of shares;
8) whether the shares are in registered or bearer form and any provision in relation to the conversion of securities supplemental to, or derogating from, the law;
9) particulars of each contribution made otherwise than in cash, the conditions on which it is made, the name of the contributor and the conclusions of the report of the *réviseur d'entreprise* provided for in Article 26-1;
10) the reason for, and the extent of, any special advantages conferred at the time of incorporation of the company upon any person who participated in the incorporation of the company;
11) if applicable, the number of securities or units which do not represent the stated capital, as well as the rights attaching thereto, in particular the right to vote at general meetings;
12) insofar as they are not provided for by law, the rules determining the number and method of appointment of the members of the corporate bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among such corporate bodies;
13) the duration of the company;
14) at least the approximate amount of the costs, expenses and remuneration or charges of whatever form, which are payable by the company or chargeable to it by reason its incorporation.»

(Law of 24th April, 1983)

«**Art. 28.**

The company may be constituted by means of one or more notarial instruments to which all the members are parties, either in person or by representative(s) holding notarised or private proxies.

The parties to those instruments shall be deemed to be the founders of the company. However, if the instruments designate as founder(s) one or more shareholders who together hold at least one third of the capital of the company, the other parties who merely subscribe for shares in cash and are not granted, directly or indirectly, any special advantage, shall be regarded as mere subscribers.

If the payments have been made in application of Article 26 before the execution of any of the constitutive instruments, the proof thereof may be furnished in the form of a private receipt, to be drawn up in duplicate.»

(Law of 24th April, 1983)

«**Art. 29.**

(1) The company may also be constituted by means of subscriptions.

(2) The constitutive instrument shall be drawn up in advance in the form of a notarial instrument and shall be published as a draft. The parties to that instrument shall be deemed to be the founders of the company.

(3) The subscriptions must be made in duplicate and must indicate:

1) the date of the notarial corporate instrument published as a draft and the date of its publication;
2) the particulars provided for by Article 27 and the name of the *réviseur* whose report is annexed to the constitutive instrument;
3) that payment on each share of at least one fourth of the amount subscribed for has been made or an undertaking that such payment will be made no later than the final incorporation of the company.

(4) They shall contain a notice convening the subscribers to a meeting to be held within three months for the purpose of the final incorporation of the company.

(5) If by virtue of paragraph (3) n° 3 of this Article, payments are made after subscription but before the general meeting provided for in the next following Article, they may also be proven by means of a private receipt drawn up in duplicate.

(6) The prospectuses and circulars must contain the same information as the subscription forms. The same shall apply to any publicly posted notices and newspaper announcements, unless they merely mention the date of publication of the draft constitutive instrument.»

(Law of 24th April, 1983)

«Art. 30.

(1) On the scheduled date, the founder(s) shall present to the meeting, which shall be held in the presence of a notary, proof, together with supporting documents, that the conditions laid down by Article 26 have been satisfied.

(2) If the majority of the subscribers present in person or represented by the holder(s) of notarised or private proxies, other than the founder(s), have no objection to the incorporation of the company, the founder(s) shall declare that it is finally incorporated.

(3) If the targeted capital has not been subscribed for in its entirety, the company may nevertheless be incorporated with an amount of capital corresponding to the total amount subscribed for, provided that the instrument published in accordance with Article 9 has allowed for such a possibility.

(4) The notarised minutes of the meeting of the subscribers, which shall contain a list of the subscribers and a statement of the payments made, shall finally incorporate the company.»

(Law of 24th April, 1983)

«Art. 31.

(1) The founders shall be jointly and severally liable towards all interested parties, notwithstanding any provision to the contrary for:

1) any portion of the capital which will not have been validly subscribed to, and any outstanding balance between the minimum capital provided for by Article 26 and the amount subscribed for; they shall ipso jure be deemed to be subscribers thereof;
2) the full and complete payment of one fourth of the shares subscribed for, and the payment within a period of five years of the shares issued against contributions other than cash; they shall likewise be under a joint and several obligation for the full and complete payment of the portion of the capital of which they are deemed to be subscribers pursuant to the foregoing paragraph;
3) the indemnification of the damage which is the immediate and direct result of either the avoidance of the company or the omission or incorrectness in the instrument or draft instrument of the company or in the subscription forms of the statements prescribed by Articles 27 and 29.

(2) Any person who enters into a commitment for a third party mentioned by name in the instrument and acting either as agent or as surety shall be deemed to be personally committed if they have no valid mandate or the commitment is not ratified within two months of the commitment.

The founders shall be jointly and severally liable for these commitments.»

(Law of 24th April, 1983)

[77/91/EEC art. 13]

«Art. 31-1.

The provisions concerning the incorporation of *sociétés anonymes* shall apply in the case of the transformation of a company of another form into a *société anonyme*.»

(Law of 24th April, 1983)

[77/91/EEC art. 25.1 and 25.2]

«Art. 32.

(1) Any increase of capital shall be decided upon by the general meeting at the conditions provided for amendments to the articles.[12]

(2) The constitutive instrument may, however, authorise the board of directors to increase the capital on one or more occasions up to a specified amount.

(3) The general meeting may also grant such authorisation by means of an amendment to the articles.

(4) The rights attaching to the new shares shall be defined in the articles.

(5) The authorisation shall be valid for only five years from publication of the constitutive instrument or the amendment of the articles. It may be renewed on one or more occasions by the general meeting deliberating in accordance with the requirements for amendments to the articles, for a period which, for each renewal, may not exceed five years.»

[12] See footnote on page 29.

(Law of 24th April, 1983)

[77/91/EEC art. 27]

«Art. 32-1.

(1) The formalities and conditions provided for the incorporation of companies shall apply to increases of capital by means of new contributions, subject to the following provisions.

(2) The members of the board of directors shall be jointly and severally subject to the obligations of the founders under Article 31.

[77/91/EEC art. 28]

(3) Where the increase is carried out by subscriptions, the subscription forms must contain the statements provided for by Article 29, paragraph (3) sub-paragraphs 2 and 3. If the proposed increase of capital is not entirely subscribed for, the capital shall be increased by the amount of subscriptions received provided the conditions of the issue expressly provided for that possibility.

(4) The increase of capital shall be recorded in a notarial instrument, prepared at the request of the board of directors, against presentation of the documents proving the subscriptions and payments in the case of an increase carried out by way of subscriptions or where it is effected pursuant to the authorisation provided for in Article 32. The notarial instrument must be drawn-up within one month from the end of the subscription period or within three months from the day on which that period commenced.»

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12 This principle is set aside for certain conversions of share capital into euro under the *Law of 10th December, 1998* (as amended with effect from 1st January, 2002 by the *Law of 1st August, 2001*);

Art. 1.

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

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

(2) The general meeting, or, in the case of *sociétés à responsabilité limitée* having not more than twenty-five members, the members, may also, by a resolution passed under private deed, after the entry into force of this law authorise, the board of directors or the manager(s) to take, by decision passed under private deed, the measures provided for in paragraph (1). This authorisation may not be valid beyond 31st December, 2001.

(3) By derogation to articles 67-1(2), 116 4°, 117 4°, 194 and 199 of the law of 10th August, 1915 and notwithstanding any contrary provisions of the articles, the general meeting, or, in the case of *sociétés à responsabilité limitée* having not more than twenty-five members, the members deliberate at a simple majority in the circumstances provided in paragraphs (1) and (2) and their decision is not subject to any condition regarding a quorum of the corporate capital being present or represented.

(Law of 1st Aufust 2001)

«By derogation to paragraph (1) of Article 1*****, the board of directors or the manager(s) may be authorised, by a resolution passed before 30th June, 2002 under private deed by the general meeting, or, in the case of *sociétés à responsabilitée* having not more than 25 members, by the members, to carry out an increase of the share capital until 30th June, 2002 at the latest and within the limits provided in paragraph (1).»

Art. 2.

By derogation to article 70, paragraph 3 of the law of 1915 and notwithstanding any provision to the contrary of the articles, the notices for any general meeting called to be held between the date of entry into force of this law and 31st December, 2001 and having as sole object one or more of the decisions referred to in article 1 must contain the agenda and must be made by a notice published 8 days at least before the meeting in a Luxembourg daily newspaper.

Art. 3.

The board of directors or the manager(s) of *sociétés anonymes, sociétés en commandite par actions, sociétés coopératives* and *sociétés à responsabilité limitée* the capital of which is stated in ECU may, starting 1st January, 1999 by decision passed under private deed, replace in the articles all references to the ECU by references to the euro. Such a replacement does not constitute a change of the articles.

Art. 4.

Article 9 of the law of 10th August, 1915 concerning commercial companies, as amended, shall apply to the private deed recording the decisions taken in application of article 1.

Article 9 § 1 and § 2 of the law of 10th August, 1915 concerning commercial companies, as amended, shall apply to the private deed recording the decisions taken in application of article 3. By derogation to article 9 § 3 of the law of 10th August, 1915 concerning commercial companies, as amended, the private deed recording the resolutions taken in application of article 3 will not be published in the *Mémorial C, Recueil des Sociétés et Associations*.

***** This should be by derogation to paragraph (2).

(Law of 8th March, 1989)

[77/91/EEC art. 27]

«(5) In the case of non-cash contributions, the shares must be paid in full within five years from the time the increase of capital has been resolved. A report shall be drawn up by a *réviseur d'entreprises* in accordance with article 26-1; this *réviseur d'entreprises* is appointed by the board of directors. The report of the *réviseur d'entreprises* shall be filed in accordance with Article 9, § 1.»

(Law of 24th April, 1983)

[77/91/EEC art. 26]

«Art. 32-2.

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

(Law of 24th April, 1983)

[77/91/EEC art. 29.1, 2, 3, 4, 5 and 7]

«Art. 32-3.

(1) Shares to be subscribed for in cash shall be offered on a pre-emptive basis to shareholders in the proportion of the capital represented by their shares.

(2) The articles may provide that paragraph (1) shall not apply to shares which have different rights to participate in distributions or in the assets in the event of liquidation. The articles may also provide that, where the subscribed capital of a company with several classes of shares is increased by the issue of new shares of only one class, the pre-emptive right of the holders of shares of the other classes may not be exercised until after that right has been exercised by the holders of the shares of the class in which the new shares are issued.

(3) The right to subscribe may be exercised within a period determined by the board of directors, which may not be less than 30 days from the start of the subscription period, which shall be announced by means of a notice determining the subscription period which shall be published in the *Mémorial* and in two newspapers published in Luxembourg. However, where all the shares are in registered form, the shareholders may be notified by registered letter.

(4) The right to subscribe shall be transferable throughout the subscription period, and no restrictions may be imposed on such transferability other than those applicable to the shares in respect of which the right arises.

(5) The articles may not withdraw or restrict pre-emption rights.

They may nevertheless authorise the board of directors to withdraw or restrict these rights in relation to an increase of capital made within the authorised capital provided for in accordance with Article 32. Such authorisation shall not be valid for a longer period than the period provided for in Article 32(5).

A general meeting called upon to resolve, at the conditions prescribed for amendments to the articles, either upon an increase of capital or upon the authorisation to increase the capital in accordance with Article 32 (1), may limit or withdraw pre-emptive subscription rights or authorise the board to do so. Any proposal to that effect must be specifically announced in the convening notice. Detailed reasons therefor must be set out in a report prepared by the board of directors and presented to the meeting, dealing in particular with the proposed issue price.

(6) The pre-emptive subscription rights are not excluded as provided for in paragraph (4)[13] where, in accordance with the decision relating to the increase of the subscribed capital, the shares are issued to banks or other financial institutions with a view to their being offered to the shareholders of the company in accordance with paragraphs (1) and (3).

(7) Unexercised subscription rights shall, after the end of the subscription period, be sold publicly by the company on the Luxembourg Stock Exchange; the proceeds of sale, after deduction of the expenses thereof, shall be held at the disposal of the shareholders for a period of five years. Any balance not claimed shall revert to the company.»

(Law of 24th April, 1983)

[77/91/EEC art. 25.4 and art 29.6]

«Art. 32-4.

Articles 32, 32-1 and 32-3 shall apply to the issue of convertible bonds and bonds carrying subscription rights, but not to the conversion of such securities nor to the exercise of the right to subscribe, to both of which Article 32-2 shall nevertheless apply.»

[13] This reference should be to paragraph (5); see article 29.7 of EC directive 77/91/EEC.

(Law of 23rd November, 1972)

«**Art. 33.**

The public display, offer and sale of shares, founders' shares or similar securities, however so called, must be preceded by the lodgement, in accordance with Article 9, § 1 and 2, of a notice dated and signed by the vendors, indicating, in addition to the names, first names, occupations and addresses of the signatories:

1. The date of the constitutive instrument, that of all instruments amending the articles and the dates of publication thereof;
2. The object of the company, the corporate capital and the number of shares;
3. The amount of capital not paid-up and the amount remaining to be paid on each share; the number and interest rate of bonds in issue and details of any mortgages securing such bonds;
4. The composition of the board of directors and supervisory board;
5. The particulars prescribed in Article 27;
6. The latest balance sheet and the latest profit and loss account or a statement that the same have not yet been published.

Nevertheless, if the public display, offer or sale relates to shares, founders' shares or similar securities of a company which has existed for at least five years, the notice need only contain the particulars referred to in sub-paragraphs 1, 2, 3, 4 and 6.»

(Law of 23rd November, 1972)

«**Art. 34.**

Prospectuses and circulars must contain the particulars provided for in the foregoing article.

The same shall apply to the subscription forms, if the sale is made by public subscription. Such subscription forms must be in duplicate.

Posters and newspaper announcements must reproduce the text of the notice, unless they merely indicate the date of lodgement of the notice and the number and price of the securities offered for sale.»

Art. 35.

Any person contravening the provisions of Articles 33 and 34 shall be jointly and severally liable for any loss resulting from their misconduct.»

(Law of 18th September, 1933)

«**Art. 36.**

The publication formalities prescribed in the foregoing provisions shall not apply to the public sales of shares, founders' shares or similar securities, ordered by the courts or arranged periodically by the stock exchange commission (*Commission de la Bourse de Commerce*).»

§ 3. The shares and the transfer thereof

Art. 37.

The capital of *sociétés anonymes* shall be divided into shares of equal value, with or without an indication of the value thereof.

In addition to shares representing the corporate capital, founders' shares or similar securities may be created. The articles shall specify the rights attaching thereto.

(Law of 8th August, 1985)

«Founders' shares and similar securities shall, regardless of their name, be subject to the provisions of Article 26-1.»

The shares and founders' shares are in registered or bearer form.

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

Shares and smaller denominations of shares shall bear a serial number.

Their value may not be less than «1.24 euro»[14].

[14] Implicitly modified by the law of 1st August, 2001 on euro conversion (Mém. A - 117 of 18th September, 2001, p. 2440; doc. parl. 4722).

Art. 38.

If there are several owners of a share or smaller denomination of one share, the company shall be entitled to suspend the exercise of the rights attaching thereto until one person is designated as being the owner, vis-à-vis the company, of the share or smaller denomination.

Art. 39.

A register of the registered shares shall be maintained at the registered office and every shareholder may examine it; the register shall specify:

the precise designation of each shareholder and the number of shares or fractional shares held by him;

the payments made on the shares;

transfers and the dates thereof or conversion of the shares into shares in bearer form, if the articles allow therefor.

Art. 40.

Ownership of registered shares shall be established by an entry in the register prescribed in the foregoing Article.

Certificates recording such entries shall be issued to the shareholders.

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

Subject to any contrary provisions of the articles, transmission, in the case of death, shall be validly established vis-à-vis the company, provided that no objection is lodged, on production of a death certificate, the registered certificate and an affidavit (*acte de notoriété*) attested by a *juge de paix* or a notary.

(Law of 23rd November, 1972)

«**Art. 41.**

«Bearer shares shall be signed by two directors. Subject to contrary provisions of the articles, both or either one of such signatures may be manual, in facsimile or affixed by means of a stamp.

However, one of the signatures may be affixed by a person delegated for that purpose by the board of directors. In such case, it must be manual.

A certified true copy of the instrument delegating authority to such a person who is not a member of the board of directors shall be lodged in advance in accordance with Article 9, § 1 and 2.

The share shall indicate:

the date of the constitutive instrument of the company and the date of publication thereof;

the capital of the company, the number and type of each class of shares and the nominal value of the securities or the interest in the company which they represent;

a brief description of the contributions made to the company and the conditions on which they are made;

any special advantages conferred upon the founders;

the duration of the company;

the day and the time of the annual general meeting and the municipality in which it is to be held.»

Art. 42.

The transfer of bearer shares shall be made by the mere delivery of the certificate.

Art. 43.

(Law of 7th September, 1987)

«Transfers of shares shall be valid only after the final incorporation of the company and after one fourth of the amount of the shares shall have been paid-up.»

Shares shall be in registered form until they are fully paid-up.

The owners of shares or securities in bearer form may, at any time, request that they be converted, at their expense, into shares or securities in registered form.

The owners of shares or securities in registered form may at an time, unless the articles expressly prohibit the same, request conversion thereof into shares or securities in bearer form.

(Law of 8th August, 1985)

«Art. 44.

(1) Non-voting shares representing capital may be issued only on the following conditions:

1) they may not represent more than half of the corporate capital;
2) they must, in case of distribution of profits, confer the right to a preferential and cumulative dividend corresponding to a percentage of their nominal value or accounting par value determined by the articles, without prejudice to any right which may be given to them in the distribution of any surplus profits;
3) they must confer a preferential right to the reimbursement of the contribution, without prejudice to any right which may be given to them in the distribution of liquidation proceeds.

(2) If the condition provided for in 1) is not, or ceases to be, fulfilled, the shares in question shall ipso jure and notwithstanding any provision to the contrary, have the voting rights provided for in Articles 67 and «67-1»[15] without prejudice to the right conferred upon them by Article 46. The same shall apply to any shares to which the rights provided for in 2) and 3) are not, or cease to be, attached.»

(Law of 8th August, 1985)

«Art. 45.

(1) Preferred non-voting shares may be issued:

- at the incorporation of the company if provided for by the articles;
- by an increase of capital;
- by the conversion of ordinary shares into preferred non-voting shares.

In the latter two cases, the general meeting shall deliberate in accordance with the rules laid down in Article «67-1 (1) and (2)»[15].

(2) The general meeting shall determine the maximum amount of such shares to be issued within the limits laid down in Article 44 (1).

(3) If non-voting shares are created by the conversion of ordinary shares in issue or, where authority for that purpose is included in the articles if non-voting preferred shares are converted into ordinary shares, the general meeting shall determine, within the limits laid down in Article 44 (1), the maximum amount of shares to be converted and the conditions for conversion.

The offer for conversion shall be made at the same time to all shareholders in proportion to the amount of capital held. The right to subscribe may be exercised within a period to be determined by the board of directors, which may not be less than thirty days from the start of the subscription period which shall be announced by means of a notice determining the subscription period which shall be published in the *Mémorial* and in two Luxembourg newspapers.

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

(Law of 8th August, 1985)

«Art. 46.

(1) The holders of shares issued pursuant to Article 44 shall be entitled to vote in every general meeting called upon to deal with the following matters:

- the issue of new shares carrying preferential rights;
- the determination of the preferential cumulative dividend attaching to the non-voting shares;
- the conversion of non-voting preferred shares into ordinary shares;
- the reduction of the capital of the company;
- any change to its corporate object;
- the issue of convertible bonds;
- the dissolution of the company before its term;
- the transformation of the company into a company of another legal form.

[15] Modified by the law of 7th September, 1987.

(2) They shall have the same voting rights as the holders of ordinary shares at all meetings, in case, despite the existence of profits available for that purpose, the preferential cumulative dividends have not been paid in their entirety for any reason whatsoever for a period of two successive financial years and until such time as all cumulative dividends shall have been received in full.

(3) Save where they have voting right, no account shall be taken of non-voting preferred shares in determining the conditions as to quorum and majority at general meetings.»

(Law of 8th August, 1985)

«Art. 47.

The convening notices, reports and documents which, by virtue of the provisions of this law, must be sent or notified to the shareholders of the company shall likewise be sent or notified to the holders of non-voting preferred shares within the periods prescribed for that purpose.»

Art. 48.

A statement regarding the capital of the company shall be published once each year, at the end of the balance sheet.

(Law of 24th April, 1983)

[77/91/EEC art. 3]

«It shall comprise: the number of shares subscribed for;

the amounts paid-up;

a list of the shareholders who have not yet paid-up their shares, specifying the sums remaining due from them.»

The publication of this list shall, as regards the changes of the shareholders recorded therein, have the same effect as a publication made in accordance with Article 11.[16]

In the event of an increase of capital, the statement shall indicate a mention of the portion of the capital which shall not yet have been subscribed for.

Art. 49.

Notwithstanding any provision to the contrary, shareholders shall be liable for the total amount of their shares.

However, a valid transfer of the shares shall release them, vis-à-vis the company, from the obligation to make any contribution to debts arising after the transfer, and vis-à-vis third parties they shall be released from the obligation to make any contribution to debts arising after publication of the transfer.

Every transferor shall have a right of recourse jointly and severally against his immediate transferees and the subsequent transferees.

(. . .) *(Title of Section abrogated by the law of 12th March, 1998)*

(Law of 24th April, 1983)

[77/91/EEC art. 18]

«Art. 49-1.

(1) The shares of a company may not be subscribed for by the company itself.

(2) If the shares of a company have been subscribed for by a person acting in his own name but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his own account.

(3) The natural or legal persons as well as the parties to the instrument referred to in Article 29 paragraph (2) or, in the case of an increase of the subscribed capital, the members of the board of directors, shall be obliged to pay-up any shares subscribed for in contravention of this Article.

However, the above-mentioned persons may be released from that obligation on proving that no misconduct is attributable to them personally.»

[16] The reference should be to Article 11bis.

(Law of 24th April, 1983)

[77/91/EEC art. 19]

«Art. 49-2.

(1) The company may acquire its own shares either itself or through a person acting in his own name but on the company's behalf subject to the following conditions:

1° the authorisation to acquire shares shall be given by the general meeting, which shall determine the terms and conditions of the proposed acquisition and in particular the maximum number of shares to be acquired, the duration of the period for which the authorisation is given and which may not exceed eighteen months and, in the case of acquisition for value, the maximum and minimum consideration;

2° the nominal value or, in the absence thereof, the accounting par value of the shares acquired, including shares previously acquired by the company and held by it in its portfolio as well as the shares acquired by a person acting in its own name but on behalf of the company, may not exceed 10 % of the subscribed capital;

3° the acquisitions must not have the effect of reducing the net assets below the aggregate of the subscribed capital and the reserves which may not be distributed under law or the articles;

4° only fully paid-up shares may be included in the transaction.

The board of directors shall ensure that at the time each authorised acquisition is carried out, the conditions set out under 2°, 3° and 4° are complied with.

(2) Where the acquisition of the company's own shares is necessary in order to prevent serious and imminent harm to the company, the condition under (1) 1° above shall not apply.

In such a case, the next general meeting must be informed by the board of directors of the reasons for and the purpose of the acquisitions made, the number and nominal values, or in the absence thereof, the accounting par value, of the shares acquired, the proportion of the subscribed capital which they represent and the consideration paid for them.

(3) The condition under (1) 1° shall likewise not apply in the case of shares acquired by either the company itself or by a person acting in his own name but on behalf of the company for the distribution thereof to the staff of the company.

The distribution of any such shares must take place within twelve months from the date of their acquisition.»

(Law of 24th April, 1983)

[77/91/EEC art. 20]

«Art. 49-3.

(1) Article 49-2 shall not apply to the acquisition of:

a) shares acquired pursuant to a decision to reduce the capital or in the circumstances referred to in Article 49-8;

b) shares acquired as a result of a universal transfer of assets;

c) fully paid-up shares acquired free of charge or acquired by banks and other financial institutions pursuant to a purchase commission contract;

d) shares acquired by reason of a legal obligation or a court order for the protection of minority shareholders, in the event, particularly of a merger, the division of the company, a change in the company's object or form, the transfer abroad of the registered office or the introduction of restrictions on the transfer of shares;

e) shares acquired from a shareholder in the event of failure to pay them up;

f) fully paid-up shares acquired pursuant to an allotment by court order for the payment of a debt owed to the company by the owner of the shares;

g) fully paid-up shares issued by an investment company with fixed capital as defined in Article 72-3 and acquired at the investor's request by that company or by a person acting in his own name but on behalf of that company.

These acquisitions may not have the effect of reducing the net assets below the aggregate of the subscribed capital and the reserves which may not be distributed under law.

(2) Shares acquired in the cases indicated under b) to f) of paragraph (1) must however be disposed of within a maximum period of three years after their acquisition, unless the nominal values, or, in the absence of nominal value, the accounting par value of the shares acquired, including shares which the company may have acquired through a person acting in its own name, but on behalf of the company, does not exceed 10 % of the subscribed capital.

(3) If the shares are not disposed of within the period prescribed in paragraph (2), they must be cancelled. The subscribed capital may be reduced by a corresponding amount. Such a reduction shall be compulsory where the acquisitions of shares to be cancelled results in the net assets having fallen below the amount referred to in Article 72-1.»

(Law of 24th April, 1983)

[77/91/EEC art. 21]

«**Art. 49-4.**

Any shares acquired in contravention of Articles 49-2 and 49-3 paragraph (1) sub a) must be disposed of within a period of one year after the acquisition. Should they not be disposed of within that period, Article 49-3 paragraph (3) shall apply.»

(Law of 24th April, 1983)

[77/91/EEC art. 22]

«**Art. 49-5.**

(1) In those cases where the acquisition by the company of its own shares is permitted in accordance with Articles 49-2 and 49-3, the holding of such shares shall be subject to the following conditions:

a) among the rights attaching to the shares, the voting rights in respect of the company's own shares shall be suspended;

b) if the said shares are included among the assets shown in the balance sheet, a non-distributable reserve of the same amount shall be created among the liabilities.

(2) Where a company has acquired its own shares in accordance with Articles 49-2 and 49-3, the annual report must indicate:

a) the reasons for acquisitions made during the financial year;

b) the number and the nominal value, or in the absence of nominal value, the accounting par value, of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

c) in the case of acquisition or disposal for value, the consideration for the shares;

d) the number and nominal value, or, in the absence of nominal value, the accounting par value, of all the shares acquired and held in the company's portfolio as well as the proportion of the subscribed capital which they represent.»

(Law of 24th April, 1983)

[77/91/EEC art. 23]

«**Art. 49-6.**

(1) A company may not advance funds nor make loans nor provide security with a view to the acquisition of its shares by a third party.

(2) Paragraph (1) shall not apply to transactions concluded by banks and other financial institutions in the normal course of business nor to transactions effected with a view to the acquisition of shares by or for the staff of the company. However, such transactions may not have the effect of reducing the net assets of the company below the aggregate of the capital and the reserves which may not be distributed under law or the articles.

(3) Paragraph (1) shall not apply to transactions carried out with a view to acquire shares as described in Article 49-3, paragraph (1) sub g).»

(Law of 24th April, 1983)

[77/91/EEC art. 24]

«Art. 49-7.

(1) The acceptance of the company's own shares as security either by the company itself or by a person acting in his own name, but on behalf of the company, shall be treated as an acquisition for the purposes of Articles 49-2, 49-3, paragraph (1) and Articles 49-5 and 49-6.

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

(Law of 24th April, 1983)

[77/91/EEC art. 39]

«Art. 49-8.

By way of derogation from the foregoing, the issue of redeemable shares shall be authorised provided that the redemption thereof is subject to the following conditions:

1) the redemption must be authorised by the articles before the redeemable shares are subscribed for;
2) the shares must be fully paid-up;
3) the terms and conditions for the redemption must be laid down in the articles;
4) redemption can only be made by using sums available for distribution in accordance with Article 72-1, paragraph (1) or the proceeds of a new issue made with a view to carry out such redemption;[17]
5) an amount equal to the nominal value, or, in the absence thereof, the accounting par value, of all the shares redeemed must be included in a reserve which can not be distributed to the shareholders except in the event of a reduction in the subscribed capital; the reserve may only be used to increase the subscribed capital by capitalisation of reserves;
6) sub-paragraph (5) shall not apply to a redemption using the proceeds of a new issue made with a view to carry out such redemption;
7) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums which are available for distribution in accordance with Article 72-1, paragraph (1).
8) notice of redemption shall be published in accordance with Article 9.»

(Law of 12th March, 1998)

[92/101/EEC]

«Art. 49bis.[18]

(1) a) The subscription, acquisition or holding of shares in a *société anonyme* by another company within the meaning of article 1 of directive 68/151/EEC in which the *société anonyme* directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence shall be regarded as having been effected by the *société anonyme* itself.

b) Sub-paragraph a) shall also apply where the other company is governed by the law of a third country and has a legal form comparable to those listed in article 1 of directive 68/151/EEC.

(2) However, where the *société anonyme* holds a majority of the voting rights only indirectly or can exercise a dominant influence only indirectly, paragraph (1) does not apply, but in such case the voting rights attached to the shares in the *société anonyme* held by the other company are suspended.

(3) For the purpose of this Article:

a) a *société anonyme* is deemed to be able to exercise a dominant influence if it:
   - has the right to appoint or dismiss a majority of the members of the administrative organ, of the management organ or of the supervisory organ, and is at the same time a shareholder or member of the other company

[17] The directive refers to its art. 15 (1) which corresponds to all of Article 72-1.

[18] Article IV of the law of 12th March, 1998:
«Article 49bis does not apply to acquisitions made before the entry into force of this law.
However, the voting rights attached to those share are suspended and those shares shall be taken into account in order to determine whether the condition laid-down in Article 49-2, paragraph (1) 2° is fulfilled.»
The law has been published on 31st March, 1998 and has entered into force on 4th April, 1998.

or

- is a shareholder or member of the other company and has sole control of the majority of the voting rights of the other company's shareholders or members under an agreement concluded with other shareholders or members of that company.

b) - a *société anonyme* is deemed to indirectly hold voting rights where such voting rights are held by a company having one of the legal forms referred to in paragraph (1) in which the *société anonyme* directly holds a majority of the voting rights

- a *société anonyme* is deemed to be able to indirectly exercise a dominant influence on an other company where the société anoyme directly holds the majority of the voting rights in a company having one of the legal forms referred to in paragraph (1) which
  - has the right to appoint or dismiss the majority of the members of the administrative organ, of the management organ or of the supervisory organ and is, at the same time, a shareholder or member of the other company

  or
  - is a shareholder or member of the other company and has sole control of the majority of the voting rights of the other company's shareholders or members under an agreement concluded with other shareholders or members of that company.

c) a *société anonyme* is deemed to hold voting rights where, in application of the articles, the law or an agreement, it is entitled to exercise the voting rights attached to the shares of the company and can in fact exercise them.

(4) Paragraph (1) shall not apply where

a) a subscription, acquisition or holding is effected on behalf of a person other than the person subscribing, acquiring or holding the shares and who is neither the *société anonyme* referred to in paragraph (1) nor another company in which the *société anonyme* directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence;

b) the subscription, acquisition or holding is effected by the other company referred to in paragraph (1) in its capacity and in the context of its activities as a professional dealer in securities, provided that it is a member of a stock exchange situated or operating within a Member State of the European Community, or is authorised or supervised by an authority of a Member State of the European Community competent to supervise professional dealers in securities which, within the meaning of this article, may include credit institutions.

(5) Paragraph (1) does not apply where the holding of shares in the *société anonyme* by the other company results from an acquisition made before the relationship between the two companies corresponded to the criteria laid down in paragraph (1).

However, the voting rights attached to those shares shall be suspended and those shares shall be taken into account in order to determine whether the condition laid down in Article 49-2, paragraph (1) 2° is fulfilled.

(6) Paragraphs (2) and (3) of Article 49-3 and Article 49-4 shall not apply where shares in a société anonyme are acquired by the other company referred to in paragraph (1) provided:

a) the voting rights attached to the shares in the *société anonyme* held by the other company are suspended;

b) the members of the administrative organ of the *société anonyme* are obliged to buy back from the other company the shares referred to in paragraphs (2) and (3) of Article 49-3 and in Article 49-4 at the price at which the other company acquired them; this sanction shall be inapplicable only where the members of the administrative organ prove that the *société anonyme* played no part whatsoever in the subscription for or acquisition of the shares in question.»