

**The Commercial Companies Code**  
**z dnia 15 września 2000 r. (Dz.U. tłum. gb Nr 94, poz. 1037)**

**Tytuł I. General Provisions.**

**Dział I. Common Provisions.**

**Art. 1. Scope of regulation, types of companies.**

§ 1. This Act regulates the creation, organisation, functioning, dissolution, merger, division and transformation of commercial companies.

§ 2. Commercial companies shall include: a registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership, a limited liability company and a joint-stock company.

**Art. 2. Reference to the Civil Code.** The matters defined in Article 1 § 1 which are not regulated in this Act shall be governed by the provisions of the Civil Code. Where required by the character (nature) of the legal relationship of the commercial company, the provisions of the Civil Code shall apply *mutatis mutandis*.

**Art. 3. Commercial company agreement.** In an agreement for a commercial company, the partners or shareholders undertake to pursue a common goal by making contributions and, where so provided in the articles or the statutes of the company, by other joint action.

**Art. 4. Terms.**

§ 1. The terms used in this Act shall mean:

- 1) a partnership - a registered partnership, a professional partnership, a limited partnership, and a limited joint-stock partnership,
- 2) a capital company - a limited liability company and a joint-stock company,
- 3) a single-shareholder company - a capital company in which all the shares belong to one shareholder,
- 4) a dominant company - a commercial company in the case where:
  - a) it controls, indirectly or directly, a majority of the votes at the general meeting or the general assembly, also as pledgee or usufructuary, or in the management board of another capital company (a dependent company), also under agreements with other parties, or
  - b) it is entitled to appoint or dismiss a majority of the members of the management board of another capital company (a dependent company) or a cooperative (a dependent cooperative), also under agreements with other parties, or
  - c) it is entitled to appoint or dismiss a majority of the members of the supervisory board of another capital company (a dependent company) or a cooperative (a dependent cooperative), also under agreements with other parties, or
  - d) the members of its management board constitute more than half of the members of the management board of another capital company (the dependent company) or of a cooperative (the dependent cooperative), or
  - e) it controls, indirectly or directly, a majority of the votes in the dependent partnership or at the general meeting of the dependent cooperative, also under agreements with other parties, or
  - f) it exerts a decisive influence on the operations of the dependent capital company or dependent cooperative, in particular based on the agreements referred to in Article 7,
- 5) an affiliated company - a capital company in which another commercial company or a cooperative controls, directly or indirectly, at least 20 per cent of the votes at the general meeting or the general assembly, also as pledgee or usufructuary, or under agreements with other parties, or which directly holds at least 20 per cent of the shares in another capital company,
- 6) a public company - a company in the meaning of provisions on public offering and the terms for placing financial instruments in the organised system of trading and on public companies,
- 7) a financial institution - a bank, an investment fund, a society of investment or trust funds, a national investment fund, an insurance company, a reinsurance company, a trust fund, a pension society, a pension fund or a brokerage house which has its seat in the Republic of Poland or in a member country of the Organisation for Economic Cooperation and Development (OECD),
- 8) a register - a register of entrepreneurs,
- 9) votes- votes "for", "against" or "abstained" cast in a vote held in accordance with the law, articles of association or statutes of the company,
- 10) an absolute majority of votes - more than half of the votes cast,
- 11) a financial report - financial reports in the meaning of provisions on accountancy.

§ 2. Whenever this Act refers to „articles of association”, this shall also include the founding act made by the sole shareholder of a capital company.

§ 3. Where two commercial companies mutually control a majority of the votes, calculated in accordance with § 1 point 4 letter a), the commercial company which holds a larger percentage of the votes at the general meeting or the general assembly of the other company (the dependent company) shall be deemed to be the dominant company. Where each of the commercial companies holds the same percentage of the votes at the general meeting or the general assembly of the other company, that company which exerts an influence on the dependent company also on the basis of the link provided for in § 1 point 4 letters b)-f) shall be deemed to be the dominant company.

§ 4. Where the relationship of dominance and dependence between two commercial companies cannot be established under the criteria provided for in § 3, that commercial company which may exert an influence on another company on the basis of a larger number of links referred to in § 1 point 4 letters b)-f) shall be deemed to be the dominant company.

§ 5. Where it is impossible to establish in accordance with § 3 and 4 which of the companies is the dominant company, both companies shall be mutually dominant and dependent companies.

**Art. 5. Announcements; particulars to be filed in register.**

§ 1. Subject to the provisions on the National Court Register, the documents and information relating to a capital company and to a limited joint-stock partnership shall be announced or filed with the registry court.

§ 2. Also subject to announcement is information that a commercial company holds or ceases to hold a dominant position in a joint-stock company. The statutes may provide that, instead of the announcement, it shall suffice that all shareholders are notified by registered letter.

§ 3. The company announcements required by law shall be published in the *Monitor Sądowy i Gospodarczy* (Court and Business Gazette), unless the law provides otherwise. The articles of association or statutes may provide that the obligation to announce shall be also met in another manner.

§ 4. A company application for an announcement in the Court and Business Gazette concerning an event which is subject to a mandatory announcement in accordance with § 2 shall be made within two weeks of the occurrence of the event, unless the law provides otherwise.

**Art. 6. Dominant and dependent company.**

§ 1. The dominant company shall, within two weeks of the date on which such relation arose, notify the dependent capital company that the relation of domination has arisen, or else the exercise of the right to vote with the shares of the dominant company representing more than 33 per cent of the share capital of the dependent company shall be suspended.

§ 2. The acquisition or exercise of the share rights by the dependent company or cooperative shall be deemed to be an acquisition or exercise of rights by the dominant company.

§ 3. A resolution of the general meeting or the general assembly adopted in breach of § 1 shall be invalid, unless it satisfies the requirements of quorum and the majority of votes, irrespective of the invalid votes.

§ 4. A shareholder, member of the management board or of the supervisory board of a capital company may demand that a commercial company which is the shareholder in such company provide information as to whether it remains in a relation of dominance or dependence with respect to a particular commercial company or a cooperative which is a shareholder in the same capital company. The entitled person may also demand disclosure of the number of shares or votes which the commercial company holds in the capital company referred to in the first sentence, including those held in the capacity of pledgee or usufructuary, or under agreements with other parties. The demand for information and the replies shall be made in writing.

§ 5. The replies to the questions referred to in § 4 shall be provided to the entitled person and the capital company concerned within ten days of receipt of the demand. If the demand to be furnished information was received by the addressee later than two weeks prior to the date for which the general meeting or the general assembly is convened, the time period for the provision of the information begins the day after the day on which the general meeting or the general assembly ended. As of the date on which the time period for the provision of the reply begins until the date on which the reply is provided, the obliged commercial company may not exercise the share rights in the capital company referred to in the first sentence of § 4.

§ 6. The provisions of § 1, 2, 4 and 5 shall apply *mutatis mutandis* in the case where a relation of dependence ceases to exist. The duties stipulated in those provisions shall rest with the company which ceased to be the dominant company.

§ 7. The provisions of § 1-6 shall not prejudice the provisions of other laws concerning the obligation to give notification of the acquisition of shares or the attainment of a dominant position in the commercial company or cooperative. In the case of an overlap of provisions which cannot be applied jointly, the provisions of the law which provide for stricter rules or penalties shall be applied.

**Art. 7. Agreement for management of dependent company.**

§ 1. Where the dominant and the dependent company enter into an agreement which provides for the management of the dependent company or a transfer of profits by such company, excerpts from the agreement with provisions on the liability of the dominant company for damage caused to the dependent company as a result of non-performance or improper performance of the agreement and on the liability of the dominant company for obligations of the dependent company towards its creditors shall be filed in the registration file of the dependent company.

§ 2. If such is the case, the fact that the agreement does not regulate or that it excludes liability of the dominant company referred to in § 1 shall also be disclosed.

§ 3. The circumstances requiring disclosure in accordance with § 1 and § 2 shall be reported to the registry court by the management board of the dominant company or the dependent company or the shareholder responsible for managing the affairs of the dominant company or the dependent company. Failure to report circumstances which require disclosure within three weeks of the date of the agreement shall result in the invalidity of the provisions on the limitation or exclusion of liability of the dominant company to the dependent company or its creditors.

## Dział II. Partnerships.

**Art. 8. Capacity; business name.**

§ 1. A partnership may acquire rights in its own name, including the right of ownership of real estate and other rights *in rem*, incur obligations, sue and be sued.

§ 2. The partnership shall operate an enterprise under its own name.

**Art. 9. Amendments to articles of association.** Amendments to the provisions of the articles of association shall require the consent of all the partners, unless the articles provide otherwise.

**Art. 10. Transfer of partner's rights and obligations.**

§ 1. All rights and obligations of a partner in a partnership may be transferred to another person only where the articles of association so provide.

§ 2. All rights and obligations of a partner in a partnership may be transferred to another person only after the written consent of all of the remaining partners has been obtained, unless the articles of association provide otherwise.

§ 3. In the case where all rights and obligations of a partner are transferred to another person, the withdrawing partner and the acceding partner shall be jointly and severally liable for the obligations of the withdrawing partner arising in connection with his membership of the partnership and for the obligations of the partnership.

**Art. 10<sup>1</sup>. Financial reports.** If a partnership is not obligated to keep books of account under the Accountancy Act of 29 September 1994 (J.L. No. 121, item 591, of 1997 No. 32, item 183, No. 43, item 272, No. 88, item 554, No. 118, item 754, No. 139, item 933 and 934, No. 140, item 939 and No. 141, item 945, of 1998 No. 60, item 382, No. 106, item 668, No. 107, item 669 and No. 155, item 1014, of 1999 No. 9, item 75 and No. 83, item 931, of 2000 No. 60, item 703, No. 94, item 1037 and No. 113, item 1186, and of 2001 No. 102, item 1117), the provisions of the Code which provide that a financial report should be drawn up, shall be satisfied by reference to the totals of the entries in the tax book of receipts and expenses and other registers kept by the partnership for tax purposes, to physical stock-taking, and to other documents which allow such a report to be drawn up.

### Dział III. Capital Companies.

#### **Art. 11. Company in organisation.**

§ 1. The capital companies in organisation referred to in Article 161 and Article 323 may acquire rights in their own name, including the right of ownership of real estate and other rights *in rem*, incur obligations, sue and be sued.

§ 2. The provisions on the given type of company after its registration in the register shall apply *mutatis mutandis* to matters relating to the capital company in organisation which are not regulated in the law.

§ 3. The business name of the capital company in organisation shall include the additional words „w organizacji” („in organisation”).

**Art. 12. Effects of registration in register.** Upon registration in the register, the limited liability company in organisation or the joint-stock company in organisation shall become a limited liability company or joint-stock company and shall acquire legal personality. Upon that moment, it shall become a party to the rights and obligations of the company in organisation.

#### **Art. 13. Liability for obligations.**

§ 1. The company and the persons who acted in its name shall be liable for the obligations of the capital company in organisation.

§ 2. A shareholder of the capital company in organisation shall be jointly and severally liable with the parties referred to in § 1 for the obligations of the company up to the value of the contribution to finance the subscribed shares which has not been made.

#### **Art. 14. Contribution.**

§ 1. An inalienable right or the provision of work or services may not constitute a contribution to the capital company.

§ 2. Where a shareholder has made a defective in-kind contribution, that shareholder shall make good to the capital company the difference between the value set out in the articles of association or statutes and the sale value of the contribution. The articles of association or statutes may provide that the company shall also have other rights.

§ 3. A shareholder's claim under a loan extended by the shareholder to the capital company shall be deemed to be the contribution of that shareholder to the company in the case where its bankruptcy is announced within two years of the date of the loan agreement.

§ 4. The shareholder may not set off his receivables vis-a-vis the capital company against the receivables of the company vis-a-vis the shareholder concerning the payment for the shares. This shall not prevent a contractual set-off.

#### **Art. 15. Agreement with member of governing bodies.**

§ 1. The conclusion by the capital company of a credit agreement, a loan agreement, a surety agreement or other similar agreement with a member of the management board, supervisory board, audit committee, a holder of the commercial power of attorney or a liquidator or for the benefit of any such person, shall require the consent of the general meeting or the general assembly, unless the law provides otherwise.

§ 2. The conclusion by the dependent company of an agreement listed in § 1 with a member of the management board, a holder of the commercial power of attorney or a liquidator of the dominant company shall require the consent of the general meeting or the general assembly of the dominant company. Article 17 § 1 and § 2 shall apply to the expressing of the consent and consequences of lack of consent.

**Art. 16. Disposing of shares prior to registration.** A disposition of the share made before the registration of the capital company in the register or before registration of the increase of the share capital shall be invalid.

#### **Art. 17. Review of acts in law.**

§ 1. Where the law requires a resolution of the shareholders or the general assembly or that of the supervisory board for an act in law of the company, an act in law effected without the required resolution shall be invalid.

§ 2. The consent may be expressed before or after the company makes the relevant representation; not later, however, than within two months of the date on which the representation of the company was made. A confirmation expressed after the company makes the representation shall be retroactive as of the date of the act in law.

§ 3. An act in law effected without the consent of the appropriate body of the company, required exclusively under the articles of association or the statutes, shall be valid; this, however, shall not exclude liability of members of the management board vis-a-vis the company for a breach of the articles of association or statutes.

#### **Art. 18. Prerequisites for holding office.**

§ 1. Only a natural person who enjoys full capacity to effect acts in law may serve as a member of the management board, the supervisory board, the audit committee or as a liquidator.

§ 2. A person who has been sentenced under a final and non-appealable sentence for the crimes set out in the provisions of chapters XXXIII through XXXVII of the Penal Code and under Article 585, Article 587, Article 590 and Article 591 of this Act, may not serve as a member of the management board, supervisory board, audit committee or as a liquidator.

§ 3. The prohibition referred to in § 2 shall cease to apply upon the fifth anniversary of the date on which the adjudicating sentence became final and non-appealable. However, it may not cease to apply earlier than upon the third anniversary of the date on which the service of the sentence ended.

§ 4. Within three months of the date on which the sentence, referred to in § 2, became final and non-appealable, the sentenced person may apply to the court which delivered the sentence to be released from the prohibition on holding an office in a commercial company or for the period during which such prohibition applies to be shortened. This does not apply to crimes committed wilfully. The court shall rule on the application by way of a decision.

**Art. 19. Signatures.** The signatures of all members of the management board in a document issued by the company shall be required only in cases where the law so provides.

**Art. 20. Equality of shareholders.** The shareholders in a capital company shall be treated in the same manner where similar circumstances apply.

**Art. 21. Dissolution of company by court.**

§ 1. The registry court may adjudicate the dissolution of a commercial company registered in the register where:

- 1) the articles of association have not been made,
- 2) the objects of the company defined in the articles of association or the statutes contravene the law,
- 3) the articles of association or the statutes of the company do not include provisions on the business name, objects of the company, share capital or contributions,
- 4) all persons who entered into the articles of association or executed the statutes did not have the capacity to effect acts in law at the time of such execution.

§ 2. In the cases referred to in § 1, where the defects are not remedied within the time period defined by the registry court, that court may, after summoning the management board of the company to make a representation, issue a decision on the dissolution of the company.

§ 3. If the defects, referred to in § 1, cannot be remedied, the registry court shall rule on the dissolution of the company.

§ 4. The company may not be dissolved due to the defects referred to in § 1, if five years have elapsed since its registration in the register.

§ 5. The registry court shall rule on the dissolution of the company upon the application of a person who has a legal interest or *ex officio*, following a hearing.

§ 6. The judgement on the dissolution of the company shall not affect the validity of the acts in law of the registered company.

## Tytuł II. Partnerships.

### Dział I. Registered Partnership.

#### Rozdział 1. General Provisions.

**Art. 22. Definition; liability.**

§ 1. A registered partnership is a partnership which operates a business under its own business name and is not another commercial company.

§ 2. Each partner shall be liable for the obligations of the partnership without limitation with all his assets jointly and severally with the remaining partners and the partnership, without prejudice to Article 31.

**Art. 23. Form of articles.** The articles of association shall be made in writing, or else they shall be invalid.

**Art. 24. Business name.**

§ 1. The business name of the registered partnership shall include the surnames or business names of all the partners, or the surname or the business name of one or several partners and the additional words „*spółka jawna*” („registered partnership”).

§ 2. The abbreviation „*sp.j.*” may be used in business dealings.

**Art. 25. Contents of articles.** The articles of association of the registered partnership shall include:

- 1) the business name and the seat of the partnership,
- 2) the description of the contributions made by each of the partners and their value,
- 3) the objects of the partnership,
- 4) the term of the partnership, if it is specified.

**Art. 25<sup>1</sup>. Joint and several liability.**

§ 1. The registered partnership shall be created upon its registration in the register.

§ 2. Persons who acted in the name of the partnership following its formation but prior to its registration in the register shall be jointly and severally liable for the obligations arising out of such action.

**Art. 26. Filing in register.**

§ 1. The filing of the registered partnership with the registry court shall include:

- 1) the business name, the seat and the address of the partnership,
- 2) the objects of the partnership,

3) the surnames and first names or business names of the partners and addresses of the partners or their addresses for correspondence,

4) the surnames and first names of persons who are authorised to represent the partnership and the manner of representation.

§ 2. All changes to the data referred to in § 1 shall be reported to the registry court.

§ 3. Each partner shall have the right and obligation to file the registered partnership for registration. Sample signatures of the persons authorised to represent the partnership, put before the court or certified by a notary, shall be attached to the filing.

§ 4. The partnership referred to in Article 860 of the Civil Code (civil law partnership) may be transformed into a registered partnership. The transformation shall be reported to the registry court by all of the partners. The provisions of § 1-3 shall apply *mutatis mutandis*.

§ 5. Upon registration in the register, the partnership referred to in § 4 shall become a registered partnership. The partnership shall have all of the rights and obligations which constitute the joint assets of the partners. The provisions of Article 553 § 2 and 3 shall apply *mutatis mutandis*.

§ 6. Prior to filing for registration referred to in § 4 the partners shall adapt the articles of association to the provisions on the registered partnership.

**Art. 27. Registration of marital agreement.** The spouse of a partner may request that a note be made in the register of the agreement concerning property relations between the spouses.

## Rozdział 2. Relations with Third Parties.

**Art. 28. Assets.** The assets of the partnership shall include any property contributed to the partnership and that acquired by the partnership in the course of its existence.

### **Art. 29. Representation.**

§ 1. Each partner shall have the right to represent the partnership.

§ 2. The right of the partner to represent the partnership shall include all acts in court and out of court.

§ 3. The right of representation may not be limited with effect towards third parties.

### **Art. 30. Depriving of right to represent.**

§ 1. The articles of association may provide that the partner is deprived of the right to represent the partnership or that he is authorised to represent the partnership only together with another partner or the holder of the commercial power of attorney.

§ 2. The partner may be deprived of the right to represent the partnership only for significant reasons under a final and non-appealable court judgement.

### **Art. 31. Subsidiary liability of partner.**

§ 1. A creditor of the partnership may conduct execution from the partner's assets where execution from the assets of the partnership proves ineffective (subsidiary liability of the partner).

§ 2. The provisions of § 1 above shall not bar a suit against the partner before execution from the assets of the partnership proves to be ineffective.

§ 3. Subsidiary liability of the partner shall not apply to obligations which arose prior to the registration in the register.

**Art. 32. New partner joining.** A person joining the partnership shall be liable for the obligations of the partnership which arose prior to such joining.

**Art. 33. Partnership with sole entrepreneur.** Any person who enters into a registered partnership with a sole entrepreneur, where such a sole entrepreneur contributes the enterprise to the partnership, shall also be liable for the obligations which arose in connection with the operation of the enterprise prior to the date of the creation of the partnership, up to the value of the enterprise so contributed as it was as of the date of the contribution, and at the prices as of the date of satisfaction of the creditor.

**Art. 34. Limitations of liability ineffective.** Contractual provisions contrary to those of Articles 31-33 shall not be effective against third parties.

### **Art. 35. Objections raised by sued partner.**

§ 1. A partner sued on account of liability for the obligations of the partnership may raise against the creditor the objections of the partnership against the creditor.

§ 2. Where an objection requires that the partnership make a declaration of will in order to avoid legal consequences of a declaration of will, or a set-off or in other similar cases, the partner may refuse to satisfy the creditor until the partnership makes such a declaration. The creditor may set a two-week period during which the partnership should make the declaration of will, after which, if it passes ineffectively, the partner or the creditor may exercise their rights.

### **Art. 36. Effects of separation of assets.**

§ 1. During the term of the partnership, the partner may not demand from the debtor payment of the share in the partnership's receivable, nor present to his creditor the partnership's receivable for a set-off.

§ 2. The debtor of the partnership may not present for a set-off to the partnership his receivable due to the debtor from one of the partners.

## Rozdział 3. Internal Relations of the Partnership.

**Art. 37. Role of articles.**

§ 1. The provisions of this Chapter shall apply, unless the articles of association provide otherwise.

§ 2. The articles of association may not limit or derogate from the provisions of Article 38.

**Art. 38. Rights of partners.**

§ 1. Management of the affairs of the partnership may not be entrusted to third parties to the exclusion of the partners.

§ 2. A contractual limitation of the right of a partner to personally inquire about the state of the assets and business of the partnership and a contractual limitation of the right to personally review the books and documents of the partnership shall be invalid.

**Art. 39. Management of affairs of partnership.**

§ 1. Each partner shall have the right and obligation to manage the affairs of the partnership.

§ 2. Each partner may, without a prior resolution of the partners, manage the affairs within the ordinary business of the partnership.

§ 3. However, where prior to conclusion of the matter referred to in § 2, at least one of the remaining partners objects to the conclusion of the matter, a prior resolution of the partners shall be required.

**Art. 40. Entrusting management.**

§ 1. Management of the affairs of the partnership may be entrusted to one or several partners under the articles of association or under a subsequent resolution of the partners. In such a case, the remaining partners shall be excluded from managing the affairs of the partnership.

§ 2. Where management of the affairs of the partnership has been entrusted to several partners, the management of the affairs of the partnership by such partners shall be governed by the provisions of the law governing the management of the affairs of the partnership by all the partners. A resolution of all partners shall be replaced by a resolution of those partners who have been entrusted with managing the affairs of the partnership.

**Art. 41. Commercial power of attorney.**

§ 1. The granting of a commercial power of attorney shall require the consent of all the partners who have the right to manage the affairs of the partnership.

§ 2. The commercial power of attorney may be revoked by any partner who has the right to manage the affairs of the partnership.

**Art. 42. Ordinary course of business.** Where in matters which fall within the ordinary course of business of the partnership a resolution of the partners is required, the unanimity of all partners who have the right to manage the affairs of the partnership shall be required.

**Art. 43. Matters outside ordinary course of business.** In matters which fall outside of the ordinary course of business of the partnership, the consent of all partners shall be required, including those who are excluded from managing the affairs of the partnership.

**Art. 44. Urgent action.** The partner who has the right to manage the affairs of the partnership may, without a resolution of the partners, effect an urgent action, where a failure to effect such action could cause serious damage to the partnership.

**Art. 45. Reference to the Civil Code.** The rights and obligations of the partner who manages the affairs of the partnership shall be evaluated in relations between such partner and the partnership in accordance with the provisions on mandate, or in the case where the partner acts in the name of the partnership without authorisation or where the partner entitled to manage the affairs of the partnership exceeds his authority- in accordance with the provisions on *negotiorum gestio*.

**Art. 46. No remuneration.** The partner shall not receive remuneration for managing the affairs of the partnership.

**Art. 47. Depriving of right to manage affairs.** For significant reasons, under a final and non-appealable court judgement, a partner may be deprived of the right to manage the affairs of the partnership; this shall also apply to relieving the partner of the obligation to manage the affairs of the partnership.

**Art. 48. Contributions of partners.**

§ 1. In case of doubt, the contributions of the partners shall be deemed to be equal.

§ 2. The partner may make the contribution by transferring or encumbering the right of ownership of things or other rights, and by providing other performances to the partnership.

§ 3. The rights which the partner undertakes to contribute to the partnership shall be deemed to have been transferred to the partnership.

**Art. 49. In-kind contribution.**

§ 1. If the partner undertook to contribute as his contribution to the partnership things other than money, to be owned or used, the provisions on sale or lease shall apply *mutatis mutandis* to his obligation to perform and the risk of accidental loss of the object of the performance.

§ 2. (*abrogated*)

**Art. 50. Capital share.**

§ 1. The capital share of the partner shall equal the value of the contribution effectively made.

§ 2. The partner shall have neither the right nor the obligation to increase the agreed contribution.

**Art. 51. Participation in profits and losses.**

§ 1. Each partner shall be entitled to an equal share in the profits and shall participate in the losses in the same proportion, irrespective of the type and value of the contribution.

§ 2. A partner's share in the profits defined in the articles of association shall also apply, in case of doubt, to his share in the losses.

§ 3. The articles of association may release a partner from participation in losses.

**Art. 52. Distribution of profits.**

§ 1. A partner may request that the entire profits be divided and distributed at the end of each financial year.

§ 2. If, as a result of a loss sustained by the partnership, the capital share of the partner has diminished, the profits shall be first of all used to supplement the share of the partner.

**Art. 53. Interest on capital share.** A partner may demand every year a 5 per cent interest on that partner's capital share, even if the partnership has sustained a loss.

**Art. 54. Reduction of capital share; no set-off.**

§ 1. A reduction of the capital share shall require the consent of the remaining partners.

§ 2. A partner may not set off his receivable vis-a-vis the partnership against the partnership's receivable which the partnership has against the partner as redress for damage.

**Art. 55. Other articles entered into by partner.** If a partner enters into other articles of association or transfers to a third party some rights arising out of participation in the partnership, then neither his partner nor his legal successor shall become partners of the registered partnership, and in particular they shall not have the right to inquire about the state of the assets and business of that partnership.

**Art. 56. Non-competition.**

§ 1. A partner shall refrain from any activity which is in conflict with the interests of the partnership.

§ 2. The partner may not, without the express or implied consent of the remaining partners, engage in a competitor business, in particular participate in a competitor company as a partner in a civil law partnership, registered partnership, professional partnership, a general partner or a member of a company governing body.

**Art. 57. Sanctions.**

§ 1. Each partner may demand the release to the partnership of the benefits received by a partner in breach of the prohibition on competition or claim redress of damage caused to the partnership.

§ 2. The claims referred to in § 1 shall be barred by limitation after six months from the date on which all of the remaining partners learnt about the breach of the prohibition; not later, however, than after three years.

§ 3. The provisions of § 1 and § 2 shall not limit the rights of the partners under Article 63.

#### **Rozdział 4. Dissolution of the Partnership and Withdrawal of a Partner.**

**Art. 58. Reasons.** The following shall be the reasons for dissolving the partnership:

- 1) the reasons set out in the articles of association,
- 2) a unanimous resolution of all partners,
- 3) a declaration of bankruptcy of the partnership,
- 4) the death of the partner or declaration of his bankruptcy,
- 5) termination of the articles of association by a partner or a creditor of a partner,
- 6) a final and non-appealable court judgement.

**Art. 59. Tacit prolongation.** The partnership shall be deemed to have been extended for an undefined time in a case where, in spite of the existence of reasons for dissolution set out in the articles of association, the partnership continues its operations with the consent of all the partners.

**Art. 60. Death of partner.**

§ 1. If the articles of association provide that the rights enjoyed by the deceased partner shall accrue jointly to all heirs, and do not include any special provisions in this matter, then the heirs shall designate one person to exercise such rights. The actions of the remaining heirs made prior to such designation shall be binding on the heirs of the partner.

§ 2. Contrary provisions in the articles of association shall be invalid.

**Art. 61. Termination.**

§ 1. If the partnership has been formed for an undefined time, a partner may terminate the articles of association six months before the end of the financial year.

§ 2. The partnership formed for the lifetime of a partner shall be deemed to have been formed for an undefined time.

§ 3. Termination shall be made by a written representation which shall be addressed to the remaining partners or to the partner who is authorised to represent the partnership.

**Art. 62. Rights of creditors of partner.**

§ 1. During the term of the partnership, a creditor of a partner may receive an attachment order concerning only the rights enjoyed by the partner in respect of participation in the partnership which the partner may freely dispose of.

§ 2. If, during the previous six months, ineffective execution of the movables of the partner has been conducted, then the partner's creditor, who under an execution title received an attachment order concerning the claims of the partner arising in the event of the partner's withdrawal or dissolution of the partnership, may terminate the articles of association six months before the end of the financial year, even if articles of association have been made for a defined time. If the articles of association provide for a shorter period of termination, the creditor may take advantage of the contractual period.

§ 3. Contrary provisions in the articles of association shall be invalid.

**Art. 63. Dissolution by court.**

§ 1. Each partner may, for significant reasons, demand that the partnership be dissolved by the court.

§ 2. However, if the significant reason relates to one of the partners only, the court may, upon an application of the remaining partners, rule on the expulsion of that partner from the partnership.

§ 3. Contrary provisions in the articles of association shall be invalid.

**Art. 64. Continuation of partnership.**

§ 1. Despite the death or declaration of bankruptcy of a partner and despite termination of the articles of association by a partner or a partner's creditor, the partnership shall continue among the remaining partners if the articles of association so provide or the remaining partners so decide.

§ 2. In the case of the death or declaration of bankruptcy of a partner, such decision shall be made immediately, and in the event of termination - before the end of the termination period. Otherwise, the heir, receiver or the partner who terminated the articles of association and his creditor may demand that liquidation be carried out.

**Art. 65. Share paid out.**

§ 1. In the case of a withdrawal of a partner from the partnership, the value of the capital share of the partner or that of a partner's heir shall be calculated on the basis of a separate balance sheet which takes into account the sale value of the assets of the partnership.

§ 2. The balance sheet date shall be:

- 1) in the case of termination - the last date of the financial year in which the termination period ended,
- 2) in the case of the death or a partner or declaration of bankruptcy - the date of death or declaration of bankruptcy,
- 3) in the case of an expulsion of a partner under a final and non-appealable court judgement - the date on which the suit was filed.

§ 3. The capital share calculated in the manner defined in § 1 and § 2 should be paid out in monies. Things contributed to the partnership by the partner only for use shall be returned in kind.

§ 4. If the capital share of the withdrawing partner or that of the heir of the partner proves in the course of settlements to be in deficit, he shall make good to the partnership the missing value attributable to him.

§ 5. The withdrawing partner or the heir of the partner shall participate in the profit and loss of the business in progress; they shall not, however, influence the way such business is conducted. They may, however, request explanations, accounts and division of profit and loss at the end of each financial year.

**Art. 66. Dissolution of partnership of two partners.** If in a partnership made of two partners a reason for dissolution of the partnership arises with respect to one partner, the court may give the other partner the right to take over the assets of the partnership with the obligation to settle with the withdrawing partner in accordance with Article 65.

## Rozdział 5. Liquidation.

**Art. 67. Obligation to liquidate.**

§ 1. In the cases set out in Article 58, liquidation of the partnership shall be conducted, unless the partners have agreed on another mode of bringing the operations of the partnership to an end.

§ 2. In the case of termination of the articles of association by the creditor of the partner or a declaration of bankruptcy of the partner, the agreement on bringing the operations of the partnership to an end after the reason for dissolution arises shall require the consent of, respectively, the creditor or the receiver.

**Art. 68. Reference.** During liquidation, the partnership shall be governed by the provisions on internal and external relations of the partnership, unless the provisions of this Chapter provide otherwise or it follows otherwise from the purpose of the liquidation.

**Art. 69. Non-competition.** During liquidation, the prohibition on competitive activity shall apply only to persons serving as liquidators.

**Art. 70. Appointment of liquidators.**

§ 1. All partners shall serve as liquidators. The partners may appoint only some of the partners as liquidators, as well as other persons. Such resolution shall require unanimity, unless the articles of association provide otherwise.

§ 2. The bankrupt partner shall be replaced by the receiver.

**Art. 71. Liquidators appointed by court.**

§ 1. The registry court may, for significant reasons, upon an application of the partner or another person who has a legal interest, appoint as liquidators only some of the partners, as well as other persons.

§ 2. Contrary provisions in the articles of association shall be invalid.

**Art. 72. Dismissal.** A liquidator may be dismissed only upon a unanimous resolution of the partners.

**Art. 73. Dismissal by court.**

§ 1. For significant reasons, the registry court may, upon an application of the partner or a person who has a legal interest, dismiss a liquidator.

§ 2. A liquidator appointed by the court may be dismissed only by the court.

§ 3. Contrary provisions in the articles of association shall be invalid.

**Art. 74. Filing of liquidation in register.**

§ 1. The following shall be reported to the registry court: the opening of the liquidation, the surnames and first names of the liquidators and their addresses, the manner of representation of the partnership by the liquidators, and any changes to the above, even if the manner of representation of the partnership has not changed. Each liquidator shall have the right and the obligation to file.

§ 2. Sample signatures of the liquidators, put before the court or certified by a notary, shall be attached to the filing referred to in § 1.

§ 3. The registration of the liquidators appointed by the court and the deletion of the liquidators dismissed by the court shall be made *ex officio*.

§ 4. Liquidation shall be made under the name of the partnership with the additional words „w likwidacji” („in liquidation”).

**Art. 75. Joint representation.** If there are several liquidators, they shall be authorised to represent the partnership jointly, unless the partners or the court which appoints the liquidators have decided otherwise.

**Art. 76. Resolution of liquidators.** The matters in which a resolution of the liquidators is required shall be decided by a majority vote, unless the partners or the court which appoints the liquidators have decided otherwise.

**Art. 77. Liquidation actions.**

§ 1. The liquidators shall close the current business of the partnership, collect the receivables, perform the obligations and liquidate the assets of the partnership. New business can be transacted only where this is necessary to close the business in progress.

§ 2. In internal relations, the liquidators shall abide by the resolutions of the partners. The liquidators appointed by the court shall abide by unanimous resolutions adopted by the partners and by persons who have a legal interest, who have caused their appointment.



**Art. 78. Scope of representation.**

§ 1. Within the limits of their competence set out in Article 77 § 1, the liquidators may manage the affairs of the partnership and represent it. Limitation of their competence shall not be effective against third parties.

§ 2. With regard to *bona fide* third parties, actions undertaken by the liquidators shall be deemed to be liquidation actions.

**Art. 79. Expiration of commercial power of attorney.**

§ 1. The opening of liquidation shall cause expiration of any previously existing commercial power of attorney.

§ 2. During liquidation, a commercial power of attorney may not be granted.

**Art. 80. Liability of partner's heirs.** The heirs of the partner shall be liable for obligations contracted during liquidation in accordance with the provisions on liability for inheritance debts.

**Art. 81. Balance sheet.**

§ 1. The liquidators shall draw up a balance sheet as at the date of the opening and as at the date of closing liquidation.

§ 2. In the case where liquidation takes more than a year, the financial report shall be drawn up as at the end of each financial year.

**Art. 82. Payment of obligations; division of assets.**

§ 1. The assets of the partnership shall be used first of all to pay the obligations of the partnership; an appropriate amount shall be left for repayment of immature and disputed obligations.

§ 2. The remaining assets shall be divided among the partners in accordance with the provisions of the articles of association. If the articles of association do not include appropriate provisions, the shares shall be repaid to the partners. Any surplus shall be divided among the partners in the proportion in which they participate in the profit.

§ 3. Things contributed to the partnership by the partner only for use shall be returned to the partner in kind.

**Art. 83. Division of shortfall.** If the assets of the partnership are not sufficient for repayment of the shares and debts, the shortfall shall be divided among the partners in accordance with the provisions of the articles of association and if there are no such provisions, in the same proportion as that in which the partners participate in the loss. In the case of the insolvency of one of the partners, the share of that partner in the shortfall shall be divided among the remaining partners in the same proportion.

**Art. 84. Deletion from register.**

§ 1. The liquidators shall report the conclusion of the liquidation and apply that the partnership be deleted from the register. In the case of dissolution of the partnership without liquidation, the application shall be made by the partners.

§ 2. Dissolution of the partnership shall be effective as of the deletion of the partnership from the register.

§ 3. The books and documents of the dissolved partnership shall be deposited with the partner or with a third party for a period not shorter than five years. If the partner or the third party does not consent, a depositary shall be appointed by the registry court.

§ 4. The partners and persons who have a legal interest may review the books and documents.

**Art. 85. Bankruptcy.**

§ 1. If bankruptcy of the partnership is declared, the partnership shall be dissolved following the bankruptcy procedure; the application for deletion of the partnership from the register shall be made by the receiver.

§ 2. The provisions of § 1 shall not apply if the procedure concludes with a composition with the creditors or is for other reasons waived or discontinued.

## Dział II. Professional Partnership.

### Rozdział 1. General Provisions.

**Art. 86. Definition.**

§ 1. A professional partnership is a partnership created by partners for the purpose of pursuing a profession in a partnership which operates a business under its own business name.

§ 2. The partnership may be formed for the purpose of pursuing more than one profession, unless a different law provides otherwise.

**Art. 87. Partners.**

§ 1. Only natural persons qualified to pursue professions defined in Article 88 or in a different law, may become partners in the partnership.

§ 2. The pursuit of a profession in the partnership may be subject to additional requirements provided for in a different law.

**Art. 88. Professions.** Persons qualified to pursue the following professions may become partners in the partnership: advocate, pharmacist, architect, civil engineer, auditor, insurance broker, tax adviser, stock broker, investment adviser, accountant, physician, dentist, veterinary doctor, notary, nurse, midwife, legal adviser, patent attorney, property appraiser and sworn translator.

**Art. 89. Legal regime.** In matters not regulated in this Division, the provisions on the registered partnership shall apply *mutatis mutandis* to the professional partnership, unless the law provides otherwise.

**Art. 90. Business name.**

§ 1. The business name of the professional partnership shall include the surname of at least one partner, the additional words „i partner” („and partner”) or „i partnerzy” („and partners”) or „spółka partnerska” („professional partnership”) and the designation of the profession pursued in the partnership.

§ 2. The abbreviation „*sp.p.*” may be used in business dealings.

§ 3. The business names with the designation „*i partner*” („and partner”) or „*i partnerzy*” („and partners”) or „*spółka partnerska*” („professional partnership”), as well as the abbreviation „*sp.p.*”, may only be used by the professional partnership.

**Art. 91. Contents of articles.** The articles of association of the professional partnership shall include:

- 1) the designation of the profession pursued by the partners in the partnership,
- 2) the objects of the partnership,
- 3) the surnames and first names of the partners who are liable without limitation for the obligations of the partnership, in the case provided for in Article 95 § 2,
- 4) if the partnership is represented by some of the partners only, the surnames and first names of such partners,
- 5) the business name and seat of the partnership,
- 6) the term of the partnership, if it is specified,
- 7) a description of the contributions made by each of the partners and their value.

**Art. 92. Form.** The articles of association of a professional partnership shall be made in writing or else they shall be invalid.

**Art. 93. Filing in register.**

§ 1. The filing of a professional partnership with the registry court shall include:

- 1) the business name, seat, address of the partnership, surnames and first names of the partners and their addresses or addresses for correspondence,
- 2) the designation of the profession pursued by the partners in the partnership,
- 3) the objects of the partnership,
- 4) the surnames and first names of the partners authorised to represent the partnership; this shall not apply in the case where the articles of association do not provide for limitations of the right of representation of the partners,
- 5) the surnames and first names of the holders of the commercial power of attorney or persons appointed to the management board,
- 6) the surnames and first names of the partners who are liable without limitation for the obligations of the partnership, in the case provided for in Article 95 § 2.

§ 2. Documents proving the qualification of each of the partners to pursue the profession shall be attached to the filing to the registry court.

§ 3. All changes to the data referred to in § 1 shall be reported to the registry court.

**Art. 94. Registration.** The professional partnership shall be created upon its registration in the register.

## **Rozdział 2. Relations with Third Parties. Management Board of the Partnership.**

**Art. 95. Several liability.**

§ 1. A partner shall not be liable for the obligations of the partnership which arise in connection with the pursuit by the remaining partners of the profession in the partnership, or for the obligations of the partnership which arise as a result of acts or omissions of persons employed by the partnership under an employment contract or another legal relationship who have been guided by another partner in the provision of services connected with the objects of the partnership.

§ 2. The articles of association may provide that one or more partners agree to be liable as a partner of a registered partnership.

**Art. 96. Representation.**

§ 1. Each partner shall have the right to represent the partnership individually, unless the articles of association provide otherwise.

§ 2. A partner may be deprived of the right to represent the partnership only for significant reasons under a resolution adopted by a majority of three-fourths of the votes in the presence of at least two-thirds of the total number of partners. The articles of association may provide for stricter requirements for such a resolution.

§ 3. The depriving of a partner of the right to represent the partnership under § 2 shall be effective upon registration in the register.

**Art. 97. Appointment of management board.**

§ 1. The articles of association of a professional partnership may provide that the management of the affairs and the representation of the partnership be entrusted to the management board. The provisions of Article 96 shall not apply.

§ 2. The provisions of Articles 201-211 and Articles 293-300 shall apply to the management board appointed in accordance with § 1.

## **Rozdział 3. Dissolution of the Partnership.**

**Art. 98. Reasons.**

§ 1. The following shall be the reasons for dissolving the partnership:

- 1) the reasons set out in the articles of association,
- 2) a unanimous resolution of all partners,
- 3) a declaration of bankruptcy of the partnership,
- 4) a loss by all partners of the right to pursue the profession,
- 5) a final and non-appealable court judgement.

§ 2. In the case where one partner remains in the partnership or where only one partner has the qualifications to pursue the profession connected with the objects of the partnership, the partnership shall be dissolved at the latest after one year from the date on which any of the above circumstances occurred.

**Art. 99. Reference.** The provisions of Articles 59-62 and Articles 64-66 shall apply in the case of:

- 1) the death of a partner,
- 2) a declaration of bankruptcy of a partner,
- 3) a termination of the articles of association by a partner or by a partner's creditor.

**Art. 100. Loss of professional qualifications.**

§ 1. In the event that a partner loses the right to pursue the profession, he shall withdraw from the partnership at the latest at the end of the financial year in which he lost the right to pursue the profession.

§ 2. The withdrawal shall be made by a written representation addressed to the management board or to the partner authorised to represent the partnership.

§ 3. After an ineffective expiration of the time period referred to in § 1, the partner shall be deemed to have withdrawn from the partnership on the last day of the above time period.

**Art. 101. Death of partner.** The heir of the partner shall not join the partnership in the place of the deceased partner, unless the articles of association provide otherwise, without prejudice to Article 87.

### Dział III. Limited Partnership.

#### Rozdział 1. General Provisions.

**Art. 102. Definition.** A limited partnership is a partnership whose purpose is to operate a business under its own business name, at least one partner of which is liable to the creditors for the obligations of the partnership without limitation (the general partner) and the liability of at least one partner (the limited partner) is limited.

**Art. 103. Legal regime.** In matters not regulated in this Division, the provisions on the registered partnership shall apply *mutatis mutandis* to the limited partnership, unless the law provides otherwise.

**Art. 104. Business name.**

§ 1. The business name of the limited partnership shall include the surname of one or several general partners and the additional words „*spółka komandytowa*” („limited partnership”).

§ 2. The abbreviation „*sp.k.*” may be used in business dealings.

§ 3. If a legal person is the general partner, the business name of the limited partnership shall include the full business name of that legal person with the additional words „*spółka komandytowa*” („limited partnership”). This shall not preclude the placing of the surname of the general partner who is a natural person.

§ 4. The surname of the limited partner may not be placed in the business name of the partnership. If the surname or business name of the limited partner is placed in the business name of the partnership, that limited partner shall be liable vis-a-vis third parties like a general partner.

**Art. 105. Contents of articles.** The articles of association of the limited partnership shall include:

- 1) the business name and seat of the partnership,
- 2) the objects of the partnership,
- 3) the term of the partnership, if it is specified,
- 4) the description of the contributions made by each of the partners and their value,
- 5) the amount up to which each of the limited partners is liable vis-a-vis the creditors (commendam sum).

**Art. 106. Form.** The articles of association of a limited partnership shall be made in the form of a notarial deed.

**Art. 107. Contribution of limited partner.**

§ 1. If the contribution of the limited partner to the partnership consists in whole or in part of a non-pecuniary performance, the articles of association shall define the object of that performance (in-kind contribution), its value, as well as the partner making such non-pecuniary contribution.

§ 2. The obligation to provide work or services for the benefit of the partnership and the remuneration for the services provided upon the formation of the partnership may not represent the limited partner's contribution to the partnership, unless the value of his other contributions to the partnership is not lower than the commendam sum.

§ 3. If a limited liability company or a joint stock company is the general partner, and a shareholder in such a company is the limited partner, the limited partner's contribution may not include his shares in that limited liability company or the shares in that joint stock company.

**Art. 108. Value of contribution.**

§ 1. Unless the articles of association provide otherwise, the limited partner's contribution may be made in a value lower than the commendam sum.

§ 2. A decision of the partners to release the limited partner from the obligation to make a contribution shall be invalid.

**Art. 109. Registration in register.**

§ 1. The limited partnership shall be created upon its registration in the register.

§ 2. Persons who acted in the name of the partnership following its formation but prior to its registration in the register shall be liable jointly and severally.

**Art. 110. Filing in register.**

§ 1. The filing of the limited partnership with the registry court shall include:

- 1) the business name, seat and address of the partnership,
- 2) the objects of the partnership,
- 3) the surnames and first names or business names of the general partners and separately the surnames and first names or the business names of the limited partners as well as the circumstances concerning any limitations of the partner's capacity to effect acts in law, if any,
- 4) the surnames and first names of persons who are authorised to represent the partnership and the manner of representation; in the case where the general partners entrusted only some among themselves with the

management of the affairs of the partnership, this should be mentioned,  
5) the commendam sum.  
§ 2. All changes to the data referred to in § 1 shall be reported to the registry court.

## **Rozdział 2. Relations with Third Parties.**

**Art. 111. Scope of liability.** The limited partner shall be liable for obligations of the partnership vis-à-vis its creditors only up to the commendam sum.

**Art. 112. Contribution versus liability.**

§ 1. The limited partner shall be free of liability to the extent of the value of the contribution contributed to the partnership.

§ 2. In the case where the contribution is returned in whole or in part, the liability shall be re-established in an amount equal to the value of the returned contribution.

§ 3. If the assets of the partnership are reduced by a loss, each payment made by the partnership for the benefit of a limited partner before the contribution is supplemented to the original value set out in the articles of association shall be deemed, vis-à-vis the creditors, to be the return of the contribution. The making of such payments shall not require registration in the register.

§ 4. A limited partner shall not be obligated to return what he received in respect of profit under the financial report, unless he acted *mala fide*.

**Art. 113. Reduction of commendam sum.** A reduction of the commendam sum shall not have a legal effect vis-à-vis the creditors whose receivables arose prior to registration of the reduction in the register.

**Art. 114. Obligations subject to liability.** A person joining the partnership as a limited partner shall also be liable for the obligations of the partnership which exist at the time he is registered in the register.

**Art. 115. Change of status.** If the articles of association allow a new general partner to join the partnership, the existing limited partner may become a general partner or a third person may join the partnership as a general partner with the consent of all the existing partners.

**Art. 116. Partnership with entrepreneur.** In the case where the articles of association concerning a limited partnership are made with an entrepreneur operating an enterprise in his own name and on his own account, the limited partner shall also be liable for obligations which arose in connection with the operation of that enterprise and which existed on the date of registration of the partnership in the register.

**Art. 117. Representation.** The partnership shall be represented by the general partners, who are not deprived of the right to represent the partnership under the articles of association or a final and non-appealable court judgement.

**Art. 118. Limited partner as attorney in fact.**

§ 1. A limited partner may represent the partnership only as an attorney in fact.

§ 2. If a limited partner effects an act in law in the name of the partnership without disclosing his power of attorney, he shall be liable without limitation for the consequences of such act in law vis-à-vis third parties; this shall also apply to representation of the partnership by a limited partner who is not authorised or who acts beyond his authorisation.

**Art. 119. Effect of agreement.** Contractual provisions contrary to those of this Chapter shall not be effective with respect to third parties.

## **Rozdział 3. Internal Relations of the Partnership.**

**Art. 120. Access to books and documents.**

§ 1. A limited partner may demand a copy of the financial report for the financial year and may review books and documents in order to check its accuracy.

§ 2. On the application of a limited partner, the registry court may, for significant reasons, order at any time that he be provided with the financial report or other explanations, as well as allow the limited partner to review the books and documents.

§ 3. The articles of association may not exclude or limit the rights of the limited partner referred to in § 1 and § 2.

**Art. 121. Managing affairs of partnership.**

§ 1. A limited partner shall not have the right or obligation to manage the affairs of the partnership, unless the articles of association provide otherwise.

§ 2. The consent of the limited partner shall be required in matters which fall outside the ordinary course of business of the partnership, unless the articles of association provide otherwise.

§ 3. The limitations referred to in Article 56 and Article 57 shall not apply to a limited partner who does not have the right to manage the affairs of the partnership or to represent it, unless the articles of association provide otherwise.

**Art. 122. Transfer of rights and obligations.** In the case of a transfer of all the rights and obligations of a limited partner, the right to manage the affairs of the partnership shall not pass to the transferee.

**Art. 123. Participation in profits and losses.**

§ 1. A limited partner shall participate in the profits of the partnership proportionately to his contribution actually made to the partnership, unless the articles of association provide otherwise.

§ 2. The profit due to a limited partner for a given financial year shall be used first of all to supplement his contribution actually made up to the value of the agreed contribution.

§ 3. In case of doubt, a limited partner shall participate in the loss only up to the value of the agreed contribution.

**Art. 124. Death of limited partner.**

§ 1. The death of a limited partner shall not be a reason for dissolving the partnership. The heirs of the limited partner shall designate one person to exercise their rights. Actions of the remaining heirs made prior to such designation shall be binding on the heirs of the limited partner.

§ 2. The division of the limited partner's share in the assets of the partnership among his heirs shall be effective vis-a-vis the partnership only upon the consent of the remaining partners.

## Dział IV. Limited Joint-Stock Partnership.

### Rozdział 1. General Provisions.

**Art. 125. Definition.** A limited joint-stock partnership is a partnership whose purpose is to operate a business under its own business name, at least one partner of which is liable to the creditors for the obligations of the partnership without limitation (the general partner) and at least one partner is a shareholder.

**Art. 126. Legal regime; share capital.**

§ 1. In matters not regulated in this Division, the following provisions shall apply to the limited joint-stock partnership:

1) with regard to the legal relationship of the general partners among themselves, with all shareholders, and with third parties, as well as to the contributions of such partners to the partnership, to the exclusion of contributions to the share capital - the provisions on the registered partnership applied *mutatis mutandis*,

2) with regard to other matters - *mutatis mutandis* the provisions on the joint stock company, in particular those concerning the share capital, contributions of the shareholders, shares, supervisory board and general assembly.

§ 2. The share capital of the limited joint-stock partnership shall be at least 50,000 zlotys.

**Art. 127. Business name.**

§ 1. The business name of the limited joint-stock partnership shall include the surnames of one or several general partners and the additional words „*spółka komandytowo-akcyjna*” („limited joint-stock partnership”).

§ 2. The abbreviation „S.K.A.” may be used in business dealings.

§ 3. If a legal person is a general partner, the business name of the limited joint-stock partnership shall include the full business name of that legal person with the additional words „*spółka komandytowo-akcyjna*”. This shall not preclude the placing of the surname of a general partner who is a natural person.

§ 4. The surname or business name of the shareholder may not be placed in the business name of the partnership. If the surname or business name of the shareholder is placed in the business name of the partnership, that shareholder shall be liable vis-a-vis third parties like a general partner.

§ 5. Written communications and commercial orders filed by the limited joint-stock partnership on paper and electronically, and the information published on the partnership's websites, shall include:

1) the business name of the partnership, its seat and address,

2) the registry court where the documents of the partnership are filed and the number of the partnership in the register,

3) the taxpayer's identification number (NIP),

4) the share capital and the paid-in capital.

**Art. 128. Performances of shareholder.** The shareholder shall only be obligated to provide the performances set out in the statutes.

### Rozdział 2. Creation of the Partnership.

**Art. 129. Promoters.** The persons who sign the statutes shall be the promoters of the partnership. The statutes shall be signed by at least all of the general partners.

**Art. 130. Contents of statutes.** The statutes of the limited joint-stock partnership shall include:

1) the business name and seat of the partnership,

2) the objects of the partnership,

3) the term of the partnership, if it is specified,

4) a description of the contributions made by each of the general partners and their value,

5) the share capital, the manner in which it is collected, the nominal value of the shares and the number of shares, with information as to whether the shares are registered or bearer shares,

6) the number of shares of a given class and the rights attached to the shares, if shares of different classes are to be introduced,

7) the surnames and first names or business names of the general partners and their seats, addresses or addresses for correspondence,

8) the organisation of the general assembly and the supervisory board, if the law or the statutes provide for a supervisory board.

**Art. 131. Form.** The statutes of a limited joint-stock partnership shall be made in the form of a notarial deed.

**Art. 132. Contribution of general partner.**

§ 1. The general partner may make a contribution to the limited joint-stock partnership to be allocated for the share capital or other funds.

§ 2. The making of the contribution to the share capital by the general partner shall not exclude his unlimited liability for the obligations of the partnership.

**Art. 133. Filing in register.**

§ 1. The filing of the limited joint-stock partnership with the registry court shall include:

- 1) the business name, seat and address of the partnership,
- 2) the objects of the partnership,
- 3) the share capital, the number and nominal value of the shares,
- 4) the number of preference shares and the type of the preference, if it is provided for in the statutes,
- 5) information regarding which part of the share capital has been paid in before registration,
- 6) the surnames and first names or business names of the general partners, as well as the circumstances concerning limitations of their capacity to effect acts in law, if any,
- 7) the surnames and first names of persons who are authorised to represent the partnership and the manner of representation; in the case where the general partners entrusted only some among themselves with the management of the affairs of the partnership, this should be mentioned,
- 8) information that the shareholders make in-kind contribution upon formation of the partnership, if applicable,
- 9) the term of the partnership, if it is specified.

§ 2. All changes to the data referred to in § 1 shall be reported to the registry court.

**Art. 134. Registration in register.**

§ 1. The limited joint-stock partnership shall be created upon its registration in the register.

§ 2. Persons who acted in the name of the partnership following its formation but prior to its registration in the register shall be liable jointly and severally.

### **Rozdział 3. Relations with Third Parties.**

**Art. 135. Situation of shareholder.** The shareholder shall not be liable for the obligations of the partnership.

**Art. 136. New general partner.**

§ 1. If the statutes allow a new general partner to join the partnership, the existing shareholder may become a general partner or a third person may join the partnership as a general partner with the consent of all the existing general partners.

§ 2. The representation of the new general partner, as well as the designation of the value of his contributions and the consent to the wording of the statutes, shall be made in the form of a notarial deed.

§ 3. The new general partner shall be liable for the obligations of the partnership which exist at the time he is registered in the register.

**Art. 137. Representation.**

§ 1. The partnership shall be represented by the general partners, who are not deprived of the right to represent the partnership under the statutes or a final and non-appealable court judgement.

§ 2. Any subsequent deprivation of a general partner of the right to represent the partnership shall represent an amendment to the statutes and shall require the consent of all the remaining general partners.

§ 3. The deprivation of a general partner of the right to represent the partnership, despite that general partner's objection, may be effected only for significant reasons under a final and non-appealable court judgement.

§ 4. The objection referred to in § 3 shall be reported in the minutes of the general assembly or made in writing, the signature being confirmed by a notary, not later than within one month from the date of the adoption of the resolution by the general assembly.

§ 5. The deprivation of a general partner of the right to represent the partnership, despite the objection referred to in § 3 and § 4, shall release that partner from personal liability for obligations of the partnership which arose after the relevant entry was made in the register.

**Art. 138. Shareholder as attorney in fact.**

§ 1. A shareholder may represent the partnership only as an attorney in fact.

§ 2. If a shareholder effects an act in law in the name of the partnership without disclosing his power of attorney, he shall be liable without limitation for the consequences of such act in law vis-a-vis third parties; this shall also apply to representation of the partnership by a shareholder who is not authorised or who acts beyond his authorisation.

**Art. 139. Effect of statutes.** Provisions of the statutes contrary to those of this Chapter shall not be effective with respect to third parties.

### **Rozdział 4. Internal Relations of the Partnership.**

**Art. 140. Managing affairs of partnership.**

§ 1. Each general partner shall have the right and obligation to manage the affairs of the partnership.

§ 2. The statutes may provide that management of the affairs of the partnership shall be entrusted to one or several general partners.

§ 3. Any amendment to the statutes which takes away the right to manage the affairs of the partnership or which grants such right to a general partner who has not enjoyed it yet, shall require the consent of all the remaining general partners.

**Art. 141. Division of powers.** A general partner shall not have the right to manage the affairs of the partnership with regard to matters which, under the provisions of this Division or under the statutes of the partnership, are reserved for the competence of the general assembly or the supervisory board.

**Art. 142. Supervisory board.**

§ 1. A supervisory board may be established in any limited joint-stock partnership. If there are more than twenty-five shareholders, the creation of a supervisory board shall be obligatory.

§ 2. The members of the supervisory board shall be appointed and dismissed by the general assembly.

§ 3. A general partner or his employee may not serve as a member of the supervisory board.

§ 4. If a general partner has subscribed for or acquired shares in a limited joint-stock partnership, he shall not exercise the right to vote with such shares on the resolutions referred to in § 2. Nor shall he act as a proxy for the remaining shareholders at the general assembly in the vote on such resolutions.

§ 5. The provisions of § 3 and § 4 shall not apply to a general partner who is deprived of the right to manage the affairs of the partnership or to represent it.

**Art. 143. Exercise of supervision.**

§ 1. The supervisory board shall exercise permanent supervision over the partnership in all areas of its operation.

§ 2. The provisions of Article 383 shall not apply to the supervisory board of a limited joint-stock partnership. The supervisory board may, however, delegate its members to temporarily perform the tasks of the general partners where none of the general partners authorised to manage the affairs of the partnership and to represent it may so act.

§ 3. The supervisory board may, in the name of the partnership, bring an action for damages against the general partners who are not deprived of the right to manage the affairs of the partnership or to represent it. The provisions of Articles 483-490 shall apply *mutatis mutandis*.

**Art. 144. Attorney in fact.** A limited joint-stock partnership, in which there is no supervisory board, shall be represented in connection with the actions referred to in Article 143 § 3 and Article 378 by the attorney in fact appointed by virtue of a resolution of the general assembly.

**Art. 145. General assembly.**

§ 1. A general assembly may be ordinary or extraordinary.

§ 2. A shareholder, and a general partner also if he is not the shareholder of the limited joint-stock partnership, shall have the right to participate in the general assembly.

§ 3. Each share subscribed for or acquired by a person who is not a general partner shall carry one vote, unless the statutes provide otherwise. A shareholder may not be entirely deprived of the right to vote.

§ 4. Each share subscribed for or acquired by a general partner shall carry one vote.

**Art. 146. Resolutions; consent of general partners.**

§ 1. In addition to other matters stipulated in this Division or in the statutes, a resolution of the general assembly shall be required for:

- 1) consideration and approval of the report of the general partners on the activities of the partnership and the financial report of the partnership for the previous financial year,
- 2) granting the general partners who manage the affairs of the partnership an approval of the performance of their duties,
- 3) granting the members of the supervisory board an approval of the performance of their duties,
- 4) election of the auditor, unless the statutes provide for the competence of the supervisory board in this matter,
- 5) dissolution of the partnership.

§ 2. The following resolutions of the general assembly shall require the consent of all the general partners, or else they shall be invalid:

- 1) entrusting one or several general partners with management of the affairs and representation of the partnership,
- 2) division of the profits for the financial year in respect of the portion for the shareholders,
- 3) transferring or letting in tenancy of the enterprise of the partnership or its organised part and establishing over it a right of usufruct,
- 4) transferring the real estate of the partnership,
- 5) increase and reduction of the share capital,
- 6) issuance of bonds,
- 7) merger and transformation of the partnership,
- 8) amendments to the statutes,
- 9) dissolution of the partnership,
- 10) other acts stipulated in this Division or in the statutes.

§ 3. The consent of a majority of the general partners shall be required for the resolutions of the general assembly concerning:

- 1) a division of the profits for the financial year in respect of the portion for the general partners,
- 2) financing of losses for the previous financial year,
- 3) other acts stipulated in the statutes, or else they shall be invalid.

**Art. 147. Participation in profits.**

§ 1. A general partner and shareholder shall participate in the profits of the partnership in proportion to their contributions made to the partnership, unless the statutes provide otherwise.

§ 2. Unless the statutes provide otherwise, a general partner not deprived of the right to manage the affairs of the partnership, who is remunerated for the actions stipulated in Article 137 § 1 and Article 141, shall not be entitled to a share in the profits of the partnership to the extent equivalent to his work contributed to the partnership.

## **Rozdział 5. Dissolution and Liquidation of the Partnership. Withdrawal of a Partner.**

**Art. 148. Reasons.**

§ 1. The following shall be the reasons for dissolving the partnership:

- 1) the reasons stipulated in the statutes,
- 2) a resolution of the general assembly on dissolution of the partnership,
- 3) a declaration of bankruptcy of the partnership,
- 4) the death, declaration of bankruptcy or withdrawal of the sole general partner, unless the statutes provide otherwise,
- 5) other reasons provided for by the law.

§ 2. A declaration of bankruptcy of a shareholder shall not be a reason for dissolution of the partnership.

**Art. 149. Right to terminate.**

§ 1. Termination of the articles of association by a general partner and his withdrawal from the partnership shall be allowed if the statutes so provide. The provisions on the registered partnership shall apply *mutatis mutandis*.

§ 2. A shareholder shall not have the right to terminate the articles of association.

**Art. 150. Rules for liquidation.**

§ 1. Unless the provisions of this Division provide otherwise, the provisions on liquidation of the joint-stock company shall apply *mutatis mutandis* to the dissolution and liquidation of the limited joint-stock partnership.

§ 2. The general partners who have the right to manage the affairs of the partnership shall act as liquidators, unless the statutes or a resolution of the general assembly, adopted with the consent of all the general partners, provide otherwise.

## Tytuł III. Capital Companies.

### Dział I. Limited Liability Company.

#### Rozdział 1. Creation of the Company.

**Art. 151. Purposes; situation of shareholders.**

§ 1. A limited liability company may be incorporated by one or more persons for any purpose allowed by law, unless the law provides otherwise.

§ 2. A limited liability company may not be formed solely by another single-shareholder limited liability company.

§ 3. The shareholders shall provide only the performances stipulated in the articles of association.

§ 4. The shareholders shall not be liable for the obligations of the company.

**Art. 152. Share capital.** The share capital of the company shall be divided into shares of equal or non-equal nominal value.

**Art. 153. Shares.** The articles of association shall determine whether a shareholder may have one or more shares. If the shareholder may have more than one share, all shares in the share capital shall be equal and indivisible.

**Art. 154. Amount of capital; value of the share.**

§ 1. The share capital of the company shall be at least 5,000 zlotys.

§ 2. The nominal value of a share may not be lower than 50 zlotys.

§ 3. The shares may not be subscribed for below their nominal value. If a share is subscribed for at a price higher than the nominal value, the balance shall be transferred to the supplementary capital.

**Art. 155. Foreign companies.** Limited liability companies with a seat abroad may open branches and representative offices on the territory of the Republic of Poland. The terms on which such branches and representative offices may be opened shall be stipulated in a separate law.

**Art. 156. Single-shareholder companies.** In a single-shareholder company, the single shareholder shall exercise all rights of the general meeting in accordance with the provisions of this Division. The provisions on the general meeting shall apply *mutatis mutandis*.

**Art. 157. Contents of articles; form.**

§ 1. The articles of association of a limited liability company shall stipulate:

- 1) the name and seat of the company,
- 2) the objects of the company,
- 3) the amount of the share capital,
- 4) whether or not the shareholder may have more than one share,
- 5) the number and nominal value of the shares subscribed for by individual shareholders,
- 6) the term of the company, if it is defined.

§ 2. The articles of association shall be made in the form of a notarial deed.

**Art. 158. In-kind contribution.**

§ 1. If an in-kind contribution is to be made as contribution to the company for the purpose of financing the share in whole or in part, the articles of association shall specify in detail that in-kind contribution and the shareholder who makes such an in-kind contribution, as well as the number and nominal value of the shares acquired for such contribution.

§ 2. Remuneration for the services provided upon creation of the company may not be paid from the funds paid in for the share capital, nor can it be credited towards the shareholder's contribution.

§ 3. The subject matter of the contribution shall be at the sole disposal of the management board of the company.

**Art. 159. Special benefits and obligations.** If a shareholder is to be granted special benefits or if the shareholders are to have obligations towards the company other than the obligation to make contributions towards the shares, these should be specified in detail in the articles of association, or else they shall be ineffective vis-a-vis the company.

**Art. 160. Business name.**



§ 1. The business name of the company may be chosen freely, it shall, however, include the additional words „*spółka z ograniczoną odpowiedzialnością*” („limited liability company”).

§ 2. The abbreviation „*spółka z o.o.*” or „*sp. z o.o.*” may be used in business dealings.

**Art. 161. Company in organisation.**

§ 1. Upon conclusion of the articles of association, a limited liability company in organisation shall be created.

§ 2. The company in organisation shall be represented by the management board or by an attorney in fact appointed by a unanimous resolution of the shareholders.

§ 3. The liability of the persons referred to in Article 13 § 1 shall cease with respect to the company upon approval of their actions by the general meeting.

**Art. 162. Single-shareholder company in organisation.** In a single-shareholder company in organisation, the single shareholder shall not have the right to represent the company. This shall not apply to the filing for registration of the company with the registry court.

**Art. 163. Prerequisites for creation.** The following shall be required for the creation of a limited liability company:

- 1) the conclusion of the articles of association,
- 2) the making by the shareholders of contributions to finance the entire share capital, and where the share is subscribed for a price higher than the nominal value, also contributing of the balance,
- 3) the appointment of the management board,
- 4) the constitution of the supervisory board or the audit committee, if this is required by the law or by the articles of association,
- 5) the registration in the register.

**Art. 164. Filing in register.**

§ 1. The management board shall report the formation of the company to the registry court which has jurisdiction for the seat of the company, so that the company can be registered in the register. The application for registration of the company in the register shall be signed by all the members of the management board.

§ 2. With respect to matters not regulated in this Act, the filing for registration of the company with the registry court shall be governed by the provisions on the National Court Register.

§ 3. The registry court may not refuse registration of the company in the register due to minor irregularities which do not affect the interest of the company and public interest, and which cannot be remedied without disproportionately high costs.

**Art. 165. Defects in application.** In the case where there exists a defect in the application which is capable of being remedied, the registry court shall grant the company in organisation an appropriate time to remedy it. Where this is not complied with, registration in the register shall be refused.

**Art. 166. Contents of application.**

§ 1. The filing of the limited liability company with the registry court shall include:

- 1) the business name, seat and address of the company,
- 2) the objects of the company,
- 3) the amount of the share capital,
- 4) information as to whether or not the shareholder may have more than one share,
- 5) the surnames, first names and addresses of the members of the management board and the manner of representation of the company,
- 6) the surnames and first names of the members of the supervisory board or the audit committee, if the law or articles of association require the constitution of the supervisory board or the audit committee,
- 7) if the shareholders make in-kind contributions, notice concerning this,
- 8) the term of the company, if it is specified,
- 9) if the articles of association specify the gazette selected for publication of the company announcements, the name of that gazette.

§ 2. The filing of a single-shareholder limited liability company with the registry court shall also include the surname and first name or the business name, and the seat and the address of the single shareholder, as well as information that he is the single shareholder of the company.

§ 3. The provisions of § 2 shall apply *mutatis mutandis* in the case of an acquisition by a single shareholder of all shares following the registration of the company.

**Art. 167. Attachments.**

§ 1. The following shall be attached to the filing:

- 1) the articles of association,
- 2) the representation of all members of the management board that the contributions towards the share capital have been made by all shareholders in full,
- 3) if the notarial deed which includes the articles of association does not provide for the appointment of the members of the company governing bodies, proof of their appointment with details of their membership.

§ 2. Together with the filing, a list of all shareholders signed by all members of the management board, including the surname and first name or the business name and the number and the nominal value of the shares of each shareholder, shall be filed.

§ 3. Sample signatures of members of the management board put before the court or certified by a notary shall be attached to the filing of the company or a filing made in connection with changes in the composition of the management board.

**Art. 168. Changes of data to be reported.** Any changes to the data listed in Article 166 § 1 and § 2 shall be reported by the management board to the registry court so that they may be registered in the register or disclosed in the registration file.

**Art. 169. Deadline; registration refused.** If the formation of the company is not reported to the registry court within six months of the date of conclusion of the articles of association or if a decision of the court refusing registration becomes final and non-appealable, the articles of association shall be dissolved.

**Art. 170. Liquidation of company in organisation.**

§ 1. If the company was not filed with the registry court within the time limit stipulated in Article 169 or a decision of the registry court refusing registration becomes final and non-appealable, and the company under organisation

is not capable of immediately returning all contributions made or of paying off the debts towards third parties, the management board shall carry out liquidation. If the company in organisation does not have a management board, the general meeting or the registry court shall appoint a liquidator or liquidators.

§ 2. The provisions on liquidation of the company shall apply *mutatis mutandis* to liquidation of the company in organisation.

§ 3. The liquidators shall make one announcement of the opening of liquidation, and summon the creditors to report their claims within one month of the date of the announcement.

§ 4. The company in organisation shall be dissolved on the date of approval by the general meeting of the liquidation report.

§ 5. Registration matters connected with the liquidation of the company in organisation shall be handled by the registry court having jurisdiction for the seat of the company.

**Art. 171. Filing with tax office.** Following registration of the company, the management board shall, within two weeks, file a copy of the articles of association, certified by the management board, with the appropriate tax office, and indicate the court where the company has been registered, as well as the date and registration number.

**Art. 172. Defects.**

§ 1. If, following registration of the company, defects resulting from a failure to observe the law are discovered, the registry court shall, *ex officio*, or upon an application of the persons having a legal interest, summon the company to remedy such defects and shall stipulate an appropriate time for this purpose.

§ 2. If the company fails to comply with the summons referred to in § 1, the registry court may impose fines in accordance with the rules stipulated in the provisions on the National Court Register.

**Art. 173. Declarations in a single-shareholder company.**

§ 1. Where all the shares in the company are held by a single shareholder or a single shareholder and the company, the declaration of will of such a shareholder addressed to the company shall be made in writing, or else it shall be invalid, unless the law provides otherwise.

§ 2. (*abrogated*)

§ 3. (*abrogated*)

## **Rozdział 2. Rights and Obligations of the Shareholders.**

**Art. 174. Equality.**

§ 1. Unless the law or the articles of association provide otherwise, the shareholders shall have equal rights and obligations in the company.

§ 2. If the articles of association provide for shares with special rights attached to them, such rights shall be specified in the articles (preference shares).

§ 3. Such privileges may concern in particular the right to vote, the right to dividends or participation in the division of assets in the event of liquidation of the company. Such privileges in respect of the right to vote may attach only to shares of equal nominal value.

§ 4. Such privileges in respect of the right to vote may not grant to the entitled party more than three votes per one share. Such privileges in respect of dividends may not breach the provisions of Article 196.

§ 5. The articles of association may make the special rights conditional on the provision of additional performances to the company, lapse of time or the satisfaction of a condition.

§ 6. Bearer documents, registered documents or documents to an order may not be issued for shares or rights to profits in the company.

**Art. 175. Value of in-kind contributions inflated.**

§ 1. If the value of in-kind contributions has been considerably inflated in relation to their sale value as at the date of the conclusion of the articles of association, the shareholder who made such a contribution and members of the management board who, knowing this, filed the company in the register, shall be jointly and severally liable to make good the outstanding balance to the company.

§ 2. The shareholder and the members of the management board shall not be relieved of the obligation referred to in § 1.

**Art. 176. Recurrent non-pecuniary performances.**

§ 1. If a shareholder is to be obligated to provide recurrent non-pecuniary performances, the articles of association shall stipulate the type and the scope of such performances.

§ 2. Remuneration due to the shareholder for such performances for the company shall be paid by the company even where the financial report does not show profits. The remuneration shall not be higher than the prices or rates normally applicable in business transactions.

§ 3. In the event referred to in § 1, a transfer of the share, its part or a fraction of the share or encumbrance of the share, may be effected only with the consent of the company, referred to in Article 182, unless the articles of association provide otherwise.

**Art. 177. Additional contributions.**

§ 1. The articles of association may obligate the shareholders to make additional contributions up to a certain specified amount in proportion to the share.

§ 2. The additional contributions shall be imposed and paid by the shareholders equally in proportion to their respective shares.

**Art. 178. Dates and amount of additional contributions.**

§ 1. The amount and dates of the additional contributions shall be determined, as the need arises, in the shareholder resolutions. Unless the articles of association provide otherwise, the provisions of § 2 and Article 179 shall apply to the additional contributions.

§ 2. If a shareholder does not pay the additional contribution within a specified deadline, he shall pay statutory interest; the company may also demand redress of the damage resulting from the delay.

**Art. 179. Additional contributions repaid.**

§ 1. The additional contributions may be repaid to the shareholders if they are not needed to finance the loss shown in the financial report.

§ 2. The additional contributions may be repaid after one month from the date of announcement of the proposed repayment in the gazette selected for publication of company announcements.

§ 3. Repayment shall be made equally to all shareholders.

§ 4. The repaid additional contributions shall not be taken into account on the occasion of a call for new additional contributions.

**Art. 180. Transfer and encumbrance of share.** A transfer of the share, its part or a fraction of the share or a pledging of the share shall be effected in writing with signatures certified by a notary.

**Art. 181. Transfer of part of share.**

§ 1. If the articles of association stipulate that a shareholder may have only one share, the articles of association may allow for the transfer of a part of the share.

§ 2. The division may not result in the creation of shares less lower 50 zlotys.

**Art. 182. Transfer and encumbrance restricted.**

§ 1. The articles of association may stipulate that a transfer of the share, its part or a fraction of the share and a pledging of the share shall be subject to the consent of the company or otherwise restricted.

§ 2. If the transfer is subject to the consent of the company, the provisions of § 3-5 shall apply, unless the articles of association provide otherwise.

§ 3. Consent shall be given by the management board in writing. In the event that consent is refused, the registry court may allow for the transfer to be made, if there exist significant reasons.

§ 4. In the event referred to in § 3, the company may, within the time limit fixed by the registry court, propose another transferee. If no agreement is reached, the purchase price and the date of payment shall be fixed by the registry court upon the application of the shareholder or the company, in consultation, wherever required, with an expert.

§ 5. If the party proposed by the company does not pay the purchase price within the time fixed, the shareholder shall be free to dispose of his share, its part or a fraction of the share, unless the shareholder failed to accept the payment offered.

**Art. 183. Death of shareholder.**

§ 1. The articles of association may limit or exclude the joining of the company by the heirs in place of a deceased shareholder. In such a case, the articles of association shall stipulate the conditions for repayment due to the heirs who do not join the company, or else such limitation or exclusion shall be ineffective.

§ 2. The articles of association may exclude or limit in a certain manner the distribution of shares among the heirs where the deceased shareholder had more than one share.

§ 3. If, under the articles of association, a shareholder could have only one share, that share may be divided among the heirs, unless the articles of association exclude or limit in a certain manner the division of that share among the heirs. The division may not result in the creation of shares lower than 50 zlotys.

**Art. 183<sup>1</sup>. Articles of association and the spouse.** The articles of association may limit or exclude the joining of the company by the spouse of a shareholder where the share or shares are part of the joint marital patrimony.

**Art. 184. Joint holders of share.**

§ 1. The joint holders of the share or shares shall exercise their rights in the company through a common representative; they shall be jointly and severally liable for the performances attaching to the share.

§ 2. If the joint holders have not presented a common representative, the representations of the company may be made to any of them.

**Art. 185. Enforcement.**

§ 1. If, in the course of enforcement proceedings, there is to be a sale of the share whose transfer is subject, under the articles of association, to the consent of the company or is limited in some other manner, the company shall be entitled to present the party who will acquire the share at the price to be determined by the registry court in consultation, if required, with an expert.

§ 2. In the event referred to in § 1, the company shall, within two weeks of the date of notification by the registry court of the order for the sale being given, file for a valuation of the share under the above rule.

§ 3. If, within the time limit referred to in § 2, the company does not file for a valuation of the share or if within two weeks of the date of notification to the company of determination of the purchase price, the party presented by the company does not pay to the bailiff the determined price, the shares shall be sold in accordance with the procedure specified in the provisions governing the enforcement proceedings.

§ 4. The provisions of § 1-3 shall apply *mutatis mutandis* to a transfer of a part of the share or a fraction of the share.

**Art. 186. Liability of transferee.**

§ 1. In the case of a transfer of the share or its part, the transferee shall be liable to the company, jointly and severally with the transferor, for outstanding performances due to the company in respect of the share or a part of the share transferred. This provision shall apply also to the transfer of a fraction of the share.

§ 2. The claims of the company against the transferor in respect of the performances referred to in § 1 shall be barred by limitation after three years from the date on which the company was notified of the transfer of the share, its part or a fraction of the share.

**Art. 187. Notification of disposition.**

§ 1. The transfer of the share, its part or a fraction of the share to another party and the pledging of and creation of the right of usufruct on the share shall be notified to the company by the parties involved; a proof of the transfer or the creation of the pledge or the right of usufruct shall be presented. The transfer of the share, its part or a fraction of the share and the creation of the pledge or the right of usufruct shall be effective with respect to the company as of the moment when the company receives from one of those involved a notification of the same, together with a proof of the transaction.

§ 2. The articles of association may provide that the pledgee or the holder of the right of usufruct of the share may exercise the right to vote.

**Art. 188. Share register.**

§ 1. The management board shall keep a share register where the surname and first name or the business name and the seat of each shareholder, the address, the number and the nominal value of his shares and the creation of the pledge or usufruct and the exercise of the right to vote by the pledgee or the holder of the right of usufruct shall be entered, together with all changes of the shareholders and their respective shares.

§ 2. Each shareholder may inspect the share register.

§ 3. Each time, following registration of the change, the management board shall file with the registry court a new list of shareholders signed by all the members of the management board, specifying the number and nominal value of the respective shares of each shareholder and notice of the creation of a pledge or the right of usufruct on the share.

**Art. 189. Contributions not to be returned.**

§ 1. During the term of the company, the contributions made by the shareholders may not be returned to them in whole or in part, unless the provisions of this Division provide otherwise.

§ 2. The shareholders may not receive, under any title, any payments from the company assets needed to fully finance the share capital.

**Art. 190. No interest to be charged.** A shareholder may not charge interest on the contributions made or on his shares.

**Art. 191. Profits to be divided.**

§ 1. A shareholder shall be entitled to a share in the profits specified in the annual financial report and allocated under a resolution of the general meeting for division, subject to the provisions of Article 195 § 1.

§ 2. The articles of association may provide for another manner of division of profits, subject to the provisions of Articles 192-197.

§ 3. Unless the articles of association provide otherwise, the profits allocated for the shareholders shall be divided proportionately to the shares.

**Art. 192. Profits designated for division.** The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary and reserve capitals created out of profits which may be divided. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the articles of association should be allocated, from the profits for the previous financial year, to the supplementary or reserve capitals.

**Art. 193. Division of dividends.**

§ 1. The dividends for a given financial year may be paid to the shareholders who held shares on the date of the resolution on division of profits.

§ 2. The articles of association may authorise the general meeting to set the date according to which the list of the shareholders entitled to dividends for a given financial year shall be drawn up (the dividend day).

§ 3. The dividend day shall be determined within two months of the date of the adoption of the resolution referred to in Article 191 § 1.

§ 4. The dividends shall be paid out on the date designated in the resolution of the shareholders. If the resolution of the shareholders does not designate such a date, then the dividends shall be paid out on the date designated by the management board.

**Art. 194. Advance on dividends.** The articles of association may authorise the management board to pay the shareholders an advance on the expected dividends for the financial year if the company has sufficient funds for such payment.

**Art. 195. When advance can be paid.**

§ 1. The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, increased by the reserve capitals created out of profits which the management board may administer for the purpose of the payment of the advance, and reduced by uncovered losses and own shares.

§ 2. Article 197 shall not apply to the advance on the expected dividends.

**Art. 196. Preference dividends.** Each preference share which is a preference share as regards dividends may give entitlement to dividends larger by not more than half than the dividend payable on non-preference shares (privileged dividends). The shares which are preference shares as regards dividends shall not enjoy satisfaction prior to the remaining shares, unless the articles of association provide otherwise.

**Art. 197. Dividends for previous years.** If the articles of association give entitlement to preference dividends which have not been paid in previous years, they shall stipulate the maximum number of years for which the dividends may be paid from profits in subsequent years; such period may not exceed five years.

**Art. 198. Payment to be returned.**

§ 1. A shareholder who received payment in breach of the law or the provisions of the articles of association (the recipient), shall return it. The members of the company governing bodies responsible for such payment shall be jointly and severally liable to the company, with the recipient, for such repayment.

§ 2. If the repayment cannot be enforced against the recipient or the persons responsible for the payment, the shareholders shall be liable, proportionately to their shares, for the shortfall in the company assets necessary to ensure full financing of the share capital. The amounts which cannot be enforced against particular shareholders shall be spread among the remaining shareholders in proportion to their shares.

§ 3. Those liable may not be released from the liability referred to in § 1 and § 2.

§ 4. The claims referred to in § 1 and § 2 shall be barred by limitation after three years from the date of the payment, except for claims against the recipient who knew that the payment received was illegal.

**Art. 199. Redemption of share.**

§ 1. A share may be redeemed only following registration of the company in the register and only if the articles of association so provide. A share may be redeemed with the consent of the shareholder by way of an acquisition of the share by the company (voluntary redemption) or without the consent of the shareholder (forced redemption). The terms and procedures for the forced redemption shall be stipulated in the articles of association.

§ 2. The redemption of the share shall require a resolution of the general meeting, such a resolution to specify in particular the legal basis for the redemption, and the amount of the remuneration due to a shareholder for a redeemed share. In the case of forced redemption, such remuneration shall not be lower than the net value of the assets per share, as demonstrated in the financial report for the previous financial year, reduced by the sum to be divided among the shareholders. In the case of forced redemption, the relevant resolution shall also include a justification.

§ 3. With the consent of the shareholder, the redemption may be effected without remuneration.

§ 4. The articles of association may provide that where a certain event occurs, a share shall be redeemed without the resolution of the general meeting. The provisions on forced redemption shall apply.

§ 5. In the case of an occurrence of the event stipulated in the articles of association, referred to in § 4, the management board shall immediately adopt a resolution on a reduction of the share capital, unless a share is redeemed out of net profits.

§ 6. The redemption of a share out of net profits shall not involve a reduction of the share capital.

§ 7. In the case of a redemption which involves a reduction of the share capital, the redemption shall be effected upon reduction of the share capital.

#### **Art. 200. Own shares.**

§ 1. The company may not subscribe for, acquire, or accept as pledge its own shares. This prohibition shall apply also to the subscription for, acquisition or acceptance as pledge of the shares by a dependent company or co-operative. Acquisition in the course of enforcement proceedings for satisfaction of claims of the company which may not be satisfied from other assets of the shareholder, acquisition for the purpose of redemption, and acquisition or subscription for the shares in other cases envisaged by the law shall be an exception to the above rule.

§ 2. If the shares acquired in the course of enforcement proceedings in accordance with § 1 are not disposed of within one year of the date of acquisition, they shall be redeemed in accordance with the provision on reduction of the share capital, unless a special reserve fund has been created in the company for the purpose of redemption of the shares.

§ 3. The company own shares shall be recorded in the balance sheet under a separate heading as part of the company's own capital, and represented as a negative value.

§ 4. The provisions of § 1-3 shall apply *mutatis mutandis* to a part of the share and a fraction of the share.

### **Rozdział 3. The Company Governing Bodies.**

#### **Oddział 1. Management Board.**

##### **Art. 201. Powers; composition.**

§ 1. The management board shall manage the affairs of the company and represent the company.

§ 2. The management board shall include one or more members.

§ 3. The members of the management board may be drawn from among the shareholders or other persons.

§ 4. A member of the management board shall be appointed and dismissed by a resolution of the shareholders, unless the articles of association provide otherwise.

##### **Art. 202. Expiration of mandate.**

§ 1. Unless the articles of association provide otherwise, the mandate of a member of the management board shall expire on the date of the general meeting which approves the financial report for the first full financial year of his service as a member of the management board.

§ 2. Where a member of the management board is appointed for a period longer than one year, the mandate of that member of the management board shall expire on the date of the general meeting which approves the financial report for the last full financial year of his service as a member of the management board, unless the articles of association provide otherwise.

§ 3. If the articles of association provide that the members of the management board shall be appointed for a joint term of office, the mandate of the member of the management board appointed before the end of a given term of office of the management board shall expire simultaneously with the expiration of the mandates of the remaining members of the management board, unless the articles of association provide otherwise.

§ 4. The mandate of a member of the management board shall expire also upon death, resignation or dismissal from the management board.

§ 5. The provisions on termination of the contract of mandate by the mandatary shall apply *mutatis mutandis* to the resignation of a member of the management board.

##### **Art. 203. Dismissal.**

§ 1. A member of the management board may be dismissed at any time by the resolution of the shareholders. This shall not affect his rights under the employment relationship or another legal relationship applicable to his service as a member of the management board.

§ 2. The articles of association may include other provisions, in particular limit the right to dismiss a member of the management board to situations where there exist significant reasons.

§ 3. A dismissed member of the management board shall be entitled and obligated to provide explanations in the course of drafting the report of the management board on the operations of the company and the financial report for the period of his service on the management board, as well as to participate in the general meeting held to approve the reports referred to in Article 231 § 2 point 1, unless the instrument of dismissal provides otherwise.

##### **Art. 204. Scope of actions.**

§ 1. The right of a member of the management board to manage the affairs of the company and to represent it shall cover all court proceedings and out of court dealings of the company.

§ 2. The right of a member of the management board to represent the company may not be restricted with a legal effect vis-a-vis third parties.

**Art. 205. Representation; commercial power of attorney.**

§ 1. If the management board comprises several members, the rules for representation shall be stipulated in the articles of association. If the articles of association do not include any provisions in this respect, representations in the name of the company may be made by two members of the management board acting jointly or by one member of the management board acting together with a holder of the commercial power of attorney.

§ 2. The representations addressed to the company may be made and written communications to the company may be served on one member of the management board or on a holder of the commercial power of attorney.

§ 3. The provisions of § 1 and § 2 shall not exclude the creation of a single-person or a joint commercial power of attorney and shall not limit the rights of the holders of the commercial power of attorney under the provisions on the commercial power of attorney.

**Art. 206. Particulars to be included in written communications.**

§ 1. Written communications and commercial orders filed by the company on paper and electronically, and the information published on the company's websites, shall include:

- 1) the business name of the company, its seat and address,
- 2) the registry court where the documents of the company are filed and the number of the company in the register,
- 3) the taxpayer's identification number (NIP),
- 4) the share capital.

§ 2. *(abrogated)*

§ 3. The provisions of § 1 shall apply *mutatis mutandis* to a branch of a limited liability company with its seat abroad.

**Art. 207. Limitations in relation to company.** In relation to the company, the members of the management board shall be subject to the limitations stipulated in this Division, in the articles of association and, unless the articles of association provide otherwise, in resolutions of the shareholders.

**Art. 208. Management board with several members.**

§ 1. If the management board comprises several members, and the articles of association do not provide otherwise, the relations among the members of the management board shall be governed by the provisions of § 2-8.

§ 2. Each member of the management board shall have the right and obligation to manage the affairs of the company.

§ 3. Each member of the management board may, without a prior resolution of the management board, manage the affairs which do not exceed the ordinary affairs of the company.

§ 4. However, if prior to the conclusion of any matter referred to in § 3, at least one of the remaining members of the management board objects to its conclusion or if the matter falls outside the ordinary affairs of the company, a prior resolution of the management board shall be required.

§ 5. The resolutions of the management board may be adopted if all members have been properly notified of the meeting of the management board. The resolutions of the management board shall be adopted by an absolute majority of votes.

§ 6. The appointment of a holder of the commercial power of attorney shall require the consent of all members of the management board.

§ 7. The commercial power of attorney may be revoked by any member of the management board.

§ 8. The articles of association may provide that in the event of an equal number of votes the president of the management board shall have the casting vote, as well as grant him certain powers in managing the operations of the management board.

**Art. 209. Conflict of interest.** Where there exists a conflict between the interests of the company and those of a member of the management board, his spouse, relatives or relations up to the second degree and persons with whom he has personal relations, the member of the management board shall withhold from deciding such matters and may request that this be recorded in the minutes.

**Art. 210. Contracts with member of management board.**

§ 1. In contracts between the company and a member of the management board and in disputes with him, the company shall be represented by the supervisory board or an attorney in fact, appointed under a resolution of the general meeting.

§ 2. Paragraph 1 shall not apply where the shareholder referred to in Article 173 § 1 is also the single member of the management board. An act in law between such shareholder and the company which he represents shall require a notarial deed. The notary shall notify the registry court each time such act in law is made, by sending a copy of the notarial deed to the court.

**Art. 211. Non-competition.**

§ 1. A member of the management board may not, without the consent of the company, engage in a competitor business or participate in a competitor company as a partner in a civil law partnership or in a partnership, or as a member of a governing body of a capital company, or participate in another competing legal person as a member of its governing body. This prohibition shall also apply to participation in a competitor capital company where the member of the management board holds at least 10 per cent of shares of that company or the right to appoint at least one member of its management board.

§ 2. Unless the articles of association provide otherwise, the consent shall be given by the governing body entitled to appoint the management board.

**Art. 212. Shareholder's right to control.**

§ 1. The right to control shall be enjoyed by each shareholder. For this purpose, a shareholder or the shareholder together with a person he so authorises, may at any time inspect the books and documents of the company, draw up a balance sheet for his use or request explanations from the management board.

§ 2. The management board may refuse to give explanations to the shareholder or provide the company books and documents for inspection, if there exists a justified concern that the shareholder may use them for purposes contrary to the interests of the company and as a result may cause material damage to the company.

§ 3. In the case referred to in § 2, the shareholder may demand that the matter be resolved in a resolution of the shareholders. The resolution shall be adopted within one month from the date on which the request was made.

§ 4. A shareholder who has been refused explanations or access to the company documents or books may apply to the registry court that the management board be obligated to offer explanations or provide access to company documents or books for inspection. The application shall be filed within seven days of the date of receipt of a notification concerning the resolution or of the end of the time limit specified in § 3, if the resolution of the shareholders has not been adopted within that time limit.

**Art. 213. Governing bodies to exercise supervision.**

§ 1. The articles of association may create a supervisory board or an audit committee or both.

§ 2. The supervisory board or the audit committee shall be created in companies whose share capital exceeds 500,000 zlotys and where there are more than twenty-five shareholders.

§ 3. If the supervisory board or the audit committee are created, the articles of association may exclude or limit the exercise of individual control by the shareholders.

**Art. 214. No overlapping of functions.**

§ 1. A member of the management board, a holder of the commercial power of attorney, a liquidator, a manager of a branch or factory and those employed in the company as the chief accountant, legal advisor or advocate may not be at the same time a member of the supervisory board or the audit committee.

§ 2. The provisions of § 1 shall also apply to other persons who are directly answerable to a member of the management board or a liquidator.

§ 3. The provisions of § 1 shall apply *mutatis mutandis* to the members of the management board and the liquidators of the dependent company or cooperative.

**Art. 215. Composition of supervisory board.**

§ 1. The supervisory board shall consist of at least three members appointed and dismissed by a resolution of the shareholders.

§ 2. The articles of association may provide for a different manner of appointment and dismissal of members of the supervisory board.

**Art. 216. Term of office.**

§ 1. The members of the supervisory board shall be appointed for one year, unless the articles of association provide otherwise.

§ 2. A resolution of the shareholders may dismiss the members of the supervisory board at any time.

**Art. 217. Composition of audit committee.** The audit committee shall consist of at least three members, appointed and dismissed in accordance with the same rules as those applicable to members of the supervisory board.

**Art. 218. Expiration of mandates.**

§ 1. Unless the articles of association provide otherwise, the mandates of the members of the supervisory board and of the audit committee shall expire on the date of the general meeting which approves the financial report for the first full financial year of service as a member.

§ 2. Where the members of the supervisory board and the audit committee are appointed for a period longer than one year, their mandates shall expire on the day when the general meeting, which approves the financial report for the last full financial year of their service, has been held.

§ 3. The provisions of Article 202 § 3-5 shall apply *mutatis mutandis*.

**Art. 219. Tasks of supervisory board.**

§ 1. The supervisory board shall exercise permanent supervision over all areas of the activities of the company.

§ 2. The supervisory board shall not have the right to give the management board any binding instructions with respect to the management of the affairs of the company.

§ 3. The special duties of the supervisory board shall include evaluating the reports referred to in Article 231 § 2 point 1, with regard to their conformity with the books and documents, as well as with the actual state of affairs, and proposals of the management board concerning the division of profits or the financing of losses, as well as submitting to the general meeting an annual written report on the results of such evaluation.

§ 4. In order to perform its duties, the supervisory board may review all company documents, request reports and explanations from the management board and the employees, and review the state of the company's assets.

§ 5. Each member of the supervisory board may exercise the right of supervision alone, unless the articles of association provide otherwise.

**Art. 220. Powers expanded.** The articles of association may expand the powers of the supervisory board, and in particular stipulate that the management board shall obtain the consent of the supervisory board prior to carrying out actions specified in the articles of association, and grant the supervisory board the right to suspend from their duties, for significant reasons, any or all members of the management board.

**Art. 221. Tasks of audit committee.**

§ 1. The duties of the audit committee shall include evaluating the reports referred to in Article 231 § 2 point 1, and proposals of the management board concerning the division of profits or the financing of losses, as well as submitting to the general meeting an annual written report on the results of such evaluation, in accordance with the procedure and to the extent specified for the performance of such actions by the supervisory board.

§ 2. The articles of association may expand the duties of the audit committee in a company which does not have a supervisory board.

**Art. 222. Resolutions of supervisory board.**

§ 1. The supervisory board shall adopt resolutions if its meeting is attended by at least half of its members, and all the members have been invited. The articles of association may stipulate stricter rules concerning the quorum of the supervisory board.

§ 2. Minutes shall be taken of the meeting of the supervisory board.

§ 3. The articles of association may provide that the members of the supervisory board may participate in the adoption of resolutions of the supervisory board by casting their votes in writing through another member of the supervisory board. The casting of the vote in writing may not concern matters put on the agenda during the meeting of the supervisory board.

§ 4. The adoption of resolutions by the supervisory board in writing or through means of instantaneous communications shall be allowed only if the articles of association so provide. The resolution shall be valid if all members of the supervisory board have been notified of the contents of the draft resolution.

§ 5. Resolutions on the election of the chairman and deputy chairman of the supervisory board, appointment of a member of the management board or dismissal and suspension from duties of such persons, may not be adopted in accordance with the procedure stipulated in § 3 and § 4.

§ 6. The general meeting may adopt regulations of the supervisory board specifying its organisation and rules of procedure. The general meeting may authorise the supervisory board to adopt its own regulations.

§ 7. The provisions of § 1-6 shall apply *mutatis mutandis* to the audit committee.

**Art. 223. Minority rights.** Upon a request of a shareholder or shareholders representing at least one tenth of the share capital, the registry court may, having summoned the management board to make a representation, appoint a party authorised to review the financial reports for the purpose of examining the accounts and operations of the company.

**Art. 224. Auditor.** The members of the company governing bodies shall offer to the auditor the requested explanations and allow the auditor to inspect the company books and documents, check the cash balance and take stock of the assets and liabilities of the company, as well as offer necessary assistance for that purpose.

**Art. 225. Report of auditor.** The auditor shall file his report with the registry court which shall forward a copy thereof to the party who requested the audit of the accounts and operations of the company, the management board and the supervisory board or the audit committee. The report shall be read out in full during the next general meeting.

**Art. 226. Costs of audit.**

§ 1. The remuneration of the auditor shall be determined by the registry court.

§ 2. The costs of the audit of the accounts and operations of the company shall be borne by the party who requested the audit.

§ 3. If the audit referred to in § 2 reveals an abuse, an action adverse to the company or a flagrant violation of the law or of the articles of association, the party who requested the audit shall be entitled to be reimbursed the costs of the audit by the company.

### Oddział 3. General Meeting.

**Art. 227. Resolutions.**

§ 1. Resolutions of the shareholders shall be adopted at the general meeting.

§ 2. Resolutions may be adopted without holding a general meeting if all the shareholders consent in writing to the decision to be taken or to a written vote.

**Art. 228. Powers.** In addition to other matters stipulated in this Division or in the articles of association, the following matters shall require a resolution of the shareholders:

1) consideration and approval of the management board report on the operations of the company, the financial report for the previous financial year and the granting of approval of the performance of duties by the members of the company governing bodies,

2) decisions on claims for redress of damage caused upon formation of the company or its management or supervision,

3) disposal of or tenancy of the enterprise or its organised part and the creation of a limited right in rem over them,

4) acquisition and disposal of real estate, the right of perpetual usufruct, or a share in real estate, unless the articles of association provide otherwise,

5) repayment of additional contributions,

6) conclusion of a contract referred to in Article 7.

**Art. 229. Acquisition of real estate and fixed assets.** A contract for the acquisition for the company of real estate or a share in real estate or fixed assets for a price higher than one fourth of the share capital, not lower, however, than 50,000 zlotys, entered into prior to the end of two years from registration of the company, shall require a resolution of the shareholders, unless such contract has been envisaged in the articles of association.

**Art. 230. Disposals and obligations.** A disposal of a right or contracting of an obligation to provide performance of a value exceeding twice the amount of the share capital shall require a resolution of the shareholders, unless the articles of association provide otherwise. The provisions of Article 17 § 1 shall not apply.

**Art. 231. Ordinary general meeting.**

§ 1. The ordinary general meeting shall be held within six months of the end of each financial year.

§ 2. The ordinary general meeting shall have on its agenda:

1) consideration and approval of the management board report on the operations of the company and of the financial report for the previous financial year,

2) adoption of a resolution on division of profits or financing of losses if such matters have not been excluded from the competence of the general meeting in accordance with Article 191 § 2,

3) granting approval of the performance of duties by the members of the company governing bodies.

§ 3. The provisions of § 2 point 3 shall apply to all persons who served as members of the management board, the supervisory board or the audit committee of the company during the previous financial year. The members of the company governing bodies whose mandates expired prior to the date of the general meeting may participate



in the general meeting, review the management board report and the financial report, together with a copy of the report of the supervisory board or the audit committee and that of the auditor, and present written opinions on such reports. A request concerning the exercise of such rights shall be filed with the management board in writing not later than one week prior to the general meeting.

§ 4. The matters referred to in § 2 and § 3 may not be resolved by a written vote.

§ 5. The ordinary general meeting may also consider and approve the financial report of the capital group in the meaning of the provisions on accountancy and matters other than those listed in § 2.

**Art. 232. Extraordinary general meeting.** The extraordinary general meeting shall be convened in the cases stipulated in this Division or in the articles of association, and where the governing bodies or persons authorised to convene the general meetings consider this desirable.

**Art. 233. Mandatory convocation.**

§ 1. If the balance sheet drawn up by the management board shows a loss exceeding the aggregated supplementary and reserve capitals and half of the share capital, the management board shall immediately convene the general meeting so that a resolution on the continued existence of the company can be adopted.

§ 2. The provisions of § 1 shall apply *mutatis mutandis* where the balance sheet has been drawn up in accordance with the provisions of Articles 223-225.

**Art. 234. Venue.**

§ 1. General meetings shall be held at the seat of the company, unless the articles of association provide for another location on the territory of the Republic of Poland.

§ 2. The general meeting may also be held in another location on the territory of the Republic of Poland if all the shareholders so agree in writing.

**Art. 235. Convocation.**

§ 1. The general meeting shall be convened by the management board.

§ 2. The supervisory board, as well as the audit committee, may convene the ordinary general meeting if the management board fails to convene it at the time stipulated in this Division or in the articles of association, and the extraordinary general meeting if they consider it desirable that it should be convened, and the management board fails to convene the general meeting within two weeks of the date when the supervisory board or the audit committee file the relevant request.

§ 3. The articles of association may grant the right referred to in § 2 to other persons also.

**Art. 236. At request by minority.**

§ 1. A shareholder or shareholders representing at least one tenth of the share capital may request that the extraordinary general meeting be convened, as well as that certain matters be placed on the agenda of the next general meeting. Such request shall be submitted to the management board in writing not later than one month prior to the proposed date of the general meeting.

§ 2. The articles of association may grant the rights referred to in § 1 to shareholders representing less than one tenth of the share capital.

**Art. 237. Court authorisation to convene.**

§ 1. If the extraordinary general meeting is not convened within two weeks of the submission of the request to the management board, the registry court may, having summoned the management board to make a representation, authorise the shareholders who have submitted the request to convene the extraordinary general meeting. The court shall designate the chairman of such meeting.

§ 2. The meeting referred to in § 1 shall adopt a resolution determining whether or not the costs of convening and holding the meeting shall be borne by the company.

§ 3. The notices on the convocation of the extraordinary general meeting referred to in § 1 shall refer to the relevant decision of the registry court.

**Art. 238. Convocation notice.**

§ 1. The general meeting shall be convened by means of registered letters or courier mail, sent out at least two weeks prior to the date of the general meeting. Instead of a registered letter or courier mail the notice may be sent to the shareholder by electronic mail if the shareholder has earlier agreed thereto in writing and provided the address to which the notice should be sent.

§ 2. The invitation shall specify the date, the time and the venue of the general meeting, and a detailed agenda. Where amendments to the articles of association are intended, the substance of the proposed changes shall be explained.

**Art. 239. Agenda.**

§ 1. Resolutions may not be adopted on matters not included on the agenda, unless the entire share capital is represented at the general meeting and none of those present has objected to the adoption of the resolution.

§ 2. The motion that the extraordinary general meeting be convened and motions on points of order may be adopted despite the fact that they were not been included on the agenda.

**Art. 240. Informal convocation.** Resolutions may be adopted, despite the general meeting not having been formally convened, where the entire share capital is represented and none of those present has objected to the holding of the general meeting or the inclusion of particular matters on the agenda.

**Art. 241. Valid meeting.** Unless the provisions of this Division or the articles of association provide otherwise, the general meeting shall be valid irrespective of the number of shares represented.

**Art. 242. Voting right.**

§ 1. Each share of an equal nominal value shall carry one vote, unless the articles of association provide otherwise.

§ 2. Unless the articles of association provide otherwise, every 10 zlotys of the nominal value of the share of unequal value shall carry one vote.

**Art. 243. Proxy.**

§ 1. Unless the law or the articles of association provide for any limitations, the shareholders may participate in the general meeting and exercise the voting right by proxy.

§ 2. The proxy shall be granted in writing, or else it shall be invalid, and shall be attached to the minutes book.

§ 3. A member of the management board and an employee of the company may not serve as proxies at the general meeting.

§ 4. The provisions on the exercise of the voting right by proxy shall apply to the exercise of the voting right through another representative.

**Art. 244. No right to vote on certain matters.** A shareholder may not, in person or by proxy, or as a proxy of another person, vote on resolutions on his liability to the company on any account, including the granting of approval of performance of his duties, release from an obligation towards the company or a dispute between him and the company.

**Art. 245. Simple majority of votes.** The resolutions shall be adopted by an absolute majority of votes, unless the provisions of this Division or the articles of association provide otherwise.

**Art. 246. Qualified majority.**

§ 1. Resolutions on amendments to the articles of association, the dissolution of the company or a transfer of the enterprise or its organised part shall be adopted by a majority of two thirds of the votes. A resolution on a substantial change in the objects of the company shall require a majority of three fourths of the votes. The articles of association may provide for stricter rules for adopting such resolutions.

§ 2. In the event referred to in Article 233, the resolution on dissolution of the company may be adopted by an absolute majority of votes, unless the articles of association provide otherwise.

§ 3. A resolution on amendments to the articles of association of the company providing for an increase in the performances of the shareholders or a limitation of the share rights or the rights granted personally to individual shareholders shall require the consent of all the shareholders concerned.

**Art. 247. Voting.**

§ 1. Voting shall be open.

§ 2. A secret vote shall be ordered for elections and with regard to motions for the dismissal of members of the company governing bodies or liquidators, to enforcing their liability and to personal matters. Also, a secret vote shall be ordered whenever requested by at least one shareholder present or represented at the general meeting.

§ 3. The general meeting may resolve to refrain from a secret vote in elections of a committee appointed by the general meeting.

**Art. 248. Minutes.**

§ 1. The resolutions of the general meeting shall be recorded in the minutes book and signed by those present or at least by the chairman and the person who records the minutes. If the minutes are recorded by a notary, the management board shall file an official copy of the minutes in the minutes book.

§ 2. The minutes shall state that the general meeting has been properly convened and that it is competent to adopt resolutions, list the resolutions adopted, the number of votes cast in favour of each of the resolutions and the objections made. The attendance list with signatures of those participating in the general meeting shall be attached to the minutes. Evidence that the general meeting has been convened shall be attached to the minutes book by the management board.

§ 3. Written resolutions adopted in accordance with Article 227 § 2 shall be recorded by the management board in the minutes book.

§ 4. The shareholders may inspect the minutes book and demand copies of the resolutions, certified by the management board.

**Art. 249. Action for annulment of resolution.**

§ 1. A resolution of the shareholders which contravenes the articles of association or good practices, and harms the interests of the company or is aimed at harming a shareholder may be challenged in an action brought against the company for an annulment of the resolution.

§ 2. The challenge of the resolution shall not halt the registration proceedings. The registry court may, however, suspend the proceedings after holding a hearing.

**Art. 250. Right of action.** The following parties shall have the right to bring an action for an annulment of a resolution of the shareholders:

- 1) the management board, the supervisory board, the audit committee and their individual members,
- 2) a shareholder who voted against the resolution and, following its adoption, requested that his objection be recorded,
- 3) a shareholder who, without valid reason, was not allowed to participate in the general meeting,
- 4) a shareholder who was not present at the general meeting; however, only where the general meeting was wrongly convened or where the resolution concerned a matter not included on the agenda,
- 5) in the case of a written vote, a shareholder who was overlooked at the vote or who did not consent to a written vote or who voted against the resolution and lodged an objection within two weeks of receiving notice of the resolution.

**Art. 251. Term.** An action for an annulment of a resolution of the shareholders shall be brought within one month of the date of receipt of notice of the resolution; not later, however, than within six months of the adoption of the resolution.

**Art. 252. Action for declaration of invalidity of resolution.**

§ 1. The persons or company governing bodies listed in Article 250 may bring an action against the company for a declaration of the invalidity of a resolution of the shareholders which is contrary to the law. The provisions of Article 189 of the Code of Civil Procedure shall not apply.

§ 2. The provisions of Article 249 § 2 shall apply *mutatis mutandis*.

§ 3. The right to bring the action shall expire at the end of six months of the date of receipt of notice of the resolution; not later, however, than after three years of the adoption of the resolution.

§ 4. The lapse of the time periods referred to in § 3 shall not preclude the raising of the objection that the resolution is invalid.

**Art. 253. Representation of company.**

§ 1. In a dispute concerning the annulment or declaration of the invalidity of a resolution of the shareholders, the defendant company shall be represented by the management board, unless an attorney in fact has been appointed for this purpose under a resolution of the shareholders.

§ 2. If the management board cannot act for the company, and no resolution of the shareholders on the appointment of an attorney in fact has been adopted, the court having jurisdiction for the action shall appoint a curator for the company.

**Art. 254. Effect of judgement.**

§ 1. A final and non-appealable judgement annulling a resolution shall be binding in relations between the company and all of its shareholders and in relations between the company and members of the company governing bodies.

§ 2. Where the validity of an act effected by the company depends on a resolution of the general meeting, an annulment of such resolution shall not have an effect against *bona fide* third parties.

§ 3. The final and non-appealable judgement annulling the resolution shall be reported to the registry court by the management board within seven days.

§ 4. The provisions of § 1-3 shall apply *mutatis mutandis* to a judgement passed in an action for a declaration of invalidity of a resolution, brought under Article 252 § 1.

**Rozdział 4. Amendment to the Articles of Association.**

**Art. 255. Procedure; registration.**

§ 1. An amendment to the articles of association shall require a resolution of the shareholders and registration in the register.

§ 2. A reduction of the share capital in accordance with the procedure stipulated in Article 199 § 5 shall require a resolution of the management board and registration in the register.

§ 3. The resolutions referred to in § 1 and § 2 shall be recorded in minutes taken by a notary.

**Art. 256. Filing of amendment in register.**

§ 1. The amendment to the articles of association shall be reported by the management board to the registry court.

§ 2. Simultaneously with the registration of the amendment to the articles of association, a change in the particulars listed in Article 166 shall be registered in the register, if such particulars are subject to registration.

§ 3. The provisions of Article 164 § 3, Article 165, Article 169, Article 171 and Article 172 shall apply *mutatis mutandis* to the registration of amendments to the articles of association.

**Art. 257. Increase of share capital.**

§ 1. If an increase of the share capital is effected otherwise than under the present provisions of the articles of association providing for a maximum amount of the increase of the share capital and the time of such increase, the increase may be effected only through an amendment to the articles of association.

§ 2. The increase of the share capital shall be effected through an increase of the nominal value of the existing shares or by the creation of new shares.

§ 3. If an increase of the share capital is effected under the present provisions of the articles of association, the requirements stipulated in § 1 being duly observed, the declarations of the existing shareholders that they subscribe for the new shares shall be made in writing, or else they shall be invalid. Article 260 § 2 shall apply *mutatis mutandis*.

**Art. 258. Priority in subscribing for new shares.**

§ 1. Unless the articles of association or the resolution on the increase of the share capital provide otherwise, the existing shareholders shall have priority in subscribing for the new shares in the increased share capital in proportion to their existing shares. The right of priority shall be exercised within a month of the date of the summons to exercise it. Such summons shall be sent out to the shareholders by the management board at the same time.

§ 2. A declaration of an existing shareholder that he subscribes for a new share or shares or that he subscribes for the increase in the value of an existing share or shares shall be made in the form of a notarial deed.

§ 3. The provisions of § 1 and § 2 shall not apply to the company own shares referred to in Article 200.

**Art. 259. New shareholder.** A declaration of a new shareholder shall include accession to the company and subscription for the share or shares of a specified nominal value. Such declaration shall be made in the form of a notarial deed.

**Art. 260. Increase of capital out of company funds.**

§ 1. The share capital may be increased by a resolution of the shareholders on amendments to the articles of association, whereby funds from the supplementary capital or reserve capitals (funds), created out of the company profits, are designated for that purpose (the increase of the share capital out of the company funds).

§ 2. New shares shall be due to the shareholders in proportion to their existing shares and shall not have to be subscribed for.

§ 3. The provisions of § 2 shall apply *mutatis mutandis* to the increase of the nominal value of the existing shares.

§ 4. The provisions of § 2 shall not apply to the company own shares referred to in Article 200.

**Art. 261. Reference.** The provisions of this Division on the nominal value of the share, full payment towards the share capital, the payment referred to in Article 154 § 3 and in-kind contributions shall apply *mutatis mutandis* to the increase of the share capital.

**Art. 262. Filing of increase in register.**

§ 1. The increase of the share capital shall be reported by the management board to the registry court.

§ 2. The filing concerning the increase of the share capital shall have the following attachments:

- 1) the resolution on the increase of the share capital,
- 2) the declarations on subscription for the shares in the increased share capital,
- 3) the representation of all the members of the management board that contributions to the increased share capital have been made in full.

§ 3. The provisions of § 2 points 2 and 3 shall not apply where the share capital is increased in accordance with Article 260.

§ 4. The increase of the share capital shall be effective as of the registration in the register.

**Art. 263. Reduction of capital.**

§ 1. A resolution on the reduction of the share capital shall specify the amount by which the share capital is to be reduced and the reduction method.

§ 2. The provisions of this Division on the minimum amount of the share capital and of the share shall apply to the reduction of the share capital.

**Art. 264. Announcement.**

§ 1. The management board shall immediately announce that it has been resolved that the share capital should be reduced by summoning the creditors of the company to lodge objections within three months of the date of the announcement if they do not agree to the reduction. Creditors who lodge an objection within that time shall be satisfied or secured by the company. Creditors who have not lodged an objection shall be deemed to have granted their consent to the reduction of the share capital.

§ 2. The provisions of § 1 shall not apply if, despite the reduction of the share capital, the payments made towards the share capital are not returned to the shareholders, and simultaneously with the reduction, the share capital is increased at least to the previous amount.

**Art. 265. Filing of reduction in register.**

§ 1. The reduction of the share capital shall be reported by the management board to the registry court.

§ 2. The filing concerning the reduction of the share capital shall have the following attachments:

- 1) the resolution on the reduction of the share capital,
- 2) evidence that the creditors have been properly summoned,
- 3) a declaration by all of the members of the management board stating that the creditors who lodged an objection within the time specified in Article 264 § 1 have been satisfied or secured.

§ 3. The provisions of § 2 points 2 and 3 shall not apply in the case referred to in Article 264 § 2.

§ 4. In the case referred to in Article 199 § 4 and § 5, instead of a resolution of the general meeting, a representation of all the members of the management board, in the form of a notarial deed, on satisfaction of all conditions for the reduction of the share capital stipulated in the law and in the articles of association and in the resolution on the reduction of the share capital, shall be attached.

## **Rozdział 5. Expulsion of a Shareholder.**

**Art. 266. Right to seek expulsion.**

§ 1. For significant reasons concerning a given shareholder, the court may rule on his expulsion from the company where all of the remaining shareholders so request, if the shares of the shareholders who make such request represent more than half of the share capital.

§ 2. The articles of association may authorise a smaller number of shareholders to bring the action referred to in § 1 if their shares represent more than half of the share capital. In such a case, all of the remaining shareholders should be sued.

§ 3. The shares of the expelled shareholder shall be taken over by the shareholders or third parties. The takeover price shall be determined by the court on the basis of their real value as at the date on which the statement of claim was served.

**Art. 267. Judgement concerning expulsion.**

§ 1. The court, when ruling on the expulsion of the shareholder, shall determine the time during which the expelled shareholder shall be paid the takeover price, with interest accruing as of the date on which the statement of claim was served. If that amount is not paid or deposited in the court deposit during such time, the judgement on the expulsion shall be ineffective.

§ 2. Where the judgement on the expulsion becomes ineffective for the reasons stipulated in § 1, the shareholder ineffectively expelled may demand redress of damage from the plaintiffs.

**Art. 268. Measures to secure claim.** In order to secure the claim, the court may, for significant reasons, suspend the shareholder in the exercise of his share rights in the company.

**Art. 269. Effects of expulsion.** The shareholder expelled under a final and non-appealable judgement whose shares have been taken over and paid for on time shall be deemed expelled from the company as of the date on which the statement of claim was served on him; however, this shall not affect the validity of acts in which he participated in the company after the date on which the statement of claim was served on him.

## **Rozdział 6. Dissolution and Liquidation of the Company.**

**Art. 270. Reasons.** The following shall be the reasons for dissolving the company:

- 1) the reasons stipulated in the articles of association,
- 2) a resolution of the shareholders on dissolution of the company or on the transfer of the seat of the company abroad, recorded in the minutes recorded by a notary,
- 3) a declaration of bankruptcy of the company,
- 4) other reasons provided for in the law.

**Art. 271. Dissolution by court.** In addition to the cases referred to in Article 21, the court may, by a judgement, rule on the dissolution of the company:

- 1) upon the request of a shareholder or a member of the company governing body if the objects of the company have become impossible to be achieved or there exist other significant reasons resulting from relations within the company,
- 2) upon the request of a state agency identified in a separate law, if the activities of the company which violate the law threaten the public interest.

**Art. 272. Deletion from register.** Dissolution of the company shall take place after liquidation, upon the deletion of the company from the register.

**Art. 273. Resolution to prevent dissolution.** Until the date of filing the application for the company to be deleted from the register, a unanimous resolution of all the shareholders on the continuation of the company may prevent its dissolution, unless the request that the company be dissolved has been made by a member of the company governing body who is not himself a shareholder or by the agency referred to in Article 271 point 2, or in the cases stipulated in Article 21.

**Art. 274. Opening of liquidation.**

§ 1. The liquidation shall be opened on the date when the judgement on dissolution of the company by the court becomes final and non-appealable, on the date of adoption by the shareholders of the resolution on dissolution of the company or of the occurrence of another reason for its dissolution.

§ 2. Liquidation shall be carried out under the name of the company with the additional words „w likwidacji” („in liquidation”).

§ 3. During the liquidation process, the company shall retain legal personality.

**Art. 275. Period of liquidation.**

§ 1. The provisions on the company governing bodies, the rights and obligations of the shareholders shall apply to the company in liquidation, unless the provisions of this Division provide otherwise or unless it follows otherwise from the purpose of the liquidation.

§ 2. During liquidation, no payment, even partial, of the profits may be made to the shareholders, nor may the company assets be distributed before satisfaction of all debts.

§ 3. During liquidation, resolutions on additional contributions may be adopted only with the consent of all shareholders.

**Art. 276. Liquidators.**

§ 1. The members of the management board shall act as the liquidators, unless the articles of association or a resolution of the shareholders provide otherwise.

§ 2. Unless the articles of association provide otherwise, the liquidators may be dismissed by a resolution of the shareholders. The liquidators appointed by the court may be dismissed only by the court.

§ 3. Where the dissolution of the company is decided by the court, the court may simultaneously appoint the liquidators.

§ 4. Upon an application of persons having a legal interest, the court may, for significant reasons, dismiss the liquidators and appoint new ones.

§ 5. The court which appointed the liquidators shall determine their remuneration.

**Art. 277. Filing of liquidation in register.**

§ 1. The following particulars shall be reported to the registry court: the opening of the liquidation, the surnames and first names of the liquidators and their addresses, the manner of representation of the company by the liquidators and any changes in this respect, even if there is no change in the existing representation of the company. Each liquidator shall have the right and the obligation to file.

§ 2. Sample signatures of the liquidators put before the court or certified by a notary shall be attached to the filing referred to in § 1.

§ 3. The registration of the liquidators appointed by the court and the deletion of the liquidators dismissed by the court shall be made *ex officio*.

**Art. 278. Filing where liquidation is reversed.** Where the liquidation is reversed, the liquidators shall report this fact to the registry court.

**Art. 279. Announcement of liquidation; creditors summoned.** The liquidators shall announce the dissolution of the company and the opening of the liquidation by summoning the creditors to report their claims within three months of the date of the announcement.

**Art. 280. Reference.** The provisions on the members of the management board shall apply to the liquidators, unless the provisions of this Chapter provide otherwise.

**Art. 281. Liquidation balance sheet.**

§ 1. The liquidators shall draw up a balance sheet as at the opening of liquidation. Such balance sheet shall be submitted by the liquidators to the general meeting for approval.

§ 2. After the end of each financial year, the liquidators shall submit to the general meeting a report on their activities and a financial report.

§ 3. All assets shall be included in the liquidation balance sheet at their sale value.

**Art. 282. Liquidation actions.**

§ 1. Liquidators shall close the current business of the company, collect receivables, pay debts and liquidate the assets of the company (liquidation actions). New business can be transacted only where needed to close current business. Real estate can be disposed of by public auction; without auction, real estate can be disposed of only under a resolution of the shareholders and at a price not lower than that resolved by the shareholders.

§ 2. In internal relations, the liquidators shall comply with the resolutions of the shareholders. The liquidators appointed by the court shall comply with unanimous resolutions adopted by the shareholders and by the persons who caused their appointment in accordance with Article 276 § 4.

**Art. 283. Powers of liquidators.**

§ 1. Within their powers determined in Article 282 § 1, the liquidators shall have the right to manage the affairs and represent the company.

§ 2. Limitations of the powers of the liquidators shall not be effective vis-?-vis third parties.

§ 3. In relations with *bona fide* third parties, the actions of the liquidators shall be deemed to be liquidation actions.

**Art. 284. Commercial power of attorney.**

§ 1. The opening of liquidation shall result in the expiry of the commercial power of attorney.

§ 2. During liquidation, the commercial power of attorney may not be granted.

**Art. 285. Court deposit.** The amounts necessary to satisfy or secure the creditors, of which the company is aware who have not reported their claims or whose receivables are not due or are disputed, shall be deposited in the court deposit.

**Art. 286. Distribution of assets.**

§ 1. Assets remaining after satisfying or securing the creditors shall not be distributed among the shareholders before end of six months of the date of the announcement of the opening of the liquidation and summoning the creditors.

§ 2. The assets referred to in § 1 shall be distributed among the shareholders in proportion to their shares.

§ 3. The articles of association may stipulate other rules for the distribution of the assets.

**Art. 287. Late creditors.**

§ 1. Creditors of the company who have not reported their claims at the appropriate time nor have been known to the company may demand their claims to be satisfied from the still undistributed assets of the company.

§ 2. The shareholders who, after the end of the time period stipulated in Article 286 § 1, have *bona fide* received their share in the company assets shall not be obligated to return it in order to pay the creditors.

**Art. 288. Liquidation report.**

§ 1. After the general meeting approves the financial report drawn up as at the date preceding the distribution among the shareholders of the assets remaining after the creditors are satisfied or secured (the liquidation report) and after the liquidation process is completed, the liquidators shall announce the report at the seat of the company and file it with the registry court, together with the application that the company be deleted from the register.

§ 2. If the general meeting convened to approve the liquidation report has not been held for want of a quorum, the liquidators shall complete the procedures referred to in § 1 without the approval of the report by the general meeting.

§ 3. The books and documents of the dissolved company shall be deposited with the person identified in the articles of association or in the resolution of the shareholders. If no such person is identified, the depository shall be appointed by the registry court.

§ 4. With the authorisation of the registry court, the shareholders and persons having a legal interest may inspect the books and documents.

**Art. 289. Bankruptcy.**

§ 1. In the case of bankruptcy of the company, its dissolution shall take place after the completion of the bankruptcy proceedings, upon it being deleted from the register. The application for the company to be deleted from the register shall be filed by the receiver.

§ 2. The company shall not be dissolved where the proceedings end with a composition or are reversed or discontinued for other reasons.

**Art. 290. Notification to tax office.** The appropriate tax office shall be notified by the liquidator or receiver of the dissolution of the company, a copy of the liquidation report shall be submitted.

## Rozdział 7. Civil Liability.

**Art. 291. Providing false data.** If members of the management board have, wilfully or out of negligence, provided false data in the representation referred to in Article 167 § 1 point 2 or Article 262 § 2 point 3, they shall be liable to the creditors of the company, jointly and severally with the company, for three years from the date of registration of the company or registration of the increase of the share capital.

**Art. 292. Breach of rules on incorporation.** A person who, while participating in the incorporation of a company, in breach of the law through his fault caused damage to the company, shall be liable to redress it.

**Art. 293. Fault of members of company governing bodies.**

§ 1. A member of the management board, the supervisory board, the audit committee and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless he is not at fault.

§ 2. A member of the management board, the supervisory board, the audit committee and a liquidator shall, in the course of performing his duties, exercise diligence characteristic of the professional nature of his activity.

**Art. 294. Joint and several liability.** If the damage referred to in Article 292 and Article 293 § 1 has been caused by several persons jointly, they shall be jointly and severally liable for such damage.

**Art. 295. Action of shareholder; defence of defendant.**

§ 1. If the company does not bring an action for a redress of damage caused to it within one year of the date on which the act causing the damage is discovered, each shareholder may file a writ in an action for a redress of damage caused to the company.

§ 2. At the request of the defendant made upon the first action in the course of the proceedings, the court may order that bail be paid to secure the damage which may be sustained by the defendant. The court shall determine the amount and type of bail at its discretion. Where the bail is not paid within the time limit specified by the court, the statement of claim shall be rejected.

§ 3. The defendant shall have the right to satisfy his claims out of the bail in priority of all creditors of the plaintiff.

§ 4. If the action proves to be unfounded and the plaintiff acted in bad faith or flagrant negligence when bringing the action, the plaintiff shall be obligated to redress the damage caused to the defendant.

**Art. 296. No release from liability.** Where an action is brought by a shareholder under Article 295 and in the event of bankruptcy of the company, the persons liable to redress the damage may not invoke a resolution of the shareholders on approval of the performance of their duties or a waiver by the company of claims for damages.

**Art. 297. Limitation.** The claim for redress of damage shall be barred by limitation after three years from the date on which the company learnt of the damage and of the person liable to redress it. However, in any case, the claim shall be barred by limitation after ten years from the date of the event which caused the damage.

**Art. 298. Court to have jurisdiction.** The action for damages against members of the company governing bodies and liquidators shall be brought before the court having jurisdiction for the seat of the company.

**Art. 299. Liability of members of management board.**

§ 1. If enforcement against the company proves to be ineffective, the members of the management board shall be jointly and severally liable for its obligations.

§ 2. A member of the management board may release himself from the liability referred to in § 1 if he demonstrates that, in appropriate time, a petition for bankruptcy was filed or that composition proceedings were commenced, or that it is not due to his fault that the petition for bankruptcy was not filed or that composition proceedings were not commenced, or that the creditor did not sustain any damage despite the fact that the petition for bankruptcy was not filed or that composition proceedings were not commenced.

§ 3. The provisions of § 1 and § 2 shall be without prejudice to the provisions providing for further liability of members of the management board.

**Art. 300. Liability in accordance with general rules.** The provisions of Articles 291-299 shall be without prejudice to the rights of the shareholders and third parties to seek redress of damage in accordance with general rules.

## Dział II. Joint-stock Company.

### Rozdział 1. Creation of the Company.

**Art. 301. Promoters; statutes; liability.**

§ 1. A joint-stock company may be formed by one or more persons. A joint-stock company may not be formed exclusively by a single-shareholder limited liability company.

§ 2. The statutes of the joint-stock company shall be made in the form of a notarial deed.

§ 3. The persons who sign the statutes shall be the promoters of the company.

§ 4. The shareholders shall provide only the performances stipulated in the statutes.

§ 5. The shareholders shall not be liable for the obligations of the company.

**Art. 302. Shares.** The share capital of a joint-stock company shall be divided into shares of equal nominal value.

**Art. 303. Single-shareholder company.**

§ 1. In a single-shareholder company, the single shareholder shall exercise all rights of the general assembly in accordance with the provisions of this Division. The provisions on the general assembly shall apply *mutatis mutandis*.

§ 2. Where all the shares of the company are held by a single shareholder or the single shareholder and the company, the declaration of will of such shareholder addressed to the company shall be made in writing, or else it shall be invalid, unless the law provides otherwise.

§ 3. (*abrogated*)

§ 4. (*abrogated*)

**Art. 304. Contents of statutes.**

§ 1. The statutes of a joint-stock company shall stipulate:

- 1) the name and the seat of the company,
- 2) the objects of the company,
- 3) the term of the company, if it is defined,
- 4) the amount of the share capital and the amount paid in before registration towards the share capital,
- 5) the nominal value of shares and their number, and information as to whether the shares are registered shares or bearer shares,
- 6) the number of shares of a given class and the rights attached to them where shares of different classes are to be introduced,
- 7) the surnames and first names or business names of the promoters,
- 8) the number of members of the management board and the supervisory board or at least the minimum or maximum number of members of such governing bodies and the party entitled to determine the membership of the management board or the supervisory board,
- 9) (*abrogated*)
- 10) the gazette selected for publication of the company announcement if the company intends to publish announcements in addition to those published in the „*Monitor Sądowy i Gospodarczy*” („Court and Business Gazette”).

§ 2. The statutes shall also stipulate the provisions on:

- 1) the number and types of entitlements to participation in the profits or in distribution of company assets and the rights attached to them,
- 2) any obligations to provide performance to the company attached to the shares, except for the obligation to pay for the shares,
- 3) the terms and procedures for the redemption of shares,
- 4) limitations concerning the transferability of the shares,
- 5) personal rights granted to the shareholders referred to in Article 354, or else such provisions shall be ineffective against the company,
- 6) at least an approximation of all costs incurred or those to be borne by the company in connection with its formation, or else such stipulations shall be ineffective vis-a-vis the company,

§ 3. The statutes may include provisions differing from those stipulated in the law, if the law so allows.

§ 4. The statutes may include additional provisions, unless it follows from the law that the law provides a comprehensive regime or such additional provisions of the statutes are contrary to the nature of the joint-stock company or good practices.

**Art. 305. Business name.**

§ 1. The business name of the company may be chosen freely, it shall, however, include the additional words „*spółka akcyjna* („joint-stock company”).

§ 2. The abbreviation „S.A.” may be used in business dealings.

**Art. 306. Prerequisites for creation.** The following shall be required for the creation of a joint-stock company:

- 1) the formation of the company, including the signing of the statutes by the promoters,
- 2) the making by the shareholders of the contributions to finance the entire share capital, subject to the provisions of Article 309 § 3 and § 4,
- 3) the constitution of the management board and the supervisory board,
- 4) registration in the register.

**Art. 307. Foreign companies.** Joint-stock companies with a seat abroad may open branches and representative offices on the territory of the Republic of Poland. The terms on which such branches and representative offices may be opened shall be stipulated in a separate law.

**Art. 308. Amount of capital; shares.**

§ 1. The share capital of the company shall be at least 100,000 zlotys.

§ 2. The nominal value of a share may not be lower than 1 grosz.

**Art. 309. Rules for subscription for shares.**

§ 1. The shares may not be subscribed for below their nominal value.

§ 2. If the shares are subscribed for at a price higher than the nominal value, the balance shall be paid in full prior to registration of the company.

§ 3. The shares subscribed for in-kind contributions shall be paid in full not later than before the end of one year of registration of the company. The shares subscribed for cash contributions shall be paid prior to registration of the company to the extent of at least one fourth of their nominal value.

§ 4. If the shares are subscribed for in-kind contributions only or for in-kind contributions and for cash contributions, the share capital shall be paid in prior to registration to the extent of at least one fourth of its amount determined in Article 308 § 1.

§ 5. The provisions of this Division concerning payment for the shares shall apply *mutatis mutandis* to in-kind contributions.

**Art. 310. Moment of formation of company.**

§ 1. The joint-stock company shall be formed when all of its shares are subscribed for.

§ 2. The statutes may stipulate the minimum or the maximum amount of the share capital. In such a case, the company shall be formed upon subscription by the shareholders for such a number of shares whose total nominal value equals at least the minimum amount of the share capital determined in Article 308 § 1 and upon the making by the management board, prior to filing the company in the register, of a representation in the form of a notarial deed on the amount of the subscribed share capital. The amount of the subscribed capital shall fall within the limits stipulated in the statutes.

§ 3. A change in the representation of the management board referred to in § 2 shall not affect the moment of formation of the company.

§ 4. The notarial deed which includes the representation of the management board referred to in § 2 shall include the stipulation that the amount of the share capital will be detailed in the statutes. The amount of the share capital determined in the statutes shall equal that stipulated in the representation of the management board.

**Art. 311. In-kind contributions; report of promoters.**

§ 1. If in-kind contributions are proposed or the company acquires property or pays remuneration for services provided upon its creation, the promoters shall draw up a report which shall detail in particular:

- 1) the in-kind contributions and the number and class of shares and other entitlements to participation in the profits or in distribution of company assets offered for such in-kind contributions,
- 2) the property acquired prior to registration of the company and the amount and manner of payment,
- 3) the services provided upon creation of the company and the amount and manner of remuneration,
- 4) the persons who make the in-kind contributions, transfer property to the company or are remunerated for the services,
- 5) the method of valuation of the in-kind contributions employed.

§ 2. The proposed transactions shall be justified in the report, including the subscription for the shares for the in-kind contributions, and the amount of the remuneration and the payment. The originals or officially certified copies of the relevant documents shall be attached to the report.

§ 3. If the contributed or the acquired objects include an enterprise, the financial reports for the enterprise for the previous two financial years shall be attached to the report of the promoters. If the enterprise has been operating for less than two years, the financial report shall cover the entire period of operation. Article 101 shall apply *mutatis mutandis*.

§ 4. If the contributed or the acquired objects include an enterprise, the report of the promoters may omit the assets acquired in the ordinary course of business of the enterprise.

**Art. 312. Opinion of auditor.**

§ 1. The report of the promoters shall be audited by one or several auditors for its accuracy and reliability, and in order that an opinion be given as to what a fair value of the in-kind contributions is, and as to whether it corresponds to at least the nominal value of the shares subscribed for such contributions or the higher issue price, and whether or not the amount of the remuneration granted or the payment is justified.

§ 2. The auditor shall be appointed by the registry court which has jurisdiction for the seat of the company.

§ 3. At a written request of the auditor, the promoters shall provide in writing additional explanations or documents.

§ 4. The opinion of the auditor shall evaluate the method of valuation of the in-kind contributions employed in the report of the promoters, referred to in Article 311 § 1 point 5.

§ 5. The auditor shall draw up, in two copies, a detailed opinion and submit it, together with the report of the promoters, to the registry court. The court shall furnish the promoters with one such copy, certified by the court.

§ 6. The registry court shall determine the remuneration for the services of the auditor and approve his expenses. If these have not been paid by the promoters, such amounts shall be enforced by the registry court in accordance with the rules for the enforcement of court fees.



§ 7. Information that the auditor has submitted the report to the registry court shall be announced by the company prior to the date of its registration.

§ 8. In the case of a difference of opinion between the promoters and the auditor, the dispute shall be resolved by the registry court, upon an application of the promoters. The decision of the court issued upon consideration of the application may not be appealed. The registry court may appoint another auditor, if the court deems it desirable.

**Art. 312<sup>1</sup>. In-kind contributions; no audit to be held.**

§ 1. The management board may decide that an audit by an auditor of the in-kind contributions should not be held where the in-kind contributions comprise:

1) disposable securities or instruments of the money market where their value is determined at the average weighted price at which they were traded on the regulated market during the six months before the date on which the contribution was made,

2) assets other than those listed under point 1 above, where an auditor issued an opinion on their fair value determined for the date falling not earlier than six months prior to the date on which the contribution was made,

3) assets other than those listed under point 1 above, where their fair value follows from the financial statements for the previous financial year, audited by an auditor in accordance with the rules set out in the Accountancy Law of 29 September 1994 for the auditing of annual financial statements and consolidated financial statements.

§ 2. The management board shall nevertheless have the valuation of in-kind contributions audited by an auditor where: 1) extraordinary circumstances occurred such that they impacted on the price of the disposable securities or instruments of the money market as of the moment they were contributed, in particular those relating to the loss of liquidity of trading on the regulated market, 2) new circumstances occurred that may have had a major impact on the fair value of the contributions as of the moment they were contributed.

§ 3. Where the management board does not have the valuation of the contributions referred to in § 1 points 2 and 3 audited by an auditor despite there prevailing circumstances which justify such a valuation, an audit may be requested by shareholders representing at least one twentieth of the share capital, both on the date on which the resolution concerning the increase of the share capital was made and on the date when such a request is made. The right shall exist up to the date on which the contributions are made.

§ 4. Where within two weeks of receipt of the request the management board does not petition the registry court that an auditor should be appointed, the shareholders qualifying under § 3 may file such a petition.

§ 5. Where the in-kind contribution has not been audited by an auditor, the company shall announce, within one month of the date on which the contribution was made:

1) a description of the contribution, its value, the source of the valuation, and the method of the valuation,

2) a representation on whether the value of the contribution adopted corresponds to its fair value and to the number and the nominal value of the shares subscribed for the contribution or to a higher issue price of the shares,

3) a representation attesting to the absence of extraordinary or new circumstances that impact on the valuation of the contribution.

**Art. 313. Collective formation; contents of deed.**

§ 1. The consent to the formation of the joint-stock company and the wording of the statutes, as well as to the subscription for the shares by the single promoter or promoters, or jointly with third parties, shall be expressed in one or several notarial deeds.

§ 2. The deeds referred to in § 1 shall detail in particular the persons who subscribe for the shares, the number and class of the shares subscribed for by each of them, the nominal value and the issue price of the shares and the dates of payment.

§ 3. The deeds referred to in § 1 shall also state that the first company governing bodies have been appointed. The surnames and first names of the persons appointed to the first company governing bodies shall not be stated in the statutes.

§ 4. If the shareholders make in-kind contributions for the shares or if any property is to be acquired for the company prior to the registration under other acts in law, the notarial deed shall identify the persons who make the contributions or the transferors of the acquired property, the subject matter of the in-kind contribution or the acquired property, and the type and amount of remuneration or payment.

**Art. 314. Representations to be made upon signing.** The notarial deeds on the formation of the company shall state that each of the prospective shareholders signing the deed has acquainted himself with the report of the promoters and with the opinion of the auditor referred to in Article 312.

**Art. 315. Payment.**

§ 1. Payment towards the shares shall be made directly or through an investment company, to the account of the company in organisation held by a bank on the territory of the European Union or a state-party to the agreement on the European Economic Area.

§ 2. The subject matter of the contribution shall be at the exclusive disposal of the management board.

**Art. 316. Filing in register.**

§ 1. The management board shall report the formation of the company to the registry court having jurisdiction for the seat of the company in order that the company can be registered in the register. The application for registration of the company in the register shall be signed by all the members of the management board.

§ 2. With regard to matters not regulated in this Act, the filing of the company with the registry court shall be governed by the provisions on the National Court Register.

**Art. 317. Defects in application.**

§ 1. In a case where there exists a defect in the application which is capable of being remedied, the registry court shall grant the company in organisation an appropriate time to remedy it. Where this is not complied with, registration shall be refused.

§ 2. The registry court may not refuse registration of the company in the register due to minor irregularities which do not affect the interest of the company and public interest and which cannot be remedied without disproportionately high costs.

**Art. 318. Contents of application.** The filing of the joint-stock company with the registry court shall include:

1) the business name, seat and address of the company or correspondence address,

2) the objects of the company,

- 3) the share capital, the number and nominal value of the shares,
- 4) the authorised capital, if it is provided for in the statutes,
- 5) the number of preference shares and the type of the privilege,
- 6) information concerning what part of the share capital has been paid in prior to the registration,
- 7) the surnames and first names of the members of the management board and the manner of representation of the company,
- 8) the surnames and first names of the members of the supervisory board,
- 9) if the shareholders make in-kind contributions, a mention to that effect,
- 10) the term of the company, if it is specified,
- 11) if the statutes provide for a gazette for company announcements, the name of such gazette,
- 12) if the statutes provide for the granting of personal rights to certain shareholders or entitlements to participation in the profits or in distribution of company assets which are not attached to the shares, a mention to that effect.

**Art. 319. Single shareholder.**

§ 1. The filing of a single-shareholder company shall include, in addition to the particulars defined in Article 318, the surname and first name or the business name, and the seat and address of the single shareholder, and a mention that he is the single shareholder of the company.

§ 2. The provisions of § 1 shall apply *mutatis mutandis* where all shares in the company are acquired by the shareholder following registration of the company. The management board shall report such fact to the registry court within three weeks of the date on which the management board learnt that all shares in the company were acquired by the single shareholder.

**Art. 320. Attachments.**

§ 1. The following shall be attached to the filing:

- 1) the statutes,
- 2) the notarial deeds on the formation of the company and subscription for the shares,
- 3) a representation of all members of the management board that the payments towards the shares and the in-kind contributions required under the statutes have been made as provided for in the law,
- 4) a proof, certified by a bank or an investment company, of payment for the shares made to the account of the company in organisation; where the statutes provide for financing the share capital with in-kind contributions following registration, a representation of all members of the management board that the making of such contributions to the company is ensured in accordance with the provisions of the statutes prior to the end of the time period specified in Article 309 § 3 shall be attached,
- 5) a document stating that the company governing bodies have been constituted, with details of their membership,
- 6) the permit or proof of approval of the statutes by the appropriate state agency if they are required for the creation of the company,
- 7) the representation referred to in Article 310 § 2 if the management board made such representation.

§ 2. In the cases stipulated in this Division, the report of the promoters, together with the opinion of the auditor, shall be attached.

**Art. 321. Filing of changes, sample signatures.**

§ 1. Any changes in the particulars listed in Article 318 and Article 319 shall be reported by the management board to the registry court in order that they be registered in the register or disclosed in the registration file.

§ 2. If only part of the share capital has been paid in prior to registration of the company, the management board shall report to the registry court each subsequent contribution to the share capital.

§ 3. Sample signatures of members of the management board put before the court or certified by a notary shall be attached to the filing of the company or any filings concerning changes in the composition of the management board.

**Art. 322. Issuing documents.** The company in organisation may not issue bearer documents, temporary certificates or registered documents or documents to the order for shares or rights to participation in the profits or in distribution of company assets.

**Art. 323. Company in organisation.**

§ 1. Upon formation of the company, the joint-stock company in organisation shall be created.

§ 2. Prior to the constitution of the management board, the company in organisation shall be represented by all the promoters acting jointly or by an attorney in fact appointed upon a unanimous resolution of the promoters.

§ 3. The liability of the persons referred to in § 2 shall cease with respect to the company upon approval of their actions by the general assembly.

§ 4. The provisions on the joint-stock company in organisation shall apply *mutatis mutandis* to the rights and obligations and liability of the promoters of the company prior to the creation of the company in organisation.

**Art. 324. Filing with tax office.** Following registration of the company, the management board shall, within two weeks, file a copy of the company statutes, certified by the management board, with the appropriate tax office, and indicate the court where the company has been registered, as well as the date and registration number.

**Art. 325. Announcement that company was not registered.**

§ 1. If within six months of the date when the company statutes were drawn up, the company has not been filed for registration or if the decision of the court refusing registration has become final and non-appealable, the management board shall immediately notify the persons having a legal interest of the above fact, by publishing appropriate notices, and order that the amounts paid in and the in-kind contributions be returned.

§ 2. If the company does not have a management board, the contributions shall be returned by the promoters.

**Art. 326. Liquidation of company in organisation.**

§ 1. If the company has not been filed with the registry court within the time limit specified in Article 325 § 1 or the decision of the court refusing registration has become final and non-appealable, and the company in organisation is not in a position to immediately return all contributions made or pay in full the debts payable to third parties, the management board shall proceed with liquidation. If the company in organisation does not have a management board, the general assembly or the registry court shall appoint a liquidator or liquidators.

§ 2. The provisions on liquidation of the company shall apply *mutatis mutandis* to the liquidation of the company in organisation.

§ 3. The liquidators shall make one announcement of the opening of the liquidation and summon the creditors to report their claims within one month of the date of the announcement.

§ 4. The company in organisation shall be dissolved as of the date of the approval by the general assembly of the liquidation report.

§ 5. Registration matters connected with liquidation of the company in organisation shall be handled by the court having jurisdiction for the seat of the company.

#### **Art. 327. Defects.**

§ 1. If, following registration of the company, defects resulting from a failure to observe the law are discovered, the registry court shall, *ex officio*, or upon an application of persons having a legal interest, summon the company to remedy such defects and shall stipulate an appropriate time for this purpose.

§ 2. If the company fails to comply with the summons, the registry court may impose fines in accordance with the rules stipulated in the provisions on the National Court Register.

## **Rozdział 2. Rights and Obligations of the Shareholders.**

#### **Art. 328. Contents of document; obligation to issue.**

§ 1. The share certificate shall be made in writing and include the following particulars:

- 1) the business name, the seat and address of the company,
- 2) the registry court and the number under which the company is registered in the register,
- 3) the date of registration of the company and issuance of the share,
- 4) the nominal value, the series and the number, the class of a particular share and special rights attached to the share,
- 5) in the case of registered shares, the amount paid in,
- 6) limitations concerning transferability of the shares,
- 7) provisions of the statutes on obligations towards the company attached to the share.

§ 2. The share certificate shall be stamped with the seal of the company and signed by the management board. The signature may be mechanically reproduced.

§ 3. The statutes may include provisions concerning additional particulars to be included in the share certificate and its form.

§ 4. A breach of the provisions of § 1 points 1, 2 and 4 or of § 2 shall result in invalidity of the share certificate.

§ 5. The shareholder shall have a claim for the release to him of the share certificate within one month of the date of registration of the company. The management board shall release the share certificates within one week of the date when the shareholder makes the claim.

§ 6. The shareholder of a public company who holds dematerialised shares shall be entitled to a registered depositary certificate to be issued by the party operating the securities account in accordance with the provisions on trading in financial instruments and to a registered certificate concerning the right to participate in the general assembly of the public company.

#### **Art. 329. Payments towards shares.**

§ 1. The shareholder shall make full contribution towards the shares.

§ 2. The payments shall be made proportionately for all shares.

§ 3. Payment towards the shares shall be made directly or through an investment company to the account of the company held by a bank on the territory of the European Union or a state-party to the agreement on the European Economic Area.

#### **Art. 330. Effecting payment.**

§ 1. The dates and amounts of payments towards the shares shall be determined by the statutes or a resolution of the general assembly. The general assembly may authorise the management board to determine the dates of payments towards the shares.

§ 2. The management board shall make two announcements calling for the payments to be made.

§ 3. The first announcement shall be made one month and the second announcement shall be made not later than two weeks before the date of payment.

§ 4. In lieu of the announcements, the calls may be made by registered letter, such letters to be dispatched on the dates referred to in § 3.

§ 5. If the shareholder fails to make the payment on the date specified in § 1, the shareholder shall pay statutory interest on delay or damages, unless the statutes provide otherwise.

#### **Art. 331. Delay; invalidation of share certificates.**

§ 1. If the shareholder, within one month of the date of payment, has failed to pay the overdue payment, the interest, damages or other payments stipulated in the statutes, the shareholder may, without prior notice, be deprived of his share rights by way of invalidation of the share certificates or the temporary certificates; the company shall warn of the above in the announcements of the payments or in the registered letters.

§ 2. The invalidation of the share certificates or the temporary certificates due to a failure to make the payments within the time limit determined in § 1, shall be notified by the company to the shareholder and his legal predecessors who have been registered in the share register during the previous five years. The notifications shall be sent by registered letter, such letters to be dispatched to the addresses entered in the share register.

§ 3. Having announced the numbers of the invalidated share certificates or the temporary certificates, the company shall issue new share certificates or the temporary certificates under the previous numbers and sell them through a notary, investment company or bank.

§ 4. The amount generated by the sale, after deduction of costs of the announcements and the sale, as well as the interest, damages and other dues, shall be credited to the overdue payment. The balance shall be returned to the shareholder who has been in arrears with the payment.

§ 5. If the amount generated by the sale does not cover the costs and dues referred to in § 4, the shareholder and his legal predecessors shall be jointly and severally liable for the shortfall.

§ 6. The claims of the company against the shareholder and his legal predecessors shall be barred by limitation after three years from the date of the sale of the shares in accordance with § 3.

**Art. 332. Recourse to successor.** The shareholder or the legal predecessor of the shareholder who has been in arrears with his contribution or other performances connected with it, in the case where he covers the shortfall, shall have recourse to his successor. Such claims shall be barred by limitation after three years.

**Art. 332<sup>1</sup>. One of spouses as shareholder.** The statutes may provide that where registered shares are part of the joint marital patrimony it is only one of the spouses who may be a shareholder.

**Art. 333. Indivisibility of shares.**

§ 1. The shares shall be indivisible. They may be issued in collective share certificates.

§ 2. Joint rightholders under a share shall exercise their rights in the company through a common representative; they shall be jointly and severally liable for the performances attached to the share.

§ 3. If the joint rightholders have failed to identify the common representative, the representations of the company may be made to any of them.

**Art. 334. Types.**

§ 1. There may be registered shares or bearer shares.

§ 2. Registered shares may be changed to bearer shares or the opposite change may be made at the request of a shareholder, unless the law or the statutes provide otherwise.

**Art. 335. Issuing share certificates.**

§ 1. The bearer share certificates may not be issued before full payment. As proof of partial payment, registered temporary certificates shall be issued. The provisions of Article 328 shall apply *mutatis mutandis* to temporary certificates.

§ 2. The registered share certificates may be issued before full payment.

§ 3. Each payment shall be recorded in the temporary certificates and in the registered share certificates.

§ 4. Share certificates or temporary certificates, issued prior to the registration of the increase of the share capital, shall be invalid.

**Art. 336. Shares for in-kind contributions.**

§ 1. The shares subscribed for in-kind contributions shall remain registered shares until the date of approval by the earliest ordinary general assembly of the financial report for the financial year in which such shares have been paid for, and during such time they shall not be transferred or pledged.

§ 2. Such shares, during the time referred to in § 1, shall be retained by the company as security for claims for damages for non-performance or improper performance of the obligation to make in-kind contributions. Such claims shall have priority of satisfaction over other non-privileged claims.

§ 3. The provisions of § 1 and § 2 shall not apply to shares subscribed for as part of an increase of the share capital which, in connection with the fact that the company seeks such shares to be admitted to trading on a regulated market, are to be dematerialised in accordance with the provisions on trading in financial instruments, and to shares issued in the case of a merger, division and transformation of companies.

**Art. 337. Transferability.**

§ 1. The shares shall be transferable.

§ 2. The statutes may provide that the consent of the company is necessary for the transfer of registered shares or limit the transferability of registered shares in another manner.

§ 3. Where the statutes provide that the consent of the company is necessary for the transfer of shares, the consent shall be given by the management board in writing, or else such consent shall be invalid, unless the statutes provide otherwise.

§ 4. If the company refuses consent for the transfer of the shares, the company shall designate another transferee. The time during which such designation shall be made, the price or the manner in which the price shall be determined, and the time for payment shall be specified in the statutes. If there are no such provisions, a registered share may be freely transferred. The time for the designation of the transferee shall not be longer than two months from the date on which the company is notified of the intention to transfer the share.

§ 5. The consent of the company shall not be required for the transfer of the share as part of enforcement proceedings.

§ 6. The provisions of § 1-5 shall apply *mutatis mutandis* to the disposition of a fraction of the share.

**Art. 338. Limitation concerning disposition.**

§ 1. An agreement providing for limitations concerning the disposition of the share or a fraction of the share shall be allowed, provided that such limitations are to apply for a specified time. Such limitation may not be stipulated for more than five years of the date of the agreement.

§ 2. Agreements creating a pre-emption right or another priority right with respect to the acquisition of the share or a fraction of the share shall be allowed. Limitations concerning disposition arising under such agreements may not exist for more than ten years of the date of the agreement.

**Art. 339. Transfer.** The transfer of the registered share or the temporary certificate shall be effected by way of a written declaration either in the share certificate or in the temporary certificate, or in a separate instrument, and shall require the transfer of possession of the share or the temporary certificate.

**Art. 340. Voting right enjoyed by pledgee and usufructuary.**

§ 1. The pledgee and the usufructuary may exercise the voting right attached to the registered share or the temporary certificate on which the pledge or the usufruct have been created, if an act in law for the creation of the limited right in rem so provides, and where there is an entry in the share register of its creation and the authorisation to exercise the voting right.

§ 2. The statutes may provide that the pledgee or the usufructuary of the share may not be authorised to exercise the voting right or it may provide that the consent of a certain company governing body shall be necessary for such authorisation.

§ 3. At the time when shares in a public company, on which a pledge or usufruct have been created, are registered on a securities account with a party licensed in accordance with the provisions on trading in financial instruments, the voting right attached to such shares shall be enjoyed by the shareholder.

**Art. 341. Share register.**

§ 1. The management board shall keep the register of registered shares and temporary certificates (the share register), in which the surname and first name or the business name, the seat and the address of the shareholder, or correspondence address, the payments made, as well as, at the request of those entitled, information on the transfer of the share to another person, together with the date of registration, shall be registered.

§ 2. At the request of the transferee of the share, the pledgee or the usufructuary, the management board shall register the transfer of the share or the creation of a limited right in rem on the share. The pledgee and the usufructuary may also request disclosure of the fact that they are authorised to exercise the voting right attached to the encumbered share. The provisions of § 1 shall apply *mutatis mutandis* to the pledgee and the usufructuary.

§ 3. Where the share or the rights under the pledge are acquired by way of general succession, the management board shall make a relevant entry in the share register upon an application of those entitled.

§ 4. Before any entries in the share register are altered, the management board shall announce its intention to make such alterations to those concerned, and designate at least a two-week deadline for lodging objections. A written objection lodged during such time shall halt the making of the alteration. Those concerned shall include the persons whose rights registered in the share register are to be deleted or encumbered by the entry of the limited right in rem.

§ 5. The applicants referred to in § 2 shall submit to the company documents which justify their request for the entry to be made. The management board shall not be obligated to examine the authenticity of the signatures of the transferor of the share and of those who create the pledge or the usufruct on the share.

§ 6. The provisions of § 1-5 shall apply to the temporary certificates.

§ 7. Each shareholder may inspect the share register and request excerpts, the costs of such excerpts to be paid by the shareholder.

§ 8. The share register may be kept in electronic form.

**Art. 342. Keeping register.** The company may commission a bank or investment company in the Republic of Poland to keep the share register.

**Art. 343. Shareholder.**

§ 1. In relations with the company, only a person who is registered in the share register or has possession of a bearer share, without prejudice to the provisions on trading in financial instruments, shall be deemed a shareholder.

§ 2. The provisions of § 1 shall apply *mutatis mutandis* to the pledgee or the usufructuary of the share.

**Art. 344. Dues returned.**

§ 1. During the term of the company, payments towards the shares may not be returned to the shareholder in full or in part, except in the cases stipulated in this Division.

§ 2. The shareholder and his legal predecessor may not be released from the obligation to provide the performances stipulated in Article 329 § 1, Article 330 § 5 and Article 350 § 1. Their liability shall be joint and several.

**Art. 345. Financing share issues.**

§ 1. The company may, directly or indirectly, finance the acquisition of or subscription for the shares it issues, in particular by making loans, providing advance payments or creating security.

§ 2. The financing shall be extended on market terms, in particular with regard to the interest received by the company or security created for the benefit of the company on account of the loans made or advances paid, as well as after the solvency of the debtor has been checked.

§ 3. Where the company finances acquisition of or subscription for the shares it issues, the acquisition or subscription shall be for a fair price.

§ 4. The company may finance acquisition of or subscription for the shares it issues, provided that it has created a reserve capital for that purpose from the amount which, in accordance with Article 348 § 1, may be allocated for division.

§ 5. The financing by the company of acquisition of or subscription for the shares it issues shall be based on and be within the limits set out in an earlier resolution of the general assembly. The provisions of Article 17 § 2 shall not apply.

§ 6. The basis for the resolution of the general assembly on the financing shall be a report of the management board that specifies:

- 1) the reasons for or the purpose of the financing,
- 2) the company's interest in providing the financing,
- 3) the terms of the financing, including those safeguarding the interests of the company,
- 4) the impact of the financing on the risk concerning financial liquidity and solvency of the company,
- 5) the price of acquisition of or subscription for the shares, accompanied with a justification that that is a fair price.

§ 7. The management board shall file the report with the registry court and publish it.

§ 8. The provisions of § 2, 3, 5-7 shall not apply to performances made as part of the ordinary business of financial institutions, as well as to performances rendered to the employees of the company or those of an affiliated company that are aimed at facilitating acquisition of or subscription for the shares issued by the company.

**Art. 346. Interest.** The shareholders may not charge interest on the contributions made and on the shares which they possess.

**Art. 347. Division of profits.**

§ 1. The shareholders shall be entitled to participate in the profits shown in the financial report, audited by an auditor, which have been designated by the general assembly for distribution to the shareholders.

§ 2. The profits shall be divided in proportion to the number of shares. If the shares are not paid for in full, the profits shall be divided in proportion to the effected payments for the shares.

§ 3. The statutes may stipulate other rules of division of profits, subject to the provisions of Article 348, Article 349, Article 351 § 4 and Article 353.

**Art. 348. Profits designated for division.**

§ 1. The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by

uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary or reserve capitals.

§ 2. The shareholders who held shares on the date of the resolution on division of profits shall be entitled to the dividends for the given financial year. The statutes may authorise the general assembly to stipulate the date by reference to which the list of the shareholders entitled to dividends for a given financial year shall be drawn up (the dividends day). The dividends day shall not be fixed later than within two months of the date of the resolution referred to in Article 347 § 1. The resolution on changing the dividends day shall be adopted at the ordinary general assembly.

§ 3. The ordinary general assembly of a public company shall fix the dividends day and the time for the payment of the dividends. The dividends day may fall on the date of the adoption of the resolution or within the next three months as of that day.

§ 4. The dividends shall be paid out on the date designated in the resolution of the general assembly. If the resolution of the general assembly does not designate such a date, then the dividends shall be paid out on the date designated by the supervisory board.

#### **Art. 349. Advance on dividends.**

§ 1. The statutes may authorise the management board to pay the shareholders an advance on the dividends expected at the end of the financial year if the company has sufficient funds for such payment. The payment of the advance shall require the consent of the supervisory board.

§ 2. The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, shown in the financial report audited by the auditor, increased by the reserve capitals created out of profits which may be administered by the management board for the payment of the advances, and reduced by the uncovered losses and own shares.

§ 3. The provisions of Article 347 shall apply *mutatis mutandis* to the advance on the expected dividends.

§ 4. The management board shall announce the proposed payment of the advance at least four weeks prior to the date when the payments are to begin to be made, and provide the date as of which the financial report has been drawn up, the amount to be paid out, as well as the date as of which the group of those entitled to receive the advance is to be defined. Such date shall fall within seven days prior to the date on which the payments are to begin to be made.

#### **Art. 350. Performances returned.**

§ 1. Shareholders who received any performance whatsoever from the company in breach of the law or the provisions of the statutes shall return them. The receipt by a *bona fide* shareholder of a share in the profits shall constitute an exception. The members of the management board or the supervisory board responsible for such undue performances, shall be jointly and severally liable with the recipient of the performance.

§ 2. The claims referred to in § 1 shall be barred by limitation after three years from the date of the payment, except for claims against the recipient who knew of the illegality of the performance.

#### **Art. 351. Preference shares.**

§ 1. The company may issue shares with special rights attached to them, such rights to be stipulated in the statutes (preference shares). Preference shares, with the exception of non-voting shares, shall be registered shares.

§ 2. Such privileges referred to in § 1 may concern in particular the right to vote, the right to dividends or participation in the division of assets in the case of liquidation of the company. Such privileges in respect of the right to vote shall not apply in the case of a public company.

§ 3. The statutes may make the special privileges conditional on the provision of additional performances towards the company, lapse of time or the satisfaction of a condition.

§ 4. The shareholder may exercise the special rights attached to the preference share granted to the shareholder after the end of the financial year during which he made in full the contribution towards the share capital.

**Art. 352. Privileges with respect to voting right.** A single share may carry no more than two votes. In the event that such a share is changed into a bearer share or disposed of in breach of certain reserved conditions, the privilege shall expire.

#### **Art. 353. Privileges with respect to dividends.**

§ 1. Shares which are preference shares in respect of dividends may entitle the rightholder to dividends which exceed by not more than half the dividends designated to be paid out to the shareholders entitled under non-preference shares.

§ 2. Shares which are preference shares in respect of dividends shall not enjoy priority of satisfaction over the remaining shares.

§ 3. The voting right may be excluded with respect to shares which are preference shares in respect of dividends (non-voting shares). The provisions of § 1 and § 2 shall not apply to non-voting shares. The non-applicability of § 1 shall not concern advances on dividends.

§ 4. The statutes may provide that the shareholder entitled under a nonvoting share who has not been paid the dividends in entirety or in part in a given financial year shall be entitled to a balance out of profits in the following years; not later, however, than during the three following financial years.

§ 5. Paragraph 4 shall not apply to advances on dividends.

#### **Art. 354. Personal rights.**

§ 1. The statutes may grant personal rights to an individual shareholder. In particular, they may include the right to appoint or dismiss members of the management board, the supervisory board or the right to receive specified performances from the company.

§ 2. The statutes may make the granting of a personal right to the shareholder dependent on the provision of specified performances, lapse of time or the satisfaction of a condition.

§ 3. The limitations concerning the scope and exercise of rights attached to preference shares shall apply *mutatis mutandis* to the rights granted personally to the shareholder.

§ 4. Personal rights granted to the individual shareholder shall expire at the latest on the date on which the entitled person ceases to be a shareholder in the company.

#### **Art. 355. Promoter certificates.**

§ 1. The company may issue registered promoter certificates as remuneration for the services provided upon creation of the company.

§ 2. The promoter certificates may be issued for a maximum period of ten years following registration of the company. The certificates shall give the right to participate in the division of profits of the company within the limits stipulated in the statutes, after the minimum amount of dividends stipulated in the statutes has been deducted for the benefit of the shareholders.

§ 3. Remuneration for the services or for other performances provided to the company by the promoters, shareholders, as well as by companies and co-operatives affiliated with them or those remaining in the relationship of dependence or domination, may not be higher than the remuneration normally applicable in business transactions.

**Art. 356. Recurrent non-pecuniary performances.**

§ 1. The registered share may carry the obligation to provide recurrent non-pecuniary performances.

§ 2. Such shares may be transferred only with the consent of the company. The company may refuse its consent only for significant reasons, without being obligated to designate another transferee.

§ 3. The statutes may provide for contractual damages for the non-performance or improper performance of the recurrent performances attached to the share.

§ 4. The company shall pay remuneration for the performances referred to in § 1, even if the balance sheet does not show profits. The provisions of Article 355 § 3 shall apply *mutatis mutandis*.

**Art. 357. New certificates; duplicates.**

§ 1. In the event that the share certificate, the temporary certificate or the dividend coupon is considerably damaged, or a defective or invalid share certificate is issued, the company shall, at the request of the entitled person, issue a new document, the costs of such issue to be refunded. The company shall bear the costs of issuing the defective or invalid document.

§ 2. The statutes may regulate the procedures for cancelling damaged or lost share certificates, temporary certificates and other documents issued by the company. The issuance of duplicates of documents shall require a prior announcement that such documents have been damaged or lost.

§ 3. If the statutes do not regulate the procedures for issuing duplicates of the share certificates, temporary certificates or other documents issued by the company which are damaged or lost by the shareholder, the company shall issue to the entitled person a new document, upon repayment of the costs of its issue, after the damaged or lost document is cancelled. The cancellation shall be made in accordance with the procedure set out in the Decree of 10 December 1946 on the Cancellation of Dost Documents (J.L. of 1947, No 5, item 20).

**Art. 358. Changes of contents; exchange; invalidation of document.**

§ 1. If the contents of the share certificate become outdated due to a change of legal relationships, in particular in the event of a change in the nominal value or an aggregation of shares, the company may call on the shareholder, by way of a public announcement or by registered letter, to deposit the share certificate with the company so that the contents of the document may be changed or so that it may be exchanged, and warn that otherwise such share certificate shall be invalidated. The time for depositing the share certificate may not be shorter than two weeks of the date of the announcement of the call or the delivery of the registered letter.

§ 2. A new share certificate shall be issued in place of that invalidated. The costs of invalidation of the share certificate and issuing the new certificate shall be borne by the company.

§ 3. The management board shall announce a list of invalidated share certificates within four weeks of the date of the resolution on their invalidation.

**Art. 359. Redemption of shares.**

§ 1. Shares may be redeemed if the statutes so provide. A share may be redeemed either with the consent of the shareholder by way of its acquisition by the company (voluntary redemption) or without the consent of the shareholder (forced redemption). Voluntary redemption may not be effected more frequently than once in a financial year. The preconditions and procedure for forced redemption shall be stipulated in the statutes.

§ 2. The redemption of shares shall require a resolution of the general assembly. The resolution shall stipulate, in particular, the legal basis for the redemption, the amount of the payment due to the shareholder of the redeemed shares or the reasons for the redemption of the shares without payment and the method of reduction of the share capital. The forced redemption shall be effected against remuneration, such remuneration not being lower than the net value of the assets per share, as demonstrated in the financial report for the previous financial year, reduced by the amount to be divided among the shareholders.

§ 3. The resolution on redemption of shares shall be announced.

§ 4. Reasons for a resolution on amendments to the statutes with respect to redemption of shares shall be provided.

§ 5. The amendment to the statutes providing for a forced redemption of shares may not concern shares subscribed for prior to its registration in the register.

§ 6. The statutes may provide that shares shall be redeemed upon the occurrence of a certain event without the adoption of a resolution by the general assembly. The provisions on forced redemption shall apply.

§ 7. In the event of the occurrence of a certain event stipulated in the statutes, referred to in § 6, the management board shall immediately adopt a resolution on a reduction of the share capital.

**Art. 360. Procedure for redemption.**

§ 1. A redemption of shares shall require a reduction of the share capital. The resolution on the reduction of the share capital shall be adopted at the general assembly which adopts the resolution on the redemption of shares.

§ 2. The requirements referred to in Article 456, shall not apply to the redemption of shares:

1) where the company redeems its own shares acquired gratuitously for the purpose of their redemption, or

2) if the remuneration due to the shareholders of the redeemed shares is to be paid out exclusively out of the sums which, in accordance with Article 348 § 1, may be allocated for division, or

3) if the redemption is effected without any performances in favour of the shareholders, except for granting them utility certificates.

§ 3. The provisions of § 2 shall apply only to the redemption of shares which have been paid for in full.

§ 4. A redemption of shares shall be effective as of the reduction of the share capital. However, in the case referred to in § 2 point 2, the share rights attached to the redeemed shares shall not be exercised as of the date on which the company has paid remuneration to the shareholder.

#### **Art. 361. Utility certificates.**

§ 1. The statutes may provide that, in exchange for the redeemed shares, the company issues utility certificates without a specified nominal value. The utility certificates may be registered certificates or bearer certificates.

§ 2. Unless the statutes provide otherwise, the utility certificates shall participate on equal terms with the shares in the dividends and in the balance of the assets of the company over and above the nominal value of the shares.

§ 3. The party entitled under the utility certificate shall not be liable for obligations attached to the redeemed share and shall not enjoy any share rights, except for those stipulated in § 2.

#### **Art. 362. Company own shares.**

§ 1. The company may not acquire the shares which it has issued (own shares). This prohibition shall not apply to:

- 1) an acquisition of shares effected in order to prevent a major damage directly threatening the company,
- 2) an acquisition of shares which are to be offered for acquisition by the employees or persons who have been employed in the company or an affiliated company for at least three years,
- 2a) a public company which acquires shares in order to meet the obligations arising under debt instruments convertible to shares,
- 3) an acquisition under general succession,
- 4) a financial institution which acquires, for value, fully paid up shares on the account of another, for the purpose of resale,
- 5) an acquisition of shares for the purpose of their redemption,
- 6) an acquisition of fully paid up shares in the course of enforcement proceedings in order to satisfy the claims of the company which could not be otherwise satisfied from the assets of the shareholder,
- 7) a gratuitous acquisition of fully paid up shares,
- 8) acquisition based on and made within the limits of the authorization granted by the general assembly; the authorization shall define the terms of the acquisition, including the maximum number of the shares to be acquired, the duration of the authorization (which shall not be longer than five years), as well as the maximum and minimum payment for the acquired shares where the acquisition is effected against payment,
- 9) an acquisition of shares in other cases stipulated in the law.

§ 2. In the cases stipulated in § 1 points 1, 2 and 8, the acquisition of its own shares by the company shall be allowed only if the following conditions have been all satisfied:

- 1) the acquired shares have been paid for in full,
- 2) the total nominal value of the acquired shares does not exceed 20 per cent of the share capital of the company, including the nominal value of the remaining own shares which have not yet been disposed of by the company,
- 3) the total acquisition price of its own shares, together with the cost of acquisition, is not greater than the reserve capital created for that purpose from the amounts which, in accordance with Article 348 § 1 may be allocated for division.

§ 3. The provisions of § 1 and § 2 and those of Articles 363-365 shall apply *mutatis mutandis* to the creation of a pledge on the company own shares. This shall not apply to a financial institution if the creation of a pledge on the shares is connected with the objects of its activity.

§ 4. The provisions of Articles 362-365 shall apply *mutatis mutandis* to the acquisition of own shares of a dominant company by a dependent company or co-operative. This shall also apply to persons acting on their account.

#### **Art. 363. Review of acquisition.**

§ 1. In the events stipulated in Article 362 § 1 points 1 and 8, the management board shall notify the next general assembly of the reasons or purpose for acquiring own shares, the number and the nominal value of such shares, their proportion in the share capital, as well as of the value of the performance provided in exchange for the acquired shares.

§ 2. In the event that own shares are acquired by the company or by a person acting in their own name but on account of the company, the report of the management board referred to in Article 395 § 2 point 1 shall include:

- 1) a justification of the acquisition of own shares in a given financial year,
- 2) the number and nominal value of the shares acquired or disposed of in a financial year, as well as the percentage represented by such shares in the share capital,
- 3) in the event of an acquisition or disposal against payment, the price received or the value of another mutual performance received, 4) the number and the nominal value of the shares acquired and retained, as well as the percentage represented by such shares in the share capital.

§ 3. Shares acquired for the purposes set out in Article 362 § 1 point 2 shall be offered to the employees or other persons identified in that provision not later than on the first anniversary of the date of their acquisition by the company.

§ 4. Shares acquired in breach of the provisions of Article 362 § 1 or § 2 shall be disposed of within one year of their acquisition by the company. In the remaining cases, the part of own shares of the company acquired pursuant to the provisions of Article 362 § 1 points 3, 4 and 6 and the provisions aimed at protecting the minority shareholders which exceeds 10 per cent of the share capital of the company shall be disposed of within two years of the acquisition.

§ 5. If own shares are not disposed of within the time specified in § 3 or § 4, the management board shall immediately redeem them, without calling a general assembly. Article 359 § 7 shall apply *mutatis mutandis*.

§ 6. The company's own shares shall be recorded in the balance sheet under a separate heading as part of the company's own capital, and represented as a negative value. At the same time, the reserve capital for the company's own shares created in accordance with Article 362 § 2 point 3 shall be reduced, and the capital or capitals from which it was created shall be correspondingly increased.

#### **Art. 364. Share rights attached to own shares.**

§ 1. Dispositive acts in law made in breach of Article 362 shall be valid.

§ 2. The company shall not exercise share rights attached to own shares, except for the right to dispose of them or the actions aimed at preserving such rights.

#### **Art. 365. Proportion of shares in share capital.**

§ 1. An acquisition of own shares of the company by a third party, acting on the account of the company, shall be allowed if the company is also entitled to acquire such shares in accordance with Article 362.



§ 2. In calculations of the proportion of own shares in the share capital in accordance with Article 362 § 2 point 2 and Article 363 § 2 points 2 and 4, the value of the shares held by a dependent company or co-operative and by a third party, acting on the account of the company or the company or co-operative dependent on it, shall be included.

**Art. 366. No subscribing for own shares.**

§ 1. The company may not subscribe for own shares. This prohibition also applies to the subscription for the shares of the company by a dependent company or co-operative.

§ 2. Subscription for shares in breach of the provisions of § 1 shall be valid.

§ 3. In the case of subscription for shares in breach of the provisions of § 1, the member of the management board shall be jointly and severally liable with the person who subscribed for the shares for full payment for the shares, unless he is not at fault.

§ 4. If the shares of the company are subscribed for by a person acting in his own name but on the account of the company or the company or co-operative dependent on it, the subscriber shall be deemed to act on his own account.

§ 5. The provisions of § 1-4 shall apply *mutatis mutandis* to the subscription for own shares in the case of the formation of the company.

**Art. 367. Reference.** The provisions of the first sentence of Article 363 § 4, of § 5 and 6 and those of Article 364 § 2 shall apply to its own shares subscribed for by the company in breach of the provisions of Article 366 § 1.

### Rozdział 3. Company Governing Bodies.

#### Oddział 1. Management Board.

**Art. 368. Powers; composition.**

§ 1. The management board shall manage the affairs of the company and represent the company.

§ 2. The management board shall include one or more members.

§ 3. Persons from among the shareholders or other persons may be appointed to the management board.

§ 4. The members of the management board shall be appointed and dismissed by the supervisory board, unless the statutes provide otherwise. A member of the management board may also be dismissed or suspended from his activities by the general assembly.

**Art. 369. Term of office; expiration of mandate.**

§ 1. A member of the management board may not serve for more than five years (term of office). Reappointments of the same person as a member of the management board shall be allowed for terms of office not longer than five years each. The appointment may be made not earlier than one year before the end of the current term of office of the member of the management board.

§ 2. The statutes may, within the time limits referred to in § 1, provide for a partial renewal of the management board in such a way that a certain number of the members of the management board step down in an order determined by a draw of lots, or by seniority of appointment or in another order.

§ 3. If the statutes stipulate that members of the management board shall be appointed for a common term of office, the mandate of the member of the management board, appointed before the end of a given term of office of the management board, shall expire simultaneously with the expiry of the mandates of the remaining members of the management board, unless the statutes of the company provide otherwise.

§ 4. The mandate of the member of the management board shall expire at the latest on the date of the general assembly which approves the financial report for the last full financial year of service as a member of the management board.

§ 5. The mandate of the member of the management board shall expire also as a result of the death, resignation or dismissal of such member from the management board.

§ 6. The provisions on termination of the contract of mandate by the mandatary shall apply *mutatis mutandis* to the submission by the member of the management board of his resignation.

**Art. 370. Dismissal.**

§ 1. A member of the management board may be dismissed at any time. This shall not affect his rights under the employment relationship or another legal relationship applicable to his service as a management board member.

§ 2. The statutes of the company may include other provisions, in particular they may limit the right to dismiss a member of the management board to situations where significant reasons exist.

§ 3. A dismissed member of the management board shall be entitled and obligated to offer explanations in the course of drafting the management board report and the financial report for the period of his service as a member of the management board, and to participate in the general assembly held to approve the reports referred to in Article 395 § 2 point 1, unless the instrument of dismissal provides otherwise.

**Art. 371. Management board with several members.**

§ 1. If the management board comprises several members, all the members shall be obligated and entitled to jointly manage the affairs of the company, unless the statutes provide otherwise.

§ 2. The resolutions of the management board shall be adopted by an absolute majority of votes, unless the statutes provide otherwise. The statutes may provide that in the case of an equal number of votes, the president of the management board shall have the casting vote, as well as grant him certain powers in the management of the operations of the management board.

§ 3. The resolutions of the management board may be adopted if all members have been properly notified of the meeting of the management board.

§ 4. The appointment of a holder of the commercial power of attorney shall require the consent of all the members of the management board.

§ 5. The commercial power of attorney may be revoked by any member of the management board.

§ 6. Unless the statutes grant the supervisory board or the general assembly the right to adopt or approve the regulations of the management board, the management board may adopt its own regulations.

**Art. 372. Scope of representation.**

§ 1. The right of a member of the management board to represent the company shall cover all court proceedings and out of court dealings of the company.

§ 2. The right of a member of the management board to represent the company may not be restricted with legal effect vis-a-vis third parties.

**Art. 373. Rules for representation.**

§ 1. If the management board comprises several members, the rules for representation of the company shall be stipulated in the statutes. If the statutes do not include any provisions in this respect, representations in the name of the company may be made by two members of the management board acting jointly or by one member of the management board acting together with a holder of the commercial power of attorney.

§ 2. Representations addressed to the company may be made and written communications for the company may be served on one member of the management board or on a holder of the commercial power of attorney.

§ 3. The provisions of § 1 and § 2 shall not exclude the creation of a single-person or a joint commercial power of attorney and shall not limit the rights of the holders of the commercial power of attorney under the provisions on the commercial power of attorney.

**Art. 374. Particulars to be included in written communications.**

§ 1. Written communications and commercial orders filed by the company on paper and electronically, and the information published on the company's websites, shall include:

1) the business name of the company, its seat and address,  
2) the registry court where the documents of the company are filed and the number of the company in the register,

3) the taxpayer's identification number (NIP),

4) the share capital and the paid-in capital.

§ 2. *(abrogated)*

§ 3. *(abrogated)*

§ 4. The provisions of § 1 shall apply *mutatis mutandis* to a branch of a joint-stock company with a seat abroad.

**Art. 375. Limitations in relation to company.** In relation to the company, the members of the management board shall be subject to the limitations stipulated in this Division, in the statutes, in the regulations of the management board and in the resolutions of the supervisory board and of the general assembly.

**Art. 375<sup>1</sup>. Restrictions on management of company affairs.** The general assembly and the supervisory board may not give the management board any binding instructions with respect to the management of the affairs of the company.

**Art. 376. Minutes.** Minutes shall be taken of resolutions of the management board. The minutes shall state the agenda, the surnames and first names of the members of the management board present, the number of votes cast for each of the resolutions and dissenting opinions. The minutes shall be signed by the members of the management board present at the meeting.

**Art. 377. Conflict of interest.** Where there exists a conflict between the interests of the company and those of a member of the management board, his spouse, relatives or relations up to the second degree and persons with whom he has personal relations, the member of the management board shall withhold from deciding such matters and may request that this be recorded in the minutes.

**Art. 378. Remuneration of members of management board.**

§ 1. The supervisory board shall determine the remuneration of the members of the management board employed under an employment contract or another contract, unless the statutes provide otherwise.

§ 2. The general assembly may authorise the supervisory board to decide that the remuneration of the members of the management board shall also include the right to a specified share in the annual profit of the company which is designated for distribution among the shareholders in accordance with Article 347 § 1.

**Art. 379. Contracts with member of management board.**

§ 1. In contracts between the company and a member of the management board and in disputes with him, the company shall be represented by the supervisory board or an attorney in fact, appointed under a resolution of the general assembly.

§ 2. Paragraph 1 shall not apply where the shareholder referred to in Article 303 § 2 is also the single member of the management board. An act in law between such shareholder and the company which he represents shall require a notarial deed. The notary shall notify the registry court each time such an act in law is made, by sending a copy of the notarial deed to the court.

**Art. 380. Non-competition.**

§ 1. A member of the management board may not, without the consent of the company, engage in a competitor business or participate in a competitor company as a partner in a civil law partnership or a partnership, or as a member of a governing body of a capital company or participate in another competing legal person as a member of its governing body. This prohibition shall also apply to participation in a competitor capital company, where the member of the management board holds at least 10 per cent of shares of that company or the right to appoint at least one member of its management board.

§ 2. Unless the statutes provide otherwise, consent shall be given by the governing body authorised to appoint the management board.

## Oddział 2. Supervision.

**Art. 381. Supervisory board.** The joint-stock company shall have a supervisory board.

### **Art. 382. Powers.**

§ 1. The supervisory board shall exercise permanent supervision over all areas of the activities of the company.

§ 2. (*abrogated*)

§ 3. The special duties of the supervisory board shall include evaluating the reports referred to in Article 395 § 2 point 1, with regard to their conformity with the books and documents, as well as with the actual state of affairs, and proposals of the management board concerning the division of profits or the financing of losses, as well as submitting to the general assembly annual written reports on the results of such evaluation.

§ 4. In order to perform its duties, the supervisory board may review all documents of the company, request reports and explanations from the management board and the employees and review the state of the company's assets.

### **Art. 383. Powers.**

§ 1. The powers of the supervisory board shall also include suspending, for significant reasons, individual or all members of the management board from their duties and delegating members of the supervisory board, for a period not longer than three months, so that they temporarily perform the duties of those members of the management board who have been dismissed, who resigned or who are incapable of performing their duties for other reasons.

§ 2. In the event that a member of the management board is incapable of performing his duties, the supervisory board shall immediately take necessary actions to ensure a change in the composition of the management board.

### **Art. 384. Powers expanded.**

§ 1. The statutes may expand the powers of the supervisory board, and in particular provide that the management board shall obtain the consent of the supervisory board prior to carrying out actions specified in the statutes.

§ 2. If the supervisory board does not consent to a certain action, the management board may request the general assembly to adopt a resolution granting consent to such action.

### **Art. 385. Composition; election.**

§ 1. The supervisory board shall comprise at least three members, and in the case of public companies at least five members, appointed and dismissed by the general assembly.

§ 2. The statutes may provide for a different procedure for appointing or dismissing members of the supervisory board.

§ 3. Upon an application of the shareholders, representing at least one fifth of the share capital, the election of the supervisory board shall be made by the next general assembly by way of a vote in separate groups, even if the statutes provide for a different procedure for appointing the supervisory board.

§ 4. If the supervisory board comprises a person appointed by a body specified in a different law, only the remaining members of the supervisory board shall be elected.

§ 5. The persons representing at the general assembly the portion of shares which represents the result of the division of the total number of the represented shares by the number of members of the board, may create a separate group for the purpose of electing one member of the board, and shall not participate in the election of the remaining members.

§ 6. The positions on the supervisory board not filled by the appropriate group of shareholders created in accordance with § 5, shall be filled by way of a vote held with the participation of all shareholders whose votes were not cast in the election of the members of the supervisory board elected by a vote in separate groups.

§ 7. If at the general assembly, referred to in § 3, not even a single group capable of electing a member of the supervisory board is created, the election shall not be held.

§ 8. Upon election of at least one member of the supervisory board in accordance with the provisions of § 3-7, the mandates of all existing members of the supervisory board shall expire prematurely, except for those of the persons referred to in § 4.

§ 9. In the vote referred to in § 3 and § 6, each share shall carry only one vote, without privileges or limitations, subject to the provisions of Article 353 § 3.

### **Art. 386. Term of office.**

§ 1. The term of office of a member of the supervisory board may not be longer than five years.

§ 2. The provisions of Article 369 and Article 370 shall apply *mutatis mutandis*.

### **Art. 387. No overlapping of functions.**

§ 1. A member of the management board, a holder of the commercial power of attorney, a liquidator, a manager of a branch or factory and those employed in the company as the chief accountant, legal advisor or advocate may not be at the same time a member of the supervisory board.

§ 2. The provisions of § 1 shall also apply to other persons who are directly answerable to a member of the management board or a liquidator.

§ 3. The provisions of § 1 shall apply *mutatis mutandis* to the members of the management board and the liquidators of the dependent company or co-operative.

### **Art. 388. Resolutions of the supervisory board.**

§ 1. The supervisory board shall adopt resolutions if its meeting is attended by at least half of its members, and all the members have been invited. The statutes may stipulate stricter rules concerning the quorum of the supervisory board.

§ 2. The statutes may provide that the members of the supervisory board may participate in the adoption of resolutions of the board, by casting their votes in writing through another member of the supervisory board. The casting of the vote in writing may not concern matters put on the agenda during the meeting of the supervisory board.

§ 3. The adoption of resolutions by the supervisory board in writing or through means of instantaneous communications shall be allowed only if the statutes so provide. The resolution shall be valid if all members of the board have been notified of the contents of the draft resolution.

§ 4. Resolutions on the election of the chairman and deputy chairman of the supervisory board, the appointment of a member of the management board, or dismissal and suspension of such persons from their duties, may not be adopted in accordance with the procedure stipulated in § 2 and § 3.

**Art. 389. Calling a meeting.**

§ 1. The management board or a member of the supervisory board may request that the meeting of the supervisory board be convened, and submit the proposed agenda. The chairman of the supervisory board shall convene the meeting within two weeks of receipt of the request.

§ 2. Should the chairman of the supervisory board fail to convene the meeting in accordance with § 1, the person who made the request may convene it, and designate the date, venue and the proposed agenda.

§ 3. The supervisory board shall be convened as the need arises; not less frequently, however, than three times in the financial year.

**Art. 390. Collective action.**

§ 1. The supervisory board shall exercise its duties collectively. It may, however, delegate its members to individually perform certain acts of supervision.

§ 2. If the supervisory board has been elected in a vote in separate groups, each group may delegate one of the members of the supervisory board which it elected to permanently and individually perform acts of supervision. Such members may participate in the meetings of the management board in an advisory capacity. The management board shall notify them in advance of each of its meetings.

§ 3. The members of the supervisory board delegated to permanently and individually perform acts of supervision shall receive a separate remuneration determined by the general assembly. The general assembly may entrust this power to the supervisory board. The non-competition rule referred to in Article 380 shall apply to such members.

**Art. 391. Voting; minutes.**

§ 1. The resolutions of the supervisory board shall be adopted by an absolute majority of votes, unless the statutes provide otherwise. The statutes may provide that in the case of an equal number of votes, the chairman of the supervisory board shall have the casting vote.

§ 2. The provisions on the minutes of the management board shall apply *mutatis mutandis* to the minutes of the supervisory board.

§ 3. The general assembly may adopt regulations of the supervisory board, governing its organisation and rules of procedure. The statutes may authorise the supervisory board to adopt its regulations.

**Art. 392. Remuneration; reimbursement of costs.**

§ 1. The members of the supervisory board may be granted remuneration. The remuneration shall be determined by the statutes or a resolution of the general assembly.

§ 2. The remuneration of the members of the board in the form of the right to participate in the profits of the company for a given financial year, designated for distribution among the shareholders in accordance with Article 347 § 1, may be granted solely by the general assembly.

§ 3. The members of the supervisory board shall be entitled to a reimbursement of the costs connected with participation in the work of the board.

### Oddział 3. General Assembly.

**Art. 393. Powers.** In addition to other matters stipulated in this Division or in the statutes, the following matters shall require a resolution of the general assembly:

- 1) consideration and approval of the report of the management board on the operations of the company and the financial report for the previous financial year and the granting of approval of the performance by the members of the company governing bodies of their duties,
- 2) decisions concerning claims for redress of damage caused upon formation of the company or in the course of management or supervision,
- 3) transfer or tenancy of the enterprise or its organised part and the creation of a limited right in rem on them,
- 4) acquisition and transfer of real estate, the right of perpetual usufruct, or a share in real estate, unless the statutes provide otherwise,
- 5) issue of convertible bonds or bonds with the right of priority, and issue of subscription warrants referred to in Article 453 § 2,
- 6) acquisition of the company's own shares in the case referred to in Article 362 § 1 point 2 and authorisation to acquire them in the case referred to in Article 362 § 1 point 8,
- 7) conclusion of a contract referred to in Article 7.

**Art. 394. Acquisition of material property interest.**

§ 1. Contracts for the acquisition for the company of any property for a price exceeding one tenth of the paid in share capital, from the promoter or the shareholder, or for the dependent company or co-operative from the promoter or the shareholder, concluded before the end of two years of the date of registration of the company shall require a resolution of the general assembly, such resolution to be adopted by a majority of two thirds of the votes.

§ 2. The provisions of § 1 shall also apply to the acquisition of property from the dominant company or from a dependent company or co-operative.

§ 3. The general assembly shall be provided with the management board report, which report should satisfy the requirements stipulated in Article 311. The report shall be audited and announced prior to the general assembly in accordance with the procedures stipulated in Article 312 § 7. The provisions of Article 312<sup>1</sup> shall apply *mutatis mutandis*.

§ 4. The provisions of § 1-3 shall not apply to the acquisition of property under the provisions on public procurement, liquidation, bankruptcy and enforcement proceedings, and to the acquisition of securities and goods on regulated markets.

**Art. 395. Ordinary general assembly.**

§ 1. The ordinary general assembly shall be held within six months of the end of each financial year.

§ 2. The agenda of the ordinary general assembly shall include:

1) consideration and approval of the management board report on the operations of the company and of the financial report for the previous financial year,

2) adoption of a resolution on the distribution of profits or the financing of losses,

3) granting of approval of the performance by the members of the company governing bodies of their duties.

§ 3. The provisions of § 2 point 3 shall apply to all persons who served as members of the company governing bodies during the previous financial year. The members of the company governing bodies whose mandates expired prior to the date of the general assembly may participate in the assembly, review documents referred to in § 4, and submit written comments on such documents. The request concerning the exercise of the above rights shall be submitted to the management board in writing at least one week before the general assembly.

§ 4. Copies of the management board report on the operations of the company and of the financial report, together with a copy of the supervisory board report and the opinion of the auditor shall be provided to the shareholders upon request, not later than fifteen days before the general assembly.

§ 5. The ordinary general assembly may also consider and approve the financial report of the capital group in the meaning of the accounting law, and matters other than those listed in § 2.

#### **Art. 396. Supplementary and reserve capitals.**

§ 1. A supplementary capital shall be created so that loss can be financed; at least 8 per cent of the profits for a given financial year shall be transferred to the supplementary capital until such capital reaches at least one third of the share capital.

§ 2. The surplus generated on the issue of shares above their nominal value, remaining after the costs of such issue have been paid, shall be transferred to the supplementary capital.

§ 3. The additional contributions paid by the shareholders as consideration for special rights granted to their existing shares, unless such additional contributions are used to finance extraordinary write offs or losses, shall also be transferred to the supplementary capital.

§ 4. The statutes may provide that other capitals shall be created with a view to financing special losses or expenditures (reserve capitals).

§ 5. The use of the supplementary and the reserve capital shall be determined by the general assembly, however, the part of the supplementary capital equal to one third of the share capital may only be applied to finance the loss shown in the financial report.

**Art. 397. Mandatory convocation.** If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the management board shall immediately convene the general assembly so that a resolution on the continued existence of the company can be adopted.

**Art. 398. Extraordinary general assembly.** The extraordinary general assembly shall be convened in the cases stipulated in this Division or in the statutes and where the governing bodies or persons authorised to convene general assemblies deem it desirable.

#### **Art. 399. Right to convene.**

§ 1. The general assembly shall be convened by the management board.

§ 2. The supervisory board may convene the ordinary general assembly should the management board fail to convene it within the time stipulated in this Division or in the statutes, and the extraordinary general assembly, should it deem it desirable that it be convened.

§ 3. The shareholders representing at least half of the share capital or at least half of the total number of the votes in the company may convene the extraordinary general assembly. The shareholders shall appoint the chairman of the assembly.

§ 4. The statutes may authorise other persons too to convene the ordinary general assembly should the management board fail to convene it within the time stipulated in this Division or in the statutes, and to convene the extraordinary general assembly.

#### **Art. 400. Request of shareholders.**

§ 1. The shareholder or shareholders representing at least one twentieth of the share capital may request that the extraordinary general assembly be convened, as well as that certain matters be placed on the agenda of that assembly, the statutes may authorize shareholders representing less than one twentieth of the share capital to request that the extraordinary general assembly be convened.

§ 2. The request that the extraordinary general assembly be convened shall be submitted to the management board in writing or electronically.

§ 3. If the extraordinary general assembly is not convened within two weeks of the submission of the request to the management board, the registry court may authorize the shareholders who have submitted the request to convene the extraordinary general assembly. The court shall appoint the chairman of that assembly.

§ 4. The assembly referred to in § 1 shall adopt a resolution determining whether or not the costs of convening and holding the assembly shall be borne by the company. The shareholders at whose request the assembly has been convened may address the registry court to be released from the obligation to bear the costs imposed under the resolution of the assembly.

§ 5. The announcement that the extraordinary general assembly referred to in § 3 is convened shall refer to the decision of the registry court.

#### **Art. 401. Court authorisation to convene.**

§ 1. The shareholder or shareholders representing at least one twentieth of the share capital may request that certain matters be placed on the agenda of the next general assembly. The request shall be submitted to the management board not later than fourteen days prior to the scheduled date of the assembly. That deadline shall be twenty one days in the case of a public company. The request shall include a justification or a draft of the resolution concerning the proposed item on the agenda. The request may be submitted electronically.

§ 2. The management board shall immediately, not later, however, than four days prior to the scheduled date of the general assembly, announce changes in its agenda made at the request of the shareholders. That deadline shall be eighteen days in the case of a public company. The announcement shall be made in the manner applicable to the convocation of the general assembly.

§ 3. If the general assembly is convened under Article 402 § 3, the provisions of § 1 and 2 shall not be applicable.

§ 4. The shareholder or shareholders of a public company representing at least one twentieth of the share capital may, prior to the date of the general assembly, submit to the company, in writing or by means of electronic communication, drafts of the resolutions concerning the matters placed on the agenda of the general assembly or those that are to be placed on the agenda. The company shall forthwith publish drafts of the resolutions on its website.

§ 5. During the general assembly each of the shareholders may submit drafts of resolutions concerning the matters placed on its agenda.

§ 6. The statutes may authorise shareholders representing less than one twentieth of the share capital to request that certain matters be placed on the agenda of the next general assembly, and to submit to the company, in writing or by means of electronic communication, drafts of resolutions concerning matters placed on the agenda of the general assembly or those that are to be placed on the agenda.

#### **Art. 402. Method of convening.**

§ 1. The general assembly shall be convened by an announcement to be made at least three weeks prior to the date of the general assembly.

§ 2. The announcement shall specify the date, the time and the venue of the general assembly and a detailed agenda. Where a change in the statutes is proposed, the existing provisions and the proposed amendments shall be presented. Where this is justified due to the wide scope of the proposed amendments, the announcement may include the draft of the new consolidated text of the statutes, together with a list of the new or amended provisions of the statutes.

§ 3. If all the shares issued by the company are registered shares, the general assembly may be convened by registered letter or courier mail sent out at least two weeks prior to the date of the general assembly. The date of dispatch of the letters shall be deemed to be the date of the announcement. Instead of a registered letter or courier mail the notice may be sent to the shareholder by electronic mail, if the shareholder has earlier agreed thereto in writing and provided the address to which the notice should be sent.

#### **Art. 402<sup>1</sup>. Announcement of convocation of general assembly.**

§ 1. The general assembly of a public company shall be convened by an announcement published on the company's website and in the manner applicable to the publication of current information in accordance with the provisions on public offering and the terms for the placing of financial instruments in an organised system of trading and on public companies.

§ 2. The announcement shall be made at least twenty-six days prior to the date of the general assembly.

**Art. 402<sup>2</sup>. Formal requirements for announcement.** The announcement of a general assembly of a public company shall include at least:

- 1) the date, the time and the venue of the general assembly and its detailed agenda,
- 2) a precise description of the procedures relating to participation in the general assembly and the exercise of the voting right, in particular information concerning:
  - a) the right of the shareholder to request that certain matters be placed on the agenda of the general assembly,
  - b) the right of the shareholder to submit drafts of resolutions concerning matters placed on the agenda of the general assembly or those that are to be placed on the agenda prior to the date of the general assembly,
  - c) the right of the shareholder to submit drafts of resolutions concerning matters placed on the agenda during the general meeting,
  - d) how the right to vote may be exercised by a proxy, including in particular information concerning the forms used during voting by proxy, and how the company is to be notified by means of electronic communication that a proxy has been appointed,
  - e) the possibility and the manner in which one may participate in the general assembly by means of electronic communication,
  - f) the manner in which one may make one's views known during the general assembly by means of electronic communication,
  - g) the manner in which the voting right may be exercised by correspondence or by means of electronic communication,
- 3) the day of registration of one's participation in the general assembly referred to in Article 406<sup>1</sup>,
- 4) information that only those persons who are shareholders in the company on the day of registration of participation in the general assembly are entitled to participate in the general assembly,
- 5) information on where and how the person entitled to participate in the general assembly may receive full-text documentation which is to be submitted to the general assembly and the drafts of the resolutions or, where it is not envisaged that resolutions will be adopted, the comments of the management board or those of the supervisory board on matters placed on the agenda of the general assembly or those that are to be placed on the agenda prior to the date of the general assembly,
- 6) the website where information concerning the general assembly will be available.

#### **Art. 402<sup>3</sup>. Data to be made available on website.**

§ 1. A public company shall have a website and publish the following information there, as of the date on which the general assembly is convened:

- 1) the announcement that the general assembly is convened,
- 2) information on the total number of shares in the company and the number of the votes attached to such shares as of the date of the announcement, and where there are different types of shares, also on the allocation of the shares by the type and the number of the votes attached to the shares of each type,
- 3) the documentation that is to be submitted to the general assembly,
- 4) drafts of the resolutions or, where it is not envisaged that resolutions will be adopted, the comments of the management board or those of the supervisory board on matters placed on the agenda of the general assembly or those that are to be placed on the agenda prior to the date of the general assembly,
- 5) the forms enabling one to exercise one's voting right by proxy or by correspondence, if they are not sent directly to all of the shareholders.

§ 2. If for technical reasons the forms referred to in § 1 point 5 cannot be made available on the website, a public company shall specify on that website how and where the forms may be obtained. In that case, the public company shall send the forms by post, free of charge, to each shareholder at his request.

§ 3. The forms referred to in § 1 point 5 shall include the wording of the proposed resolution of the general assembly and enable one to:

- 1) identify the shareholder who casts the vote and his proxy, if the shareholder exercises the voting right by proxy,
- 2) cast the vote in the meaning of Article 4 § 1 point 9,
- 3) - with regard to shareholders who vote against the resolution - to make an objection,
- 4) place instructions as to voting on each of the resolutions on which the proxy is to vote.

**Art. 403. Venue.** The general assembly shall be held at the seat of the company. The general assembly of a public company may also be held in the place of the seat of the company operating the stock exchange at which the shares of the company are traded. The statutes may provide otherwise with respect to the place of convocation of the general assembly; however, the assemblies may only be held on the territory of the Republic of Poland.

**Art. 404. Agenda.**

§ 1. Resolutions may not be adopted on matters not included on the agenda, unless the entire share capital is represented at the general assembly and none of those present has objected to the adoption of the resolution.

§ 2. The motion that the extraordinary general assembly be convened and motions on points of order may be adopted despite the fact that they were not included on the agenda.

**Art. 405. Informal convocation.**

§ 1. Resolutions may be adopted, despite the general assembly not having been formally convened, where the entire share capital is represented and none of those present has objected to the holding of the general assembly or the inclusion of particular matters on the agenda.

§ 2. *(abrogated)*

**Art. 406. Right to participate.**

§ 1. Those entitled under registered shares and temporary certificates, as well as the pledgees and usufructuaries that have the right to vote, shall have the right to participate in the general assembly of a non-public company if they were registered in the share register at least one week prior to the holding of the general assembly.

§ 2. Bearer shares shall give the right to participate in the general assembly of a non-public company if the share certificates are deposited with the company at least one week prior to the date of the assembly and are not collected before its end. Instead of the shares, a certificate proving that the shares have been deposited with a notary, bank or investment company with a seat or a branch on the territory of the European Union or a State-Party to the agreement on the European Economic Area, identified in the announcement on the convocation of the general assembly, may be deposited. The certificate shall include the numbers of the share certificates and state that the share certificates will not be released before the end of the general assembly.

**Art. 406<sup>1</sup>. Persons entitled to participate in general assembly.**

§ 1. Only the persons who are shareholders in the company sixteen days prior to the date of the general assembly (the day of registration of one's participation in the general assembly) shall have the right to participate in the general assembly of a public company.

§ 2. The day of registration of one's participation in the general assembly shall be the same for those entitled under bearer shares and under registered shares.

**Art. 406<sup>2</sup>. Other persons entitled to participate.** Those entitled under registered shares and temporary certificates, as well as the pledgees and usufructuaries who have the right to vote, shall have the right to participate in the general assembly of a public company if they are registered in the share register as of the day of registration of one's participation in the general assembly.

**Art. 406<sup>3</sup>. Bearer shares with right to participate.**

§ 1. Bearer shares that are incorporated in a share certificate shall give the right to participate in the general assembly of a public company if the share certificates are deposited with the company not later than on the day of registration of one's participation in the general assembly and are not collected before the end of that date. Instead of the share certificates, a certificate proving that the shares have been deposited with a notary, bank or investment company with a seat or a branch on the territory of the European Union or a State-Party to the agreement on the European Economic Area, identified in the announcement on the convocation of the general assembly, may be deposited. The certificate shall include the numbers of the share certificates and state that the share certificates will not be released before the end of the day of registration of one's participation in the general assembly.

§ 2. At the request of a person entitled under dematerialized bearer shares in a public company made not earlier than after the announcement of the convocation of the general assembly and not later than on the first weekday following the day of registration of one's participation in the general assembly, the entity that operates a securities account shall issue a registered certificate confirming the right to participate in the general assembly.

§ 3. The certificate referred to in § 2 shall include:

- 1) the business name, seat, address and the stamp of the issuer and the log number of the certificate,
- 2) the number of shares,
- 3) the type and the code of the shares,
- 4) the business name, seat and address of the public company that issued the shares,
- 5) the nominal value of the shares,
- 6) the first name and surname or the business name of the person entitled under the shares,
- 7) the seat (place of residence) and address of the person entitled under the shares,
- 8) the purpose for which the certificate is issued,
- 9) the date and place where the certificate is issued,
- 10) the signature of the person authorized to issue the certificate.

§ 4. At the request of the person entitled under dematerialized bearer shares, the certificate shall refer to some or to all of the shares registered in his securities account.

§ 5. The provisions on trading in financial instruments may designate other documents that are equivalent to the certificate, provided that the issuer of such documents has been identified to the entity operating a securities deposit for a public company.

§ 6. A list of those entitled under bearer shares to participate in the general assembly of a public company shall be created by the company based on the shares deposited with the company in accordance with § 1 and on the schedule drawn up by the entity operating the securities deposit in accordance with the provisions on trading in financial instruments.

§ 7. The entity that operates a securities deposit shall draw up the schedule referred to in § 6 based on schedules transmitted not later than twelve days prior to the date of the general assembly by the entities entitled in accordance with the provisions on trading in financial instruments. The certificates concerning the right to participate in the general assembly of a public company that have been issued shall be the basis for the drawing up of the schedules transmitted to the entity operating a securities deposit.

§ 8. The entity that operates a securities deposit shall make available to a public company the schedule referred to in § 6 by means of electronic communication not later than a week prior to the date of the general assembly. If for technical reasons the schedule cannot be made available in that manner, the entity operating a securities deposit shall release it as a document made in writing not later than six days prior to the date of the general assembly; it shall be released at the seat of the body that manages the entity.

**Art. 406<sup>4</sup>. Transfer of shares by shareholder.** A shareholder in a public company may transfer his shares during the period between the day of registration of his participation in the general assembly and the date on which the assembly ends.

**Art. 406<sup>5</sup>. Electronic communication; broadcasting of deliberations.**

§ 1. The statutes may allow for participation in the general assembly through the use of means of electronic communication, which includes in particular:

- 1) broadcasting the deliberations of the general assembly in real time,
- 2) two-way communication in real time whereby the shareholders may make their views known during the deliberations of the general assembly while being present in a place other than the venue of the general assembly,
- 3) exercising the voting right, personally or by proxy, prior to or during the general assembly.

§ 2. Where the statutes allow for participation in the general assembly through the use of means of electronic communication, the shareholder participation in the general assembly may be subject to only such requirements and limitations that are necessary for the shareholders to be identified and security of electronic communication to be ensured.

§ 3. The broadcasting of the deliberations of the general assembly in real time shall be without prejudice to the information obligations set out in the provisions on public offering and the terms for the placing of financial instruments in an organized system of trading and on public companies.

**Art. 406<sup>6</sup>. Participation of members of management and supervisory boards.** The members of the management board and of the supervisory board shall have the right to participate in the general assembly.

**Art. 407. List of shareholders.**

§ 1. The list of the shareholders entitled to participate in the general assembly, signed by the management board, with the surnames and first names, or business names of those entitled, their residence (seat), the number, class and serial numbers of shares and the number of votes to which they are entitled, shall be displayed on the premises of the management board for three weekdays prior to the holding of the general assembly. A natural person may submit the correspondence address instead of the place of residence. A shareholder may review the list of shareholders on the premises of the management board and request copies, upon payment of the costs.

§ 1<sup>1</sup>. The shareholder in a public company may request that the list of shareholders be sent to him by electronic mail, free of charge, provided that he identifies the address to which it should be sent.

§ 2. A shareholder shall have the right to request copies of motions on matters included on the agenda within one week prior to the general assembly.

§ 3. If a pledgee or usufructuary has the voting right attached to the share, this shall be marked on the list of the shareholders upon the motion of the rightholder.

**Art. 408. Validity of meeting.**

§ 1. Unless the provisions of this Division or of the statutes provide otherwise, the general assembly shall be valid, irrespective of the number of shares represented.

§ 2. The general assembly may, by a majority of two thirds, decide to adjourn its sittings. The adjournments may not last for more than thirty days in total.

**Art. 409. Opening; election of chairperson.**

§ 1. Unless the provisions of this Division or of the statutes provide otherwise, the general assembly shall be opened by the chairperson of the supervisory board or their deputy, then, the chairperson shall be elected from among those entitled to participate in the general assembly. Should these persons be absent, the general assembly shall be opened by the president of the management board or a person designated by the management board.

§ 2. The chairperson of the general assembly may not, without the consent of the general assembly, withdraw or change the order of the matters placed on the agenda.

**Art. 410. Attendance list.**

§ 1. The attendance list, with the names of those participating in the general assembly, together with the number of shares represented by each of them and the number of votes, signed by the chairperson of the general assembly, shall be drawn up immediately after the election of the chairperson and shall remain displayed during the deliberations of the assembly.

§ 2. Upon a motion of the shareholders, representing one tenth of the share capital represented at the general assembly, the attendance list shall be checked by a committee elected for that purpose, which committee shall comprise at least three persons. The persons who propose the motion may elect one member of the committee.

**Art. 411. Voting right.**

§ 1. A share shall carry one vote at the general assembly.

§ 2. The voting right shall arise as of the date the share is paid for in full, unless the statutes provide otherwise.

§ 3. The statutes may limit the voting right of the shareholders controlling more than one-tenth of the total number of the votes. The votes

a shareholder holds as a pledgee or usufructuary, or under another legal title shall be counted towards the total number of the votes controlled by a given shareholder. The limitation may also apply to other persons who control



the votes as a pledgee, usufructuary or under another legal title. The limitation may apply only to the exercise of the voting right on shares above the limit of the votes provided for in the statutes.

§ 4. The statutes may also provide for cumulating of the votes held by the shareholders among whom there exists the relationship of dominance or dependence in the meaning of this or another act, as well as set out the rules for the reduction of the votes. In that case the votes attached to the shares of the dependent company or co-operative shall be added to the votes attached to the shares of the dominant company.

**Art. 411<sup>1</sup>. Casting vote by correspondence.**

§ 1. The shareholder in a public company may cast his vote at the general assembly by correspondence if the regulations of the general assembly so provide.

§ 2. A public company shall forthwith make available on its website the forms enabling one to exercise the voting right in relation to the draft resolutions submitted by the shareholders and publicised on the website in accordance with Article 401 § 4. The provisions of Article 402<sup>3</sup> § 2 shall apply.

§ 3. A vote cast in a manner other than on the form, or on a form that does not satisfy the requirements set out in Article 402<sup>3</sup> § 3 or any additional requirements provided for in the statutes of the company or in the regulations of the general assembly shall be invalid.

§ 4. A public company shall take appropriate measures so as to identify the shareholder who votes by correspondence. Such measures shall be proportionate to their objective.

**Art. 411<sup>2</sup>. Quorum.**

§ 1. When confirming whether the quorum exists and when counting the results of the voting, those votes cast by correspondence which were received by the company not later than at the moment when voting was announced at the general assembly shall be included.

§ 2. The votes cast by correspondence shall be no longer secret as of the moment when the results of the voting are announced.

§ 3. Where an objection is made by correspondence, this shall be equivalent to a request that the objection be recorded in the minutes made by a shareholder present at the general assembly, and shall give one the right to challenge the resolution of the general assembly.

§ 4. The shareholder who cast his vote by correspondence shall lose the right to cast the vote at the general assembly. However, the vote cast by correspondence may be recalled in a statement addressed to the company. The statement on recalling the vote shall be effective if it reaches the company not later than at the moment when voting at the general assembly is announced.

§ 5. Voting by correspondence may also cover the matters referred to in Article 420 § 2, unless the regulations of the general assembly provide otherwise. Where the shareholder casts his vote by correspondence, this shall be equivalent to his consent to waive the secrecy of voting.

**Art. 411<sup>3</sup>. Shareholder's freedom of voting.** The shareholder may vote differently with each of his shares.

**Art. 412. Proxy.**

§ 1. The shareholder may participate in the general assembly and exercise the voting right in person or by proxy.

§ 2. There may be no limitations on the right to appoint a proxy at the general assembly or on the number of proxies.

§ 3. The proxy shall exercise all rights of the shareholder at the general assembly, unless the proxy provides otherwise.

§ 4. The proxy may grant a further proxy if his proxy so allows.

§ 5. A proxy may represent more than one shareholder and vote differently with the shares of each of the shareholders.

§ 6. The shareholder in a public company who holds shares registered on more than one securities account may appoint separate proxies to exercise the share rights under the shares registered on each of the accounts.

§ 7. The provisions on the exercise of the voting right by proxy shall apply to the exercise of the voting right by another representative.

**Art. 412<sup>1</sup>. Form of proxy.**

§ 1. The proxy to participate in the general assembly and exercise the voting right shall be made in writing or else it shall be invalid.

§ 2. The proxy to participate in the general assembly of a public company and to exercise the voting right shall be made in writing or electronically. Where the proxy is made electronically, it shall not be required that it be confirmed with a secure electronic signature verifiable with a valid qualified certificate.

§ 3. The statutes shall not provide for further reaching limitations concerning the form for the granting of the proxy.

§ 4. A public company shall indicate to the shareholders at least one method for communicating with the use of means of electronic communication that proxy in electronic form has been granted. The method for the communicating shall be determined in the regulations of the general assembly or, where there are no such regulations, it shall be determined by the management board.

§ 5. A public company shall take appropriate measures so as to ensure that the shareholder and the proxy can be identified so that the validity of the proxy granted electronically can be verified. Such measures shall be proportionate to their objective.

§ 6. The provisions of § 1-5 shall apply *mutatis mutandis* to revocation of the proxy.

**Art. 412<sup>2</sup>. Limitations as to who may be proxy.**

§ 1. A member of the management board and an employee of the company may not serve as proxies at the general assembly.

§ 2. The provisions of § 1 do not apply to a public company.

§ 3. If a member of the management board, a member of the supervisory board, a liquidator, an employee of a public company or a member of the bodies or an employee of its dependent company or cooperative serves as a proxy at the general assembly, the proxy may authorize him to represent the shareholder at one general assembly only. The proxy shall disclose to the shareholder all circumstances giving rise to an existing or a possible conflict of interest. A further proxy may not be granted.

§ 4. The proxy referred to in § 3 shall vote in accordance with the instructions given by the shareholder.

**Art. 413. No right to vote on certain matters.**

§ 1. The shareholder may not, in person or by proxy, or as a proxy of another person, vote on resolutions on his liability towards the company on any account, including the granting of approval of performance of his duties, release from an obligation towards the company or a dispute between him and the company.

§ 2. The shareholder in a public company may vote as a proxy on resolutions concerning his person, referred to in § 1. The provisions of Article 412<sup>c</sup> § 3 and 4 shall apply *mutatis mutandis*.

**Art. 414. Absolute majority of votes.** The resolutions shall be passed by an absolute majority of votes, unless the provisions of this Division or of the statutes provide otherwise.

**Art. 415. Qualified majority.**

§ 1. A resolution on the issue of convertible bonds and bonds with the right of priority in subscription for the shares, amendments to the statutes, redemption of the shares, reduction of the share capital, transfer of the enterprise or its organised part, and dissolution of the company, shall be adopted by a majority of three fourths of the votes.

§ 1<sup>a</sup>. A resolution on the financing by the company of acquisition of or subscription to the shares it issues shall be adopted by a majority of two thirds of the votes. However, where at least half of the share capital is represented at the general assembly, an absolute majority of the votes shall suffice for the adoption of the resolution.

§ 2. In the event referred to in Article 397, the resolution on the dissolution of the company may be adopted by an absolute majority of votes, unless the statutes provide otherwise.

§ 3. A resolution on amendments to the statutes, providing for an increase in the performances of the shareholders or a limitation of the rights granted personally to individual shareholders in accordance with Article 354, shall require the consent of all of the shareholders concerned.

§ 4. If at least half of the share capital is represented at the general assembly, a simple majority of votes shall be sufficient for the adoption of the resolution on redemption of shares.

§ 5. The statutes may provide for stricter rules for adopting the resolutions referred to in § 1-4.

**Art. 416. Change of objects.**

§ 1. A majority of two thirds of the votes shall be required for the adoption of a resolution on a major change of the objects of the company.

§ 2. In the case referred to in § 1, each share shall carry one vote, without privileges or limitations.

§ 3. The resolution shall be adopted in an open vote by roll call and shall be announced.

§ 4. For the resolution to be effective, shareholders who do not agree to the change shall have their shares bought out. The shareholders present at the general assembly who voted against the resolution shall, within two days of the general assembly, and those absent - within a month of the date on which the resolution is announced, deposit with the company their shares or certificates proving that such shares have been deposited at the disposal of the company, otherwise, such shareholders shall be deemed to have agreed to the change.

§ 5. *{abrogated}*

**Art. 417. Details; buyout of shares.**

§ 1. The shares shall be bought out at the price quoted on the regulated market, at the average rate of the last three months prior to the adoption of the resolution or, where the shares are not quoted on the regulated market, at the price determined by an expert appointed by the general assembly. Should the shareholders fail to appoint the expert at the same general assembly, the management board shall, within one week of the date of the general assembly, request that the registry court appoint the expert so that shares subject to the buyout can be valued. The provisions of Article 312 § 5, 6 and § 8 shall apply *mutatis mutandis*. The buyout shall be made through the management board.

§ 2. Persons who intend to buy out the shares shall pay the amount equal to the price of all of the shares to be bought out (the buyout price) to the bank account of the company within three weeks of the date on which the buyout price is announced by the management board. The buyout price may also be announced at the general assembly.

§ 3. The management board shall buy out the shares on the account of the shareholders who remain in the company within one month of the end of the time during which shares shall be deposited, referred to in Article 416 § 4; not earlier, however, than after the buyout price is paid in.

§ 4. The statutes may provide for a change in the objects of the company without the buyout if the resolution is adopted by a majority of two thirds of the votes, in the presence of persons representing at least half of the share capital.

**Art. 418. Forced buyout.**

§ 1. The general assembly may adopt a resolution on a forced buyout of shares of the shareholders representing not more than 5% of the share capital (minority shareholders) by not more than five shareholders, holding jointly not less than 95% of the share capital and where each of them holds not less than 5% of the share capital. The resolution shall require a majority of 95% of the votes cast. The statutes may provide for stricter requirements for the adoption of the resolution. The provisions of Article 416 § 2 and 3 shall apply *mutatis mutandis*.

§ 2. The resolution referred to in § 1 shall identify the shares to be bought out and the shareholders who undertake to buy the shares out, as well as the shares designated for particular purchasers. The shareholders who are to buy the shares out and who voted in favour of the resolution shall be jointly and severally liable towards the company for the payment of the entire buyout sum.

§ 2a. The minority shareholders whose shares are subject to a forced buyout shall, within one month of the date on which the resolution is announced, lodge with the company the share certificates or proof that they are lodged to be disposed of by the company. If the shareholder fails to lodge the share certificate within the time prescribed, the management board shall invalidate it in accordance with the procedures stipulated in Article 358, and the transferee shall be issued with a new share certificate with the same issue number.

§ 2b. The effectiveness of the resolution concerning a forced buyout of shares shall be contingent upon a buyout of shares offered for a buyout by the minority shareholders whose shares were not covered by the resolution referred to in § 1. Such shareholders shall lodge with the company the share certificates or proof that they are lodged to be disposed of by the company within two days of the date of the general assembly, if present at the general assembly, and the remaining shareholders shall do so within one month of the date on which the resolution is announced. The shareholders who fail to lodge their share certificates within the time prescribed shall be deemed to consent to continue to be shareholders of the company.

§ 3. The provisions of Article 417 § 1-3 shall apply *mutatis mutandis*. After the entire buyout price has been paid, including that for the shares referred to in § 2b, the management board shall without delay transfer the bought out

shares to the transferees. Until the entire buyout price has been paid the minority shareholders shall continue to enjoy all rights attached to the shares.

§ 4. The provisions on a forced share buyout shall not apply to public companies.

#### **Art. 418<sup>1</sup>. Forced purchase of shares.**

§ 1. A shareholder or shareholders representing not more than 5 per cent of the share capital may request that the agenda of the next general assembly includes the matter of adoption of a resolution on a forced purchase of their shares by not more than five shareholders who jointly represent not less than 95 per cent of the share capital, each of whom holds not less than 5 per cent of the share capital (majority shareholders). The provisions of Article 416 § 2 and 3 shall apply *mutatis mutandis*.

§ 2. The request referred to in § 1 shall be submitted to the management board not later than one month prior to the proposed date of the general assembly. The minority shareholders who have not submitted the request for their shares to be purchased and who wish the resolution on a forced purchase to apply to them, shall submit to the management board a request for their shares to be purchased, such request to be submitted not later than within a week of the date on which the agenda of the general assembly is announced.

§ 3. The resolution referred to in § 1 shall identify the shares subject to a forced purchase and the shareholders obligated to purchase the shares, as well as the shares designated for particular purchasers. Unless the resolution determines another manner of allocation of the shares to each of the purchasers, the majority shareholders shall purchase the shares proportionately to their shareholding.

§ 4. If the resolution referred to in § 1 is not adopted at a general assembly, the company shall purchase the shares of the minority shareholders within 3 months of the date of the general assembly so that they can be redeemed. The majority shareholders shall be liable towards the company for the payment of the entire purchase price proportionately to the number of shares held on the date of the general assembly referred to in § 1.

§ 5. Within a month of the date of the general assembly, the minority shareholders whose shares are subject to a forced purchase shall lodge with the company the share certificates or proof that they are lodged to be disposed of by the company.

§ 6. The purchase price shall equal the value of the net assets per share, as stated in the financial report for the last financial year, less the amount to be distributed among the shareholders. Until the entire purchase price has been paid the minority shareholders shall continue to enjoy all rights attached to the shares. The provisions of Article 417 § 2 and 3 shall apply *mutatis mutandis*.

§ 7. If a shareholder or the company who take part in the purchase of shares do not agree to the purchase price provided for in § 6, they may apply to the registry court so that an auditor should be appointed in order to determine the market price of the shares or, where there is no market price, a fair purchase price. The provisions of Article 312 § 5, 6 and 8 shall apply *mutatis mutandis*.

§ 8. The provisions on a forced purchase of shares shall not apply to public companies, to companies under liquidation and to companies in bankruptcy, unless the resolution of the general assembly on a forced purchase of shares has been adopted at least 3 months prior to the declaration of liquidation or bankruptcy.

#### **Art. 419. Change of preference shares.**

§ 1. If there are shares with different rights attached to them, the resolutions on amendments to the statutes, reduction of the share capital and redemption of shares, which may affect the rights of the shareholders of a given class of shares, shall be adopted by way of a separate vote in each of the groups (classes) of shares. In each of the groups of shareholders, the resolution shall be adopted by such a majority of votes as that required for a resolution of the given type to be adopted at the general assembly.

§ 2. The provisions of § 1 shall apply also to the issue of new preference shares to which rights of the same type as those attached to the existing preference shares, are attached, or which ensure other rights that may affect the rights of the existing preference shareholders. This shall not apply where the statutes provide for the issue of new preference shares.

§ 3. Cancellation of a privilege carried by a non-voting share shall result in the acquisition by the shareholder of the voting right on such a share.

§ 4. The statutes may provide that damages shall be paid for cancellation or limitation to privileges attached to the shares of different classes and the personal rights granted individually to particular shareholders.

#### **Art. 420. Voting.**

§ 1. Voting shall be open.

§ 2. A secret vote shall be ordered in the case of elections and motions for the dismissal of members of the company governing bodies or the liquidators, on holding them liable, as well as on personal matters. In addition, a secret vote shall be ordered at the request of at least one of the shareholders present or represented at the general assembly.

§ 3. The general assembly may adopt a resolution on the abrogation of the secrecy of voting in the case of the election of a committee appointed by the general assembly.

§ 4. The provisions of § 1 and § 2 shall not apply where only one shareholder participates in the general assembly.

#### **Art. 421. Minutes.**

§ 1. The resolutions of the general assembly shall be recorded in the minutes drawn up by a notary.

§ 2. The minutes shall state that the general assembly was duly convened and that it is capable of adopting resolutions, and list the resolutions adopted, and for each resolution the number of the shares with which valid votes were cast, the percentage of the share capital such shares represent, the total number of valid votes, the number of the „yes”, „nay” and „abstained” votes, and the objections made. The attendance list with the signatures of the participants in the general assembly and the list of the shareholders who vote by correspondence or in another manner with the use of the means of electronic communication shall be attached to the minutes. Proof of convocation of the general assembly shall be attached by the management board to the minutes book.

§ 3. Excerpts from the minutes, together with proof of convocation of the general assembly and the proxies granted by the shareholders shall be attached by the management board to the minutes book. The shareholders may review the minutes book, as well as request copies of the resolutions, certified by the management board.

§ 4. A public company shall within one week of the end of the general assembly disclose on its website the results of the voting as specified in the provisions of § 2. The results of the voting shall be available up to the end of the deadline for challenging a resolution of the general assembly.

**Art. 422. Action for annulment of resolution.**

§ 1. A resolution of the general assembly which contravenes the statutes or good practices and harms the interests of the company or is aimed at harming a shareholder, may be challenged in an action brought against the company for an annulment of the resolution.

§ 2. The following parties shall have the right to bring an action for an annulment of a resolution of the general assembly:

- 1) the management board, the supervisory board, and their individual members,
- 2) a shareholder who voted against the resolution and, following its adoption, requested that his objection be recorded in the minutes; the requirement as to the voting shall not apply to a holder of a non-voting share,
- 3) a shareholder who, without valid reason, was not allowed to participate in the general assembly,
- 4) the shareholders who were not present at the general assembly; however, only where the general assembly was wrongly convened, or where the resolution concerned a matter not included on the agenda.

**Art. 423. Effects of action.**

§ 1. The challenge of the resolution of the general assembly shall not halt the registration proceedings. The registry court may, however, suspend the registration proceedings after holding a hearing.

§ 2. Where a clearly unfounded action for an annulment of the resolution of the general assembly is brought, the court, on an application of the defendant company, may adjudicate from the plaintiff an amount up to ten times the court costs and a remuneration of a single advocate or legal advisor. This shall not preclude the seeking of damages in accordance with general rules.

**Art. 424. Time.**

§ 1. An action for an annulment of the resolution of the general assembly shall be brought within one month of receipt of notice of the resolution; not later, however, than within six months of the adoption of the resolution.

§ 2. With respect to a public company, the time for bringing the action shall be one month of receipt of information on the resolution; not later, however, than three months of the date of the adoption of the resolution.

**Art. 425. Action for declaration of invalidity of resolution.**

§ 1. The persons or company governing bodies listed in Article 422 § 2 may bring an action against the company for a declaration of the invalidity of a resolution of the general assembly which is contrary to the law. The provisions of Article 189 of the Code of Civil Procedure shall not apply.

§ 2. The right to bring the action shall expire at the end of six months of the date on which the entitled party learnt of the resolution; not later, however, than after two years of the adoption of the resolution.

§ 3. The action for a declaration of the invalidity of a resolution of the general assembly of a public company shall be brought within thirty days of it being announced; not later, however, than within one year of the adoption of the resolution.

§ 4. The lapse of the time periods referred to in § 2 and § 3 shall not preclude the raising of the objection that the resolution is invalid.

§ 5. The provisions of Article 423 § 1 and § 2 shall apply *mutatis mutandis*.

**Art. 426. Representation of company.**

§ 1. In a dispute concerning the annulment or declaration of the invalidity of a resolution of the general assembly, the defendant company shall be represented by the management board, unless an attorney in fact has been appointed for this purpose under a resolution of the general assembly.

§ 2. If the management board cannot act for the company, and no resolution of the general assembly on the appointment of an attorney in fact has been adopted, the court having jurisdiction for the action shall appoint a curator for the company.

**Art. 427. Effects of judgement.**

§ 1. A final and non-appealable judgement annulling a resolution shall be binding in relations between the company and all of its shareholders and in relations between the company and members of the company governing bodies.

§ 2. Where the validity of an act effected by the company depends on a resolution of the general assembly, an annulment of such resolution shall not have an effect against *bona fide* third parties.

§ 3. The final and non-appealable judgement annulling the resolution shall be reported by the management board to the registry court within one week.

§ 4. The provisions of § 1-3 shall apply *mutatis mutandis* to the judgement given in an action for a declaration of the invalidity of a resolution, brought under Article 425 § 1.

**Art. 428. Information during general assembly.**

§ 1. During the sitting of the general assembly, the management board shall provide a shareholder, at his request, with information concerning the company, wherever this is required so that a matter included on the agenda can be considered.

§ 2. The management board shall refuse to provide information where this could bring damage to the company, an affiliated company or a dependent company or cooperative, in particular due to the disclosure of technical, commercial or organisational secrets relating to the enterprise.

§ 3. A member of the management board may refuse to provide information where the providing of information could be a basis for his criminal, civil or administrative liability.

§ 4. An answer is deemed to be provided where the appropriate information is available on the company's website in the space designated for questions to be put by the shareholders and the provision of the answers.

§ 5. In the case referred to in § 1 the management board may provide information in writing outside of the general assembly if there exist important reasons to do so. The management board shall provide information not later than within two weeks of the date when it was requested during the general assembly.

§ 6. Where a shareholder files a request for information concerning the company outside of the general assembly, the management board may provide the shareholder with information in writing, subject to the limitations arising under § 2.

§ 7. The management board shall disclose, in writing, the information provided to the shareholder outside of the general assembly in the documentation submitted to the next general assembly, together with the date when and the person to whom it was provided. The information submitted to the next general assembly need not include information provided to the public and that provided during the general assembly.

**Art. 429. Protection of right of information.**

§ 1. A shareholder who has been refused the requested information during the sitting of the general assembly and who raised an objection, recorded in the minutes, may file an application with the registry court requesting that the management board be obligated to provide the information.

§ 2. The application shall be filed within one week of the end of the general assembly at which the information was refused. The shareholder may also file an application with the registry court requesting that the company be obligated to announce the information provided to another shareholder outside of the general assembly.

**Rozdział 4. Amendment to the Statutes and Ordinary Increase of the Share Capital.**

**Oddział 1. General Provisions.**

**Art. 430. Procedure; registration.**

§ 1. An amendment to the statutes shall require a resolution of the general assembly and registration in the register.

§ 2. The amendment to the statutes shall be filed by the management board with the registry court. The amendment to the statutes may not be filed after the end of three months of the date of the adoption of the resolution by the general assembly, subject to the provisions of Article 431 § 4 and Article 455 § 5.

§ 3. Simultaneously with the registration of the amendment to the statutes, a change of the particulars listed in Article 318 and Article 319 shall be registered.

§ 4. The provisions of Article 324 and Article 327 shall apply *mutatis mutandis* to the registration of amendments to the statutes.

§ 5. The general assembly may authorise the supervisory board to edit the consolidated text of the amended statutes or to make other editing changes stipulated in the resolution of the assembly.

**Art. 431. Increase of share capital.**

§ 1. An increase of the share capital shall require an amendment to the statutes and shall be effected by way of an issue of new shares or an increase of the nominal value of the existing shares.

§ 2. The new shares may be taken up by way of:

1) the making of an offer by the company and its acceptance by a specified offeree; the acceptance of the offer shall be expressed in writing, or else it shall be invalid (private subscription),

2) the offering of the shares solely to the shareholders who have the preemptive right (closed subscription),

3) the offering of the shares in an announcement in accordance with Article 440 § 1, addressed to the persons who do not have the preemptive right (open subscription).

§ 3. The increase of the share capital may be effected only after full payment of at least nine tenths of the existing share capital. This provision shall not apply in the event of a merger of companies.

§ 3a. Adoption by the general assembly of a public company of a resolution on the increase of the share capital whereby the new shares are to be taken up by way of a private subscription or of an open subscription by a designated addressee shall require the presence of shareholders representing at least one third of the share capital. If the general assembly convened so that such resolution could be adopted has not been held due to a lack of the quorum, another general assembly may be convened, and at that assembly the resolution may be adopted regardless of the number of the shareholders present, unless the statutes provide otherwise.

§ 4. The resolution on the increase of the share capital may not be filed with the registry court after the end of six months of its adoption, and in the case of the shares of a new issue which are subject to a public offering covered by a prospectus or an information memorandum under the provisions on public offering and the terms for the placing of financial instruments in an organized system of trading and on public companies - after twelve months of the date of, respectively, approval of the prospectus or information memorandum, or confirmation that the information included in the information memorandum is equivalent with the information required for the prospectus, and not later than after the end of one month of the date of allocation of the shares, provided that the application that the prospectus or the information memorandum be approved, or an application that equivalence of the information included in the information memorandum with that required for the prospectus be confirmed, may not be filed after the end of four months of the date of adoption of the resolution on the increase of the share capital.

§ 5. The management board shall return the cash and in-kind contributions to the persons who took up the shares at the latest by the end of one month of an ineffective lapse of the six-month period referred to in § 4, and where the increase of the share capital is filed with the registry court, before the end of one month of the date on which the decision of the court refusing registration becomes final and non-appealable. The above provisions shall not prejudice Article 438 § 3 and § 4 and Article 439 § 3.

§ 6. The taking up of shares in accordance with § 2 point 1 may not be subject to a condition or a time clause.

§ 7. The provisions of Articles 308-312<sup>1</sup>, Article 315 § 2, Article 316 § 2, Article 317, Article 321 § 2, Article 322 and Article 328 § 5 shall apply *mutatis mutandis* to the increase of the share capital.

**Art. 432. Contents of resolution.**

§ 1. The resolution on the increase of the share capital shall include:

1) the amount by which the share capital is to be increased,

2) an indication of whether the shares of the new issue are bearer shares or registered shares,

3) special rights, if the resolution provides for such special rights to be granted to the shares of the new issue,

4) the issue price for the new shares or authorisation for the management board or the supervisory board to determine the issue price,

5) the date from which the new shares are to participate in the dividends,

6) the dates of the opening and closing of subscription or the authorisation for the management board or the supervisory board to determine such dates, or the date for the entering by the company into the agreement on the subscription for the shares in accordance with the procedures stipulated in Article 431 § 2 point 1,

7) the object of the in-kind contributions and their valuation, and the persons who are to take up shares in exchange for such contributions, together with the number of shares to be allocated to each of them, if the shares are to be taken up for in-kind contributions.

§ 2. The resolution on the increase of the share capital shall also stipulate the date by reference to which it is to be determined which shareholders have the pre-emptive right with respect to the new shares (the day of the pre-emptive right), unless they have been deprived of that right in whole.

The day of the pre-emptive right shall not be determined later than by the end of three months of the adoption of the resolution, and in the case of a public company - six months of the adoption of the resolution.

§ 3. The announced agenda of the general assembly shall indicate the proposed day of the pre-emptive right.

§ 4. The resolution on the increase of the share capital relating to the shares of a new issue which are part of a public offering covered by a prospectus or an approved information memorandum may provide for authorization for the management board or the supervisory board to define the final amount by which the share capital is to be increased, provided that the amount so defined shall not be lower than the minimum amount stipulated by the general assembly or higher than the maximum amount of that increase stipulated by the general assembly.

#### **Art. 433. Pre-emptive right.**

§ 1. The shareholders shall have the right of priority in taking up the new shares in proportion to the number of shares they hold (the pre-emptive right).

§ 2. Where the interests of the company so require, the general assembly may deprive the shareholders of the pre-emptive right, in whole or in part. The resolution of the general assembly shall require at least a majority of four fifths of the votes. The shareholders may be deprived of the pre-emptive right with respect to the shares, provided that this has been indicated in the agenda of the general assembly. The management board shall present to the general assembly a written opinion justifying the reasons for the depriving of the shareholders of the pre-emptive right and the proposed issue price of the shares or the method of its calculation.

§ 3. The provisions of § 2 shall not apply where:

1) the resolution on the increase of the capital provides that all the new shares are to be taken up by a financial institution (subissuer), which shall subsequently offer them to the shareholders with a view to enabling them to exercise the pre-emptive right on the terms stipulated in the resolution,

2) the resolution provides that the new shares are to be taken up by the subissuer in the case where the shareholders who have the pre-emptive right do not take up some or all of the shares offered to them.

§ 4. The shares may be taken up by the subissuer solely in exchange for cash contributions.

§ 5. The entering into the agreement, referred to in § 3, with the subissuer, shall require the consent of the general assembly. The general assembly shall adopt the resolution upon a motion of the management board opined by the supervisory board. The statutes or the resolution of the general assembly may provide that the above power shall be delegated to the supervisory board.

§ 6. The provisions of § 1-5 shall apply to the issues of securities convertible to shares or those incorporating the right to subscribe for the shares.

## **Oddział 2. Subscription for the Shares.**

#### **Art. 434. Announcement of pre-emptive right.**

§ 1. The shares, to which the pre-emptive right of the shareholders applies, shall be offered by the management board in an announcement.

§ 2. The announcement shall include:

1) the date of the adoption of the resolution on the increase of the share capital,

2) the amount by which the share capital is to be increased,

3) the number, class and nominal value of the shares to which the pre-emptive right applies,

4) the issue price of the shares,

5) the rules for allocating the shares to the existing shareholders,

6) the place, date and the amount of payments for the shares, as well as the consequences of a decision not to exercise the pre-emptive right and of a failure to make the payments due,

7) the date after which the party subscribing for the shares ceases to be bound by the subscription, if by that time the new issue is not filed for registration,

8) the date by which the shareholders may exercise the pre-emptive right; such date shall not fall earlier than three weeks of the date of the announcement,

9) the date on which the allocation of shares will be announced.

§ 3. If all of the existing shares in the company are registered shares, the management board may dispense with the announcements. In such a case, all the shareholders shall be informed of the contents of the announcement, referred to in § 1, by registered letter. The time for the exercise of the pre-emptive right shall not be shorter than two weeks of the date of dispatch of the registered letter to the shareholder.

#### **Art. 435. Second term of pre-emption.**

§ 1. If, within the first term, the existing shareholders have not exercised the pre-emptive right, the management board shall announce the second, at least two-week term for the exercise of the pre-emptive right with respect to the remaining shares by all of the existing shareholders. The provisions of Article 434 § 3, first and second sentence, shall apply *mutatis mutandis*.

§ 2. The second allocation of the shares shall be made in accordance with the following rules:

1) should the number of the subscriptions be larger than the number of the shares remaining to be taken up, each subscriber shall be allocated such a percentage of the shares not yet taken up as that which he has in the existing share capital; the remaining shares shall be divided equally in proportion to the number of subscriptions, provided that fractions of shares designated for individual shareholders shall be deemed to have not been taken up,

2) the number of shares allocated to the shareholder in accordance with point 1 may not be higher than the number of shares for which he subscribed,

3) the remaining shares, not taken up in accordance with points 1 and 2, shall be allocated by the management board at its discretion, however, at a price not lower than the issue price.

§ 3. The general assembly may adopt other rules for the allocation of shares in the second term.

**Art. 436. Shares in public company.**

§ 1. The pre-emptive right with respect to the shares subject to a public offering shall be exercised at a time designated in the prospectus or the information memorandum, and where it is not mandatory to draft these documents - in the announcement referred to in Article 434 § 1. However, the date, designated in the prospectus or the information memorandum, up to which the shareholders may exercise the pre-emptive right, shall not fall sooner than two weeks of the date on which, respectively, the prospectus and the information memorandum are made public.

§ 2. The shareholders who have the pre-emptive right to the shares referred to in § 1 may, within the time during which it is exercisable, make an additional subscription for the shares in a number not larger than the issue, if the remaining shareholders do not exercise their pre-emptive right.

§ 3. Shares covered by the additional subscription referred to in § 2, shall be allocated by the management board in proportion to the subscriptions.

§ 4. Shares not taken up in accordance with the procedures stipulated in § 2 and § 3 shall be allocated by the management board at its discretion, however, at a price not lower than the issue price.

**Art. 437. Subscriptions for shares.**

§ 1. The subscription for the shares shall be made in writing on a form drafted by the company in at least two copies per subscriber, one copy for the subscriber, the other copy for the company. The subscription shall be filed with the company or the person authorised by the company by the date identified in the announcement, the prospectus or the registered letter, referred to in Article 434 § 3.

§ 2. The subscriptions shall include:

- 1) the number and the class of the shares being subscribed for,
- 2) the amount of the payment made towards the shares,
- 3) the consent of the subscriber to the wording of the statutes, if the subscriber is not a shareholder in the company,
- 4) signatures of the subscriber and the company or another party, authorised to accept subscriptions and payments for the shares,
- 5) the address of the party authorised to accept subscriptions and payments for the shares.

§ 3. The acceptance of the subscription may be certified with a stamp or with a mechanically copied signature.

§ 4. The subscription for the shares made under a condition or a time clause shall be invalid.

§ 5. A declaration of the subscriber which lacks some of the particulars referred to in § 2 shall be invalid.

Additional provisions not provided for in the form shall not have any legal effect.

**Art. 438. Subscription period.**

§ 1. The period during which subscriptions for the shares may be made shall not be longer than three months of the opening of the subscription.

§ 2. Should all or at least a minimum number of the offered shares not be subscribed and properly paid for during the time referred to in § 1, the increase of the share capital shall be deemed to be ineffective.

§ 3. The management board shall announce the ineffectiveness of the increase of the share capital in the journals where the announcements on the subscription have been published within two weeks of the date of the closing of the subscription. The management board shall at the same time call on the subscribers to collect the payments made. The provisions of Article 434 § 3, second sentence shall apply *mutatis mutandis*.

§ 4. The time for collecting the payments may not be longer than two weeks of the date of the publication of the call referred to in § 3 or of the receipt of the registered letter by the shareholder.

**Art. 439. Allocation of shares.**

§ 1. Should at least the minimum number of the shares designated to be taken up be subscribed and properly paid for, the management board shall, within two weeks of the closing of the subscription, allocate the shares to the subscribers in accordance with the announced rules for allocation of the shares.

§ 2. The list of the subscribers, together with the number and class of the shares allocated to each of them, shall be displayed at the latest within a week of the date on which the shares have been allocated and remain available for review during the next two weeks in the venues where the subscriptions were accepted.

§ 3. The persons who have not been allocated the shares, shall be called to collect their payments at the latest after two weeks of the date of the completion of allocation of the shares. The provisions of Article 438 § 4 shall apply *mutatis mutandis* to the dates for the collection of such payments.

**Art. 440. Open subscription.**

§ 1. If the new issue of shares is to be taken up through an open subscription, the announcement calling for subscriptions for the shares shall include the particulars stipulated in Article 434 § 2 points 1-7 and 9, as well as:

- 1) the issue and the date of the *Monitor Sądowy i Gospodarczy* (Court and Business Gazette) in which the statutes have been published,
- 2) the business name and the address of the company,
- 3) the business name and the address of the subissuer and the price for taking up the shares offered to it, in the case where the company entered into an agreement with the subissuer,
- 4) the business name and the address of the party accepting the subscriptions and payments for the shares, if the company issued such an authorisation,
- 5) the date by which the subscribers may subscribe for the shares; such date may not be sooner than two weeks of the date of the announcement.

§ 2. The provisions of Articles 437-439 shall also apply to the open subscription.

§ 3. The provisions of § 1 and those of Article 434 shall not apply to the subscription for shares subject to a public offering covered by a prospectus or an information memorandum as provided for in the provisions referred to in Article 431 § 4.

**Art. 441. Filing of increase of capital in register.**

§ 1. The management board shall report the increase of the share capital to the registry court.

§ 2. The following shall be attached to the filing:

- 1) the resolution of the general assembly on the increase of the share capital or the resolution of the management board referred to in Article 446 § 1,
- 2) the announcement and the subscription form, where the increase of the share capital has been effected through a closed or open subscription,

- 3) the list of the acquirers of the shares, together with the number of the shares allocated to each of them and the amounts of the payments made,
  - 4) proof of approval of the amendments in the statutes by the appropriate public agency, should such approval be required for amendments to the statutes,
  - 5) a representation of all members of the management board that the contributions towards the shares have been made; where the in-kind contributions are to be made after registration of the increase of the capital, a representation that the transfer of such contributions to the company within the time stipulated in the resolution on the increase of the share capital is ensured,
  - 6) where the shares have been taken up through a private subscription -the agreement on taking up shares or, where the shares have been taken up through a public offering covered by a prospectus or an information memorandum under the provisions referred to in Article 431 § 4 - the subscription form filled in by the subscriber,
  - 7) representation of the management board referred to in Article 310 § 2 in connection with Article 431 § 7, where the management board has made such representation.
- § 3. In the case of taking up shares subject to a public offering covered by a prospectus or an information memorandum under the provisions referred to in Article 431 § 4, that document shall be attached.
- § 4. The increase of the share capital shall be effective as of registration in the register.

### **Oddział 3. Increase of the Share Capital from Company Funds.**

#### **Art. 442. Prerequisites.**

§ 1. The general assembly may increase the share capital by designating for this purpose funds from the reserve capitals created from the profits, where they may be designated for such purpose (increase of the share capital from company funds), including the reserve capitals created in the case referred to in Article 457 § 2, the reserve capitals created from the profits which in accordance with the statutes may not be divided among the shareholders and from the supplementary capital. The part of the capitals which may be designated for division, corresponding to the uncovered losses and the company's own shares shall, however, remain intact.

§ 2. The resolution on the increase of the share capital from company funds may be adopted if the approved financial report for the previous financial year shows profits, and the opinion of the auditor does not contain material reservations concerning the financial standing of the company. If the last financial report has been made as at the balance sheet date falling at least six months of the date of the general assembly at which such resolution is proposed to be adopted, the auditor of the company, appointed to audit the financial report of the company or another auditor, appointed by the supervisory board, shall audit the new balance sheet and the profit and loss statement, together with the additional information, which should be submitted at that assembly.

§ 3. The new shares to be allocated to the shareholders under the resolution of the general assembly, shall not have to be subscribed for, subject to the provisions of Article 443 § 2.

#### **Art. 443. Allocation of shares.**

§ 1. The shareholders shall be entitled to the shares allocated in accordance with the rule stipulated in Article 442, in proportion to their shares in the existing share capital. Contrary provisions of the statutes or the resolution shall be invalid.

§ 2. Should the shareholders be allocated fractions of the share, the general assembly may adopt a resolution concerning:

- 1) the issue and conveyance to the shareholders of shares which are not financed entirely from the company funds, subject to the condition that the shareholders make contributions up to the full issue price, or
- 2) payment to the shareholders of appropriate amounts representing the difference between the issue price and the nominal value of the fractions of the shares to which they are entitled, which remain, however, not taken up.

§ 3. If the shares, referred to in § 2 point 1, are not taken up entirely, the management board shall make appropriate payments to the entitled shareholders, in accordance with § 2 point 2. The payments may not be larger than one tenth of the total nominal value of the shares allocated to the shareholders in accordance with Article 442.

§ 4. The management board shall call on the shareholders to deposit share certificates so that they can be updated or exchanged, not later than within one month of the date of the registration of the increase of the share capital.

### **Rozdział 5. Authorised Capital Contingent Increase of the Share Capital.**

#### **Art. 444. Increase within authorised capital.**

§ 1. The statutes may authorise the management board, for a period not longer than three years, to increase the share capital in accordance with the rules stipulated in this Chapter. The management board may exercise the authorisation by effecting one or several subsequent share capital increases, within the limits stipulated in § 3 (the authorised capital).

§ 2. The authorisation for the management board to increase the share capital may be granted for subsequent periods; not longer, however, than three years. The granting of the authorisation shall require amendments to the statutes.

§ 3. The amount of the authorised capital may not be larger than three fourths of the share capital as at the date on which the authorisation is granted to the management board.

§ 4. The management board may issue shares only for cash contributions, unless the authorisation to increase the share capital provides for the shares to be taken up in exchange for in-kind contributions.

§ 5. The authorisation for the management board to increase the capital may not include the right to increase the capital from the company own funds.



§ 6. The management board may not issue preference shares or grant the rights referred to in Article 354.

§ 7. The authorisation for the management board to increase the share capital may provide for the issuing of subscription warrants referred to in Article 453 § 2, such warrants to provide that the subscription right is exercisable not later than at the end of the time period for which the authorisation has been granted. Article 447 shall apply to the issuance by the management board of the subscription warrants.

**Art. 445. Authorisation for management board.**

§ 1. A resolution of the general assembly on amendments to the statutes, providing for the authorisation for the management board to increase the share capital within the limits of the authorised capital, shall require a majority of three fourths of the votes. The resolution shall be adopted in the presence of the shareholders representing at least half of the share capital, and, in the case of a public company, at least one third of the share capital. The resolution should be justified.

§ 2. If the general assembly, convened so that the resolution on the authorised capital can be adopted, has not been held for want of the quorum referred to in § 1, another general assembly may be convened; at such assembly, the presence of the shareholders representing at least one third of the share capital of the company shall be required so that the resolution can be adopted.

§ 3. The resolution of the general assembly of a public company, referred to in § 2, may be adopted irrespective of the number of the shareholders present at the assembly, unless the statutes provide otherwise.

**Art. 446. Procedure for increase.**

§ 1. A resolution of the management board, adopted in accordance with the authorisation stipulated in the statutes, shall replace the resolution of the general assembly on the increase of the share capital. The management board shall decide on all issues connected with the increase of the share capital, unless the provisions of this Chapter or the authorisation granted to the management board include provisions to the contrary.

§ 2. The resolutions of the management board on matters concerning the issue price and the issuance of the shares in exchange for in-kind contributions shall require the consent of the supervisory board, unless the statutes provide otherwise.

§ 3. The resolution, referred to in § 1, shall be made in the form of a notarial deed.

**Art. 447. Exclusion of pre-emptive right.**

§ 1. The depriving of shareholders of the pre-emptive right in whole or in part applicable to each increase of the share capital made within the limits of the authorised capital shall require a resolution of the general assembly, adopted in accordance with Article 433 § 2. The statutes may authorise the management board to deprive the shareholders of the pre-emptive right in whole or in part with the consent of the supervisory board.

§ 2. The adoption by the general assembly of a resolution on amendments to the statutes which provides for the granting to the management board of the power to deprive the shareholders of the pre-emptive right in whole or in part with the consent of the supervisory board, shall require satisfaction of the conditions stipulated in Article 433 § 2.

**Art. 447<sup>1</sup>. Dates of announcements.** If it was decided that the in-kind contributions referred to in Article 312<sup>1</sup> would not be audited by an auditor, the company shall, before the contributions are made, announce the date of the resolution on the increase of the share capital within the limits of the authorized capital, and the information listed in Article 312<sup>1</sup> § 5. Within one month of the date on which the contributions are made, the company shall publish a statement confirming that no extraordinary or new circumstances prevail such that they would impact on the valuation of the contributions.

**Art. 448. Contingent increase.**

§ 1. The general assembly may resolve an increase of the share capital, subject to the reservation that the persons to whom the right to take up the shares is granted shall exercise it on the terms stipulated in the resolution in accordance with the rules provided for in Articles 448-452 (the contingent increase of the share capital).

§ 2. The resolution on a contingent increase of the share capital may be adopted in order that:

- 1) the right for the shares to be taken up by the holders of convertible bonds or bonds with the right of priority can be granted, or
- 2) the right for the shares to be taken up by employees, members of the management board or the supervisory board in exchange for in-kind contributions can be granted, such in-kind contributions representing their claims under vested rights to a share in the profits of the company or those of the dependent company, or
- 3) the right for the shares to be taken up by the holders of the subscription warrants, referred to in Article 453 § 2, can be granted.

§ 3. The nominal value of the contingent increase of the share capital may not be larger than the double of the share capital as at the date of the adoption of the resolution, referred to in § 1.

§ 4. An increase of the share capital for the purpose of granting the rights to take up the shares, referred to in § 2, may be effected solely in accordance with the procedures for the contingent share capital increase, subject to the provisions on bonds.

**Art. 449. Contents of resolution.**

§ 1. The provisions of Article 445 shall apply to a resolution of the general assembly on the contingent increase of the share capital. The resolution shall stipulate in particular:

- 1) the nominal value of the contingent increase of the share capital,
- 2) the purpose of the contingent increase of the share capital,
- 3) the term for the exercise of the right to take up the shares,
- 4) the persons authorised to take up the shares.

§ 2. The provisions on in-kind contributions shall not apply to the contributions made by the holders of convertible bonds.

§ 3. Where the resolution on the contingent increase of the share capital provides for the taking up of the shares in exchange for in-kind contributions, such contributions shall be examined by an auditor. The registry court shall dismiss the application for the registration of the increase of the share capital should the value of the contributions be lower by at least one fifth than the issue price of the shares which are to be taken up in exchange for in-kind contributions. The provisions of Article 311 § 1, Article 312 and Article 312<sup>1</sup> shall apply *mutatis mutandis*.

§ 4. In the case of the contingent increase of the share capital for the purpose of offering the shares to the holders of convertible bonds, the provisions of Article 431 § 3 shall not apply.

**Art. 450. Filing of increase in register.**

§ 1. The management board shall report the contingent increase of the share capital to the registry court. The following shall be attached to the filing:

- 1) the documents referred to in Article 441 § 2 points 2 and 4,
- 2) the resolution on the contingent increase of the share capital,
- 3) the report of the management board and the opinion of the auditor, where the shares are taken up in exchange for in-kind contributions,
- 4) the resolution of the general assembly on the issuance of the subscription warrants if the contingent increase of the share capital has been resolved for the purpose stipulated in Article 448 § 2 point 3.

§ 2. The resolution on the contingent increase of the share capital shall be announced by the management board at the latest within six weeks of the date of registration in the register of the contingent increase of the share capital.

**Art. 451. Taking up shares.**

§ 1. The persons authorised to take up the shares, referred to in the resolution of the general assembly, shall take up the shares in the contingently increased share capital by way of making a written representation on the forms drafted by the company. The provisions of Article 437 shall apply *mutatis mutandis* to such representations.

§ 2. Following the registration of the contingent increase of the share capital, the management board shall release the share certificates in accordance with the resolution, referred to in Article 449 § 1. With regard to dematerialised shares in a public company, registration of the shares in a securities account in accordance with the provisions on trading in financial instruments shall be equivalent to the release of the share certificates.

§ 3. Share certificates may be released only to those shareholders who made the contributions in full. The provisions of Article 309 § 3 and § 4 shall not apply.

§ 4. Share certificates released in breach of the provisions of § 1-3 shall be invalid.

**Art. 452. Filing of shares taken up in register.**

§ 1. Upon release of the share certificates in accordance with Article 451 § 2 and § 3, the share rights shall be acquired, and the increase of the share capital of the company by the amount equal to the nominal value of the shares taken up under the resolution on the contingent increase of the share capital shall be effected.

§ 2. Within thirty days of the end of each calendar year, the management board shall file with the registry court a list of shares taken up in a given year so that the entry concerning the share capital can be updated.

§ 3. The list of persons who have exercised the right to take up the shares shall be attached to the filing. The list shall include the surnames and first names or business names of the shareholders, the number of the shares taken up by them, and the value of the contributions made by each of the shareholders. The representation of the management board that the shares have been released to the shareholders who made full contributions shall also be attached.

§ 4. The management board of a public company shall make the filing, referred to in § 2 and § 3, within one week of the end of each subsequent month, as of the release of the first share certificate in accordance with § 1. If no shares have been released in accordance with the rules on the contingent increase of the share capital, the management board shall report this to the registry court.

**Art. 453. Reference.**

§ 1. The provisions of Chapter 4 shall apply *mutatis mutandis* to the authorised and contingent increase of the share capital, unless the provisions of this Chapter provide otherwise.

§ 2. In order to effect increase of the share capital in accordance with the provisions of this Chapter, the company may issue registered or bearer securities authorising the holder to subscribe for or take up shares with no right of pre-emption (subscription warrants).

§ 3. The resolution concerning the issuance of the subscription warrants shall stipulate:

- 1) those entitled to take up the subscription warrants,
- 2) the issue price or the manner in which it is to be determined, provided that the subscription warrants are to be issued against payment,
- 3) the number of shares per each subscription warrant,
- 4) the time for the exercise of the rights under the subscription warrant, provided that it shall not be longer than 10 years.

**Art. 454. Powers.** The provisions on the authorised and contingent capital shall not infringe the powers of the general assembly to effect the ordinary increase of the share capital in accordance with the rules stipulated in Article 431 during the time when the management board may exercise the powers stipulated in this Chapter.

## **Rozdział 6. Reduction of the Share Capital.**

**Art. 455. Procedure and manner of reduction.**

§ 1. The share capital shall be reduced by way of amendment to the statutes, by a reduction of the nominal value of shares, an aggregation of shares or by a redemption of some of the shares, and in the case of a division by separation.

§ 2. A resolution on the reduction of the share capital and the announcement of the convocation of the general assembly shall stipulate the purpose of the reduction, the amount by which the share capital is to be reduced, as well as the method of the reduction.

§ 3. Where the shares are redeemed in accordance with the rules stipulated in Article 359 § 7 or Article 363 § 5, the resolution of the general assembly shall be replaced by a resolution of the management board recorded by a notary.

§ 4. The provisions of this Division on the minimum share capital and shares shall apply to a reduction of the share capital.

§ 5. A resolution on the reduction of the share capital may not be filed with the registry court after the end of six months of its adoption, or, in the case where simultaneously with the reduction the share capital is increased at

least to the original amount by way of a new issue of shares, of the date designated in accordance with Article 431 § 4.

**Art. 456. Summoning creditors to file claims following reduction of share capital.**

§ 1. The management board shall forthwith announce that a reduction of the share capital has been resolved, and summon the creditors to file claims against the company within three months of the date of the announcement.

§ 2. The company shall satisfy mature claims filed at the time stipulated in § 1. The creditors may also request security for non-mature claims that arose before the resolution on the reduction of the share capital was announced and were filed at the time stipulated in § 1, if they demonstrate with probability that the reduction threatens satisfaction of such claims and that they have not obtained security from the company. An appropriate sum should be deposited with the court as security, or, where there exist important reasons, security may also be offered by other means.

§ 3. The claims of the shareholders with regard to the reduction of the share capital may be satisfied by the company at the earliest after six months from the date on which the registration of the share capital in the register is announced.

**Art. 457. No duty to announce.**

§ 1. The provisions of Article 456 shall not apply if:

1) despite a reduction of the share capital, the contributions towards the shares made by the shareholders are not returned to the shareholders, nor are they released from the obligation to make the contributions to the share capital, and simultaneously with its reduction, the share capital is increased at least to the original amount by way of a new issue whose shares are fully paid, or

2) the purpose of a reduction of the share capital is to balance losses sustained or to transfer certain amounts to the reserve capital referred to in the first sentence of § 2, or

3) the share capital is reduced in the cases referred to in Article 363 § 5.

§ 2. Where the share capital is reduced in accordance with § 1 points 2 and 3 and in the case referred to in Article 360 § 2, the amounts generated from the reduction of the share capital shall be allocated to a separate reserve capital; such capital may be used solely to finance losses. In the case referred to in § 1 point 1, unless the allocation of the amounts generated from the reduction of the share capital has been determined in the resolution on the reduction of the share capital, such amounts shall be allocated to the supplementary capital.

§ 3. Where the share capital is reduced, as stipulated in § 1 points 2 and 3, the exclusion of the operation of Article 456 shall be effective only if, following a reduction of the share capital the reserve capital referred to in the first sentence of § 2 does not exceed 10% of the reduced share capital. When calculating the reserve capital, the part of the reserve capital reflecting the extent to which it has been created or increased in the cases referred to in Article 360 § 2, shall not be taken into account.

**Art. 458. Filing of reduction in register.**

§ 1. A reduction of the share capital shall be reported by the management board to the registry court.

§ 2. The following shall be attached to the filing:

1) a resolution of the general assembly or of the management board on the reduction of the share capital,

2) proof that an amendment to the statutes has been approved by the relevant state agency, if such approval is required for an amendment to the statutes,

3) proof that the creditors have been properly summoned,

4) a representation of all of the members of the management board that the creditors who filed claims against the company at the time referred to in Article 456 § 1 have been satisfied or given security.

§ 3. The provisions of § 2 points 3 and 4 shall not apply in the cases stipulated in Article 360 § 2 and Article 457 § 1. In such cases, a representation of all the members of the management board, made in the form of a notarial deed, on satisfaction of all the conditions for a reduction of the share capital provided for in the law and the statutes, as well as in the resolution on the reduction of the share capital, shall be attached to the filing.

## **Rozdział 7. Dissolution and Liquidation of the Company.**

**Art. 459. Reasons.** The following shall be the reasons for dissolving the company:

1) the reasons stipulated in the statutes,

2) a resolution of the general assembly on dissolution of the company or a transfer of the seat of the company abroad,

3) an announcement of bankruptcy of the company,

4) other reasons provided by law.

**Art. 460. Resolution to prevent dissolution.**

§ 1. Until the date when an application is filed for the company to be deleted from the register, dissolution may be prevented by a resolution of the general assembly, adopted by the majority of the votes required for an amendment to the statutes, cast in the presence of shareholders representing at least half of the share capital.

§ 2. The provisions of § 1 shall not apply where dissolution occurs under a final and non-appealable court judgement.

**Art. 461. Period of liquidation.**

§ 1. Liquidation shall be opened on the date on which the judgement on dissolution of the company by the court becomes final and non-appealable, upon adoption by the general assembly of a resolution on dissolution of the company or the occurrence of other reasons for its dissolution.

§ 2. Liquidation shall be carried out under the business name of the company with the additional words „w likwidacji” („in liquidation”).

§ 3. During liquidation, the company shall retain its legal personality.

**Art. 462. Period of liquidation.**

§ 1. The provisions on company governing bodies, rights and obligations of shareholders and other provisions of this Division shall apply to a company in liquidation, unless the provisions of this Chapter provide otherwise or if it follows otherwise from the purpose of liquidation.

§ 2. During liquidation, profits may not be paid to the shareholders, even in part, nor shall the assets of the company be divided prior to payment of all debts.

**Art. 463. Liquidators.**

§ 1. Members of the management board shall act as liquidators, unless the statutes or a resolution of the general assembly provide otherwise.

§ 2. At the request of shareholders representing at least one tenth of the share capital, the registry court may increase the number of liquidators, by appointing one or two liquidators.

§ 3. If liquidation is decided by the court, the court may simultaneously appoint liquidators.

§ 4. At the request of persons who have a legal interest, the registry court may, for significant reasons, dismiss the liquidators and appoint other liquidators. The liquidators appointed by the court may be dismissed by the court only.

§ 5. The court, which appointed the liquidators, shall determine their remuneration.

**Art. 464. Filing of liquidation in register.**

§ 1. Opening of liquidation, the surnames and first names of liquidators and their addresses or correspondence addresses, the manner of representation of the company by the liquidators and any changes in the above particulars shall be filed, even if there is no change in the present representation of the company. Each liquidator shall have a right and an obligation to make this filing.

§ 2. Sample signatures of the liquidators, put before the court or certified by a notary, shall be attached to the filing referred to in § 1.

§ 3. Registration of liquidators appointed by the court and deletion of liquidators dismissed by the court shall be made *ex officio*.

§ 4. In the event that liquidation is reversed, the liquidators shall report this to the registry court so that it be registered in the register.

**Art. 465. Announcement of liquidation; summoning creditors.**

§ 1. Liquidators shall announce the dissolution of the company and opening of liquidation twice, and summon the creditors to report their claims within six months of the date of the last announcement.

§ 2. The announcements, referred to in § 1, may not be made over one month or under two weeks of each other.

**Art. 466. Reference.** The provisions on the members of the management board shall apply to liquidators, unless the provisions of this Chapter provide otherwise.

**Art. 467. Liquidation balance sheet.**

§ 1. Liquidators shall draw up a balance sheet of the opening of liquidation. The balance sheet shall be submitted by the liquidators to the general assembly for approval.

§ 2. After the end of each financial year, liquidators shall submit to the general assembly a report on their activities and a financial report.

§ 3. All assets shall be accounted for in the liquidation balance sheet at their sale value.

**Art. 468. Liquidation actions.**

§ 1. Liquidators shall close current business, collect receivables, perform obligations and liquidate the assets of the company (liquidation actions). New business shall be transacted only where needed to close current business. Real estate may be disposed of by way of a public auction, and without auction - only under a resolution of the general assembly and at a price not lower than that resolved by the general assembly.

§ 2. In internal relations, liquidators shall comply with the resolutions of the general assembly. This rule shall not apply to liquidators appointed by the court.

**Art. 469. Powers of liquidators.**

§ 1. Within their powers stipulated in Article 468, liquidators have the right to manage the affairs and represent the company.

§ 2. Limitations concerning the powers of the liquidators shall not have a legal effect on third parties.

§ 3. With respect to *bona fide* third parties, the actions undertaken by the liquidators shall be deemed to be liquidation actions.

**Art. 470. Commercial power of attorney.**

§ 1. The opening of liquidation shall cause the expiration of the commercial power of attorney.

§ 2. During liquidation, a commercial power of attorney may not be granted.

**Art. 471. Capital to be supplemented.** If the share capital has not been paid in full, and the assets of the company are not sufficient to pay its debts, liquidators shall collect from each of the shareholders, beginning with the shares with no privilege as to division of assets, payment of the amounts due to the extent necessary for payment of debts.

**Art. 472. Capital to be supplemented.** If the assets of the company are not sufficient to repay the amounts paid for the shares with a privilege as to division of assets, and the remaining shares have not been paid in full, the balance of the amounts due shall be collected from the ordinary shareholders.

**Art. 473. Court deposit.** The amounts necessary to satisfy or secure the creditors known to the company who have not reported or whose receivables are not mature or are disputed, shall be deposited with the court.

**Art. 474. Division of assets.**

§ 1. The assets remaining after the creditors are satisfied or secured, may not be divided among the shareholders prior to the end of one year of the date of the last announcement on the opening of liquidation and summoning of the creditors.

§ 2. The assets, referred to in § 1, shall be divided among the shareholders proportionately to the payments towards the share capital made by each of them.

§ 3. If preference shares enjoy a priority right in the division of the company assets, preference shares shall be paid first, to the extent of the amounts paid for each of them; subsequently, ordinary shares shall be paid in the same manner; any surplus of the assets shall be divided in accordance with regular rules among all of the shares.

§ 4. The statutes may provide for different rules for the division of the assets.

**Art. 475. Late creditors.**

§ 1. Creditors of the company who have not reported their claims within the appropriate deadline or who were not known to the company, may demand satisfaction of their claims from the yet undivided assets of the company.

§ 2. Shareholders who, after the end of the period stipulated in Article 474 § 1, received, *bona fide*, the part of the assets of the company due to them, shall not be obligated to return it so that the receivables of the creditors may be paid.

**Art. 476. Liquidation report.**

§ 1. After the general assembly approves the financial report drawn up as at the date preceding the distribution among the shareholders of the assets remaining after the creditors are satisfied or secured (the liquidation report) and after the liquidation process is completed, the liquidators shall announce the report at the seat of the company and file it with the registry court, together with the application that the company be deleted from the register.

§ 2. If the general assembly convened to approve the liquidation report has not been held for want of a quorum, the liquidators may complete the procedures referred to in § 1 without the approval of the report by the general assembly.

§ 3. The books and documents of a dissolved company shall be deposited with a person identified in the statutes or in a resolution of the general assembly. If no such person is identified, the depositary shall be appointed by the registry court.

§ 4. With authorisation of the registry court, the shareholders and persons who have a legal interest may inspect the books and documents.

**Art. 477. Bankruptcy.**

§ 1. In the case of bankruptcy of a company, its dissolution shall be effective after the end of the bankruptcy proceedings, upon deletion from the register. The application for deletion from the register shall be filed by the receiver.

§ 2. A company shall not be dissolved where the proceedings end with a composition or are reversed or discontinued for other reasons.

§ 3. The liquidators or the receiver shall notify dissolution of the company to the appropriate tax office and submit a copy of the liquidation report; they shall also notify other bodies and agencies identified in separate provisions, and submit to them, where requested, a copy of the liquidation report.

**Art. 478. Moment at which company is dissolved.** Dissolution of a company shall be effective after liquidation, upon deletion of the company from the register.

## **Rozdział 8. Civil Liability.**

**Art. 479. Providing false data.** If members of the management board, wilfully or out of negligence, have provided false data in the representation referred to in Article 320 § 1 points 3 and 4 or in Article 441 § 2 point 5, they shall be liable to the creditors of the company, jointly and severally with the company, for three years from the date of registration of the company or registration of the increase of the share capital.

**Art. 480. Breach of rules on incorporation.**

§ 1. A person who, while participating in the incorporation of a company, in breach of the law through his fault caused damage to the company, shall be liable to redress it.

§ 2. In particular, liability rests with a person who:

1) included, or collaborated in including, in the statutes, reports, opinions, announcements and records, false data or disseminated such data in another manner, or omitted or collaborated in omitting in such documents data material for the creation of the company, in particular that pertaining to in-kind contributions, acquisition of property, or granting to the shareholders or other persons of remuneration or other special benefits, or

2) collaborated in activities aimed at ensuring registration of a company on the basis of a document containing false data.

**Art. 481. Receipt of excessive benefits.** A person who, in connection with the creation of a joint-stock company or an increase of its share capital, through his fault, secures for himself or a third party, a payment excessively higher than the sale value of in-kind contributions or the acquired property, or a remuneration or special benefits disproportionate to the services rendered, shall redress damage caused to the company.

**Art. 482. Fault of auditor.** A person who, in the course of examining a financial report of a company, through his fault, has allowed damage to be caused to the company, shall redress it.

**Art. 483. Fault of members of governing bodies.**

§ 1. A member of the management board, the supervisory board and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes, unless he is not at fault.

§ 2. A member of the management board, the supervisory board and a liquidator shall, in the course of performing his duties, exercise diligence characteristic of the professional nature of his activity.

**Art. 484. Dissemination of false data.** A person who has collaborated in the issuing by the company, directly or through third parties, of shares, bonds or other titles giving the right to participate in the profits or division of assets, shall redress damage caused, if he included in the announcements or records false data or disseminated such data in another manner or, when providing data on the assets of the company, concealed circumstances which should have been disclosed in accordance with the law in force.

**Art. 485. Joint and several liability.** If the damage referred to in Articles 480-484 has been caused by several persons jointly, they shall be jointly and severally liable for such damage.

**Art. 486. Action of shareholder; defence of defendant.**

§ 1. If the company does not bring an action for a redress of damage caused to it within one year of the date on which the act causing the damage is discovered, each shareholder or a person who holds another title to participate in profits or division of assets may file a writ in an action for a redress of damage caused to the company.

§ 2. At the demand of the defendant made upon the first action in the course of the proceedings, the court may order that bail be paid to secure the damage which may be sustained by the defendant. The court shall determine the amount and type of bail at its discretion. Where the bail is not paid within the time limit specified by the court, the writ shall be dismissed.

§ 3. The defendant shall have the right to satisfy his claims out of the bail in priority of all creditors of the plaintiff.

§ 4. If the action proves to be unfounded and the plaintiff acted in bad faith or flagrant negligence when bringing the action, the plaintiff shall be obligated to redress the damage caused to the defendant.

**Art. 487. No release from liability.** Where an action is brought under Article 486 § 1 and in the event of bankruptcy of the company, the persons liable to redress the damage may not invoke a resolution of the general assembly on approval of the performance of their duties or a waiver by the company of claims for damages.

**Art. 488. Limitation.** A claim for redress of damage shall be barred by limitation after three years from the date on which the company learned of the damage and of the person liable to redress it. However, in any case, the claim shall be barred by limitation after five years from the date of the event which caused the damage.

**Art. 489. Court to have jurisdiction.** The action for damages against members of company governing bodies and liquidators shall be brought before the court having jurisdiction for the seat of the company.

**Art. 490. Liability in accordance with general rules.** Provisions of Articles 479-489 shall be without prejudice to the rights of shareholders and other persons to seek redress of damage in accordance with general rules.

## Tytuł IV. Merger, Division and Transformation of Companies.

### Dział I. Merger of Companies.

#### Rozdział 1. General Provisions.

##### **Art. 491. Rules.**

§ 1. Capital companies may merge with one another and with partnerships; a partnership, however, may not be an acquiring company or a newly formed company.

§ 1<sup>1</sup>. A capital company and a limited joint-stock partnership may merge with a foreign company referred to in Article 2 point 1 of Directive 2005/56/EC of the European Parliament and the Council of 26 October 2005 on trans-border merger of capital companies (OJ L 310 of 25.11.2005, p. 1), created in accordance with the law of a European Union Member State or that of a State-Party to the agreement on the European Economic Area, with a statutory seat, the main administration centre or the main undertaking on the territory of the European Union or a State-Party to the agreement on the European Economic Area (trans-border merger). The limited joint-stock partnership, however, may not be an acquiring company or a newly formed company.

§ 2. Partnerships may merge with one another only by the formation of a capital company.

§ 3. A company in liquidation which has begun to divide assets, as well as a bankrupt company, may not merge.

##### **Art. 492. Methods.**

§ 1. A merger may be effected by:

1) a transfer of all the assets of a company (the company being acquired) to another company (the acquiring company) for shares which the acquiring company issues to the shareholders of the company being acquired (merger by acquisition),

2) formation of a capital company to which the assets of all the merging companies are transferred for shares of the new company (merger by the formation of a new company).

§ 2. Shareholders of a company being acquired or of companies merging by the formation of a new company may receive, in addition to shares of the acquiring company or of the newly formed company, additional cash payments not greater than 10 per cent in total of the balance sheet value of the allocated shares of the acquiring company, determined in accordance with the accounting statement referred to in Article 499 § 2 point 4, or 10 per cent of the nominal value of the allocated shares of the newly formed company. The additional payments of the acquiring company shall be made out of profits or the supplementary capital of that company.

§ 3. An acquiring company or a newly formed company may make the issuance of its shares to the shareholders of a company being acquired or of companies merging by the formation of a new company conditional on a contribution of additional payments in cash not exceeding the value referred to in § 2.

##### **Art. 493. Merger date.**

§ 1. A company being acquired or companies merging by the formation of a new company shall be dissolved, without a liquidation process, on the date on which they are deleted from the register.

§ 2. The merger shall be effected as of the date of registration of the merger in the register appropriate for the seat, respectively, of the acquiring company or the newly formed company (the merger date). The registration shall have the effect of deletion of the company being acquired or companies merging through the formation of a new company, subject to Article 507.

§ 3. Deletion of a company being acquired from the register may not be made prior to the date of registration of an increase of the share capital of the acquiring company, if such increase is to be effected, and prior to the date of registration of the merger in the register appropriate for the seat of the company being acquired.

§ 4. Deletion of companies merging by the formation of a new company may not be made prior to the date of registration of the new company in the register.

§ 5. Deletion from the register, referred to in § 3 and § 4, shall be made *ex officio*.

**Art. 494. Succession.**

§ 1. An acquiring company or a newly formed company shall enter, as of the merger date, into all the rights and obligations of a company being acquired or companies merging by the formation of a new company.

§ 2. In particular, permits, concessions and relief granted to a company being acquired or to any of the companies merging by the formation of a new company, shall be transferred as of merger date to the acquiring company or the newly formed company, unless the law or the decision on the grant of the permit, concession or relief provides otherwise.

§ 3. Disclosure in the land and mortgage registers or other registers of the transfer to the acquiring company or the newly formed company of the rights disclosed in such land and mortgage registers or other registers shall be made at the request of that company.

§ 4. As of the merger date, the shareholders of a company being acquired or of companies merging by the formation of a new company, shall become shareholders of the acquiring company or the newly formed company.

§ 5. The provisions of § 2 shall not apply to permits and concessions granted to a company which is a financial institution if the agency which granted the permit or concession lodged an objection within one month of the draft terms of merger being announced.

**Art. 495. Separate management.**

§ 1. The assets of each of the merged companies shall be managed separately by the acquiring company or the newly formed company until the date on which the creditors whose claims antedate the merger date, and who, prior to the end of six months of the date of the announcement of merger, demanded the payment in writing, are satisfied or secured.

§ 2. Members of the governing bodies of the acquiring company or the newly formed company shall be jointly and severally liable for the separate management.

**Art. 496. Priority of creditors.**

§ 1. At the time of separate management of the assets of the companies, the creditors of each company shall enjoy priority of satisfaction from the assets of their original debtor over the creditors of the remaining merging companies.

§ 2. Creditors of a merging company who reported their claims within six months of the date of announcement of the merger and demonstrated with probability that their satisfaction is threatened by the merger, may demand that their claims be secured.

**Art. 497. Reference.**

§ 1. The provisions on the creation of the acquiring company or the newly formed company, incorporated as a result of the merger, with the exception of those concerning in-kind contributions, shall apply *mutatis mutandis* to the merger of companies, unless the provisions of this Division provide otherwise.

§ 2. A merger may not be annulled due to the defects, referred to in Article 21, if six months have elapsed since the merger date.

## **Rozdział 2. Merger of Capital Companies.**

**Art. 498. Agreeing draft terms of merger.** The draft terms of merger of companies shall be agreed in writing by the merging companies.

**Art. 499. Contents of draft terms of merger.**

§ 1. The draft terms of merger shall stipulate at least:

- 1) the type, business name and seat of each of the merging companies, method of merger, and, in the case of a merger by the formation of a new company, also the type, business name and seat of that company,
- 2) the ratio of exchange of the shares of a company being acquired or companies merging by the formation of a new company for shares of the acquiring company or the newly formed company, and the amount of additional payments, if any,
- 3) the rules governing the allocation of shares of the acquiring company or of the newly formed company,
- 4) the date as of which the shares, referred to in point 3, give the right to participate in the profits of the acquiring company or the newly formed company,
- 5) rights granted by the acquiring company or the newly formed company to the shareholders or persons enjoying special rights in the company being acquired or in companies merging by the formation of a new company,
- 6) special benefits for members of the governing bodies of the merging companies and other persons involved in the merger, should any such benefits be granted.

§ 2. The following shall be attached to the draft terms of merger:

- 1) drafts of the merger resolutions,
- 2) draft amendments to the articles of association or the statutes of the acquiring company or draft articles of association or statutes of the newly formed company,
- 3) a valuation of the assets of the company being acquired or of companies merging by the formation of a new company as at a certain date in the month preceding the filing of an application for an announcement of the draft terms of merger,
- 4) an accounting statement drawn up for the purposes of the merger as at the date referred to in point 3 using the same methods and the same layout as the last annual balance sheet.

§ 3. In the statement referred to in § 2 point 4:

- 1) it shall not be necessary to present a new inventory,
- 2) the valuations shown in the last balance sheet shall be altered only in the case where it is necessary to reflect entries in the books of account; in this case, interim depreciations and provisions and material changes in actual value not shown in the books shall be taken into account.

**Art. 500. Filing of draft terms of merger in register; announcement.**

§ 1. The draft terms of merger shall be filed with the registry court of the merging companies, together with the application referred to in Article 502 § 2.

§ 2. The draft terms of merger shall be announced not later than a month prior to the date of the general meeting or the general assembly at which the merger resolution is to be adopted.

§ 3. Where the merging companies jointly file an application for the draft terms of the merger to be announced, the announcement shall be made not later than a month prior to the date of the general meeting or the general assembly at which the first merger resolution is to be adopted.

**Art. 501. Reports of management boards.** The management board of each of the merging companies shall draw up a report justifying the merger, its legal and economic grounds, in particular the share exchange ratio referred to in Article 499 § 1 point 2. In the event that any special difficulties have arisen with respect to the valuation of the shares of the merging companies, the report shall describe such difficulties.

**Art. 502. Examination of draft terms of merger.**

§ 1. The draft terms of merger shall be examined by an expert for their correctness and reliability.

§ 2. The registry court having jurisdiction for the seat of the acquiring company or the company which is to be formed in place of the merging companies shall appoint an expert on a joint application of the merging companies. In justified cases, the court may appoint two or more experts.

§ 3. The registry court shall determine the remuneration for the work of the expert and approve accounts of his expenses. If the merging companies do not pay such costs voluntarily within two weeks, the registry court shall enforce them in accordance with the rules for the enforcement of court fees.

**Art. 503. Opinion of auditor.**

§ 1. The expert, within the time limit determined by the court, not longer, however, than two months of the date of his appointment, shall draw up a detailed opinion and submit it, together with the draft terms of merger, to the registry court and to the management boards of the merging companies. The opinion shall include at least:

- 1) a declaration as to whether or not the share exchange ratio, referred to in Article 499 § 1 point 2, has been properly calculated,
- 2) an indication of the method or methods used to arrive at the share exchange ratio proposed in the draft terms of merger, together with an opinion as to whether or not it has been appropriate to use them,
- 3) an indication of any special valuation difficulties connected with the valuation of shares of the merging companies.

§ 2. At a written request of the expert, the management boards of the merging companies shall submit to him additional explanations or documents.

**Art. 503<sup>1</sup>. Expert not to be involved.** An audit of and auditor's opinion on the draft terms of merger shall not be required where all of the shareholders in each of the merging companies have so consented, without prejudice to the provisions of Article 516 § 7.

**Art. 504. Notification to shareholders.**

§ 1. The management boards of the merging companies shall twice notify the shareholders, in the manner in which the general meetings or the general assemblies are convened, of the intention that there should be a merger with another company. The first notification shall be made not later than a month prior to the day on which the merger resolution is proposed to be adopted, and the second notification shall be made at an interval not shorter than two weeks of the date of the first notification.

§ 2. The notification referred to in § 1 shall include at least:

- 1) the issue of the *Monitor Sądowy i Gospodarczy* (Court and Business Gazette) in which the announcement referred to in Article 500 § 2 has been published, unless the notification is so announced,
- 2) the venue and time at which the shareholders may inspect documents listed in Article 505 § 1; such time may not be shorter than one month prior to the proposed date of adoption of a resolution to merge.

**Art. 505. Shareholders' right to information.**

§ 1. The shareholders of the merging companies may inspect the following documents:

- 1) the draft terms of merger,
- 2) financial reports and reports of the management boards on the activities of the merging companies for the three preceding financial years, together with the opinion and report of the auditor if such opinion or report has been drawn up,
- 3) the documents referred to in Article 499 § 2,
- 4) the reports of the management boards of the merging companies drawn up for the purposes of the merger, referred to in Article 501,
- 5) the opinion of the expert, referred to in Article 503 § 1.

§ 2. If a merging company has been operating for less than three years, the reports, referred to in § 1 point 2, shall cover the entire term of operation of the company.

§ 3. The shareholders may request that copies of the documents referred to in § 1 be made available to them on the premises of the company, free of charge.

§ 4. Immediately before the adoption of the resolution to merge, the shareholders shall be orally presented with the major provisions of the draft terms of merger, the report of the management board and the opinion of the expert.

**Art. 506. Resolutions to merge.**

§ 1. A merger of companies shall require a resolution of the general meeting or general assembly of each of the merging companies, such resolution to be adopted by a majority of three fourths of the votes, representing at least half of the share capital, unless the articles of association or the statutes provide for stricter requirements.

§ 2. A resolution of the general assembly of a public company on a merger with another company shall require a two-thirds' majority of the votes, unless the statutes provide for a stricter majority.

§ 3. In the case where there are different classes of shares in a merging joint-stock company, the resolution shall be adopted in a vote held separately for each class of shares.

§ 4. The resolution referred to in § 1-3 shall include a consent to the draft terms of merger and to the proposed amendments to the articles of association or the statutes of the acquiring company, or to the articles of association or the statutes of the new company.

§ 5. The resolution referred to in § 1-3 shall be recorded in minutes drawn up by a notary.

**Art. 507. Filing of resolution in register.**



§ 1. The management board of each of the merging companies shall file the merger resolution with the registry court, so that an entry of such resolution can be made in the register, together with an indication of whether the merging company is the acquiring company or the company being acquired.

§ 2. In the case where the seats of the competent registry courts are in different places, the registry court having jurisdiction for the seat of the acquiring company or the newly formed company shall immediately notify, *ex officio*, the registry court having jurisdiction for the seat of the company being acquired or of the companies merging by the formation of a new company, of its decision referred to in Article 493 § 2.

§ 3. In the case referred to in § 2, the registry court having jurisdiction for the seat of the company being acquired or for each of the companies merging by the formation of a new company, shall hand over, *ex officio*, the file of the company deleted from the register, so that it can be kept, to the registry court having jurisdiction for the seat of the acquiring company or of the newly formed company.

**Art. 508. Announcement of merger.** An announcement of a merger shall be made on the application of the acquiring company or of the newly formed company.

**Art. 509. Challenge to resolution to merge.**

§ 1. After the merger date, an action for an annulment or for a declaration of the invalidity of the resolution referred to in Article 506 may be brought only against the acquiring company or the newly formed company.

§ 2. The action referred to in § 1 may be brought not later than within one month of the date of adoption of the resolution. The provisions of Article 249, Article 250, Article 252 § 1 and 2, Article 253, Article 254 or Article 422, Article 423, Article 425 § 1 and 5, Article 426 and Article 427 shall apply *mutatis mutandis*.

§ 3. The resolution may not be challenged on the grounds of objections only as to the share exchange ratio, referred to in Article 499 § 1 point 2. This shall not restrict the right to seek damages in accordance with general rules.

§ 4. After the judgement on an annulment or a declaration of the invalidity of the resolution referred to in Article 506 becomes final and nonappealable, the court shall notify, *ex officio*, the relevant registry courts.

**Art. 510. Effects of judgement.**

§ 1. In the case where the resolution referred to in Article 506 is annulled or declared invalid, the registry court shall delete, *ex officio*, the entries made in connection with the merger.

§ 2. Deletion from the register referred to in § 1 shall not affect the validity of acts in law of the acquiring company or those of the newly formed company, made between the date of the merger and the date of the announcement on deletion. The merging companies shall be jointly and severally liable for obligations following from such acts in law.

**Art. 511. Existing rights.**

§ 1. Persons who enjoyed special rights in the company being acquired or in the companies merging by the formation of a new company, referred to in Article 174 § 2, Article 304 § 2 point 1, Articles 351-355, Article 361 and in Article 474 § 3, shall enjoy rights at least equivalent to those which they have hitherto enjoyed.

§ 2. Holders of securities other than shares, issued by the company being acquired or by the companies merging by the formation of a new company, shall enjoy rights in the acquiring company or in the newly formed company at least equivalent to those which they have hitherto enjoyed.

§ 3. The rights referred to in § 1 and § 2 may be altered or abrogated by an agreement between those entitled and the acquiring company or the newly formed company.

**Art. 512. Liability of members of governing bodies.**

§ 1. The members of the management board, the supervisory board or the audit committee and the liquidators of the merging companies shall be jointly and severally liable to the shareholders of such companies for damage caused by acts or omissions in breach of the law or the provisions of the articles of association or the statutes, unless they are not at fault.

§ 2. Claims for redress of damage shall be barred by limitation after three years from the date of the announcement of the merger. The provisions of Article 293 § 2, Article 295 § 2-4, Article 296, Article 298, Article 300 or Article 483 § 2, Article 484, Article 486 § 2-4, Article 489 and Article 490 shall apply *mutatis mutandis*.

**Art. 513. Liability of auditor.**

§ 1. An expert shall be liable to the merging companies and their shareholders for damage caused by his fault. In the case where there are several experts, their liability shall be joint and several.

§ 2. The provisions of Article 512 § 2 shall apply *mutatis mutandis* to the liability referred to in § 1.

**Art. 514. Own shares.**

§ 1. The acquiring company may not take up own shares for the shares which it holds in the company being acquired and for own shares of the company being acquired.

§ 2. The prohibition referred to in § 1 shall apply also to the taking up of own shares by persons acting in their own name but on the account of the acquiring company or the company being acquired.

**Art. 515. Merger without increase of share capital.**

§ 1. A merger may be effected without an increase of the share capital if the acquiring company holds shares in the company being acquired or shares acquired or taken up in accordance with the provisions of Article 200 or Article 362, as well as in the cases referred to in Article 366.

§ 2. In order to enable the shareholders of the company being acquired to take up shares, the acquiring company may acquire its own shares of an aggregate nominal value of not more than 10 per cent of the share capital.

**Art. 516. Acquisition without resolution.**

§ 1. With respect to the acquiring company, a merger may be effected without the adoption of the resolution referred to in Article 506, if that company holds shares of an aggregate nominal value not lower than 90 per cent of the share capital of the company being acquired, not representing, however, its entire capital. This shall not apply to the case where the acquiring company is a public company.

§ 2. A shareholder of the acquiring company, representing at least one twentieth of the share capital, may demand that an extraordinary general meeting or an extraordinary general assembly be convened so that the resolution referred to in § 1 be adopted.

§ 3. A shareholder of the company being acquired may demand that his shares be bought out by the acquiring company in accordance with the rules stipulated in Article 417.

§ 4. The rights referred to in § 2 and § 3 may be exercised within one month of the date of announcement of the draft terms of merger.

§ 5. The provisions of Articles 501-503, Article 505 § 1 points 4-5, Article 512 and Article 513 shall not apply to the merger by acquisition, referred to in § 1.

§ 6. The provisions of § 1, 2, 4 and 5 shall apply *mutatis mutandis* in the case of an acquisition by the acquiring company of its single-shareholder company. Also, in this case the provisions of Article 494 § 4 and Article 499 § 1 points 2-4 shall not apply.

§ 7. The provisions of Article 500 § 2 and Articles 502-504 shall not apply to a merger of limited liability companies whose shareholders comprise natural persons only in a number not greater than ten persons in all of the merging companies, unless at least one shareholder lodges an objection with the company not later than within one month of the date on which the draft terms of merger are filed with the registry court.

## **Rozdział 2<sup>1</sup>. Trans-border Merger of Capital Companies and Limited Joint-Stock Partnership.**

### **Oddział 1. Trans-border Merger of Capital Companies.**

**Art. 516<sup>1</sup>. Reference to Chapter 2.** A trans-border merger of capital companies shall be governed by the provisions of Chapter 2 unless the provisions of this Chapter provide otherwise.

**Art. 516<sup>2</sup>. Non-qualifying entities.** The following entities may not participate in a trans-border merger:

- 1) a foreign cooperative, even if it satisfies the criteria for a foreign company referred to in Article 491 § 1<sup>1</sup>,
- 2) a company whose object is to collectively invest capital derived from a public issue, operating under the principle of diversification of risk, and such that its participation units are, at the request of their holders, bought back or redeemed directly or indirectly out of the assets of such company.

**Art. 516<sup>3</sup>. Mandatory contents of draft terms of merger.** The draft terms of trans-border merger shall stipulate at least:

- 1) the type, business name and statutory seat of each of the merging companies, the name of the register and the registration number of each of the merging companies, method of merger, and, in the case of a merger by the formation of a new company, also the type, business name and statutory seat proposed for that company,
- 2) the ratio of exchange of the shares of a company being acquired or companies merging by the formation of a new company for shares of the acquiring company or the newly formed company, and the amount of additional payments, if any,
- 3) the ratio of exchange of other securities of the company being acquired or companies merging by the formation of a new company for securities of the acquiring company or the newly formed company, and the amount of additional payments, if any,
- 4) other rights granted by the acquiring company or the newly formed company to the shareholders or persons entitled under other securities in the company being acquired or in companies merging by the formation of a new company,
- 5) other terms concerning the allocation of the shares or other securities in the acquiring company or in the newly formed company,
- 6) the date as of which the shares give the right to participate in the profits of the acquiring company or the newly formed company, as well as other terms concerning acquisition or exercise of that right if such terms have been stipulated,
- 7) the date as of which other securities give the right to participate in the profits of the acquiring company or the newly formed company, as well as other terms concerning acquisition or exercise of that right if such terms have been stipulated,
- 8) special benefits for the auditors engaged in the auditing of the draft terms of merger or to members of the governing bodies of the merging companies, should the applicable laws provide that any such benefits may be granted,
- 9) the terms for the exercise of the rights of creditors and minority shareholders of each of the merging companies and the address at which full information on these terms may be obtained free of charge,
- 10) the procedures for elaboration of the rules for involvement of the employees in the determination of their right of participation in the governing bodies of the acquiring company or the newly formed company, in accordance with separate provisions,
- 11) the likely impact of the merger on the level of employment in the acquiring company or the newly formed company,
- 12) the date as of which the transactions of the merging companies shall be deemed, for purposes of the accountancy law, to be transactions for the account of the acquiring company or the newly formed company, subject to the provisions of the Accountancy Law of 29 September 1994,
- 13) information on the valuation of assets and liabilities being transferred to the acquiring company or the newly formed company as of a defined day in the month preceding the filing of the application for the draft terms of merger to be announced,
- 14) the date of closing of the books of the merging companies that were used to establish the terms of the merger, subject to the provisions of the Accountancy Law of 29 September 1994,
- 15) draft articles of association or statutes of the acquiring company or the newly formed company.

**Art. 516<sup>4</sup>. Date when draft terms of merger are to be announced.**

§ 1. The company shall announce the draft terms of a trans-border merger not later than a month prior to the date of the general meeting or general assembly of that company which is to adopt the merger resolution.

§ 2. Where a trans-border merger includes more than one domestic company, the provisions of Article 500 § 3 shall apply.

**Art. 516<sup>5</sup>. Report to justify merger.**

§ 1. The management board of a company shall prepare a written report to justify the merger.

§ 2. The report shall state at least:

- 1) the legal basis and economic reasons for the merger,
- 2) the consequences of the merger for the shareholder, creditors and employees,
- 3) the ratio of exchange of the shares or other securities, referred to in the draft terms of merger,
- 4) any particular difficulties in the valuation of the shares of the merging companies.

§ 3. The management board shall append to the report the opinion of the employee representatives, if it received it in due time.

**Art. 516<sup>6</sup>. Auditor; draft terms of merger to be audited.**

§ 1. The registry court having jurisdiction for the seat of the company shall, on its application, appoint an expert to audit the draft terms of merger.

§ 2. The merging companies may jointly petition the registry court having jurisdiction for the domestic company or the agency with jurisdiction over the foreign company that a common auditor or auditors be appointed to audit the draft terms of merger.

§ 3. The provisions of Article 503<sup>1</sup> shall be applicable.

**Art. 516<sup>7</sup>. Access to documents.**

§ 1. The shareholders of the merging companies and employee representatives, and where there are no such representatives - the employees, may inspect the following documents:

- 1) the draft terms of merger,
- 2) financial reports and reports of the management boards on the operations of the merging companies for the three preceding financial years, together with the opinion and report of the auditor, where the opinion or report has been drawn up,
- 3) the report justifying the merger,
- 4) the opinion of the auditor following the audit of the draft terms of merger.

§ 2. The shareholders and employee representatives, and where there are no such representatives - the employees, may request that copies of the documents referred to in § 1 be made available to them on the premises of the company, free of charge.

**Art. 516<sup>8</sup>. Condition for merger to be effective; employee representatives.** It shall be allowed to provide in the merger resolution that the effectiveness of the merger shall be conditional upon approval by the general meeting or general assembly of the terms for the participation of the employee representatives.

**Art. 516<sup>9</sup>. Provisions governing participation of representatives.** The rules for the participation of the employee representatives in the governing bodies of the company formed as a result of a trans-border merger are set out in separate provisions.

**Art. 516<sup>10</sup>. Security for creditor claims.**

§ 1. If a foreign company is the acquiring company or the newly formed company, then the provisions of Article 495 and 496 shall not be applicable.

§ 2. Within a month of the date on which the draft terms of merger were announced, a creditor of a domestic company may request that his claims be secured if he demonstrates with probability that their satisfaction is threatened by the merger.

§ 3. In case of a dispute, based on a petition by the creditor filed within two months of the announcement of the draft terms of merger, the court having jurisdiction for the seat of the company shall resolve whether or not security should be granted as demanded by the creditor.

§ 4. The creditor's petition shall not halt the issuance by the registry court of the certificate of conformity with Polish law of the trans-border merger.

**Art. 516<sup>11</sup>. Objection; right to demand that shares be bought out.**

§ 1. Where a foreign company is the acquiring company or the newly formed company, a shareholder in the domestic company who voted against the merger resolution and requested that his objection be recorded in the minutes may request that his shares be bought out.

§ 2. Within ten days of the adoption of the merger resolution the shareholders shall file with the company a written request that their shares be bought out.

§ 3. The share certificate shall be enclosed with the buy-out request.

§ 4. The shareholders in a public company who hold dematerialized shares shall enclose with the buy-out request a registered deposit certificate issued by the entity operating a securities account in accordance with the law on trading in securities. The date of validity of the certificate may not fall before the date of the buy-out.

§ 5. The buy-out of the shares shall be made by the company on its own account or on the account of the shareholders who remain in the company.

§ 6. The company may acquire on its own account shares whose aggregate nominal value, together with the shares acquired by it thus far, by its dependent companies or cooperatives or by persons acting on its account, does not exceed 25 per cent of the share capital.

§ 7. The buy-out price shall not be lower than the value calculated for the purposes of the merger.

**Art. 516<sup>12</sup>. Certificate of conformity with Polish law.**

§ 1. The management board shall file with the registry court a petition for a certificate of conformity of the trans-border merger with Polish law with regard to the procedure that is governed by that law. The provisions of Article 507 § 1 shall not be applicable.

§ 2. The following shall be enclosed with the petition:

- 1) the draft terms of merger,
- 2) the management board report justifying the merger,
- 3) the opinion of the employee representatives, where it was received by the management board in due time,
- 4) the opinion of the auditor or a copy of the consent of all of the shareholders of the merging companies to dispense with the requirement that the draft terms of merger be audited and that the auditor prepare an opinion,
- 5) proof that the auditor was appointed, where such auditor was appointed
- 6) proof that the shareholders were notified of the intention to merge,
- 7) a copy of the merger resolution,
- 8) a statement signed by all members of the management board that the merger resolution was not challenged within the prescribed time or that the challenge was finally and bindingly dismissed or rejected, or that the deadline to file an appeal passed, unless the case referred to in point 9 applies,

9) a copy of a waiver, in writing, by all those entitled, of the right to challenge the merger resolution, or a copy of the decision of the court referred to in Article 516<sup>18</sup>,

10) a statement signed by all members of the management board as to the manner of satisfaction of the rights of the creditors and shareholders under the law and the merger resolution.

§ 3. The registry court shall forthwith issue the company with a certificate of conformity of the trans-border merger with Polish law with regard to the procedure that is governed by Polish law and shall enter in the register a notice concerning the merger.

§ 4. The provisions on registration proceedings shall apply *mutatis mutandis* to the petition for the issuance of the certificate of conformity with Polish law of the trans-border merger.

#### **Art. 516<sup>13</sup>. Filing with registry court.**

§ 1. The management board of an acquiring company or the management boards or administrative bodies of the companies merging by way of formation of a new company shall file the trans-border merger with the registry court having jurisdiction for the seat of the acquiring company or the newly formed company so that it be registered in the register.

§ 2. The following shall be enclosed with the filing:

1) certificates of conformity of the trans-border merger with the law governing each of the merging companies with regard to the procedure that is governed by that law, issued by the bodies competent for the merging companies not earlier than six months of the filing,

2) the draft terms of merger,

3) copies of the merger resolutions,

4) the agreement on the terms of employee participation, wherever required.

§ 3. The registry court shall examine in particular whether the merging companies approved the draft terms of merger on the same terms and, where so required by separate provisions, whether the terms of employee participation have been defined.

§ 4. The registry court shall forthwith notify the registration of the merger in the register to the registration body competent for the company being acquired or each of the companies merging by way of formation of a new company.

**Art. 516<sup>14</sup>. Limitations on exchange of shares.** Shares in a company being acquired shall not be exchanged for shares in an acquiring company if they are held by:

1) the acquiring company or a person acting in their own name but on the account of that company,

2) the company being acquired or a person acting in their own name but on the account of that company

#### **Art. 516<sup>15</sup>. Non-applicability.**

§ 1. If an acquiring company holds all of the shares in a company being acquired, the provisions of Article 516<sup>3</sup> points 2, 4-6 with regard to the shares, and those of Article 516<sup>6</sup> shall not be applicable. The management board shall draw up the report referred to in Article 516<sup>5</sup>.

§ 2. The provisions of Article 506 shall not be applicable to the company being acquired.

**Art. 516<sup>16</sup>. Simplified procedure; non-applicability.** The simplified merger procedure referred to in Article 516 § 7 shall not be applicable to a trans-border merger.

#### **Art. 516<sup>17</sup>. Consequences of merger; liability of company.**

§ 1. Following the day of the merger, an annulment or declaration of invalidity of the merger resolution shall not be allowed. The provisions of Article 21, Article 497 § 2, Article 509 § 1 and Article 510 shall not be applicable.

§ 2. Following the day of the merger, the proceedings concerned with a challenge to the merger resolution shall be discontinued.

§ 3. The company shall be liable to the party bringing the challenge for damage caused by the merger resolution which breaches the law, the articles of association or the statutes of the company or good practices.

#### **Art. 516<sup>18</sup>. Court decision; approval of registration.**

§ 1. The company may petition the court with which a claim concerning the annulment or declaration of invalidity of the resolution was filed to be issued a decision on approval of registration of the merger.

§ 2. The court shall issue the decision where:

1) the claim is inadmissible, or

2) the claim is clearly unfounded, or

3) following examination of the petition at a hearing it considers that the interest of the company justifies completion of the merger without undue delay.

§ 3. The court shall issue the decision forthwith, not later, however, than within two weeks of the filing of the petition, and where the court decides to examine the petition at a hearing - within a month.

§ 4. A complaint may be filed against the decision, such complaint to be reviewed within two weeks.

### **Oddział 2. Trans-border Merger of Limited Joint-Stock Partnership.**

**Art. 516<sup>19</sup>. Applicability.** The provisions of Section 1 and Articles 522, 525 and 526 shall apply *mutatis mutandis* to a trans-border merger of a limited joint-stock partnership.

### **Rozdział 3. Merger with Participation of Partnerships.**

#### **Art. 517. Agreeing draft terms of merger.**

§ 1. The draft terms of merger of companies shall be agreed in writing by the merging companies.

§ 2. It shall not be obligatory to draw up draft terms of merger for partnerships merging by the formation of a new capital company, subject to the provisions of Article 520.

#### **Art. 518. Contents of draft terms of merger.**

§ 1. The draft terms of merger shall stipulate at least:

- 1) the type, business name and seat of each of the merging companies, method of merger, and, in the case of a merger by the formation of a new company, also the type, business name and seat of that company,
- 2) the number and value of the shares of the acquiring company or the newly formed company, allocated to the partners of a merging partnership, and the amount of additional payments, if any,
- 3) the date as of which the shares, allocated to the partners of a merging partnership, give a right to participate in the profits of the acquiring company or the newly formed company,
- 4) special benefits for partners of a merging partnership and other persons involved in the merger, should such benefits be granted.

§ 2. The provisions of Article 499 § 2 and § 3 shall apply *mutatis mutandis*.

**Art. 519. Filing of draft terms of merger in register.** The draft terms of merger shall be filed with the registry court of the merging companies, together with the request referred to in Article 520 § 2.

**Art. 520. Examination of draft terms of merger; opinion of auditor.**

§ 1. Where a joint-stock company is the acquiring company or the newly formed company or where a limited joint-stock partnership is one of the merging companies, the draft terms of merger shall be examined by an expert for their correctness and reliability.

§ 2. In a case other than that referred to in § 1, the draft terms of merger shall be examined by an expert, if at least one shareholder of the merging companies so requests, by lodging a written request with the company of which he is a shareholder, not later than within seven days from the date on which he was notified by the company of the intention to merge.

§ 3. The provisions of Article 501, Article 502 § 2 and 3, and Article 503 shall apply *mutatis mutandis*.

**Art. 521. Notification to shareholders.**

§ 1. A merging company shall twice notify the shareholders who do not manage the affairs of the company, such notifications to be made at least within two weeks of each other, in a manner in which notifications to the shareholders are made, of an intention to merge with another company, not later than six weeks before the proposed date of adoption of a resolution to merge. The lodging of the request referred to in Article 520 § 2 shall require an additional notification, with a new proposed date of adoption of a resolution to merge.

§ 2. The notification shall specify at least the venue and time at which the shareholders may review the documents relating to the merger. Such time may not be shorter than one month prior to the proposed date of adoption of a resolution to merge.

§ 3. The provisions of Article 505 shall apply *mutatis mutandis*.

**Art. 522. Resolutions to merge.**

§ 1. A merger of companies shall require a resolution of the meeting of shareholders or of the general assembly of a merging capital company and a resolution of all partners of a merging partnership.

§ 2. The resolution of the general meeting or general assembly of a merging capital company shall require a majority of three fourths of the votes representing at least half of the share capital, unless the articles of association or the statutes provide for stricter requirements.

§ 3. In the case where a limited partnership or a limited joint-stock partnership takes part in a merger, unanimity of the general partners shall be required, and a resolution of the limited partners or shareholders which is supported by persons representing at least three fourths of the commendam sum or the share capital, unless the articles of association or the statutes provide for stricter requirements.

§ 4. In the case where there are different classes of shares in a merging joint-stock company or a limited joint-stock partnership, the resolution shall be adopted in a vote held separately for each class of shares.

§ 5. The resolutions referred to in § 1-3 shall include a consent to the draft terms of merger and to the proposed amendments to the articles of association or the statutes of the acquiring company or to the articles of association or the statutes of the new company.

§ 6. The resolutions referred to in § 1-3 shall be recorded in minutes drawn up by a notary.

**Art. 523. Filing of merger in register.**

§ 1. The management board of a merging capital company and the partners managing the affairs of a merging partnership shall report the merger to the registry court, so that it may be registered in the register.

§ 2. The partnership being acquired may be deleted from the register not earlier than on the date of registration of the increase of the share capital of the acquiring company or registration in the register of the new company.

§ 3. The provisions of Article 507 § 2 and 3 shall apply *mutatis mutandis*.

**Art. 524. Announcement of merger.** An announcement of a merger of companies shall be made on the application of the acquiring company or of the newly formed company.

**Art. 525. Liability for obligations of partnership.**

§ 1. The partners of a merging partnership shall bear, in accordance with the existing rules, subsidiary liability to the creditors of the partnership, jointly and severally with the acquiring company or the newly formed company, for obligations of the partnership which arose prior to the merger date, for three years from that date.

§ 2. The provisions of Article 31 shall apply *mutatis mutandis*.

**Art. 526. Liability to shareholders.**

§ 1. The members of the management board, the supervisory board or the audit committee and the liquidators of a merging capital company shall be jointly and severally liable to the shareholders of the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association or the statutes, unless they are not at fault.

§ 2. The partners managing the affairs of a merging partnership shall be liable to the partners of the partnership in accordance with the rules stipulated in § 1.

§ 3. Claims for redress of damage shall be barred by limitation after three years from the date of the announcement of the merger. The provisions of Article 293 § 2, Article 295 § 2-4, Article 296, Article 298, Article 300 or Article 483 § 2, Article 484, Article 486 § 2-34, Article 489 and Article 490 shall apply *mutatis mutandis*.

**Art. 527. Liability of auditor.** The expert shall be liable in accordance with the rules stipulated in Article 513.

## Dział II. Division of Companies.

### Art. 528. Rules.

§ 1. A capital company may be divided into two or more capital companies. A division of a joint-stock company shall not be permitted where the share capital has not been paid in full.

§ 2. A partnership shall not be subject to division.

§ 3. A company in liquidation which has begun to divide assets, as well as a bankrupt company, may not be divided.

### Art. 529. Methods.

§ 1. A division may be effected by:

1) a transfer of all the assets of a company being divided to other companies for shares of an acquiring company which are taken up by the shareholders of the company being divided (division by acquisition),

2) the formation of new companies to which all the assets of a company being divided are transferred for shares of the new companies (division by the formation of new companies),

3) a transfer of all the assets of a company being divided to an existing and to a newly formed company or companies (division by acquisition and the formation of a new company),

4) a transfer of some of the assets of a company being divided to an existing company or to a newly formed company (division by separation).

§ 2. The provisions on division of companies concerning, respectively, an acquiring company or a newly formed company, shall apply to a division by separation.

§ 3. The shareholders of a company being divided may receive, in addition to the shares of the acquiring companies or of the newly formed companies, additional cash payments not greater than 10 per cent in total of the balance sheet value of the allocated shares of the pertinent acquiring company, determined in accordance with the accounting statement referred to in Article 534 § 2 point 4, or 10 per cent of the nominal value of the allocated shares of the pertinent newly formed company. The additional payments of the acquiring company shall be made out of the profits or the supplementary capital of that company.

§ 4. Each of the acquiring companies or the newly formed companies may make the issuance of its shares to the shareholders of a company being divided conditional on a contribution of additional payments in cash not exceeding the value referred to in § 3.

### Art. 530. Division date and separation date.

§ 1. A company being divided shall be dissolved, without a liquidation process, on the date on which it is deleted from the register (the division date).

§ 2. The provisions of § 1 shall not apply to division by separation. The separation of a new company shall be effective as of the date of its registration in the register. Where some of the assets of the company being divided are transferred to an existing company, separation shall be effective as of the date of registration in the register of an increase of the share capital of the acquiring company (the separation date).

### Art. 531. Succession.

§ 1. Acquiring companies or newly formed companies created as a result of division shall enter, as of the division date or the separation date, into rights and obligations of a company being divided set out in the draft terms of division.

§ 2. In particular, permits, concessions and relief granted to a company being divided and relating to the particular assets of a company being divided allocated in the draft terms of division to an acquiring company or the newly formed company created as a result of division, shall be transferred as at the division date or the separation date to such company, unless the law or the decision on the grant of the permit, concession or relief provides otherwise.

§ 3. The provisions on joint ownership defined by shares shall apply *mutatis mutandis* to the particular assets of a company being divided which are not allocated in the draft terms of division to a particular acquiring company or the newly formed company. A share of the acquiring company or the newly formed company in the joint ownership shall be proportional to the value of the assets allocated to each of such companies in the draft terms of division. The acquiring companies and the newly formed companies shall be jointly and severally liable for the obligations of the company being divided which are not allocated in the draft terms of division to such acquiring companies or newly formed companies.

§ 4. Disclosure in the land and mortgage registers or other registers of the transfer to the acquiring companies or the newly formed companies of the rights disclosed in such land and mortgage registers or other registers shall be made at the request of such companies.

§ 5. As of the division date or the separation date, the shareholders of a company being divided shall become shareholders of the acquiring company identified in the draft terms of division.

§ 6. The provisions of § 2 shall not apply to permits and concessions granted to a company which is a financial institution if the agency which granted the permit or concession lodged an objection within one month of the draft terms of division being announced.

### Art. 532. Reference.

§ 1. The provisions on the creation of a given type of an acquiring company or newly formed company, with the exception of those concerning in-kind contributions, shall apply *mutatis mutandis* to the division of a company, unless the provisions of this Division provide otherwise.

§ 2. The provisions of Article 264 § 1 and Article 265 § 2 points 2 and 3 - in the case of a division of a limited liability company, or provisions of Article 456 and Article 458 § 2 points 3 and 4 - in the case of a division of a joint-stock company shall not apply to division by separation which is effected by reduction of the share capital.

§ 3. A division may not be annulled due to the defects, referred to in Article 21, if six months have elapsed since the division date or the separation date.

### Art. 533. Draft terms of division.

§ 1. The draft terms of division of a company shall be agreed in writing by the company being divided and the acquiring company.

§ 2. In the case of a division by the formation of a new company, the draft terms of division shall be drawn up by the company being divided.

§ 3. The company being divided, the acquiring company and the newly formed company, referred to in § 1 and § 2, shall be the companies involved in the division.

**Art. 534. Contents of draft terms of division.**

§ 1. The draft terms of division shall stipulate at least:

- 1) the type, business name and seat of each of companies involved in the division,
- 2) the ratio of exchange of the shares of a company being divided for shares of acquiring companies or newly formed companies, and the amount of additional payments, if any,
- 3) the rules governing the allocation of shares of acquiring companies or of newly formed companies,
- 4) the date as of which the shares, referred to in point 3, give a right to participate in the profits of particular acquiring companies or newly formed companies,
- 5) the rights granted by acquiring companies or newly formed companies to the shareholders or persons enjoying special rights in the company being divided,
- 6) the special benefits for members of the company governing bodies and other persons involved in the division, should any such benefits be granted,
- 7) a detailed description and allocation of the assets and liabilities and permits, concessions or relief allocated to acquiring companies or newly formed companies,
- 8) a division among the shareholders of the company being divided of shares of the acquiring companies or newly formed companies and the rules for such division.

§ 2. The following shall be attached to the draft terms of division:

- 1) the draft of the division resolution,
- 2) the draft amendments to the articles of association or the statutes of the acquiring company or draft articles of association or statutes of the newly formed company,
- 3) a valuation of the assets of the company being divided as at a certain date in the month preceding the filing of an application for an announcement of the draft terms of division,
- 4) an accounting statement drawn up for the purposes of division as at the date referred to in point 3 using the same methods and the same layout as the last annual balance sheet.

§ 3. In the statement referred to in § 2 point 4:

- 1) it shall not be necessary to present a new inventory,
- 2) the valuations shown in the last balance sheet shall be altered only if it is necessary to reflect entries in the books of account; in this case, interim depreciations and provisions and material changes in actual value not shown in the books shall be taken into account.

**Art. 535. Filing of draft terms of division in register; announcement.**

§ 1. The draft terms of division shall be filed with the registry court of the company being divided or of the acquiring company, together with the application referred to in Article 537 § 2.

§ 2. In the case of a division by the formation of a new company, the draft terms of division, together with the application referred to in Article 537 § 2, shall be filed with the registry court of the company being divided.

§ 3. The draft terms of division shall be announced not later than six weeks prior to the date of adoption of the first division resolution, referred to in Article 541.

**Art. 536. Reports of management boards.**

§ 1. The management boards of the company being divided and each of the acquiring companies shall draw up a report justifying the division of the company, its legal and economic grounds, in particular the share exchange ratio, referred to in Article 534 § 1 point 2, and the criteria for their division. In the event that any special difficulties have arisen with respect to valuation of the shares of the company being divided, the report shall describe such difficulties.

§ 2. The management board of a company being divided shall carry out, with respect to a newly formed company, the activities of the management boards of companies involved in the division, stipulated in the provisions of § 1 and § 3, and in Articles 537-539.

§ 3. In the case where an acquiring company or a newly formed company is a joint-stock company, Articles 311-312<sup>1</sup> shall apply *mutatis mutandis* to the assets and liabilities allocated to that company in the draft terms of division. Information that an opinion of auditors has been drawn up in accordance with Article 312 shall be attached to the report referred to in § 1.

The registry court with which the opinion of the auditors has been filed shall also be identified.

§ 4. The management board of a company being divided shall notify the general meeting or general assembly of the company and the management boards of each of the acquiring companies or a newly formed company in organisation of any material changes with respect to assets and liabilities which occurred between the date of the draft terms of division and the date of adoption of a division resolution.

**Art. 537. Examination of draft terms of division.**

§ 1. The draft terms of division shall be examined by an expert for their correctness and reliability.

§ 2. The registry court having jurisdiction for the seat of the company being divided shall appoint an expert on a joint application of the companies involved in the division. In justified cases, the court may appoint two or more experts.

§ 3. The registry court shall determine the remuneration for the work of the expert and approve accounts of his expenses. If the companies involved in the division do not pay such costs voluntarily within two weeks, the registry court shall enforce them in accordance with the rules for the enforcement of court fees.

**Art. 538. Opinion of auditor.**

§ 1. The expert, within the time limit determined by the court, not longer, however, than two months of the date of his appointment, shall draw up a detailed opinion and submit it, together with the draft terms of division, to the registry court and to the management boards of the companies involved in the division. The opinion shall include at least:

- 1) a declaration as to whether or not the share exchange ratio, referred to in Article 534 § 1 point 2, has been properly calculated,
- 2) an indication of the method or methods used to arrive at the share exchange ratio proposed in the draft terms of division, together with an opinion as to whether or not it has been appropriate to use them,
- 3) an indication of any special valuation difficulties connected with the valuation of the shares of the company being divided.

§ 2. At a written request of the expert, the management boards of the companies involved in the division shall submit to him additional explanations or documents.

**Art. 538<sup>1</sup>. Expert not to be involved.** The statement referred to in Article 534 § 2 point 4, as well as an audit by an auditor of the draft terms of division and the auditor's opinion, shall not be required where all the shareholders in each of the companies participating in the division have so consented.

**Art. 539. Notification to shareholders.**

§ 1. The management boards of the companies involved in the division shall twice notify the shareholders of an intention to effect a division of the company being divided and to transfer its assets to acquiring companies or newly formed companies, such notifications to be made at least within two weeks of each other, not later than six weeks prior to the proposed date of adoption of the division resolution, in a manner specified for the convocation of general meetings or general assemblies.

§ 2. The notification referred to in § 1 shall include at least:

1) the issue of the *Monitor Sądowy i Gospodarczy* (Court and Business Gazette) in which the announcement referred to in Article 535 § 3 has been published, unless the notification is so announced,

2) the venue and time at which the shareholders may inspect documents listed in Article 540 § 1; such time may not be shorter than one month prior to the proposed date of adoption of the division resolution.

**Art. 540. Shareholders' right to information.**

§ 1. The shareholders of a company being divided and of acquiring companies may inspect the following documents:

1) the draft terms of division,

2) the financial reports and reports of the management boards on the activities of the company being divided and of the acquiring companies for the three preceding financial years, together with the opinion and report of the auditor if such opinion or report have been drawn up,

3) the documents referred to in Article 534 § 2,

4) the reports of the management boards of companies involved in the division drawn up for the purposes of the division, referred to in Article 536,

5) the opinion of the expert, referred to in Article 538 § 1.

§ 2. If a company being divided or an acquiring company has been operating for less than three years, the reports, referred to in § 1 point 2, shall cover the entire term of operation of the company.

§ 3. The shareholders may request that the documents referred to in § 1 be made available to them on the premises of the management board of the company, free of charge.

§ 4. Immediately before the adoption of the division resolution, the shareholders shall be orally presented with the major provisions of the draft terms of division, the report of the management board and the opinion of the expert.

**Art. 541. Division resolutions.**

§ 1. A division of a company shall require a resolution of the general meeting or general assembly of the company being divided and each of the acquiring companies, such resolution to be adopted by a majority of three fourths of the votes, representing at least half of the share capital, unless the articles of association or the statutes provide for stricter requirements.

§ 2. A division of a company by the formation of a new company shall require a resolution of the general meeting or general assembly of a company being divided and a resolution of the shareholders of each of the newly formed companies in organisation, adopted in the manner referred to in § 1.

§ 3. A division of a public company shall require a resolution of the general assembly adopted by a majority of two thirds of the votes, unless the statutes provide for stricter requirements.

§ 4. In the case where there are different classes of shares in a company involved in a division, the resolution shall be adopted in a vote held separately for each class of shares.

§ 5. If the draft terms of division provide for the taking up by the shareholders of the company being divided of shares of the acquiring company or the newly formed company on terms less favourable than those existing in the company being divided, such shareholders may lodge an objection to the draft terms of division within two weeks of the date on which it is announced and demand that the acquiring company or the newly formed company buy out their shares within a period of up to three months from the division date. In that case, the acquiring company or the newly formed company may acquire, after division, their own shares of a total value not greater than 10 per cent of the share capital, in accordance with the rules stipulated in Article 417.

§ 6. The resolution referred to in § 1-3 shall include the consent of the acquiring company or the newly formed company to the draft terms of division and to the proposed amendments to the articles of association or the statutes of the acquiring company.

§ 7. The resolution referred to in § 1-3 shall be recorded in minutes drawn up by a notary.

**Art. 542. Filing of resolutions in register.**

§ 1. The management board of each of the companies involved in a division shall file the division resolution with the registry court, so that an entry of such resolution can be made in the register, together with an indication of whether the company involved in the division is a company being divided, an acquiring company or a newly formed company.

§ 2. A company being divided shall be deleted from the register *ex officio*, immediately following registration of the increase of the share capital of the acquiring companies or registration of the new companies involved in the division.

§ 3. The registration of a new company in the register shall be based on the organisational deeds and a resolution of the shareholders of the company and a resolution of the general meeting or general assembly of a company being divided.

§ 4. The registration in the register of a division of a company by separation shall be made immediately following registration of the reduction of the share capital of a company being divided, unless such separation is effected from the company own capitals other than the share capital.

§ 5. In the case where the seats of the competent registry courts are in different places, the registry court having jurisdiction for the seat of the acquiring company or the newly formed company shall immediately notify, *ex officio*, the registry court having jurisdiction for the seat of a company being divided, of the registrations referred to in § 2-4.



§ 6. In the case referred to in § 5, the registry court having jurisdiction for the seat of the company being divided, following deletion of the company from the register, shall, *ex officio*, hand over its file, so that it can be kept, to the registry courts having jurisdiction for the seats of the remaining companies involved in the division.

**Art. 543. Announcement of division.** An announcement of a division of a company shall be made on the application of the acquiring company or of the newly formed company.

**Art. 544. Challenge to resolution.**

§ 1. After the division date or the separation date, an action for an annulment or for a declaration of the invalidity of the resolution referred to in Article 541 may be brought only against the acquiring company or the newly formed company.

§ 2. The action referred to in § 1 may be brought not later than one month from the date of adoption of the resolution. The provisions of Article 249, Article 250, Article 252 § 1 and 2, Article 253, Article 254 or Article 422, Article 423, Article 425 § 1 and 5, Article 426 and Article 427 shall apply *mutatis mutandis*.

§ 3. The resolution may not be challenged on the ground of objections only as to the share exchange ratio, referred to in Article 534 § 1 point 2. This shall not restrict the right to seek damages in accordance with general rules.

§ 4. After the judgement on an annulment or a declaration of the invalidity of the resolution referred to in Article 541 becomes final and nonappealable, the court shall notify, *ex officio*, the relevant registry courts.

**Art. 545. Effects of judgement.**

§ 1. In the case where the resolution referred to in Article 541 is annulled or declared invalid, the registry court shall delete, *ex officio*, the entries made in connection with the division.

§ 2. Deletion from the register referred to in § 1 shall not affect the validity of acts in law of an acquiring company or those of a newly formed company, made between the date of division and the date of announcement of deletion. The companies involved in the division shall be jointly and severally liable for obligations following from such acts in law.

**Art. 546. Liability for obligations.**

§ 1. The remaining companies to which assets of the company being divided have been transferred, shall be jointly and severally liable, for three years from the date of the announcement of the division, for obligations allocated in the draft terms of division to an acquiring company or newly formed company. Such liability shall be limited by the net value of assets allocated in the draft terms of division to each of the companies.

§ 2. Creditors of a company being divided and of an acquiring company who reported their claims during the period between the date of announcement of the draft terms of division and the date of announcement of the division and demonstrated with probability that their satisfaction is threatened by the division, may demand that their claims be secured.

**Art. 547. Existing rights.**

§ 1. Persons who enjoyed special rights in a company being divided referred to in Article 174 § 2, Article 304 § 2 point 1, Articles 351-355, Article 361 and in Article 474 § 3 shall enjoy rights at least equivalent to those which they have hitherto enjoyed.

§ 2. Holders of securities other than shares, issued by a company being divided, shall enjoy in an acquiring company or in a newly formed company rights at least equivalent to those which they have hitherto enjoyed.

§ 3. The rights referred to in § 1 and § 2 may be altered or abrogated by an agreement between those entitled and an acquiring company or a newly formed company.

**Art. 548. Liability of members of governing bodies.**

§ 1. Members of the management board, the supervisory board or the audit committee and the liquidators of the companies involved in a division shall be jointly and severally liable to the shareholders of such companies for damage caused by acts or omissions in breach of the law or the provisions of the articles of association or the statutes, unless they are not at fault.

§ 2. Claims for a redress of damage shall be barred by limitation three years from the date of the announcement of the division. The provisions of Article 293 § 2, Article 295 § 2-4, Article 296, Article 298, Article 300 or Article 483 § 2, Article 484, Article 486 § 2-4, Article 489 and Article 490 shall apply *mutatis mutandis*.

**Art. 549. Liability of auditor.**

§ 1. The expert shall be liable to the shareholders of companies involved in a division for damage caused by his fault. In the case where there are several experts, their liability shall be joint and several.

§ 2. The provisions of Article 548 § 2 shall apply *mutatis mutandis* to the liability referred to in § 1.

**Art. 550. Own shares.**

§ 1. An acquiring company may not subscribe for own shares for the shares which it holds in a company being divided and for own shares of a company being divided.

§ 2. The prohibition referred to in § 1 shall apply also to subscription for own shares by persons acting in their own name but on the account of an acquiring company or a company being divided.

### Dział III. Transformation of Companies.

#### Rozdział 1. General Provisions.

**Art. 551. Rules.**

§ 1. A registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership, a limited liability company, a joint-stock company (the company being transformed) may be transformed into another commercial company (the transformed company).

§ 2. A civil law partnership may be transformed into a commercial company other than a registered partnership. The present provisions shall be without prejudice to the provisions of Article 26 § 4-6.

§ 3. The provisions on transformation of a registered partnership into another commercial company shall apply *mutatis mutandis* to the transformation referred to in the first sentence of § 2; however, the consequences of the transformation shall be governed by Article 26 § 5.

§ 4. A company in liquidation which has begun to divide assets, as well as a bankrupt company, may not be transformed.

**Art. 552. Transformation date.** A company being transformed shall become a transformed company upon registration of the transformed company in the register (the transformation date). The registry court shall, *ex officio*, delete the company being transformed from the register.

**Art. 553. Continuity.**

§ 1. A transformed company shall enjoy all the rights and bear all the obligations of a company being transformed.

§ 2. A transformed company shall remain a beneficiary of, in particular, permits, concessions and relief granted to the company prior to its transformation, unless the law or the decision on the grant of the permit, concession or relief provides otherwise.

§ 3. As of the transformation date, the shareholders of a company being transformed who participate in transformation shall become shareholders of the transformed company.

**Art. 554. Business name.** In the case where a change of the business name effected in connection with the transformation does not consist solely in a change of the additional words indicating the type of the company, a transformed company shall quote, in brackets, the former business name next to the current business name with the additional word „dawniej” („formerly”) for at least one year from the transformation date.

**Art. 555. Reference.** The provisions on the creation of a transformed company shall apply *mutatis mutandis* to the transformation of a company, unless the provisions of this Division provide otherwise.

**Art. 556. Requirements.** The following shall be required for the transformation of a company:

- 1) the drawing up of draft terms of transformation, together with attachments and an opinion of an auditor,
- 2) the adoption of a resolution on the transformation of the company,
- 3) the appointment of members of the governing bodies of a transformed company or an indication of the partners who are to manage its affairs and represent it,
- 4) signing of the articles of association or statutes of the transformed company,
- 5) registration in the register of the transformed company and deletion of the company being transformed.

**Art. 557. Draft terms of transformation.**

§ 1. The draft terms of transformation shall be prepared by the management board of a company being transformed or by all partners who manage the affairs of a company being transformed.

§ 2. The draft terms of transformation shall be made in writing, or else they shall be invalid.

§ 3. The draft terms of transformation in a single-shareholder company shall be made in the form of a notarial deed.

**Art. 558. Contents of draft terms of transformation; attachments.**

§ 1. The draft terms of transformation shall stipulate at least:

- 1) the balance sheet value of the assets of the company being transformed as at a certain date in the month preceding submission of the draft terms of transformation to the shareholders,
- 2) the value of the shares of the shareholders in accordance with the financial report referred to in § 2 point 4.

§ 2. The following shall be attached to the draft terms of transformation:

- 1) a draft of the resolution on transformation,
- 2) a draft of the articles of association or statutes of the transformed company,
- 3) a valuation of the assets and liabilities of the company being transformed,
- 4) a financial report drawn up for the purposes of transformation as at the date referred to in § 1 point 1, using the same methods and the same layout as the last annual balance sheet.

**Art. 559. Examination of draft terms of transformation; opinion of auditor.**

§ 1. The draft terms of transformation shall be examined by an auditor for their correctness and reliability.

§ 2. The registry court having jurisdiction for the seat of a company being transformed shall appoint an auditor on an application of the company. In justified cases, the court may appoint two or more auditors.

§ 3. At a written request of the auditor, the management board or the partners who manage the affairs of the company, shall submit to him additional explanations or documents.

§ 4. The auditor, within the time limit determined by the court, not longer, however, than two months of the date of his appointment, shall draw up a detailed opinion and submit it, together with the draft terms of transformation, to the registry court and to the company being transformed.

§ 5. The registry court shall determine the remuneration for the work of the auditor and approve accounts of his expenses. If the company being transformed does not pay such costs voluntarily within two weeks, the registry court shall enforce them in accordance with the rules for enforcement of court fees.

**Art. 560. Notification to shareholders.**

§ 1. The company shall twice notify the shareholders of the intention to adopt a resolution on the transformation of the company, such notifications to be made at least within two weeks of each other and not later than one month prior to the proposed date of adoption of such resolution, in a manner specified for notifying the shareholders of the company being transformed.

§ 2. The notification referred to in § 1 shall include material provisions of the draft terms of transformation and of the opinion of an auditor, as well as specify the venue and time at which the shareholders of the company being transformed may review a full version of the draft terms of transformation and attachments, as well as the opinion of the auditor; such time may not be shorter than two weeks prior to the proposed date of adoption of a resolution on transformation.

§ 3. A draft of the resolution on transformation and draft articles of association or statutes of a transformed company shall be attached to the notification referred to in § 1; this shall not apply in the case where the notification is announced.

**Art. 561. Shareholders' right to information.**

§ 1. The shareholders may inspect, on the premises of the company, the documents referred to in Article 558 and Article 559 § 4, and request that their copies be made available to them free of charge.

§ 2. Immediately before the adoption of the resolution on transformation, the shareholders shall be orally presented with the major provisions of the draft terms of transformation and of the opinion of the auditor.

**Art. 562. Resolution on transformation.**

§ 1. A transformation of a company shall require a resolution: in the case of transformation of a partnership - of the partners, and in the case of a transformation of a capital company - of the general meeting or the general assembly, such resolution to be adopted in the manner stipulated, respectively, in Article 571, Article 575, Article 577 § 1 point 1 and in Article 581.

§ 2. The resolution referred to in § 1 shall be recorded in minutes drawn up by a notary.

**Art. 563. Contents of resolution.**

§ 1. The resolution on transformation shall stipulate at least:

- 1) the type of company into which the company is transformed,
- 2) the share capital, in the case of transformation into a limited liability company or into a joint-stock company, or the commendam sum, in the case of transformation into a limited partnership, or the nominal value of the share, in the case of transformation into a limited joint-stock partnership,
- 3) the amount designated for payment to the shareholders who do not participate in a transformed company, such amount not to be greater than 10 per cent of the balance sheet value of the assets of the company,
- 4) the rights granted personally to the shareholders participating in a transformed company, if applicable,
- 5) the surnames and first names of the members of the management board of a transformed company, in the case of transformation into a capital company, or surnames and first names of the partners who are to manage the affairs and represent a transformed partnership, in the case of transformation into a partnership,
- 6) the consent to the wording of the articles of association or the statutes of a transformed company.

**Art. 564. Declaration on participation.**

§ 1. The company shall summon the shareholders, in a manner stipulated for their notification, to declare, within one month of the date of adoption of a resolution on the transformation of the company, whether they wish to participate in the transformed company. This shall not apply to the shareholders who made such declarations on the date of adoption of the resolution.

§ 2. The declaration referred to in § 1 shall be made in writing, or else it shall be invalid.

**Art. 565. No declaration; request for payment.**

§ 1. A shareholder who has not declared that he wished to participate in the transformed company, shall have a claim for payment of an amount representing his shares in a company being transformed, in accordance with a financial report drawn up for the purposes of transformation. The claim shall be barred by limitation after two years from the transformation date.

§ 2. The company shall make the payment referred to in § 1 not later than within six months of the transformation date. If the claim is raised after the transformation date, the period shall begin as of the date on which the claim is raised.

§ 3. The provisions of § 1 and § 2 shall apply *mutatis mutandis* where an in-kind contribution is restored.

**Art. 566. Request that shares be valued.**

§ 1. In the case where the shareholder has objections as to reliability of valuation of the shares adopted in the draft terms of transformation, he may lodge, on the date of adoption of the resolution on transformation at the latest, a request that a new valuation of the balance sheet value of his shares is made.

§ 2. If the company does not accommodate the request referred to in § 1 within two months from the date on which it is lodged, the shareholder may bring an action for a determination of the value of his shares. Such an action shall not bar registration of the transformation.

**Art. 567. Challenge of resolution on transformation.**

§ 1. The provisions of Articles 422-427 shall apply *mutatis mutandis* to an annulment of a resolution on transformation of a partnership or of a capital company or to a declaration of the invalidity of such a resolution.

§ 2. A resolution may not be challenged solely on the grounds referred to in Article 566 § 1.

§ 3. An action for an annulment of a resolution or a declaration of its invalidity shall be brought within one month of receipt of notice of the resolution; not later, however, than within three months of the date of adoption of the resolution.

**Art. 568. Liability for damage.**

§ 1. Persons acting for a company being transformed shall be jointly and severally liable to the company, shareholders and third parties for damage caused by acts or omissions in breach of the law or the articles or statutes of the company, unless they are not at fault.

§ 2. An auditor shall be liable to the company and shareholders of a company being transformed, for damage caused by his fault. If there are several auditors, their liability shall be joint and several.

§ 3. The claims referred to in § 1 and § 2 shall be barred by limitation after three years from the transformation date.

**Art. 569. Registration in register.** An application for registration of the transformation in the register shall be made by all the members of the management board or all the partners who have the right to represent the transformed company.

**Art. 570. Announcement on transformation.** An announcement on the transformation of a company shall be made on an application of the management board of a transformed company or all the partners who manage the affairs of the transformed company.

## Rozdział 2. Transformation of a Partnership into a Capital Company.

**Art. 571. Requirements.** Transformation of a partnership into a capital company shall be effected if, in addition to satisfaction of the requirements referred to in Chapter 1, all the partners supported the transformation of the partnership into a capital company, provided that in the case of a limited partnership and a limited joint-stock partnership it shall suffice that, as well as all the general partners, the limited partners or the shareholders who represent at least two thirds of the commendam sum or the share capital support the transformation, unless the articles of association or the statutes provide for stricter requirements.

**Art. 572. Registered partnership.** The provisions of Articles 557-561 shall not apply in the case of the transformation of a registered partnership in which all the partners managed the affairs of the partnership. This shall not apply to the obligation to draw up the documents referred to in Article 558 § 2, and to submit a valuation of the assets and liabilities of the partnership for examination by an auditor.

**Art. 573. Limited joint-stock partnership.**

§ 1. The provisions of Articles 328-330 shall apply *mutatis mutandis* in the case of the transformation of a limited joint-stock partnership into a joint-stock company.

§ 2. Share certificates of the transformed joint-stock partnership shall be invalidated as of the transformation date.

**Art. 574. Liability for obligations of partnership.** The partners of a partnership being transformed shall be liable in accordance with the hitherto rules, jointly and severally with a transformed company, for obligations of the partnership which arose prior to the transformation date, for three years from that date.

### **Rozdział 3. Transformation of a Capital Company into a Partnership.**

**Art. 575. Requirements.** The transformation of a capital company into a partnership shall be effected if, in addition to satisfaction of the requirements referred to in Chapter 1, the shareholders who represent at least two thirds of the share capital supported the transformation of the capital company into a partnership, unless the articles of association or the statutes provide for stricter requirements.

**Art. 576. Consent of shareholders.**

§ 1. A resolution on the transformation of a capital company into a limited partnership or into a limited joint-stock partnership shall require, in addition to the requisite majority, the consent of the persons who are to become general partners following the transformation, such consent to be expressed in writing, or else invalid. The remaining shareholders of the company being transformed shall become limited partners or shareholders in the partnership following the transformation.

§ 2. The provisions of Article 573 shall apply *mutatis mutandis* in the case of the transformation of a joint-stock company into a limited joint-stock partnership.

### **Rozdział 4. Transformation of a Capital Company into Another Capital Company.**

**Art. 577. Requirements.**

§ 1. The transformation of a capital company into another capital company shall be effected if, in addition to satisfaction of the requirements referred to in Chapter 1:

- 1) the shareholders who represent at least half of the share capital supported the transformation with at least three fourths of the votes, unless the articles of association or the statutes provide for stricter requirements,
- 2) the financial reports of the company being transformed for at least two preceding financial years have been approved,
- 3) the share capital of a joint-stock company being transformed has been paid in full,
- 4) the share capital of the transformed company will not be lower than the share capital of the company being transformed.

§ 2. If a company being transformed has been operating for a period shorter than two years, the financial report referred to in § 1 point 2 shall cover the entire period of operation of the company which is not covered in the annual financial report.

**Art. 578. Joint-stock company.** The share certificates of a joint-stock company being transformed shall be invalidated as of the transformation date.

**Art. 579. Situation of shareholders.**

§ 1. The rights and obligations of a shareholder of a company being transformed which do not satisfy the provisions of the law concerning a transformed company shall expire by virtue of the law as of the transformation date.

§ 2. A shareholder whose rights expire in accordance with § 1 shall have a claim against the transformed company for appropriate compensation. The compensation shall be paid not later than one year from the transformation date, unless the person so entitled and the company agree otherwise.

§ 3. A shareholder who had an obligation to a company being transformed to provide recurrent non-pecuniary performances may release himself from the obligation to the transformed company by paying appropriate compensation.

§ 4. The provisions of Article 415 § 3 shall not apply.

**Art. 580. Bond holders.** Holders of convertible bonds, bonds with priority right or other bonds which carry an entitlement to non-pecuniary performances in a joint-stock company being transformed shall, in a limited liability company, have rights at least equivalent to those which they have hitherto enjoyed. This shall not preclude a change or expiry of such rights under an agreement between the entitled person and the transformed company.

## **Rozdział 5. Transformation of a Partnership into Another Partnership.**

**Art. 581. Requirements.** The transformation of a partnership into another partnership shall be effected if, in addition to satisfaction of the requirements referred to in Chapter 1, all the partners supported transformation.

**Art. 582. Registered partnership, professional partnership.** The provisions of Articles 557-561 shall not apply in the case of the transformation of a registered partnership or a professional partnership in which all the partners managed the affairs of the partnership. This shall not apply to the obligation to draw up the documents listed in Article 558 § 2 points 1 and 2.

### **Art. 583. Death of registered partner.**

§ 1. In the event of the death of a partner of a registered partnership, his heir may request that the partnership be transformed into a limited partnership and that he be granted the status of limited partner. The partnership shall accommodate the request of the heir of a deceased partner, unless the remaining partners adopt a resolution on dissolution of the partnership.

§ 2. The request of the heir of a deceased partner shall be deemed to have been accommodated also where the remaining partners resolved to transform the registered partnership into a limited joint-stock partnership, and granted the heir the status of shareholder in such a partnership.

§ 3. The partnership, when accommodating the request of the heir of a deceased partner, shall fulfil the obligations referred to in Articles 557-561.

§ 4. An heir may lodge the request within six months from the date of confirmation of his receipt of the inheritance.

§ 5. If during the time referred to in § 4 the heir obtains the status of limited partner or that of shareholder of a limited joint-stock partnership or where the partnership is dissolved during such time, he shall be liable for the obligations of the partnership which have hitherto arisen solely in accordance with the rules of the law on inheritance.

**Art. 584. Liability for obligations of partnership.** The partners of a partnership being transformed shall be liable for the obligations of the partnership which arose prior to the transformation date in accordance with the hitherto rules, for three years from such date.

## **Tytuł V. Criminal Provisions.**

### **Art. 585. Acts to the detriment of a company.**

§ 1. A person who, while participating in the creation of a commercial company or serving as a member of its management board, supervisory board or audit committee or as a liquidator, acts to the detriment of the company

- shall be subject to a penalty of imprisonment for up to 5 years and a fine.

§ 2. A person who incites a person listed in § 1 to act to the detriment of the company or aids and abets him in committing this crime shall be subject to the same penalty.

**Art. 586. Failure to file for bankruptcy.** A person who, while serving as a member of the management board of a company or a liquidator, fails to file for the bankruptcy of the commercial company despite the existence of circumstances justifying bankruptcy of the company in accordance with the relevant provisions

- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to one year.

### **Art. 587. False data.**

§ 1. A person who, in the course of performance of the duties set out in Title III and IV, announces false data or submits it to the company governing bodies, government agencies or to a person authorised to carry out an audit

- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to two years.

§ 2. If the perpetrator acts unintentionally

- he shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to one year.

**Art. 588. Acquisition of own shares.** A person who, while serving as a member of the management board or a liquidator, allows that a commercial company acquires its own shares or accepts them as a subject of a pledge

- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to 6 months.

**Art. 589. Unlawful issuance of documents.** A person who, while serving as a member of the management board or a liquidator of a limited liability company, allows that the company issues registered documents, documents to the bearer or documents to an order for shares or rights to profits in the company

- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to 6 months.

**Art. 590. Facilitating illegal vote.** A person who, in order to facilitate an illegal vote at a general assembly or an illegal exercise of minority rights:

1) issues a false certificate that a share certificate entitling to vote has been deposited,

2) lends to another a share certificate which does not entitle its owner to vote,

3) issues a false certificate concerning the right to participate in the general assembly of a public company,

4) submits or makes available a false schedule of shareholders entitled to participate in the general assembly of a public company

- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to one year.

**Art. 591. Participation in illegal vote.** A person who in connection with a vote at a general assembly or an exercise of the minority rights uses:

1) a false certificate that a share certificate entitling to vote has been deposited,

2) a share certificate belonging to another, without the consent of the owner,

3) a share certificate of another which does not entitle its owner to vote,

4) a false certificate of the right to participate in the general assembly of a public company,

5) false instructions concerning voting at the general assembly of a public company  
- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to one year.

**Art. 592. Illegal issuance of shares.** A member of the management board who allows that share certificates are issued:

- 1) which are not fully paid for,
  - 2) prior to registration of the company,
  - 3) in the case where the share capital is increased - prior to registration of the increase
- shall be subject to a fine, a penalty of restriction of liberty or imprisonment for up to one year.

**Art. 593. Jurisdiction.** Jurisdiction over the crimes listed in Articles 585-592 lies with the regional courts.

**Art. 594. Delicts of members of management board.**

§ 1. A person who, while serving as a member of the management board of a commercial company, in breach of his duty, allows that the management board:

- 1) fails to file with the registry court a list of the shareholders,
- 2) fails to keep a share register in accordance with the provisions of Article 188 § 1 or a share register in accordance with the provisions of Article 341 § 1,
- 3) fails to convene a general meeting or a general assembly,
- 4) refuses explanations to a person authorised to carry out an audit or prevents such a person from carrying out his duties,
- 5) fails to apply to the registry court for auditors to be appointed,
- 6) fails to announce that the auditor submitted an opinion to the registry court in accordance with the provisions of Article 312 § 7

- shall be subject to a fine of up to 20,000 zlotys.

§ 2. A person who, while serving as a member of the management board, allows that the company, in breach of the law or the articles, does not have a supervisory board of a proper composition for more than three months  
- shall be subject to the same fine.

§ 3. The provisions of § 1 and § 2 shall apply *mutatis mutandis* to liquidators.

§ 4. The fine shall be imposed by the registry court.

**Art. 595. Wrong description of written communications.**

§ 1. A person who, while serving as a member of the management board of a capital company, allows that the written communications and orders, as well as the information referred to in Article 206 § 1 and Article 374 § 1, do not include the particulars set out in these provisions or, while being a general partner of a limited joint-stock partnership entitled to represent the partnership, allows that the written communications and orders, as well as the information referred to in Article 127 § 5 do not include the particulars set out in these provisions - shall be subject to a fine of up to 5,000 zlotys.

§ 2. The provisions of Article 594 § 3 and § 4 shall apply *mutatis mutandis*.

## Tytuł VI. Amendments to Other Provisions, Transitional and Final Provisions.

### Dział I. Amendments to Other Provisions.

**Art. 596-609** (*intentionally omitted*)

### Dział II. Transitional Provisions.

**Art. 610. Derogation.** As of the date of entry into force of this Act, the provisions on the matters regulated herein shall be derogated, unless the provisions which follow provide otherwise.

**Art. 611. Provisions remaining in force.** Special provisions concerning the matters specified below shall remain in force:

- 1) national investment funds,
- 2) companies operating in the area of banking,
- 3) companies operating exchanges or out of exchange markets,
- 4) companies operating brokerage houses,
- 5) *Krajowy Depozyt Papierów Wartościowych S.A.* (the National Securities Deposit S.A.),
- 6) companies operating in the area of insurance,
- 7) societies of investment funds,
- 8) pension societies,
- 9) public radio and television companies,
- 10) companies created as a result of the commercialisation and privatisation of state-owned enterprises, 11) other commercial companies regulated in other laws.

**Art. 612. Direct application rule.** Legal relationships concerning commercial companies which exist as at the date of entry into force of this Act shall be governed by its provisions, unless the provisions which follow provide otherwise.

**Art. 613. Vested rights of shareholders.**

§ 1. The rights of shareholders of commercial companies acquired prior to the date of entry into force of this Act shall remain in force.

§ 2. The contents of the rights referred to in § 1 shall be governed by the existing provisions.

§ 3. The provisions of this Act shall apply to a change to the contents of the rights and to dispositions of the rights of the shareholders effected after the entry into force of this Act.

**Art. 614. Promoter certificates and utility shares.**

§ 1. The provisions of Article 613 shall apply *mutatis mutandis* to promoter certificates and utility shares.

§ 2. Promoter certificates shall expire ten years from the entry into force of this Act at the latest.

**Art. 615. Situation of members of company governing bodies.**

§ 1. As of the date of entry into force of this Act, the provisions of this Act shall apply to the duties of members of governing bodies of capital companies.

§ 2. The date of expiry of the mandate of a member of a capital company governing body which began prior to the entry into force of this Act shall be subject to the existing provisions.

**Art. 616. Proceedings in respect of registration in register.** Proceedings concerning registration in the register of a registered partnership, limited partnership, limited liability company or joint-stock company, commenced and pending as at the date of entry into force of this Act, shall be governed by the existing provisions, unless the provisions which follow provide otherwise.

**Art. 617. Merger and transformation.** The merger and transformation of capital companies, where the relevant resolution was adopted by the general meeting (general assembly) prior to the date of entry of this Act into force, shall be governed by the existing provisions; however, legal effects of a merger or transformation, registered in the register after entry into force of this Act, shall be subject to the provisions of this Act.

**Art. 618. Concessions, permits, relief.** The provisions of Article 494 § 2 and Article 531 § 2 shall apply to concessions, permits and relief granted after the date of entry into force of this Act, unless the existing provisions provided for a transfer of such rights to the acquiring company or the newly formed company.

**Art. 619. Resolutions.** Resolutions of the shareholders and those of governing bodies of capital companies adopted prior to the date of entry into force of this Act shall be governed by the existing provisions.

**Art. 620. Effects of events of legal significance.**

§ 1. The effects of events of legal significance shall be subject to the provisions in force as at the date of such events.

§ 2. As of the date of entry into force of this Act, the effects of:

1) the creation of a company in organisation as a result of entering into an agreement for the creation of a capital company,

2) events on which a judgement of a registry court on dissolution of a capital company, in accordance with Article 21, is based, shall be subject to the provisions of this Act.

**Art. 621. Limitation.** The provisions of this Act on limitation shall apply to claims which arose before the date of entry into force of this Act and which, under the Commercial Code, were not barred by limitation on that date, however, subject to the following rules:

1) the beginning, suspension and discontinuance of the period of limitation shall be subject to the provisions of the Commercial Code with respect to the period before the date of entry into force of this Act,

2) if limitation under the provisions of this Act is shorter than that under the provisions of the Commercial Code, the period of limitation shall begin on the date of entry into force of this Act; however, if the period of limitation which began before the date of entry into force of this Act would have matured earlier in accordance with the limitation under the Commercial Code, the claim shall be barred by limitation on that earlier date.

**Art. 622. Pending proceedings.** The existing provisions shall apply to proceedings concerned with commercial companies commenced before common courts of law or arbitration courts before the date of entry into force of this Act.

**Art. 623. Artykuły, founding acts, statutes.**

§ 1. Commercial companies existing on the date of entry into force of this Act shall adapt the provisions of their articles, founding acts or statutes to the provisions of this Act within three years of the date of entry into force of this Act.

§ 2. The provisions of § 1 shall not apply to the provisions of company articles and statutes which are the basis for the creation of the rights referred to in Article 613 § 1.

§ 3. In the case of a breach of § 1, the registry court may, *ex officio* or upon an application of a person having a legal interest, summon the company to remedy the breach within a period not longer than six months. If the company fails to comply, the court may also, *ex officio*, decide on dissolution of the company.

**Art. 624. Share capital.**

§ 1. Within three years of the date of entry into force of this Act, the limited liability companies, referred to in Article 612, shall increase the share capital at least to 25,000 zlotys and satisfy the requirement on the minimum value of the share stipulated in Article 154 § 2. Within five years, at the latest, from the date of entry into force of this Act, such companies shall bring the share capital into compliance with Article 154 § 1.

§ 2. Within three years of the date of entry into force of this Act, the joint-stock companies referred to in Article 612, shall increase the share capital at least to 250,000 zlotys. Within five years, at the latest, from the date of entry into force of this Act, such companies shall bring the share capital into compliance with Article 308 § 1.

§ 3. The existing provisions on the minimum amount of the share capital and the nominal value of the share shall apply to capital companies in organisation filed with the registry court prior to the date of promulgation of this Act. The provisions of § 1 and § 2 shall apply to such companies.

§ 4. Where a capital company fails to comply with the requirements stipulated in § 1 or § 2, the provisions of Article 623 § 3 shall apply *mutatis*

*mutandis*. Also, the shareholders of such a company may not collect dividends or other performances from the company until the requirements of § 1-3 are satisfied. This shall not apply to a share in company assets in the case of its dissolution or liquidation.

**Art. 625. Voting privileges of State Treasury shares.**

§ 1. Prior to 31<sup>st</sup> December 2004, the statutes of companies formed after the entry into force of this Act, with the State Treasury as a shareholder, may provide for a voting privilege of State Treasury shares greater than that stipulated in Article 352; however, the State Treasury may not be granted more than five votes per share.

§ 2. The provisions of § 1 shall cease to apply on the date on which the Republic of Poland accedes to the European Union. As of the date of the accession of the Republic of Poland to the European Union, the statutes of the companies in which the State Treasury is a shareholder may provide for a preference for State Treasury shares as far as the matters referred to in Articles 351-354 are concerned.

§ 3. Article 613 shall apply to the rights of the State Treasury in joint-stock companies acquired in accordance with § 1.

**Art. 626** (*abrogated*)

**Art. 627** (*abrogated*)

**Art. 628. Priority to be given to this Code.** In the event of doubt as to whether the provisions of this Act or the existing provisions should be applied, the provisions of this Act shall be applied.

**Art. 629. References.** Whenever any provisions refer to the provisions of the Regulation of the President of the Republic - The Commercial Code or to the Regulation of the President of the Republic - Provisions Introducing the Commercial Code, abrogated under Article 631, or refer generally to the provisions of the Commercial Code on registered partnerships, limited partnerships, limited liability companies or joint-stock companies, the relevant provisions of this Act shall be applied.

**Art. 630. Commercial register, business name, commercial power of attorney.** Whenever any provisions refer to the provisions of the Regulation of the President of the Republic, abrogated under Article 631 point 1, on the commercial register, business name or commercial power of attorney, or refer generally to the provisions on the commercial register, business name or commercial power of attorney, Article 632 shall be applied.

### **Dział III. Final Provisions.**

**Art. 631. Derogation.** Subject to the provisions of Article 632, the following shall cease to have effect:

1) Regulation of the President of the Republic of 27<sup>th</sup> June 1934 - The Commercial Code (J.L. No 57, item 502, of 1946 No. 57, item 321, of 1950 No. 34, item 312, of 1964 No. 16, item 94, of 1988 No. 41, item 326, of 1990 No. 17, item 98 and No. 51, item 298, of 1991 No. 35, item 155, No 94, item 418 and No. 111, item 480, of 1994 No. 121, item 591, of 1995 No. 96, item 478, of 1996 No. 6, item 43, of 1997 No. 88, item 554, No. 118, item 754, No. 121, item 769 and 770, of 1999 No. 101, item 1178 and of 2000 No. 60, item 702);

2) Regulation of the President of the Republic of 27<sup>th</sup> June, 1934 - Provisions Introducing the Commercial Code (J.L. No. 57, item 503, of 1945 No. 40, item 224, of 1946 No. 31, item 197 and No. 60, item 329, of 1947 No. 5, item 20, of 1961 No. 58, item 319, of 1964 No. 16, item 94, of 1997 No. 121, item 769, and of 1999 No. 101, item 1178).

**Art. 632** (*abrogated*)

**Art. 633. Entry into force.** This Act shall enter into force on 1<sup>st</sup> January 2001.

#### **Footnote 1**

As for as the matters regulated herein, this law transposes the following

EC Directives:

1) First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty with a view to making such safeguards equivalent throughout the Community (OJ L 65, 14.03.1968, p. 8, as amended; OJ Polish special edition, Ch. 17, vol. 1, p. 3, as amended);

2) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies