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ACT 3/2009 OF 3 APRIL ON STRUCTURAL CHANGES IN TRADING COMPANIES

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PREAMBLE

I

In the ongoing endeavour to perfect trading company law, a permanently evolving division of the legal system, the present act is of cardinal importance.

Firstly, it is particularly sensitive to the increasing internationalisation of economic actors. Hence, with a view to guaranteeing the entry into effect of the European Union's internal market, it integrates two of its directives into the Spanish body of law: Directive 2005/56/EC of European Parliament and of the Council of 26 October on Cross-Border Mergers of Limited Liability Companies into the Spanish body of law; and Directive 2007/63/EC of European Parliament and of the Council of 13 November 2007, Amending Council Directives 78/855/EEC and 82/891/EEC as Regards the Requirement of an Independent Expert's Report on the Occasion of Merger or Division of Public Limited Liability Companies. While cross-border mergers involving companies subject to the laws of different European Union countries are not uncommon in Spanish business practice, the integration of the directive provides a channel for harmonising these complex operations. Moreover, as acknowledgement of the importance of internationalisation, this act does not confine the process to intra-Community operations, but explicitly envisages mergers between Spanish and non-European Union country companies, each governed by their respective domestic law. A further indication of the legislator's international perspective is to be found in the enactment of provisions, for the first time in Spanish law, to regulate both the relocation of Spanish trading companies' registered offices abroad and the location of the registered offices of companies formed under the law of other States on Spanish soil, with a view to facilitating corporate mobility. Pursuant to the guidelines set out in Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (Article 8) and, in domestic law, Act 19/2005 of 14 November on European Companies Headquartered in Spain (which, among others, introduced Articles 315 and 316 in the Consolidated Text of the Joint Stock Companies Act), particular attention is paid to this very important change in such a basic determinant in the relationship with the law of the State, while establishing a judiciously designed system of protection for shareholders or partners, as well as creditors.

Secondly, the importance of the act lies in its unification and enlargement of the legal provisions governing so-called "structural changes", understood to be corporate alterations that involve more than mere amendments to the by-laws, i.e., that affect company ownership or personality. It consequently covers transformation, merger, divestment and total assignment of assets and liabilities. The act also regulates the international relocation of registered offices, a circumstance which, while not always involving structural change per se, has such significant implications for the legislation applicable to a company that its inclusion in the same legal text was deemed advisable. Unification is specific to the legislation on the transformation of trading companies. The applicable legal provisions, divided to date between the Joint Stock Companies Act and the more recent Limited Liability Companies Act, are modernised in the present text and the definition of the types of transformation possible is expanded. Driven by real-world needs, the very broad approach adopted in Act 2/1995 of 23 March ultimately prevails over the much more restrictive arrangements set out in the Joint Stock Companies Act, perceptibly stretching the former perimeter around that definition.

One of the most prominent innovations that has translated into an enlargement on the previous arrangements is the reclassification of total assignment of assets and liabilities as a structural change. This entails a clean break with the former view that linked any such operation to dissolution and thereby furnishes yet another legislative instrument for corporate transfer. Indeed, the present act allows one company to transfer all its equity to another under "universal succession" arrangements in exchange for consideration that may not consist of shares, stakes or quotas (hereafter, "shares"[1]) in the assignee company. In these cases, shareholder or partner interests are protected by

[1] T.N.: Spanish companies law distinguishes between two basic types of limited liability companies, "sociedades anónimas" translated here as "joint stock companies" and "sociedades de responsabilidad limitada", here called "limited liability companies". (See the Preamble to the Corporate Enterprises Act, Royal Legislative Decree 1/2010: http://www.mjusticia.gob.es/cs/Satellite/es/1215198252168/DetalleInformacion.html.) A distinction is likewise drawn in Spanish legislation between the holdings in one and the other: "acciones" in joint stock companies, here translated as "shares", and "participaciones" in limited liability companies, here called "stakes". That distinction, more than merely artificial, is confusing in English and has consequently been obviated in this translation. The word "cuotas", in turn, refers to shares in liquidation surplus and hence also "shares". Throughout the rest of the Act, then, where the Spanish legislator refers to "acciones, participaciones y cuotas", the English has been simplified to "shares", in the conviction that such simplification in no way detracts from the accuracy of the translation.

the nature and extent of the information that must be furnished in total assignment proposals and the requisites that must be met to adopt merger agreements. Creditor protection, in turn, is provided through the right of objection and the establishment of assignees' joint and several liability for up to the total value of the net assets allocated to each in assignment operations.

The integration into domestic law of the Directive on Cross-Border Mergers afforded an occasion to revise the existing legal provisions on merger and divestment. The aim was not only to incorporate the features of Directive 2005/56/EC of 26 October 2005 that are not the result of the "cross-border element", but also and especially to capitalise on the possibilities laid down in the 3rd and 6th Directives (Directive 78/855/EEC of 9 October 1978 and Directive 82/891/EEC of 17 December 1982) transposed under Act 19/1989 of 25 July. The first of the two most prominent changes in the present text in connection with mergers is the regulation of the acquisition of wholly or ninety per cent owned companies. The second covers operations in which a company is dissolved and all its equity is transferred to the company that holds all its shares, i.e., without attributing that equity to the successor company's shareholders or partners. The most salient measures in respect of divestment, in turn, in addition to total and partial divestment, include the introduction of the device known as separation in substantive trading company law. Moreover, the provisions on divestment are applied to operations in which a company transfers part of its equity as a single unit to another newly formed corporation in return for all the new company's shares.

II

Although the legal provisions on these corporate operations borrow heavily from the provisions governing corporate enterprises, they constitute general commercial law on structural change in companies. As such, they are applicable to any company of this nature, regardless of corporate type or status, unless explicitly provided otherwise, as in the case of intra-Community cross-border mergers. This general applicability, in conjunction with the length of the present text, explains why these provisions have been set out in a separate act, an option chosen in other European Union Member States as well. The alternative would have been to incorporate the subject matter regulated directly into the Commercial Code or the Consolidated Text of the Joint Stock Companies Act, to which other special laws must ultimately refer. The act, then, constitutes a transitional solution that will be in effect only until all the legislation that presently constitutes Spanish companies law can be wholly consolidated and harmonised.

The legislator strove to ensure that this act, formulated on the grounds of a proposal drafted by the Commercial Law Section of the Codification Commission, would be consistent with the existing suite of legal provisions on trading companies. Hence the additional provisions, some of which, in light of the need for harmonisation, were included to take advantage of the opportunity to modernise the content of the existing legislation.

Article 16 of Directive 2005/56/EC, which addresses an area of such importance and technical complexity as employee participation in companies resulting from cross-border mergers, had to be integrated into the Spanish body of law. A general provision was consequently included in the present text to amend Act 31/2006 of 18 October on Employee Involvement in European Companies and Cooperatives. Set out in Final Provision Three, the amendment consists of a new Title IV to that act, specifying the provisions applicable to intra-Community cross-border mergers among corporate enterprises.

III

In addition to the Directive on Cross-Border Mergers of Limited Liability Companies, the present act integrates yet another European directive into domestic law, namely Directive 2006/68/EC of European Parliament and of the Council of 6 September 2006, amending Council Directive 77/91/EEC as Regards the Formation of Public Limited Liability Companies and the Maintenance and Alteration of their Capital. The final provisions of the act re-word some of the articles of the corporate enterprise acts and introduce new articles that adapt Spanish legislation to the more flexible principles that served as the grounds for the lengthy discussion on amendment of the Second Directive. Indeed, Directive 2006/68/EC is transitional legislation that will only be in effect until alternatives are defined for the traditional system of legal protection for company creditors and shareholders or partners, a system that revolves around company capital. The effective life of that legislation is likewise dependent upon when technical instruments can be introduced to reduce the "administrative burden" inherent in the existing system. At the same time, the directive seeks a compromise between the champions of the principles that inspired the Second Directive and those who believe it should be replaced altogether. This is, then, the first stage of a process whose duration and vicissitudes are difficult to predict. The confrontation between the traditional system and possible alternative instruments is

actually an open question which, more than a preference for one method of protection or another, is the expression of latent but sizeable differences in the general approach to the organisation and operation of corporate enterprises.

IV

In addition to addressing harmonisation commitments, the act introduces changes to the provisions on non-monetary contributions, including a number of significant exceptions to the requirement calling for independent expert reports, as well as to the provisions on treasury stock and financial backing, where greater legislative flexibility is openly pursued. At the same time, some of the provisions of Directive 77/91/EEC of 13 December 1976, such as the principle of equal treatment, regarded to date to be an implicit principle, are introduced in the act, which also adapts the wording of other provisions directly related to legislation that should be integrated into Spanish law. More specifically, the Spanish legislator seized the opportunity to adjust the provisions on the right of preferential subscription and convertible bonds to the sentence delivered by the Court of Justice of the European Union (First Chamber) on 18 December 2008.

V

Lastly, as the need to perfect such a sensitive area as corporate law should inspire efforts to rationalise the existing legislation, the present act constitutes a transitional solution until the time is ripe for codification, or at least for compilation, of trading company law in a legal corpus adopting a single approach to basic notions. Implicit in that endeavour is the supersession of sorely outdated Title I of Book II of the Commercial Code of 1885. That context of transition and progress constitutes the backdrop for Final Provision Seven, which authorises the Government to consolidate in a single legal text the laws governing corporate enterprises (joint stock companies, limited liability companies and limited partnerships), and to standardise, clarify and harmonise the legal texts to be consolidated.

PRELIMINARY TITLE

General Provisions

Article 1. Object.

The object of the present act is the regulation of structural changes in trading companies, consisting of transformation, merger, divestment or total assignment of assets and liabilities, including the international relocation of registered offices.

Article 2. Scope.

The present act is applicable to all companies regarded to be trading companies, in light either of the nature of their purpose or of their organisational status.

Structural changes in cooperatives and the international relocation of their registered offices shall be governed by the legal provisions specifically referred thereto.

TITLE I

Transformation

CHAPTER I

General Provisions

Article 3. Description.

By virtue of transformation, a company adopts a different corporate status while conserving its legal personality.

Article 4. Possible instances of transformation.

1. A registered trading company may be transformed into any other manner of trading company.

2. A registered trading company or a European economic interest grouping may be transformed into an economic interest grouping. Similarly, an economic interest grouping may be transformed into any manner of trading company or into a European economic interest grouping.

3. A civil corporation may be transformed into any manner of trading company.

4. A joint stock company may be transformed into a European company. Similarly, a European company may be transformed into a joint stock company.

5. A cooperative may be transformed into a trading company and a registered trading company into a cooperative.

6. A cooperative may be transformed into a European cooperative and a European cooperative into a cooperative.

Article 5. Transformation of companies in the process of liquidation.

A company in the process of liquidation may be transformed providing it has not yet begun to distribute its equity among its shareholders or partners.

Article 6. Transformations between joint stock companies and European companies.

Transformation between joint stock companies and European companies and vice-versa shall be governed by the provisions of Regulation (EC) No. 2157/2001 and related legislation, as well as by the provisions of Act 31/2006 of 18 October on Employee Involvement in European Companies and Cooperatives.

Article 7. Transformation of cooperatives.

1. The transformation of a cooperative into another type of corporate entity or vice-versa shall be governed by the requirements for and effects of transformation of cooperatives laid down in the applicable legislation.

2. Transformation of cooperatives into European cooperatives and vice-versa shall be governed by the provisions of Regulation (EC) No. 1435/2003 and related legislation.

CHAPTER II

Transformation agreement

Article 8. Transformation agreement.

Company transformation shall necessarily be subject to approval by the general meeting of shareholders or partners.

Article 9. Information for shareholders or partners.

1. When convening a general assembly at which a transformation agreement is to be discussed, the directors must ensure that all relevant documents are available at the registered office for shareholders or partners, who may ask for a cost-free copy to be handed or sent to them, electronically if requested. These documents include:

1st the directors' report explaining and substantiating the legal and economic aspects of transformation and specifying its implications for shareholders or partners, as well as the possible gender impact on the company's management bodies and, as appropriate, its social responsibilities

2nd the company's balance sheet for accounts closed on a date within six months prior to the date scheduled for the meeting, together with a report on any significant changes in equity forthcoming subsequent thereto

3rd the auditor's report on the balance sheet, when the company to be transformed is required to audit its accounts

4th the proposed deed of incorporation or by-laws of the company resulting from transformation as well, as appropriate, as any shareholders' or partners' agreements to be placed on public record.

2. The company directors shall inform the general meeting to which the decision on transformation is submitted of any material change in the assets or liabilities forthcoming between the dates of the report justifying transformation and the balance sheet distributed among shareholders or partners, and the date of the general meeting.

3. The information referred to in the first paragraph above need not be made available or sent to shareholders or partners when the transformation decision is unanimously adopted at a general meeting at which all shareholders or partners are present or represented.

Article 10. Transformation agreement: requirements.

1. The transformation agreement shall be adopted subject to the requirements and formalities specified in the legislation applicable to the company to be transformed.

2. The agreement must include the company's balance sheet submitted for the transformation operation, with any amendments as appropriate, as well as any items required to form the type of company to ensue from the operation.

Article 11. Subsistence of shareholder obligations.

1. Transformation shall not of itself release shareholders or partners from compliance with their commitments to the company.

2. If the transformed company adopts a corporate status that requires capital to be fully paid up, such outlays must be made prior to the transformation agreement. Alternatively, where appropriate, the company's capital must be reduced as required to condone non-paid up capital. In the former case, substantiation of the outlays made shall be

submitted to the notary public authorising the public instrument, to which the original or certified copies of the respective documents shall be attached.

Article 12. Shareholders' holding in the transformed company.

1. The transformation agreement may not change the shareholders' or partners' holding unless consented thereto by all the shareholders or partners remaining in the company.

2. Where a company with one or more active partners adopts a post-transformation corporate status in which no legal provision is made for the existence of such partners, their holding in the capital of the transformed company shall be the same as the share attributed to them in the deed of incorporation or, wanting that, the share agreed to by all shareholders or partners. To this end, the stakes of the other shareholders or partners shall be reduced proportionally.

The subsistence, as appropriate, of an active partner's personal commitment to the company after transformation shall be subject, without exception, to the partner's consent and shall adopt the form of an ancillary commitment under the conditions laid down in the company by-laws.

Article 13. Companies having issued bonds or other securities.

The decision to transform a company having issued bonds or other securities into a corporate status in which such issues are not allowed, or to transform a joint stock company having issued convertible bonds into another type of company, shall be subject to prior redemption or conversion, as appropriate, of the bonds issued.

Article 14. Publication of the transformation agreement.

1. The transformation agreement shall be published once in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the province where the company's registered office is located.

2. Such publication shall not be necessary when notice of the agreement is served individually upon all shareholders or partners, creditors and, as appropriate, holders of special rights other than shares that cannot be kept after the transformation. A reliable procedure shall be used to serve such notices upon partners or shareholders and rights holders at the addresses shown in the company's records, and all creditors at the addresses furnished thereby or, wanting that, at their legally registered offices.

Article 15. Shareholders' or partners' exit rights.

1. Shareholders or partners not voting in favour of the agreement may exit the company to be transformed under the terms and conditions provided in the legislation on limited liability companies.

2. Shareholders or partners who, as a result of the transformation, must assume personal liability for corporate debts and who did not vote in favour of the transformation agreement shall be automatically excluded from the company unless they adhere to the agreement in some verifiable manner within one month, either of the date of its adoption if they attended the general meeting, or of the date of notification of the agreement if they did not. The share in corporate equity attributed to exiting or excluded shareholders or partners shall be appraised as provided in the legislation on limited liability companies.

Article 16. Holders of special rights.

1. Transformation may not take place if, within one month of the date the respective agreement is published in the Official Journal of the Mercantile Registry or the individual written notice is sent, it is objected to by the holders of special rights other than shares that cannot be retained after transformation.

2. Such objections shall have no effect whatsoever if raised by a shareholder or partner who voted in favour of transformation.

Article 17. Changes in addition to transformation.

1. Company transformation may entail the inclusion of new shareholders or partners.

2. When transformation takes place in conjunction with amendment of the corporate purpose, registered office, capital or other items addressed in the deed of incorporation or by-laws, the specific requirements for such operations must be met, in accordance with the provisions of the legislation governing the new corporate status.

CHAPTER III

Registration of transformation

Article 18. Public instrument.

1. The public instrument of transformation shall be issued by the company and all its shareholders or partners who, by virtue thereof, personally assume liability for company debts.

2. In addition to the particulars required to form the new type of company, the public instrument of transformation shall contain the list of shareholders or partners having exercised their exit right and their respective holdings, as well as the interest attributed to each shareholder in the transformed company.

3. Where required by the legislation on the new type of company, the independent expert report on corporate equity shall be attached to the instrument.

Article 19. Effective date of transformation.

Transformation shall not enter into effect until the public instrument is registered with the Mercantile Registry.

Article 20. Challenges to transformation.

Challenges to transformation shall only be valid if lodged within three months of the date of registration.

CHAPTER IV

Effect of transformation on shareholder or partner liability

Article 21. Shareholder or partner liability for corporate debt.

1. .Shareholders or partners who by virtue of transformation assume personal and unlimited liability for corporate debts shall likewise be liable for debts incurred prior to transformation.

2. Unless corporate creditors have explicitly consented to transformation, the liability of shareholders or partners who were personally accountable for the transformed company's corporate debts shall subsist in respect of the debts incurred prior to company transformation. Such liability shall lapse five years after publication of transformation in the Official Journal of the Mercantile Registry.

TITLE II

Mergers

CHAPTER I

Mergers in general

SECTION 1. GENERAL PROVISIONS

Article 22. Description.

In mergers, two or more registered trading companies unite to form a single company by transferring their entire equity and allocating the shares in the resulting company, which may be one of the two merged companies or an entirely new entity, among the dissolved companies' shareholders or partners.

Article 23. Types of mergers.

1. Merger and creation of a new company shall entail the dissolution of all the merged companies and the transfer of their entire respective corporate equity to the new entity, which shall acquire their rights and obligations under universal succession arrangements.

2. If the merger is the result of the acquisition of one or more companies by an existing company, the latter shall take possession by universal succession of the equity of the acquired companies, which shall be dissolved, and the former company's capital shall be increased accordingly.

Article 24. Continuity in shareholdings.

1. The dissolved companies' shareholders or partners shall join the company ensuing from the merger and receive shares therein on a pro rata basis.

2. A company with one or more active partners may be merged into another in which no legal provision is made for such partners. Under these circumstances, the former active partners' holdings in the capital of the company ensuing from the merger shall be determined by attributing to each the holding in the capital of the dissolved company allocated to them in the respective deed of incorporation. Alternatively, they may be allocated a holding agreed to by all the respective company's shareholders or partners, whose own holdings shall be reduced accordingly.

The subsistence, as appropriate, of an active partner's personal commitment to the company ensuing from the merger shall be subject, without exception, to the partner's consent and must adopt the form of an ancillary commitment when no provision is made for active partners.

Article 25. Exchange ratio.

1. In merger operations the exchange ratio of the participating companies' shares shall be established on the grounds of the real value of their respective equity.

2. Where advisable for the purpose of ratio adjustments, shareholders or partners may also receive cash compensation, which may not exceed ten per cent of the par value of the shares or the book value attributed thereto.

Article 26. Prohibition of exchange of own holdings.

When any of the merging companies' shares are held by any of the parties to the merger, or by persons acting in their own name but on the behalf of such companies, such shares may not be exchanged for shares in the company ensuing from the merger. In the event, they must be redeemed or cancelled.

Article 27. Legal provisions governing merger.

1. Mergers of two or more registered trading companies subject to Spanish law shall be governed by the provisions of the present act.

2. Mergers involving trading companies of other nationalities shall be governed by the provisions of their respective legislations, without prejudice to the provisions of Chapter II on intra-Community cross-border mergers and, as appropriate, the provisions applicable to European companies.

Article 28. Mergers of companies in the process of liquidation.

Companies in the process of liquidation may merge with others providing they have not yet begun to distribute their equity among their shareholders or partners.

Article 29. Validity of industry-specific legislation.

Mergers involving trading companies shall be subject to the requirements laid down in the respective industry-specific legislation.

SECTION 2. MERGER PROPOSAL

Article 30. Common merger proposal.

1. The directors of all the companies participating in the merger shall draft and sign a common merger proposal. If the signature of any one is missing, mention thereof shall be made and justified at the end of the proposal.

2. Once the common merger proposal is signed, the directors of the merging companies shall abstain from engaging in any actions or concluding any contracts that might compromise approval of the proposal or materially modify the exchange ratio of the shares.

3. The merger proposal shall be null and void if not approved by the general meetings of all the participating companies within six months of the date thereof.

Article 31. Content of the merger proposal.

The merger proposal shall contain at least the following items:

1st the name, type and registered office of the merging companies and the company ensuing from the merger, as well as the data identifying such companies' entries in the Mercantile Registry;

2nd the exchange ratio for the shares, the supplementary cash compensation envisaged and, as appropriate, the exchange procedure;

3rd the impact of the merger on industrial partners' contributions or ancillary commitments in the dissolved companies and the compensation to be granted, as appropriate, to the partners concerned in the resulting company;

4th the rights in the resulting company to be granted to holders of special rights or securities other than shares, or the options offered thereto;

5th any advantages of whatsoever nature that are to be granted in the resulting company to the independent experts intervening in the merger proposal, as appropriate, as well as to the directors of the merging, acquiring or new companies;

6th the date from which the holders of the new shares will be entitled to participate in corporate earnings and any particulars in connection with this right;

7th the date from which the accounts will reflect the post-merger situation, pursuant to the provisions of the National Chart of Accounts;

8th the by-laws of the company ensuing from the merger;

9th information on the appraisal of each company's assets and liabilities transferred to the resulting company;

10th the dates of the merging companies' accounts used to establish the conditions governing the merger;

11th the possible impact of the merger on employment, as well as its possible gender impact on management bodies and, as appropriate, the company's social responsibility.

Article 32. Public record and notice[2].

1. The directors shall post the common merger proposal on the websites of all the participating companies, without prejudice to voluntarily depositing a copy of the proposal with the Mercantile Registry serving each merging company's location. The publication of the merger proposal on the website shall be announced cost-free in the Official Journal of the Mercantile Registry. The announcement shall specify the site where the proposal is posted and the date of publication. Certification substantiating inclusion of the proposal on the website and the date thereof shall be sent to the respective Mercantile Registry and the information contained therein shall be published in the Official Journal of the Mercantile Registry within five days of receipt of the last such certification.

The proposal must be posted on the website and its inclusion thereon announced in the Official Journal of the Mercantile Registry at least one month in advance of the date scheduled for the general meeting convened to approve the merger. The proposal must be maintained on the website through the last day on which creditors may exercise their right to object to the merger.

2. If any of the companies participating in the merger has no website, the directors shall deposit a copy of the common merger proposal with the Mercantile Registry in which the company is registered. Once the proposal is deposited, the registrar in question shall notify the central registrar accordingly, for immediate, cost-free publication of an announcement confirming the deposit and the date thereof in the Official Journal of the Mercantile Registry.

3. The notice of the general meeting to which the merger proposal is to be submitted may not be published nor the shareholders or partners individually convened to such meeting before the proposal is posted on the website or its deposit is announced in the Official Journal of the Mercantile Registry.

Article 33. Directors' report on the merger proposal.

The directors of all the companies participating in the merger shall draft a report explaining and justifying the common merger proposal in detail. Such report shall address legal and economic matters, with special reference to the exchange ratio for the shares and any appraisal-related complexities, as well as the implications of the merger for shareholders or partners, creditors and employees.

[2] Amended pursuant to Art. 2.1, Act 1/2012 of 22 June.

Article 34. Expert report on the merger proposa[3].

1. When any of the merging companies is a joint stock company or limited partnership, the directors of each of the merging companies must apply to the mercantile registrar with authority at their registered offices to designate one or several independent experts, different for each company, who must issue separate reports on the common merger proposal..

That notwithstanding, the directors of all the merging companies referred to in the preceding paragraph may apply to the mercantile registrar to designate one or several experts to draft a single report. Designation in that case shall be incumbent upon the mercantile registrar serving the acquiring company's location or the location shown in the common merger proposal as the new company's registered office..

2. The experts designated may call upon the companies participating in the merger to furnish any information or documents deemed useful, subject to no limitation whatsoever, and may proceed to perform any verification they find necessary.

3. The expert's or experts' report shall be divided into two parts. In the first, it must describe the methods followed by the directors to establish the exchange ratio for the dissolved company's shares, express an opinion about the suitability of the methods, list the resulting values and any appraisal-related complexities identified and determine whether the exchange ratio is justified. In the second, it must specify whether the equity deriving from the dissolved companies is at least equal to the new company's capital or to the acquiring company's capital increase.

4. When so agreed by all the shareholders or partners entitled to vote in all the companies involved in the merger and, as appropriate, all other persons so entitled by law or the respective by-laws, the expert's or experts' report may consist of the second part only.

Article 35. Merger subsequent to leveraged acquisition.

In mergers involving two or more companies, where one of them incurred debt in the three years immediately preceding the merger to acquire control of another or to purchase assets thereof essential to its normal operations or of importance for the value of its equity, the following rules shall apply.

1st The merger proposal must specify the resources and dates on which the resulting company is expected to repay the debts incurred to acquire control of the assets.

2nd The directors' report on the merger proposal must specify the reasons justifying acquisition of control of the assets as well, as appropriate, as the merger operation. It must also contain an economic and financial programme listing the resources and a description of the objectives sought.

3rd The experts' report on the merger proposal must contain an opinion stating whether the items referred to in the two preceding items are reasonable and determining the possible existence of financial backing.

Under the circumstances referred to in this article, the expert report shall be requisite, even when the merger agreement is unanimously adopted.

SECTION 3. MERGER BALANCE SHEET

Article 36. Merger balance sheet[4].

1. The latest yearly balance sheet approved may be adopted as the merger balance sheet, provided it refers to accounts closed no earlier than six months prior to the merger proposal.

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[3] Amended pursuant to Art. 2.2, Act 1/2012 of 22 June. Paragraphs 4 and 5 amended pursuant to final provision 3, Act 25/2011 of 1 August.

[4] Paragraph 3 added pursuant to Art. 2.3, Act 1/2012 of 22 June.

If the yearly balance sheet fails to comply with this requirement, a balance sheet must be drawn up on a date subsequent to the first day of the third month prior to the date of the merger proposal, and applying the same accounting methods and presentation criteria as in the yearly balance sheet.I

2. In both cases, the evaluations contained in the latest balance sheet may be amended to accommodate any material changes in fair value not shown in the book entries.

3. If any of the merging companies is a stock company listed on an official secondary market or a regulated market headquartered in the European Union, its merger balance sheet may be replaced by the semi-annual financial report issued thereby in compliance with securities market legislation, provided the report was closed and made public no earlier than six months prior to the date of the merger proposal. That report shall be subject to the same provisions on disclosure to shareholders as stipulated for the merger balance sheet.

Article 37. Verification and approval of the balance sheet.

The merger balance sheet and the amendments to the evaluations contained therein must be verified by the company's auditor, if the company is bound to audit its accounts, and submitted to the general meeting convened to discuss and, as appropriate, approve the merger. To that end it must be explicitly included on the agenda for the meeting.

Article 38. Challenges to the merger balance sheet.

The existence of a challenge to the balance sheet shall not in itself suffice to suspend the merger operation.

At the request of a shareholder who regards the exchange ratio to be detrimental to his/her interests, the mercantile registrar serving the place where the registered office is located may be asked to designate an independent expert to establish the amount of the compensatory indemnity, where provision is made therefor in the by-laws or an explicit decision thereon is adopted by the general meeting approving the merger or divestment. Such request shall be lodged with the mercantile registrar within one month of the date of publication of the merger or divestment agreement in the Official Journal of the Mercantile Registry and shall be processed as stipulated in the Mercantile Registry Regulations.

SECTION 4. MERGER AGREEMENT

Article 39. Information on the merger[5].

1. Before publishing the announcement of the general meeting convened to discuss the merger proposal or sending an individual meeting notice to each shareholder or partner, the directors must post the documents listed below on the company website in downloadable and printable format or, if the company has no site, make them available at the company's registered office to shareholders or partners, bond holders, holders of special rights and workers' representatives:

1st the common merger proposal;

2nd the reports on the merger proposal issued by each company's directors;

3rd the independent experts' reports when the company ensuing from the merger is a joint stock company or a limited partnership, where legally required;

4th the financial statements and management reports for the last three financial years and the respective auditors' reports for companies legally required to audit their accounts;

5 Amended pursuant to Art. 2.4, Act 1/2012 of 22 June.

5th each company's merger balance sheet, if different from the last yearly balance sheet approved, and the auditor's report if required or, in the event of listed companies, the semi-annual financial report furnished in lieu of the balance sheet;

6th the company by-laws in effect as reflected in a public instrument and, as appropriate, any significant shareholders' or partners' agreements to be placed on public record;

7th the new company's draft deed of incorporation or, in the event of acquisitions, the full text of the acquiring company's by-laws or, wanting that, of the deed of incorporation by which it is governed, highlighting any amendments that are to be included;

8th the identity of the merging companies' directors and the date on which they assumed their positions and, as appropriate, the same information for persons nominated to be directors as a result of the merger.

2. If the company has no website, shareholders or partners, bond holders, holders of special rights and workers' representatives shall, upon request submitted by any lawful means, be entitled to examine a full copy of the documents referred to in the preceding paragraph at the registered office and to receive a copy of each cost-free.

3. The general meetings of all the merging companies must be notified of any material change in the assets or liabilities in any of the merging companies between the date the merger proposal was drafted and the date of the general meeting of shareholders or partners convened to approve it. To that end, the directors of the company where the changes have taken place shall notify the directors of the remaining companies, who shall inform their respective general meetings accordingly. The aforementioned information shall not be required when so agreed by all the shareholders or partners of all the merging companies entitled to vote and any other persons so entitled by law or the by-laws

Article 40. Merger agreement[6].

1. Mergers must necessarily be approved by the participating companies' general meetings, strictly as described in the common merger proposal and subject to the requirements and formalities laid down in the legal provisions applicable to the merging companies. The inclusion of amendments of any nature whatsoever in the merger proposal shall be tantamount to rejection thereof by the company concerned.

2. The general meeting shall be convened by published announcement or, as appropriate, by individual notice served upon all shareholders or partners, at least one month in advance of the date scheduled for the meeting. The announcement or notice shall contain at least the information on the merger proposal required by law and specify the date the documents listed in the preceding article were posted on the company's website. Where no site is in place, reference shall be made to the right of all shareholders or partners, bond holders, holders of special rights and workers' representatives to examine the aforementioned documents at the registered office, as well as to be handed or sent a copy thereof cost-free.

3. When a merger involves the formation of a new company, the merger agreement must include the particulars legally required to form such company.

Article 41. Special requirements to be met by the merger agreement.

1. The merger agreement shall also be subject to the consent of all the shareholders or partners who, by virtue of the merger, acquire unlimited liability for corporate debt, and the shareholders or partners of the dissolved companies who are to assume personal commitments to the company ensuing from the merger.

2. The individual consent of the holders of special rights other than shares shall also be required when they do not hold rights in the company ensuing from the merger equivalent to the rights held in the dissolved company, unless the change in these rights is approved, as appropriate, by a meeting of the parties concerned.

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6 Paragraph 2 amended pursuant to Art. 2.5, Act 1/2012 of 22 June.

Article 42. Unanimous merger agreement[7].

1. The documents required by law need not be published or deposited in advance nor shall the directors' report on the merger proposal be required when in all the merging companies the merger agreement is unanimously adopted at a universal general meeting by all the shareholders or partners entitled to vote and any other persons so entitled by law or the by-laws.

2. Worker representatives' right to receive information on the merger, including information on its possible effects on employment, may not be restricted by the fact that the merger is adopted at a universal general meeting.

Article 43. Publication of the agreement.

1. Upon adoption, the merger agreement shall be published in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the provinces where all the companies' registered offices are located. The announcement shall include a reference to shareholders' or partners' and creditors' right to obtain a copy of the full text of the agreement adopted and the merger balance sheet, and to creditors' right of objection.

2. The publication requirement laid down in the preceding paragraph shall not be applicable when all shareholders or partners and creditors are notified individually and in writing of the agreement by a reliable method at the address on file in the companies' records.

Article 44. Creditors' right of objection[8].

1. . The merger may not be concluded until one month after the date on which approval of the merger agreement was last publicised or, in the event of service of written notice upon all shareholders or partners and creditors, after the date when the last such notice was served.

2. Each merging company's creditors with a credit dating from but not maturing prior to the date of publication of the merger proposal may object to the merger within the aforementioned deadline, until their credits are secured. If the merger proposal was neither posted on the company's website nor deposited with the competent Mercantile Registry, creditors may object to the merger when their credit accrued prior to the date of publication of the merger agreement or the date of notice thereof served individually upon each.

Bond holders may exercise their right of objection under the same terms as other creditors, unless the merger was approved by a general meeting of bond holders.

Creditors whose credits are sufficiently secured shall not be entitled to object to the merger.

3. Where creditors are entitled to object, the merger may not be formalised until the company presents security satisfactory to the creditor or notifies the creditor of the issue of a joint and several surety bond in the company's favour by a duly accredited financial institution, for the sum of the credit held by the creditor, valid through the date on which action to demand compliance lapses.

4. If the merger is carried through despite objections lodged by an eligible creditor in due time and form in breach of the provisions of the preceding paragraph, the objecting creditor may apply to the Mercantile Registry where the merger was registered to include a marginal note on the respective entry advising of the existence of the objection.

The registrar shall enter such marginal note if the applicant substantiates that the right of objection was exercised by a notice served upon the debtor company by a reliable method in due time and form. Such marginal note shall be cancelled ex officio within six months of the date of entry unless a caveat is entered prior thereto regarding the institution of civil proceedings against the acquiring or the new company to secure the credit as established hereunder.

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[7] Amended pursuant to Art. 2.6, Act 1/2012 of 22 June.

[8] Paragraph 2 amended and paragraph 4 added pursuant to Art. 2.7, Act 1/2012 of 22 June.

SECTION 5. MERGER FORMALISATION AND REGISTRATION

Article 45. Public merger instrument[9].

1. The merging companies shall place the merger agreement adopted on public record, including therein the merger balance sheet or, in the event of listed companies, the semi-annual financial report furnished in lieu of the balance sheet.

2. Where a merger entails the formation of a new company, the deed of incorporation shall also contain the particulars legally required for the type of company formed.

Where a merger involves acquisition, the public instrument shall contain the amendments to the by-laws adopted by the acquiring company on the occasion of the merger and the number, class and series of the shares to be attributed to each new shareholder or partner.

Article 46. Merger registration.

1. Mergers shall enter into effect when the new company or, as appropriate, the acquisition is registered in the competent Mercantile Registry.

2. Registration of the merger shall entail cancellation of the registry entries on the dissolved companies.

SECTION 6. CHALLENGES TO MERGERS

Article 47. Challenges to mergers.

1. Mergers may not be challenged after they have been duly registered in accordance with the provisions of the present act. Shareholders or partners and others shall retain their rights to remedial action for any damages incurred, as appropriate.

2. Challenges must be lodged by the party demanding nullity within three months of the first day on which objections may be raised.

3. Sentences annulling a merger shall be registered in the Mercantile Registry and published in its official journal, but in themselves shall not affect the commitments acquired after registration of the merger by or in favour of the acquiring company or the new company ensuing from the merger.

In such cases, the companies participating in the merger shall be liable for the commitments assumed by the acquiring or the new company.

4. Where a merger involves the creation of a new company, the legislation on annulment of the type of company concerned shall likewise be applicable.

SECTION 7. EFFECT OF MERGER ON SHAREHOLDER OR PARTNER LIABILITY

Article 48. Liability for corporate debt prior to the merger.

Except where the corporate creditors explicitly consent to the merger, shareholders personally liable for the debts incurred prior to the merger by the companies dissolving on the occasion of such merger shall continue to be liable

[9] Paragraph 1 amended pursuant to Art. 2.8, Act 1/2012 of 22 June.

for the debts in question. Such liability shall lapse five years after publication of the merger in the Official Journal of the Mercantile Registry.

SECTION 8. SPECIAL MERGERS

Article 49. Acquisitions of wholly owned companies.

1. When the acquiring company directly or indirectly holds all the shares into which the acquired company's or companies' capital is divided, the operation shall be exempt from the following requirements:

1st inclusion in the merger proposal of the 2nd and 6th items listed in Article 31 and, except in intra-Community cross-border mergers, of the 9th and 10th items listed in that article;

2nd directors' and experts' report on the merger proposal, although the directors' report shall be required in intra-Community cross-border mergers;

3rd acquiring company's capital increase;

4th approval of the merger by the acquired company's or companies' general meetings.

2. When all the shares into which the acquired company's capital is divided are held indirectly by the acquiring company, in addition to taking into consideration the provisions of the preceding paragraph, the experts' report referred to in Article 34 shall be required along, as appropriate, with the increase in the acquiring company's capital. When the merger generates a decline in the equity of companies not participating in the merger but holding an interest in the company acquired, the acquiring company shall compensate such companies for their holdings at fair value.

Article 50. Acquisition of ninety per cent owned companies[10].

1. When ninety per cent or more but not all the capital of the joint stock or limited liability company or companies targeted is held directly by the acquiring company, neither the directors' nor the experts' reports on the merger proposal shall be required, providing the proposal includes an offer by the acquiring company to purchase the remaining shareholdings at their fair value within a specific period, which may not exceed one month from the date of registration of the acquisition in the Mercantile Registry. The directors' report shall nonetheless be required in intra-Community cross-border mergers.

2. The merger proposal must specify the value established for share purchases. Shareholders or partners willing to transfer their holdings to the acquiring company but who do not consent to the value thereof specified in the proposal, may, at their discretion and within six months of notification of their willingness to dispose of their shares, opt to ask the Mercantile Registry serving the acquiring company's location to designate an accounts auditor other than the company's own auditor to determine the fair value of their shares. Otherwise, they may institute legal action to require the company to purchase such shares at the fair value ultimately established in the proceedings.

3. The shares held by the acquired company's shareholders or partners that are not purchased must be exchanged for shares in the acquiring company, which shall be drawn from its treasury stock. Alternatively, providing no general meeting need be convened at the request of the minority and if so envisaged in the merger proposal, the directors are authorised to increase the capital strictly as needed to accommodate such exchange.

Article 51. General meeting of the acquiring company[11].

1. When ninety per cent or over of the capital of the joint stock or limited liability company or companies targeted is held directly by the acquiring company, the merger need not be approved by the acquiring company's general

[10] Paragraph 2 amended pursuant to Art. 2.9, Act 1/2012 of 22 June.
[11] Paragraph 1 amended pursuant to Art. 2.10, Act 1/2012 of 22 June.

meeting if it is announced by each of the companies participating in the operation on its website or, in the absence thereof, in the Official Journal of the Mercantile Registry or in a daily newspaper widely circulated in the province where its registered offices are located. Such announcements must be published at least one month in advance of the date of the acquired company's or companies' general meeting or meetings convened to discuss the merger proposal, or in the event of wholly owned companies, of the date scheduled for formalisation of the merger. They shall include a reference to the right of the acquiring company's shareholders or partners and the creditors of the companies involved in the merger to examine the documents listed in items I) and IV) and, as appropriate, II), III) and V) of paragraph 1, Article 39 hereunder, at the company's registered office, and, when they are not published on the website, to be handed or sent a copy of the full text thereof, cost-free, pursuant to the terms of Article 32 of this act.

The announcements shall also specify that shareholders or partners representing at least one per cent of the capital shall be entitled to require the acquiring company to convene a general meeting to approve the merger, and inform the acquiring company's creditors of their right to object to the merger within one month of the publication of the proposal, in the terms established hereunder.

2. The acquiring company's directors shall convene a general meeting to approve the merger when shareholders or partners representing at least one per cent of the capital submit a request to that effect within fifteen days of the publication of the last of the announcements referred to in the preceding paragraph. In such case, the general meeting must be convened on a date within two months of the date of receipt of a notarised request in that regard.

Article 52. Circumstances likened to the acquisition of wholly owned companies.

1. The provisions on the acquisition of wholly owned companies shall be applicable, where in order, to mergers of any nature involving companies wholly owned, directly or indirectly, by the same shareholder or partner, and acquisition when the acquired company directly or indirectly holds all the shares of the acquiring company.

2. When all the shares into which the acquiring company's capital is divided are held indirectly by the acquired company, or when the acquired and acquiring companies are indirectly owned by the same shareholder, the experts' report referred to in Article 34 shall be required, along, as appropriate, with the increase in the acquiring company's capital. When the merger generates a decline in the equity of companies not participating in the merger but holding an interest in the acquired or acquiring company, the latter shall compensate such companies for their holdings at fair value.

SECTION 9. OPERATIONS LIKENED TO MERGERS

Article 53. Operations likened to mergers.

Operations whereby a company is dissolved and transfers its entire equity to the company that holds all its shares also constitute mergers.

CHAPTER II

Intra-Community cross-border mergers

Article 54. Description.

1. Intra-Community cross-border mergers are regarded to be mergers between corporate enterprises formed in accordance with the law of a State Party to the European Economic Area and having their registered office, central administration or principal place of business within the European Economic Area, provided at least two of them are governed by the laws of different Member States and one of the merging companies is subject to Spanish law.

2. The corporate enterprises subject to Spanish law that may participate in cross-border mergers are joint stock companies, limited partnerships and limited liability companies.

Article 55. Applicable legal provisions.

Intra-Community cross-border mergers shall be subject to the provisions of this chapter and subsidiarily to the provisions governing mergers in general.

Article 56. Exclusion from cross-border merger provisions.

1. The provisions of the present chapter shall not be applicable to cross-border mergers involving one or more cooperatives.

2. Nor shall the provisions of the present chapter be applied to cross-border mergers involving a company whose corporate purpose is the collective investment of capital provided by the public, which operates on the principle of risk spreading. The units issued thereby in exchange for subscriptions are, at the subscriber's request, repurchased or redeemed, directly or indirectly, out of the company's assets. Such repurchase or redemption condition equates to the fact that the collective investment company conducts its business in a manner such as to ensure that the securities exchange value of its units does not vary significantly from its net asset value.

Article 57. Cash compensation.

That the law of at least one of the States concerned allows the cash payment forming part of the exchange ratio to exceed ten per cent of the face value of the shares exchanged or, where there is no face value, the book value thereof, shall not be an obstacle to implementing an intra-Community cross-border merger.

Article 58. Application of national law for reasons of public interest.

The provisions that enable the Spanish Government to impose conditions on domestic mergers for reasons of public interest shall be applicable to cross-border mergers in which at least one of the companies involved in the merger is subject to Spanish law.

Article 59. Common cross-border merger proposals.

1. The common cross-border merger proposal to be drafted by the directors of each of the companies participating in the merger shall contain at least the items laid down in general for the common merger proposal.

2. Such proposal shall also include the following particulars:

1st any special advantages granted to the experts who examine the cross-border merger proposal or to members of merging companies' administrative, management, supervisory or controlling bodies;

2nd where appropriate, information on the procedures for determining the involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger as provided in Article 67 of this act.

Article 60. Report of the management or administrative bodies.

1. The report drafted by the directors of each of the companies participating in the cross-border merger, which shall be formulated pursuant to the provisions of Article 33, shall be made available to shareholders or partners and employees' representatives, or where there are no such representatives, the employees themselves, no less than

one month prior to the date of the general meeting to which the common cross-border merger proposal is to be submitted.

2. When the Spanish company's directors receive the opinion of the employees' representatives in due time, that opinion shall be attached to their report.

Article 61. General meeting approval.

When deciding on the common merger proposal, each merging company's general meeting may reserve the right to make the merger contingent upon the explicit ratification of the arrangements adopted for employee participation in the company resulting from the cross-border merger.

Article 62. Shareholders' or partners' exit right[12].

Shareholders or partners of Spanish companies participating in intra-Community cross-border mergers who voted against a merger agreement whereby the resulting company's registered office would be located in another Member State may exit the company as provided in Title IX of the Corporate Enterprises Act.

Article 63. Limited liability company mergers.

The general provisions governing mergers involving joint stock companies and limited partnerships shall be applicable to limited liability companies participating in cross-border mergers.

Article 64. Pre-merger certificate.

In light of the data on record at the Registry and the public merger instrument submitted, the mercantile registrar serving the place where the merging company's registered office is located shall issue a certificate, without delay, attesting to the satisfactory completion of the pre-merger acts and formalities by each merging company subject to Spanish law.

Article 65. Scrutiny of legality.

1. When the company resulting from the merger is subject to Spanish law, before proceeding to registration, the mercantile registrar shall also scrutinise the legality of the procedure with regard to the implementation of the cross-border merger and the formation of the new company or changes in the acquiring company. The registrar shall likewise ensure that the merging companies have approved the common merger proposal in the same terms and, where appropriate, that the arrangements for employee participation are suitable. To that end, each participating company shall submit the certificate referred to in the preceding article to the mercantile registrar within six months of issue thereof, together with the common merger proposal approved by their general meetings.

2. Where, further to the provisions of Article 67, provision must be made for employee participation as specified in Act 31/2006 of 18 October on Employee Involvement in European Companies and Cooperatives, the merger may not be registered unless: an agreement on employee participation has been concluded; the bargaining period has lapsed before any agreement could be forthcoming; or the merging companies' competent bodies have opted to directly apply the subsidiary arrangements laid down in Act 31/2006 of 18 October. The by-laws of companies resulting from cross-border mergers may under no circumstances conflict in any way whatsoever with the employee participation arrangements established.

3. If in addition to the company resulting from the merger, one of the companies to be dissolved is also Spanish, the legality of the merger procedure in connection therewith shall be determined by the mercantile registrar serving the place where the registered office of the company resulting from the merger is located. This requisite

[12] Amended pursuant to Art. 2.11, Act 1/2012 of 22 June.

can be met by submitting to the registrar an instrument, duly certified by the registrar with authority at the dissolved company's registered office, attesting to the non-existence of registration-related obstacles to the proposed merger.

Article 66. Public record and notice of cross-border mergers.

1. The provisions on public record and notice of mergers in general shall be applicable to the Spanish company or companies participating in cross-border mergers.

2. An announcement shall be made in the Official Journal of the Mercantile Registry for each of the merging companies, specifying the procedures whereby creditors and, as appropriate, the merging companies' shareholders or partners may exercise their rights, as well as the address where they may obtain exhaustive and cost-free information on such procedures.

3. When the company resulting from the merger is subject to Spanish law, the Mercantile Registry where it was registered shall immediately notify the registries where the participating companies are registered, which shall proceed to cancel the respective entries.

Article 67. Employee right of involvement in the company resulting from the merger.

1. When the company resulting from the merger has its registered office in Spain, employees' right of involvement in the company shall be defined in accordance with Spanish labour law.

In particular, the employees' right to participate in the company shall be defined in accordance with the provisions of Title IV of Act 31/2006 of 18 October.

2. When at least one of the companies involved in the merger has a scheme in place for employee participation in its management and the company resulting from the cross-border merger must institute such a scheme, the latter shall adopt a corporate status that accommodates the exercise of the right of participation.

3. For the purposes of this act, the terms employee involvement and participation shall be defined as specified in Article 2 of Act 31/2006 of 18 October.

4. Entitlement to the rights of information and consultation by employees of the company resulting from the merger who render their services in worksites located in Spain shall be governed by Spanish labour law, regardless of where the company's registered office is located.

TITLE III

Divestment

CHAPTER I

General Provisions

Article 68. Types and requisites.

1. Registered trading company divestment may adopt any of the following forms:

1st total divestment;

2nd partial divestment;

3rd separation.

2. The recipient companies need not have the same legal status as the divested company.

3. A company may only be divested if shareholders' or partners' shares or contributions are fully paid up.

Article 69. Total divestment.

Total divestment is understood to mean the dissolution of a company and division of its entire equity into two or more parts, each of which is wholly transferred under universal succession arrangements to a newly formed company or acquired by an existing company. The divested company's shareholders or partners receive shares in the recipient companies on a pro-rata basis.

Article 70. Partial divestment.

1. Partial divestment is understood to mean the full transfer under universal succession arrangements of one or several parts of a company's equity, each consisting of a single economic unit, to one or several newly formed or existing companies. The divested company's shareholders or partners receive shares in the recipient companies in proportion to their respective holding in the partially divested company, whose capital is reduced as necessary.

2. If the part of the equity wholly transferred consists of one or several enterprises or commercial, industrial or service business concerns, the debt incurred to organise or run the company transferred may be attributed to the recipient company.

Article 71. Separation.

Separation is understood to mean the transfer under universal succession arrangements of one or several parts of a company's equity, each consisting of an economic unit, to one or several companies, in return for which the divested company receives shares in the recipient companies.

Article 72. Foundation of a wholly owned subsidiary via equity transfer.

The provisions on divestment shall likewise be applied, when in order, to operations whereby a company transfers its equity to another newly formed company and receives all the recipient company's shares.

CHAPTER II

Specific provisions on divestment

Article 73. Legal provisions governing divestment.

1. With the exceptions described in this chapter, divestment shall be governed by the provisions laid down for mergers in this act, in which the references to the company resulting from the merger shall be read as references to the recipient companies.

2. Divestments involving or giving rise to trading companies of different nationalities shall be governed by the provisions of their respective domestic law. European companies shall be subject to the provisions applicable thereto in each case.

Article 74. Divestment proposal.

In addition to the items listed for the merger proposal, the divestment proposal shall include the following:

1st the designation and, as appropriate, the exact distribution of each asset and liability to be transferred to the recipient companies;

2nd the distribution of the respective proportion of the recipient companies' shares among the divested company's shareholders or partners, and the criterion on which such distribution is based, although this item shall not be applicable to separation arrangements.

Article 75. Attribution of assets and liabilities.

1. In total divestment, when a specific asset is not attributed to any of the recipient companies in the divestment proposal and its distribution cannot be ascertained from the interpretation of the proposal, the asset or its value shall be distributed among all the recipient companies on a pro rata basis.

2. In total divestment, when a specific liability is not attributed to any of the recipient companies in the divestment proposal and its distribution cannot be ascertained from the interpretation of the proposal, all the recipient companies shall be held jointly and severally liable.

Article 76. Share allocations to shareholders or partners.

In total or partial divestment involving several recipient companies, the individual consent of the parties concerned shall be required when the divested company's shareholders or partners are not allocated shares in all the recipient companies.

Article 77. Directors' report on the divestment proposal.

Where the recipients are joint stock companies or limited partnerships, the report on the divestment proposal to be drafted by the participating companies' directors must indicate that reports have been issued on non-monetary contributions as provided in this act and specify the Mercantile Registry were such reports are or will be deposited.

Article 78. Independent experts' report.

1. When the companies involved in divestment are joint stock companies or limited partnerships, the divestment proposal shall be subject to a report by one or several independent experts designated by the mercantile registrar

serving the places where each company's registered office is located. That report shall likewise include an evaluation of the non-monetary equity transferred to each company.

2. Notwithstanding the provisions of the preceding paragraph, the directors of all the companies participating in the divestment operation may ask the mercantile registrar serving the places where their registered offices are located to designate one or several experts to draft a single report.

3. The experts' report or reports shall not be required when so agreed by all the shareholders or partners entitled to vote and, as appropriate, those who could legitimately participate in the balloting pursuant to law or the by-laws of each of the companies involved in the merger.

Article 78 bis. Simplification of requirements[13].

In the event of divestments entailing the formation of new companies, if the shares of each of the new companies are attributed to the shareholders or partners of the company divested in proportion to their rights in its capital, neither the directors' nor the independent experts' report on the divestment, nor the divestment balance sheet, shall be necessary.

Article 79. Changes in equity subsequent to the divestment proposal.

The directors of the divested company shall inform its general meeting of any material change in the equity forthcoming between the date when the divestment proposal was drafted and the date of the meeting. In divestment by acquisition, the recipient companies' directors must furnish the divested company's directors with the same information, which they in turn must convey to the company's general meeting.

Article 80. Joint and several liability for failure to honour commitments.

Where the commitments undertaken by a recipient company are not honoured, joint and several liability shall be attributed to the other recipient companies, up to the sum of the net assets allocated to each in the divestment operation and to the divested company itself if it subsists, up to the total amount of the commitment.

[13] Added pursuant to Art. 2.12, Act 1/2012 of 22 June.

TITLE IV

Total assignment of assets and liabilities

CHAPTER I

General Provisions

Article 81. Total assignment of assets and liabilities.

1. A registered company may transfer all its equity, under universal succession arrangements, to one or several shareholders or partners or others, in exchange for consideration that may not consist of shares in the assignee company.

2. The assignor shall be dissolved if the entire consideration is received directly by its shareholders or partners. The consideration received by each shareholder or partner shall comply with the applicable provisions on shares in liquidation surplus.

Article 82. Total multi-assignment.

When total assignment involves two or more assignees, each portion of equity assigned shall constitute a separate economic unit.

Article 83. Total assignment by companies in the process of liquidation.

Companies in the process of liquidation may assign their entire assets and liabilities providing they have not yet begun to distribute their equity among their shareholders or partners.

Article 84. International assignment.

Total assignment of assets and liabilities involving assignors and assignees from different countries shall be governed by the provisions of their respective domestic law. European companies shall be subject to the provisions applicable thereto in each case.

CHAPTER II

Specific provisions on total assignment

Article 85. Total assignment proposal.

1. The company's directors shall draft and sign a total assignment proposal which shall contain at least the items listed below:

1st company name, type and registered office and assignee identification details;

2nd the date from which the accounts will reflect the post-merger situation, pursuant to the provisions of the National Chart of Accounts;

3rd information on assets and liabilities, designation and, as appropriate, exact distribution of each asset and liability among assignees;

4th the consideration to be received by the company or its shareholders or partners, and, when the consideration is attributed to shareholders or partners, the criterion on which distribution is based;

5th the possible impact of total assignment on employment.

2. The directors shall deposit a copy of the assignment proposal with the Mercantile Registry.

Article 86. Directors' report.

The directors shall draft a report with a detailed explanation and justification of the total assignment proposal.

Article 87. Total assignment agreement.

1. Total assignments must necessarily be approved by the assignor company's general meeting, strictly as laid down in the total assignment proposal and subject to the same requirements as established for merger agreements.

2. The total assignment agreement shall be published in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the province where the registered office is located, and specify the identity of the assignee or assignees. The announcement shall include a reference to shareholders' or partners' and creditors' right to obtain a copy of the full text of the agreement adopted and to creditors' right of objection.

The publication requirement laid down in the preceding paragraph shall not be applicable when all shareholders or partners and creditors are notified individually and in writing of the agreement by a reliable method at the address on file in the company's records. The total assignment proposal and the directors' report shall also be made available to employees' representatives.

Article 88. Creditors' right of objection.

1. Total assignment may not be concluded until one month after the date on which the respective agreement was last publicised or, in the event of service of written notice upon all shareholders or partners and creditors, of the date when the last such notice was served.

2. Assignor and assignee company creditors may lodge an objection to the assignment within that period, under the same conditions and with the same effects as laid down for mergers.

Article 89. Total assignment instrument and registration.

1. Total assignments shall be placed on public record by the assignor and the assignee companies. The text of the total assignment agreement adopted by the assignee company shall be attached to the respective instruments.

2. Total assignments shall enter into effect when registered in the assignor company's Mercantile Registry. If the company is dissolved as a result of assignment, its entries in the Registry shall be cancelled.

Article 90. Challenges to total assignment.

The provisions on mergers in Article 47 of this act shall be applicable to total assignment.

Article 91. Joint and several liability for failure to honour commitments.

1. Where the commitments undertaken by an assignee are not honoured, joint and several liability shall be attributed to the other assignees, up to the sum of the net assets attributed to each in the assignment. Depending on the case, they may also be attributed to the shareholders or partners up to the amount received as consideration for the assignment, or the company itself if not dissolved, up to the total commitment.

2. Assignee and shareholder or partner joint and several liability shall lapse after five years.

TITLE V

International relocation of registered offices

CHAPTER I

General Provisions

Article 92. International relocation of registered offices.

The relocation abroad of a registered Spanish trading company's registered office and of a foreign company's registered office on Spanish soil shall be governed by the provisions of international treaties or conventions in force in Spain, and the terms of this title, without prejudice to the legislation on European companies.

Article 93. Relocation of registered offices abroad.

1. A registered company founded under Spanish law may only relocate abroad if the State where it is to relocate allows the company to retain its legal personality.

2. Companies in the process of liquidation or seeking composition with creditors may not relocate abroad.

Article 94. Relocation of registered offices on Spanish soil.

1. Relocation on Spanish soil of the registered offices of companies formed under the law of another European Economic Area State shall not affect their legal personality. They must nonetheless comply with the provisions of Spanish law for the type of company in question, except as otherwise provided in international treaties or conventions in effect in Spain.

In particular, foreign corporate enterprises intending to relocate in Spain from a European Economic Area non-member country must submit an independent expert's report substantiating that their equity covers the share capital requirements laid down in Spanish legislation.

2. The same rule shall apply to the relocation in Spain of the registered offices of companies formed under the law of other States, if their domestic law allows such relocation while retaining their legal personality.

CHAPTER II

Specific provisions on relocation

Article 95. Relocation proposal.

1. The directors of companies intending to relocate abroad must draft and sign a relocation proposal. If the signature of any one is missing, mention thereof shall be made and justified at the end of the proposal.

2. The relocation proposal shall contain at least the following items:

1st company name and registered office, as well as the data identifying its entry in the Mercantile Registry;

2nd the address of the proposed new registered office;

3rd the by-laws by which the company will be governed after relocation, including its corporate name, as appropriate;

4th the planned relocation timetable;

5th shareholders' or partners', creditors' and employees' rights designed to protect their interests.

3. The directors shall deposit a copy of the relocation proposal with the respective Mercantile Registry. Once the proposal is deposited and appraised, the registrar concerned shall notify the central Mercantile Registry accordingly, for immediate publication of the deposit and the date thereof in the Official Journal of the Mercantile Registry. The general meeting at which the relocation decision is to be adopted, as appropriate, may not be convened until the proposal is so deposited.

The announcement in the Official Journal of the Mercantile Registry shall show the relocating company's name, type, registered office, and data on its entry in the Mercantile Registry, and specify the procedures for exercising shareholder or partner and creditor rights and the address where cost-free information on these procedures can be obtained.

Article 96. Directors' report.

The directors shall draw up a report explaining and justifying the legal and economic aspects of the relocation proposal, and explaining its implications for shareholders or partners, creditors and employees.

Article 97. General meeting approval.

Relocation of registered offices to another State must necessarily be approved by the general meeting, subject to the requirements and formalities laid down in the legislation on the type of company concerned.

Article 98. Notice of the general meeting and right of information.

1. The general meeting must be convened by an announcement published in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the province where the company has its registered offices, at least two months in advance of the date set for the meeting.

2. The following items shall be published in conjunction with the meeting notice.

1st the addresses of the company's present registered office and its planned registered office abroad;

2nd shareholders' or partners' and creditors' right to examine the relocation proposal and the directors' report at the registered office, and to obtain cost-free copies of such documents on request;3rd shareholders' or partners' exit right and creditors' right of objection and the manner in which they may be exercised.

Article 99. Shareholders' exit right[14].

Shareholders not voting in favour of the agreement to relocate the registered office abroad may exit the company under the terms and conditions laid down in the legislation on limited liability companies.

Article 100. Creditors' right of objection.

Creditors whose credit dates from prior to the date of publication of the proposal to relocate the registered office abroad may object to relocation under the terms established for objection to mergers.

[14] Added pursuant to Art. 2.13, Act 1/2012 of 22 June.

Article 101. Pre-relocation certificate.

In light of the data on record at the Registry and the public instrument on relocation submitted, the mercantile registrar serving the place where the company's registered office is located shall issue a certificate attesting to the satisfactory completion of the pre-relocation acts and formalities. After issue of this certificate, the Registry shall admit no further entries.

Article 102. Entry into effect of relocation of registered offices abroad.

Registered office relocation and the respective amendment of the deed of incorporation or company by-laws shall enter into effect on the date on which the company registers with the registry serving the location where the new registered office is located.

Article 103. Cancellation of registration.

The company's entry in the Mercantile Registry shall be cancelled upon submission of a certificate attesting to company registration in the registry with authority at its new registered office and the announcement of such registration in the Official Journal of the Mercantile Registry and a daily newspaper widely circulated in the province where the company's former registered office was located.

Additional provision one. Labour rights deriving from structural changes.

1.The provisions of this act are understood to be without prejudice to employees' rights of information and consultation laid down in labour legislation.

2. Structural changes regulated by this act that entail a change in company, worksite or autonomous business unit ownership shall be subject to the provisions laid down in Article 44 of the Consolidated Text of the Workers' Statutes, approved by Royal Legislative Decree 1/1995 of 24 March.

Additional provision two.

The transformation, merger, divestment or total assignment of assets and liabilities of unregistered collective companies and irregular companies in general shall be subject to their prior registration.

Additional provision three. Provisions applicable to merger, divestment and total or partial assignment of assets and liabilities among financial institutions.

1. Mergers among financial institutions of the same nature, as well as the divestment and total assignment of assets and liabilities among financial institutions of an identical or different nature, shall be governed by the provisions laid down for such operations in the present act, without prejudice to the terms of the specific legislation applicable to such institutions.

2. Regardless of the nature of the financial institution involved, operations consisting of the transfer of one or several portions of its equity forming an economic unit to another financial institution of the same or different nature under universal succession arrangements in exchange for consideration not consisting of shares in the assignee institution shall be subject to the provisions on the total assignment of assets and liabilities laid down in Articles 85 to 91 of this act, without prejudice to the terms of any specific legislation.

Transitional provision. Transitional provisions.

The present act shall apply to structural changes in trading companies under proposals that had not yet been approved by the company or companies involved prior to entry into force of the act.

Repealing provision. Provisions repealed.

The following provisions shall be repealed upon entry into force of the present act:

1st Article 149, paragraph 2, Chapter VIII (Articles 223 to 259), Article 260, paragraph 2, 6th item and Additional Provision One, paragraph 2 of the Consolidated Text of the Joint Stock Companies Act approved under Royal Legislative Decree 1564/1989 of 22 December.

2nd Chapter VII (articles 87 to 94), Article 111, paragraph two, sub-paragraph two, Article 117 and Article 143 of Limited Liability Company Act 2/1995 of 23 March.

3rd Articles 19 and 20 of Act 12/1991 of 29 April on Economic Interest Groupings.

(.....)

Final provision three. Amendment of Act 31/2006 of 18 October on Employee Involvement in European companies and cooperatives.

One. A new title is added to Act 31/2006 of 18 October on Employee Involvement in European Companies and Cooperatives, to be worded as set out below.

"TITLE IV

Provisions applicable to intra-Community cross-border mergers among corporate enterprises

CHAPTER I

Provisions applicable to companies resulting from intra-Community cross-border mergers with registered offices in Spain

Article 39. Employees' right to participate in companies resulting from intra-Community cross-border mergers

1. Employee participation in companies resulting from intra-Community cross-border mergers that have or will have their registered offices in Spain, as well as their involvement in the definition of the respective rights, shall be governed by the provisions laid down in this chapter in any of the following circumstances.

a) In the six months prior to publication of the common merger proposal, at least one of the merging companies had an average headcount of 500 and a scheme in place for employee participation in its management.

b) The level of employee participation, if any, in the company resulting from the cross-border merger is not on the same level as in the merging companies. Such level is determined as the proportion of employee representatives on the management or supervisory bodies or their committees or each business unit's management board empowered to decide on the distribution of profits.

c) Employee participation is in place in the company resulting from the merger and the employees at company worksites located in other Member States are attributed a lower level of rights than the employees working in Spain.

2. The application of the provisions of this chapter rules out the application of the provisions in place in any other Member State where the company resulting from the merger or the merging companies may have worksites, except as explicitly stated otherwise in this chapter.

Article 40. Procedure for negotiating participation rights

The provisions of Chapter I, Title I of the present act shall be applicable to employees' participation rights, with the following exceptions.

1st The merging companies' competent bodies shall be entitled, with no need for prior negotiation, to opt to directly apply the subsidiary provisions set out in Article 20 on employee participation in merged companies, or to honour such provisions from the date the company resulting from the merger is registered.

2nd The provisions of Article 8, paragraphs 2 and 3 on the special negotiating body's functions shall not be applicable. Nonetheless, subject to a two-thirds majority of the members of the special negotiating body representing at least two-thirds of the employees and including the votes of members representing employees in at least two Member States, the body may decide to refrain from initiating negotiations or to terminate negotiations underway, in favour of the application of the provisions on participation in effect in Spanish labour law.

3rd The provisions of Article 9.2 shall not be applicable. Where any one of the merging companies has a scheme in place for employee participation in its management or supervisory bodies that covers at least 25 per cent of the total headcount of all the participating companies, any decision ensuing from the negotiation that involves accepting a reduction in employees' existing participation rights shall require a two-thirds majority of the members of the special negotiating body, representing at least two-thirds of the employees and including the votes of members representing employees in at least two Member States.

Reduction in participation rights shall be understood to mean, for these purposes, the establishment of a smaller number of members on the bodies of the company resulting from the merger than on the bodies of any of the merging companies.

4th The agreement must contain the following:

a) identification of the parties thereto;

b) its scope of application;

c) the essential elements of participation, including, as appropriate, the determination of employees' rights; the number of members on the management body of the company resulting from the cross-border merger to be elected, designated or recommended by the employees; the number of members to whose designation they would be entitled to object and the procedures to be followed in each case;

d) the date of entry into effect of the agreement, its duration and the conditions for its repudiation, extension and renegotiation.

Article 41. Application of the subsidiary provisions on participation

1. The subsidiary provisions laid down in Article 20 on employee participation shall be applicable to companies resulting from intra--Community cross-border mergers from the date they are formed in the cases listed below:

a) when so decided by the parties;

b) when no agreement is reached within six months or, as appropriate, during any extension of that period under the terms of Article 10, providing:

1st the special negotiating body has not decided to refrain from initiating negotiations or to terminate negotiations underway in favour of the application of the provisions on participation in effect under Spanish labour law;

2nd all the merging companies' competent bodies consent to applying the subsidiary provisions; if they choose not to consent to the application of such provisions, the merger process may not continue;

3rd prior to registration of the company resulting from the merger, any of the participating companies had a scheme in place for employee participation in its management or supervisory bodies covering at least 33.3 per cent of the total headcount of all the participating companies, or a lower percentage if so decided by the special negotiating body.

2. For the purposes of the provisions of the preceding paragraph, all the previously existing participation schemes covered by Article 2 l) shall be taken into consideration, irrespective of whether they are set out in legal texts or in bargaining agreements.

If none of the merging companies had such participation schemes in place prior to registration of the merger, the company resulting from the merger shall not be bound to make arrangements for employee participation.

When different employee participation schemes were in place in different merging companies, the special negotiating body shall decide which should be applied. The special negotiating body shall inform the merging companies' competent bodies of the decision adopted.

If, by the date the company is registered, the special negotiating body fails to notify the merging companies' competent bodies of the existence of a decision adopted as specified in the preceding sub-paragraph, the participation scheme to be implemented in the company resulting from the merger shall be the scheme in place for the largest number of employees in the merging companies.

Article 42. Application of certain provisions for European companies to companies resulting from intra-Community cross-border mergers

The provisions in Title I, Chapter III on European companies shall be applied to companies resulting from intra-Community cross-border mergers with registered offices in Spain, except as regards the references to employees' representative bodies and representatives whose duties relate to information and consultation procedures.

Article 43. Protection in the event of subsequent domestic mergers

When employee participation arrangements are in place in companies resulting from intra-Community cross-border mergers, such companies must guarantee protection for employees in the event of subsequent domestic mergers for three years after the intra-Community cross-border merger enters into effect. In such cases, the provisions laid down in this title shall be implemented without delay.

CHAPTER II

Provisions applicable to worksites located in Spain pertaining to companies resulting from intra-Community cross-border mergers

Article 44. Scope of this chapter

1. Except as regards the references to the representative body, the provisions contained in Title II shall be applicable to worksites located in Spain that pertain to companies resulting from cross-border mergers whose registered offices are in any European Economic Area Member State.

2. Moreover, the provisions of Title III on judicial proceedings shall be applicable to companies participating in and resulting from intra-Community cross-border mergers, in the terms laid down in that title.

3. The provisions of the preceding paragraphs shall only be applicable where employee participation schemes must be established in the company resulting from the merger under Member State provisions pursuant to Article 16 of Directive 2005/56/EC of European Parliament and of the Council of 26 October 2005 on Cross-Border Mergers of Limited Liability Companies.

Article 45. Legal efficacy in Spain of other Member State provisions

The agreements reached between the special negotiating body and merging companies' competent bodies in accordance with Member State provisions and, wanting that, with the rules subsidiary to such provisions, shall be binding on all the worksites pertaining to the company resulting from the merger that lie within the scope of such agreements and are located on Spanish soil, as well as on their respective employees, for as long as they remain in effect.

Nonetheless, the validity and efficacy of such agreements may not under any circumstances detract from or alter the negotiation, information and consultation competencies accorded by Spanish legislation to works councils, personnel delegates, trade unions or any other representative organisation created by collective bargaining."

Two. Additional provision one, paragraphs 3 and 4 are amended to read as follows.

"3. This act shall not affect any of the cases described below.

a) It excludes employees' existing rights of involvement other than participation in SE bodies, in place for persons employed by the SE or its worksites or subsidiaries, pursuant to Member States' national legislation and practice.

It likewise excludes employees' rights of involvement other than participation in the bodies of companies resulting from intra-Community cross-border mergers, applicable to persons employed by these companies or their worksites, pursuant to Member States' national legislation and practice.

b) Lastly, it excludes the rights enjoyed by SE subsidiary employees pursuant to national legislation and practice and relating to participation in these bodies.

4. To safeguard the rights referred to in paragraph 3, company registration shall not in itself cancel the mandates of employee representatives in merging companies that cease to exist as differentiated legal entities; rather, such representatives shall continue to perform their duties under the terms and conditions that prevailed prior to registration."

Final provision four. Amendment of Act 13/1989 of 26 May on Credit Unions.

Article 10 of Act 13/1989 of 26 May on Credit Unions shall be reworded as follows.

"Article ten. Merger, divestment and transformation

1. Mergers, divestments or transformations affecting credit unions shall be subject to prior administrative authorisation, following on a report issued by the Bank of Spain.

If the institution resulting from a merger, divestment or transformation is a credit union, it must apply for registration in the Bank of Spain's respective registry. Such registration is without prejudice to any registration that may be in order in the registries of the autonomous communities competent in this area pursuant to their statutes of autonomy. It must also comply with any other registration-related rules and obligations.

2. When a credit union is transformed into another type of financial institution, its mandatory reserve fund shall be transferred to the capital of the institution resulting from transformation.

Under the terms of Article 26 of the Consolidated Text of the Corporation Tax Act approved under Royal Legislative Decree 4/2004 of 5 March, such transformation shall not entail loss of tax protection status in the corporation tax period ending when the institution's legal status undergoes transformation. In that tax period, the part of the mandatory reserve fund deducted from the taxable income in preceding periods shall be added to the taxable income calculated as cooperative or extra-cooperative results."

Final provision five. Definition of competence.

This act is decreed on the grounds of the competence in the area of mercantile legislation attributed exclusively to the State by the Constitution, Article 149.1.6th.

Final provision six. Integration of Community law.

Under this act, Directive 2005/56/EC of European Parliament and of the Council of 26 October 2005 on Cross-Border Mergers of Limited Liability Companies, and Directive 2006/68/EC of European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as Regards the Formation of Public Limited Liability Companies and the Maintenance and Alteration of their Capital are integrated into Spanish Law. Likewise integrated hereby is Directive 2007/63/EC of European Parliament and of the Council of 13 November 2007,

amending Council Directives 78/855/EEC and 82/891/EEC as regards the Requirement of an Independent Expert's Report on the Occasion of Merger or Division of Public Limited Liability Companies.

Final provision seven. Government authorisation.

1. The Government is authorised to proceed, within twelve months' time, to consolidate the laws governing capital enterprises in a single text, under the title "Corporate Enterprises ACT", and standardise, clarify and harmonise the legal texts listed below:

- Section 4, Title I, Book II of the Code of Commerce of 1885, in respect of limited partnerships.

- Royal Legislative Decree 1564/1989 of 22 December, Approving the Consolidated Text of the Joint Stock Companies Act.

- Limited Liability Company Act 2/1995 of 23 March.

- Title X of Act 24/1988 of 28 July on the Securities Market, regarding listed joint stock companies.

2. The Government is authorised to decree all such provisions as required to implement and enforce the provisions of this act.

Final provision eight. Entry into force.

The present act shall enter into force three months after its publication in the Official State Journal, except for the provisions of Title II, Chapter II on intra-Community cross-border mergers, which shall enter into force the day after publication in the Official State Journal.


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