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ACT 3//2009, OF ABRIL 3, ON STRUCTURAL CHANGES IN CORPORATIONS

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ACT 3/2009, OF APRIL 3, ON STRUCTURAL CHANGES IN CORPORATIONS

JUAN CARLOS I

KING OF SPAIN

To all whom this Act shall be seen and understood,be it known that:
That the Parliament has passed and I now sanction the following Act.

PREAMBLE

I

The present Act is particularly important in the ongoing improvement process of corporate trade law, an area of the legal regime that is constantly evolving.

Firstly, due to the special sensitivity of adequately responding to the growing globalisation process of economic agents. To this effect, for the purposes of ensuring the effectiveness of the internal European market, the European Parliament and Council Directive 2005/56/EC of the 26th October 2005 in connection with cross-border mergers in share capital companies is incorporated into the Spanish legislation; and, jointly with it, the European Parliament and Council Directive 2007/63/EC of the 13th November 2007 by which Council Directives 78/855/CEE and 82/891/EEC in relation to the requirement to submit an independent expert's report in the event of the merger or division of joint stock companies are amended. Albeit the Spanish practice was already familiar with cross-border mergers between companies governed by the legislation of different Member States of the European Union, the incorporation of the Directive is the harmonisation channel for these complex operations that the Act, incidentally, recognising the importance of this globalisation process, does not limit to the community area, since it expressly considers mergers between Spanish companies and companies outside the European Union, which are governed by their respective personal laws. But, in addition, said international outlook is expressed in the regulation –for the first time in the Spanish law– for transferring the registered office of Spanish trading companies overseas and transferring the registered office of companies incorporated under the legislation of other States into the Spanish territory, thus facilitating corporate mobility. Pursuant to the guideline initiated by Council EC Regulation number 2157/2001 of the 8th October 2001, by which the European Company Statute (Article 8) is approved and, in national law, by the Act 19/2005 of the 14th November on European joint stock company registered in Spain (which was introduced, amongst others, in the Spanish Corporations Act consolidated text, Articles

315 and 316), this very significant amendment of the essential connecting factor to the State law is considered and a weighed protection system for partners and creditors is established.

Secondly, the importance of the Act becomes apparent in the consolidation and extension of the legal system of the so-called "structural changes", understood as any changes to the company that may go beyond simple amendments to the articles of association impacting the company's asset or personal structure, and that include, therefore, the conversion, merger, division and global disposal of assets and liabilities. This rule further regulates the international transfer of the registered office which, though not always showing the necessary characteristics to be encapsulated within the structural changes category, should be included within the same legislative text given its relevant consequences to the regime the company is subject to. The specific consolidation of the regulation about the conversion of trading companies whose regime –up until now, divided between the Joint Stock Companies Act and the more modern Limited-Liability Companies Act– is updated, whilst the room for potential conversions is opened up. The widely broad view of the Act 2/1995 of the 23rd March has come to prevail over the much more limiting Joint Stock Companies Act, the room for potential conversions thus opening up considerably driven by the necessities of reality.

As far as the extension is concerned, the incorporation of the global disposal of assets and liabilities amongst those structural changes is worth a mention, as it detaches from the previous view that limited this operation to the specific liquidation scope and, at the same time, provides yet another legislative instrument for the transfer of business. Presently, the Act allows for a company to transfer en bloc all its assets to another or others by universal succession in exchange for a compensation that must not involve transferee's shares, stakes or securities. In such cases, partner's protection is sought through information provided by the global disposal project and through the agreement submitting to certain requirements set out for the adoption of the merger agreement; and creditor's protection is organised around the right to oppose and the joint liability of the transferee or transferees to the cap of the net asset attributed to each of them upon transfer.

The incorporation of the Directive on cross-border mergers has been an opportunity to review the merger and division legal system, in order to include regulations originating from Directive 2005/56/EC of the 26th October 2005 not resulting from the "cross-border factor" in the general system; and, especially, in order to utilise the opportunities provided by the 3rd and 6th Directives -Directive 78/855/EEC of the 9th October 1978 and Directive 82/891/EEC of the 17th December 1982-, already incorporated by Act 19/1989 of the 25th July. In this context, the regulation on the take-over of a wholly owned company, of a 90% investee company or the operation whereby a company disappears by the en bloc transfer of its assets to the company in possession of all the shares, stakes or securities corresponding to the former –namely, where these cannot be attributed to the successor company's partners– are noted with regard to mergers. As far as division is concerned, the incorporation of the segregation legal form into the trading companies substantive law, alongside the previously regulated of total and partial division operations, can be highlighted; and, the application of division

regulations to the operation whereby a company transfers part of the shareholders' equity en bloc to a newly incorporated company, in direct exchange for all the partners shares, stakes or securities of said company.

II

Despite the legal system governing the above corporate transactions being based on the underlying capital company model, it is a general trading regulation on companies structural changes and, as such general trading law applicable to any company of this nature, regardless of the state or form of incorporation, unless otherwise expressly established, as is the case when dealing with intra-community cross-border mergers. Its general nature, alongside the extent of the articles, explains why a specific law was decided on –like other Member States of the European Union have done on a similar occasion–, instead of including matters regulated under the Commerce Code or under the Joint Stock Companies Act consolidated text, to which the other special laws should refer to. It is a temporary solution pending the consolidation and harmonisation of the various laws that currently govern our corporate law in its entirety.

The legislator strived for a harmonious incorporation of this law –developed on the basis of a proposal drafted by the General Codification Commission's Corporate Act Department– into the set of laws for commercial companies, hence the additional provisions, some of which have been updated in their regulatory content due to necessary harmonisation in benefiting from this opportunity.

In order to comply with the incorporation requirement on Article 16 of Directive 2005/56/EC in an area as important and technically complex as the participation of employees in the company resulting from a cross-border merger, the inclusion of a general provision in this Act and the amendment of Act 31/2006 of the 18th October through the third final provision on the involvement of employees in European joint stock companies and cooperative societies were decided upon, and a new Title IV on provisions applicable to intra-community cross-border mergers of companies with share capital was introduced.

III

In addition to the incorporation of the Directive on cross-border mergers in share capital companies, this Act includes the European Parliament and Council Directive 2006/68/EC of the 6th September 2006 by which the Council Directive 77/91/EEC is amended with reference to the formation of joint stock companies, as well as their maintenance and changes in their capital. Certain Articles in the incorporated companies laws are reworded in the final provisions, while new sections are added to adapt the Spanish legislation to these more adaptable premises that have been used as a legal basis for the widely discussed amendment to the Second Directive. Directive 2006/68/EC is certainly a transitional Directive while alternatives to the traditional protection system for the creditors and the very shareholders of a company –revolving around share capital– come to fruition and efficient technical instruments to reduce the "administrative burdens" inherent to the protection system in force are introduced; it is, simultaneously, a transitional Directive between the advocates of the principles that inspired the Second Directive and those who call for its total replacement. This way, it is the first stage of a process whose duration and vicissitudes are hard to

anticipate. In fact, the contrast between this traditional system and alternative instruments is an open question where the underlying differences in views on the organisation and operation of incorporated companies carry more weight than preference issues on the various protection techniques.

IV

Beyond harmonisation commitments, this Act introduces other changes to the non-cash contributions regime, including significant exceptions to the requirement of an independent expert's report and, to the treasury stock and financial assistance regime, where the aforementioned more adaptable regulatory premises become apparent. At the same time, the Spanish legislator has deemed it appropriate to introduce some rules from the Directive 77/91/EEC of the 13th December 1976, such as the equal treatment principle –which was seen as an implied principle up until now– and to adjust the wording of other rules closely related to those that should have been included. They have taken the opportunity, lastly, to adapt the preferential subscription right and convertible bonds regime to the pronouncement of the Court of Justice of the European Union judgement (First Division) of the 18th December 2008.

V

Finally, given that the need for improvement in so sensitive a sector as is corporate structuring must be accompanied by a regulatory streamlining effort, this Act represents a temporary solution in anticipation of the appropriate time for the codification or the compilation, at least, of corporate trade law into a single legal body in basic concepts, thus bringing about the repeal of the notably outdated Title I of Book II of the 1885 Commercial Code. The seventh final provision must be at the centre of this transition and progress, as it enables the Government to proceed to the consolidation the laws governing corporations (joint stock companies, limited liability companies and limited partnerships) into a single legal text that regularises, clarifies and harmonises legal texts to be consolidated.

PRELIMINARY TITLE

General provisions

Article 1. *Objective scope.*

This Act seeks to regulate structural changes in trading companies, comprising the conversion, merger, division or global disposal of assets and liabilities, including the international transfer of the registered office.

Article 2. *Subjective scope.*

This Act is applicable to any companies that are considered as trading companies, either due to the nature of their purpose or their form of incorporation.

Structural changes to cooperative societies, as well as the international transfer of the registered office, shall be governed by their specific legal system.

TITLE I
On conversions

SECTION I

General provisions

Article 3. *Concept.*

A company adopts a different state of incorporation by virtue of conversion, whilst keeping its legal identity.

Article 4. *Potential conversion scenarios.*

1. An incorporated trading company may convert to any other kind of trading company.

2. An incorporated trading company, as well as a European economic interest grouping, may convert to an economic interest grouping. Similarly, an economic interest grouping may convert to any kind of trading company and to a European economic interest grouping.

3. A civil partnership may convert to any kind of trading company.

4. A joint stock company may convert to a European joint stock company. Similarly, a European joint stock company may convert to a joint stock company.

5. A cooperative society may convert to a trading company and an incorporated trading company to a cooperative society.

6. A cooperative society may convert to a European cooperative society and a European cooperative society may convert to a cooperative society.

Article 5. *Conversion of companies in liquidation.*

A company in liquidation may convert provided that the distribution of its assets amongst the partners has not begun.

Article 6. *Conversion from joint stock company to European joint stock company.*

The conversion of joint stock companies to European joint stock companies and vice versa shall be governed by the provisions in Regulation (EC) number 2157/2001 and its implementing rules, as well as by the stipulations in Act 31/2006 of the 18th October on the involvement of employees in European joint stock companies and cooperatives.

Article 7. *Conversion of cooperative societies.*

1. The conversion of cooperative societies to a different state of incorporation or from the latter to the former shall be governed by the applicable legislation with regard to the requirements and effects of the conversion of cooperative societies.

2. The conversion of cooperative societies to European cooperative societies and vice versa shall be governed by the provisions in Regulation (EC) number 1435/2003 and its implementing rules.

SECTION II

Conversion agreement

Article 8. *Conversion agreement.*

The company's conversion must be necessarily agreed upon by a meeting of partners.

Article 9. *Information for the partners.*

1. When calling a meeting where the conversion agreement must be discussed, administrators must make the following documents available to the partners -who may request to have them delivered or sent free of charge, including by electronic means- at the registered office:

1st. An administrators' report explaining and accounting for the legal and economic considerations of the conversion, as well as pointing at the implications for the partners and its prospective gendered impact on the management bodies and the effects, where appropriate, on the company's social responsibility.

2nd. The balance sheet of the company to be converted, which must be closed within the six months prior to the estimated meeting date, alongside a report on any equity modifications that may have taken place after it.

3rd. An accounts auditor's report on the balance sheet produced, if the company being converted is under an obligation to have its accounts audited.

4th. The proposed memorandum of incorporation or articles of association resulting from such a conversion, as well as any other social contracts that shall comprise the public record, where appropriate.

2. The company's administrators are under an obligation to inform the meeting of partners to which the approval of the conversion is submitted to of any significant changes to the assets and liabilities occurring from the date of the report justifying the conversion and the balance sheet made available to the partners to the date of the meeting of partners.

3. The provision or delivery of information in connection to the first paragraph shall not be required if the conversion agreement is adopted unanimously in a general meeting.

Article 10. *Conversion agreement requirements.*

1. The conversion agreement shall be adopted alongside the requirements and formalities set forth in the legal structure of the company under conversion.

2. The agreement must comprise the approval of the company's balance sheet produced for the purposes of conversion, including any relevant changes, where appropriate, as well as any information required for the incorporation of the intended state of incorporation.

Article 11. *Continuing obligations of the partners.*

1. Conversion alone shall not release the partners from complying with their liabilities towards the company.

2. Should the state of incorporation the company converts to require payment of the share capital in full, such a payment must be made prior to the conversion agreement or, where appropriate, to a reduction in capital for the purposes of waiving passive dividends. In the first instance, the reality of payments made shall be proven before the Notary Public legalising the public record and the supporting documents shall be incorporated to it, whether as original or certified copies.

Article 12. *Partners' participation in the converted company.*

1. The conversion agreement may not change the partners' capital share unless otherwise agreed upon by all those remaining in the company.

2. In the case of a company with one or more industry partners converting to a state of incorporation in which said partners do not exist, their participation in the new converted company's capital shall be that corresponding to the holding as may have been assigned to them in the company's memorandum of incorporation or, failing this, as all partners may agree upon, proportionally reducing the participation of the other partners either way.

Where appropriate, the survival of the industry partner's personal obligation to the company, once converted, shall always require the partner's consent and shall be implemented as an ancillary obligation under the terms set out in the articles of association.

Article 13. *Companies that may have issued bonds or other securities.*

The conversion of a company that may have issued bonds or other securities under a different corporate type that is not allowed to issue them, as well as the conversion of a joint stock company that may have issued bonds convertible into shares under a different state of incorporation, may only be agreed upon should said issued bonds have been repaid or converted beforehand, where appropriate.

Article 14. *Publication of the conversion agreement.*

1. The conversion agreement will be published once in the "Official Journal of the Mercantile Registry" and in one of the high-volume local newspapers of the province in which the company has its registered office.

2. Such publication shall not be necessary if the agreement is disclosed in writing to all partners on an individual basis and, where appropriate, to the holders of special rights other than shares, stakes or securities that may not be kept after the conversion through a procedure ensuring its receipt at the address detailed in the company's

documents, as well as to all the creditors at the addresses made available to the company or, failing this, at their legal addresses.

Article 15. *Partners' right of separation.*

1. Partners not having voted in favour of the agreement may separate from the converting company, in accordance with the provisions for limited-liability companies.

2. Partners that, as a result of the conversion would have to take personal responsibility for the company's debts not having voted in favour of the conversion agreement shall automatically become separated from the company, unless unequivocally adhering to it within a month from the date of its adoption if present at the meeting of partners or from the notice of said agreement otherwise. Valuation of the corporate shares corresponding to the partners separating will be performed in accordance with the provisions for companies limited by shares.

Article 16. *Special rights holders.*

1. Conversion may not occur should holders of special rights other than shares, stakes or securities that may not be kept after the conversion oppose to it within a month after the publication of the corresponding agreement in the "Official Journal of the Mercantile Registry" or the submission of the individual notice in writing.

2. Said opposition shall have no effects if done by a partner having voted in favour of the conversion.

Article 17. *Additional modifications to the conversion.*

1. A company's conversion may be accompanied by the incorporation of new partners.

2. If conversion is accompanied by a change in the company's object, registered office, share capital or other particulars of the memorandum of incorporation or the articles of association, specific requirements in connection to the above operations must be complied with in accordance with the provisions governing the new state of incorporation.

SECTION III

About the registration of the conversion.

Article 18. *Public instrument of conversion.*

1. The public record of conversion must be executed by the company and all of the partners that shall personally respond to the company's debts.

2. In addition to the required information for the incorporation of the state adopted, the public conversion record must detail a list of partners having exercise the right of separation and the capital each of them represents, as well as the shares, stakes or securities attributable to each partner in the converted company.

3. Should the rules on the incorporation of the state adopted so require, the memorandum shall include the independent experts' report on the shareholders' equity.

Article 19. *Conversion effectiveness.*

The effectiveness of the conversion shall be subject to the registration of the public record with the Mercantile Registry.

Article 20. *Challenging the conversion.*

Once registered, the conversion may be challenged within three months.

SECTION IV

Conversion effects over partners' responsibilities

Article 21. *Partners' responsibility and company's debts.*

1. Partners who, by virtue of the conversion, may take personal unlimited responsibility for the company's debts shall answer in the same way for any debts prior to the conversion.

2. Unless the company's creditors have expressly agreed to the conversion, the responsibility of any partners that personally answered for the converted company's debts may survive towards any debts incurred prior to the company's conversion. Such responsibility shall expire in five years from the publication of the conversion in the "Official Journal of the Mercantile Registry".

TITLE II
About the merger

SECTION I

About the merger overall

Section 1. General Provisions

Article 22. *Concept.*

By virtue of the merger, two or more registered trading companies will become a single company by means of the transfer en bloc of their assets and the distribution of shares, stakes or securities of the resulting company –whether a newly incorporated company or one of the merging companies– amongst the partners of the disappearing companies.

Article 23. *Types of mergers.*

1. The merger of a new company shall entail the disappearance of each of the companies merging and the transfer en bloc of their respective shareholders' equities to the new company, that shall acquire their rights and obligations by means of universal succession.

2. Should the merger have to result in the take-over of one or more companies by an existing company, the latter shall acquire the absorbed companies' shareholders' equities by means of universal succession and they shall disappear, increasing, where appropriate, the acquiring company's share capital by the appropriate amount.

Article 24. *Continuity in participation.*

1. The partners of the disappearing companies shall become part of the company resulting from the merger and shall receive a number of shares, stakes or securities in proportion to their respective share in the former.

2. In the case of a company with one or more industry partners merging with another where such kind of partners are not permitted, their participation in the share capital of the company resulting from the merger shall be established by attributing to each of them the participation in the share capital of the disappearing company as may correspond to the holding that may have been assigned to them in the memorandum of incorporation or, failing this, as all partners of said company may agree upon, proportionally reducing the participation of the other partners either way.

Where appropriate, the survival of the industry partner's personal obligation to the company resulting from the merger shall always require the partner's consent and

shall be implemented as an ancillary obligation where industry partners are not permitted.

Article 25. *Type of exchange.*

1. In merger operations, the type of exchange of shares, stakes or securities of the companies taking part in it must be established on the basis of the real value of the assets.

2. Where appropriate, to adjust the type of exchange, partners may also receive a cash payment not exceeding ten per cent of the nominal value of the shares or stakes or the book value of the attributed holding.

Article 26. *Ban to exchange treasury stock.*

Shares, stakes or securities of the merging companies that may be in the possession of any of them or of other people acting on their own behalf but on the account of said companies shall not be exchangeable for shares, stakes or securities of the company resulting from the merger and, where appropriate, shall be repaid or cancelled.

Article 27. *Merger's legal system.*

1. The merger of two or more registered trading companies subject to the Spanish law shall be governed by the provisions in this Act.

2. The merger of trading companies of different nationalities shall be governed by the provisions in their respective personal laws, without prejudice to the provisions in Section II on intra-community cross-border mergers and, where appropriate, of the system applicable to European joint stock companies.

Article 28. *Merger of companies in liquidation.*

Companies in liquidation may merger with other companies provided that the distribution of their assets amongst the partners has not begun.

Article 29. *Sectoral legislation application.*

Such requirements as the sectoral legislation may demand, where appropriate, shall be applied to the merger of trading companies.

Section 2. About the merger project

Article 30. *Common merger project.*

1. The administrators of each of the companies taking part in the merger must write and sign a common merger project. Any missing signatures shall be pointed out at the end of the project, detailing the reason.

2. Once the common merger project has been signed, the administrators of the merging companies will refrain from taking any kind of action or reach any agreements that may compromise the approval of the project or significantly change the shares, stakes or securities swap rate.

3. The merger project shall have no effect unless approved by the meetings of partners of all the companies taking part in the merger within six months of its date.

Article 31. *Contents of the common merger project.*

The common merger project shall at least include the following indications:

1st. The designation, state of incorporation and registered office of the merging companies and the company resulting from the merger, as well as the identification details of their registration in the Mercantile Registry.

2nd. The type of exchange of shares, stakes or securities, any additional cash payments foreseen and, where appropriate, the exchange procedure.

3rd. The implications that the merger is to have over industry contributions or accessory services in the disappearing companies and any payments to be made, where appropriate, to the affected partners in the resulting company.

4th. Any rights to be granted to those who have special rights or the holders of titles other than stock certificates or the options on offer in the resulting company.

5th. Any sort of advantage to be attributed in the resulting company to any independent experts taking part, where appropriate, in the merger project, as well as to the administrators of the merging companies, the absorbing company or the new company.

6th. The commencement date when holders of new shares, stakes or securities shall have a right to partake in corporate earnings and any peculiarities in connection to such right.

7th. The date on which the merger will start having accounting effects, in accordance with the provisions of the Chart of Accounts.

8th. The articles of association of the company resulting from the merger.

9th. Information on each of the companies' assets and liabilities to be transferred to the resulting company.

10th. The dates of each of the merging companies' balance sheets used to determine the terms under which the merger is entered.

11th. The potential consequences of the merger on employment, as well as its prospective gendered impact on the management bodies and the effects, where appropriate, on the company's social responsibility.

Article 32. *Publicity.*

1. Administrators are under the obligation to enter the common merger project on the websites of each of the companies taking part in the merger, without prejudice to the ability to voluntarily file a copy of the common merger project in the Mercantile Registry corresponding to each of the companies involved. The fact that the merger project entered on the website will be published free of charge in the "Official Journal of the Mercantile Registry", including the featuring website and the date of placement. The placement of the project on the website and its date shall be proven by the authentication of its contents, submitted to the corresponding Mercantile Registry, with an obligation to publish in the "Official Journal of the Mercantile Registry" within five days upon receiving the last authentication.

The placement of the project on the website and publishing of this fact in the "Official Journal of the Mercantile Registry" shall be made at least one month prior to the estimated date when the general meeting set to agree on the merger is to be held. The placement of the project on the website must be kept until the end of the period within which creditors may exercise their right to oppose the merger.

2. Should any of the companies taking part in the merger not have a website, the administrators shall be under an obligation to file a copy of the common merger project in the corresponding Mercantile Registry. Once filed, the Registrar will inform the Central Commercial Registrar for its immediate free publication in the "Official Journal of the Mercantile Registry", the fact of the registration and the date it may have taken place on.

3. Publishing of the notice of call to the meeting of partners that may have to decide upon the merger or the individual communication of such notice to the partners may not be done prior to the publication of the placement or filing of the project in the "Official Journal of the Mercantile Registry".

Article 33. *Administrators' report on the merger project.*

The administrators of each of the companies taking part in the merger will prepare a detailed report explaining and accounting for the common merger project in its legal and economic considerations, with particular reference to the shares, stakes or securities type of exchange and any special valuation difficulties that may arise, as well as the implications of the merger for partners, creditors and employees.

Article 34. *Experts' report on the merger project.*

1. One of the companies taking part in the merger being a limited partnership or a joint-stock company, the administrators of each of the merging companies must ask the Commercial Registrar corresponding to their registered office to appoint one or several independent experts that can issue individual reports on the common merger project.

Notwithstanding the foregoing, the administrators of all the companies merging mentioned in the above paragraph may request for the Commercial Registrar to appoint one or several experts to prepare a single report. The power to appoint shall lie with the Commercial Registrar of the absorbing company's registered office or that which may be specified in the common merger project as the new company's registered address.

2. Appointed experts may gather, without limitation, any information and documents deemed helpful and proceed to making any necessary checks at their discretion at the companies taking part in the merger.

3. The report by the expert or experts shall be divided into two parts: in the first part, methods used by the administrators to decide on partners' shares, stakes or securities type of exchange of the disappearing companies are presented, the suitability of said methods is explained, referring to the values that they imply and, if any, special valuation difficulties, and whether or not the type of exchange is justified, in their opinion; and, in the second part, their opinion on whether or not the assets contributed

by the disappearing companies is equivalent, at least, to the share capital of the new company or to the sum of the absorbing company's capital increase must be expressed.

4. The contents of the report prepared by the expert or experts on the merger project shall comprise only the second part when all companies taking part in the merger have so agreed with all partners with voting rights and, on top of this, all persons that may hold said right, where appropriate, by virtue of the law or the articles of association.

Article 35. *Merger after the acquisition of a company where the acquirer incurs debts.*

In the event of the merger of two or more companies, should any of them have incurred debt within the three years immediately prior to it in order to gain control over another company taking part in the merger operation or in order to acquire assets in it that are essential for its normal exploitation or that are important due to their equity value, the following rules shall apply:

1st. The merger project must detail the resources and terms provided for the resulting company to settle any debts incurred for the acquisition of control or assets.

2nd. The administrators' report on the merger project must detail the reasons that may have substantiated the acquisition of control or assets and that explain, where appropriate, the merger operation and include a financial and economic plan, with the definition of the resources and the description of the objectives to be achieved.

3rd. The experts' report on the merger project must include their opinion on the reasonableness of the statements the above two numbers refer to, establishing whether there is financial assistance too.

Under the above scenarios, the experts' report shall be required, even if the merger agreement is unanimous.

Section 3. About the merger balance

Article 36. *Merger balance.*

1. The last approved balance sheet can be considered the merger balance sheet, provided that it had been closed within the six months prior to the merger project date.

Should the annual balance not comply with this requirement, a closed balance must be prepared after the first day of the third month prior to the date of the merger project following the same filing methods and criteria used in the last annual balance.

2. In both cases, valuation contained in the last balance regarding significant changes to the fair value not included in the accounting records can be modified.

3. Should one or several joint stock companies with securities previously admitted to trading in an official secondary market or in a regulated market registered in the European Union take part in the merger, the merger balance may be replaced by half-yearly financial reports for each of them as required by the securities market legislation, provided said reports had been closed and published within the six months prior to the date of the merger project. The report shall be made available to the shareholders in any form established for the merger balance.

Article 37. *Balance verification and approval.*

The merger balance and any modifications to the valuations therein must be verified by the company's accounts auditor, where there is an obligation to audit, and must be subject to approval of the partners meeting deciding on the merger, the purposes of which must be expressly mentioned in the meeting's agenda.

Article 38. *Merger balance challenge.*

A merger balance challenge shall not suspend the execution of the merger in itself.

Upon request of the partner deeming that the established swap rate is detrimental to them, the appointment of an independent expert to establish the amount of the compensatory payment may be submitted to the Commercial Registrar corresponding to its registered office, so long as this is provided for in the articles of association or decided upon by the meetings settling the companies' merger or division. Such a request to the Commercial Registrar must be done within a month, from the publication date of the merger or division project in the "Official Journal of the Mercantile Registry" and shall be substantiated by the rules established in the regulations of the Mercantile Registry.

Section 4. About the merger agreement

Article 39. *Information on the merger.*

1. Before the publication of the notice of call to the meeting of partners settling the merger or the individual communication of said notice to the partners, administrators must enter the following documents on the company's website –making it possible to download and print them– or, should the company not have a website, make them available to the partners, bondholders, special rights holders and employees' representatives at the company's registered address:

1st. The common merger project.

2nd. Where appropriate, reports of the administrators of each of the companies on the merger project.

3rd. Where appropriate, the independent experts' reports.

4th. Annual accounts and management reports of the last three financial years, as well as the corresponding accounts auditors' reports of those companies where these may be legally required.

5th. The merger balance for each of the companies, if different from the last approved annual balance, alongside, if possible, the audit report or, in the case of the merger of listed companies, the half-yearly financial report by which the balance may have been replaced.

6th. The current articles of association incorporated to a public record and, where appropriate, any relevant agreements that shall be comprised in the public record.

7th. The memorandum of incorporation project for the new company or, in the case of a take-over, the full text of the acquiring company's articles of association or, failing this, its governing memorandum, including, most notably, any modifications to be introduced.

8th. The merging companies' administrators' identities, the commencement date of their position and, where appropriate, the same information about any person to be proposed as an administrator as a result of the merger.

2. Should the company not have a website, the partners, bondholders, special rights holders and employees' representatives who so request by any means offered by the Act may have a right to examine the full copy of the documents listed in the above paragraph at the company's registered office, as well as to have a copy of each of them delivered or sent free of charge.

3. Significant changes in the assets and liabilities of any of the merging companies between the merger project drafting date and the meeting of partners for its approval must be reported at the meeting of all merging companies. For these purposes, the administrators of the company where such changes may have occurred must make them known to the administrators of the rest of companies, thus enabling them to inform their corresponding meetings. The above information shall not be required should all voting partners and, where appropriate, any persons rightfully entitled to exercise the right to vote under the law or the articles of association of all and each of the companies taking part in the merger.

Article 40. *Merger agreement.*

1. The merger must be agreed upon in a meeting of partners of each of the participating companies, strictly adhering to the common merger project, with such requirements and formalities as the rules of the merging companies may set out. Any agreement modifying the merger project by any one company will indicate their refusal of the proposal.

2. Publication of a notice of meeting call or its individual notice to the partners must be done at least one month prior to the meeting planned date; legally required minimum information on the merger project must be included; and it will state the date of introduction of the documents mentioned in the above article on the company's website and, should the company not have a website, the right of all the partners, bondholders, special rights holders and employees' representatives to examine a copy of said documents at the registered address and to obtain delivery or submission of them free of charge.

3. Where the merger is completed by starting a new company, the merger agreement must include the information legally required to incorporate the latter.

Article 41. *Special requirements in the merger agreement.*

1. The merger agreement shall also require the consent of all of the partners that, by virtue of the merger, may come to answer for the company's debts without limitation, as well as the partners of the disappearing companies that may have to assume personal obligations in the company resulting from the merger.

2. It shall also be necessary to have the individual consent of any holders of special rights other than shares or stakes, so long as they shall not enjoy rights equivalent those they were entitled to in the disappearing company at the company resulting from

the merger, unless changes to these rights may have been approved at a meeting of said right holders, where appropriate.

Article 42. *Unanimous merger agreement.*

1. The merger agreement may be adopted without the need to previously publish or file the documents required by law and without an administrators' report on the merger project should it be adopted unanimously in a general meeting of all voting partners and, where appropriate, any persons entitled to exercise the right to vote under the law or the articles of association at each and every one of the companies taking part in the merger.

2. Employees' representatives information rights in connection to the merger –including information on its potential impact on employments– shall not be limited by the fact that the merger be approved in a general meeting.

Article 43. *Publication of the agreement.*

1. Once adopted, the merger agreement shall be published in the "Official Journal of the Mercantile Registry" and in one of the high-volume local newspapers of the province in which each of the companies has its registered office. The notice shall include the right of all partners and creditors to obtain the full text of the adopted agreement and the merger balance, as well as the right to oppose creditors are entitled to.

2. The publication referred to in the above paragraph shall not be necessary if the agreement is individually advised in writing to all partners and creditors, by such means as may secure its reception at the address detailed in the company's documentation.

Article 44. *Creditors' right to oppose.*

1. The merger shall not be completed before the lapse of one month from the date of publication of the latest notice of agreement by which the merger is approved, or, in the case of notice in writing to all partners and creditors, of the submission to the notice to the last of them.

2. Within said period, the creditors of each of the merging companies whose credit may have arisen before the date of the introduction of the merger project on the company's website or the filing of this project at the Mercantile Registry and may not be receivable at that time, shall be entitled to oppose the merger until said credits are secured. Should the merger project have been neither introduced on the company's website nor filed at the corresponding Mercantile Registry, the date of commencement of the credit must be earlier than the date of publication of the merger agreement or its individual notice to the creditor.

Bondholders may exercise the right to oppose under the same terms as the rest of creditors, unless where the meeting of bondholders has previously approved the merger.

Creditors whose credit is already sufficiently secured shall not have a right to oppose.

3. In cases where creditors have a right to oppose the merger, this shall not take effect until the company produces a guarantee to the satisfaction of the creditor or until the

company otherwise informs said creditor of the payment of a joint and several bond amounting to the credit held by the creditor by a duly authorised credit institution in favour of the company, and until the action to demand its application has expired.

4. Should the merger have been given effect despite a rightful creditor exercising their right to oppose –in good time and in an appropriate manner–, without adequate enforcement of the provisions in the above paragraph, the opposing creditor shall be entitled to request for their exercise of the right to oppose to be recorded on a side note in the registration made at the Mercantile Registry where the merger may have been filed.

The Registrar may include the side note if the requesting party produces proof of having exercised, in good time and in an appropriate manner, their right to oppose through an unequivocal notice to the company they are a creditor to. Said side note shall be cancelled ex-officio six months after its date, unless a claim brought before the Commercial Court against the acquiring company or the new company requesting the provision of a credit payment guarantee has previously been reflected through preventive annotation, as set out in this Act.

Section 5. About the completion and registration of the merger

Article 45. *Public deed of merger.*

1. The merging companies will convert the adopted merger agreement to a public deed, to which their merger balance or, in the case of the merger of listed companies, their half-yearly financial report in lieu of balance shall be annexed.

2. Should the merger be completed through the start of a new company, the deed must also include such information as is legally required for its incorporation, in line with the chosen state of incorporation.

Should it be completed through a take-over, the deed shall include such amendments to the articles of association as may have been agreed by the acquiring company upon the merger, as well as the number, class and series of shares, stakes or securities that are to be attributed, in each case, to each of the new partners.

Article 46. *Registration of the merger.*

1. The effectiveness of the merger shall take place upon the registration of the new company or, where appropriate, the registration of the take-over at the corresponding Mercantile Registry.

2. Once the merger has been registered, all entries of the disappearing companies at the Mercantile Registry shall be cancelled.

Section 6. About the challenge of the merger

Article 47. *Challenge of the merger.*

1. No merger shall be challenged after its registration, provided this has been done in accordance with the stipulations in this Act. The rights of the partners and third parties to compensation for damages caused are excepted, where appropriate.

2. The term for exercising a challenge action expires after three months from the date of the merger becoming opposable to whomever pleads for its invalidity.

3. The invalidity ruling must be registered at the Mercantile Registry and published in its "Official Gazette" and shall not affect in itself the validity of the obligations arising after the registration of the merger -in favour or at the expense of the acquiring company or the new company resulting from the merger.

The companies taking part in the merger will answer jointly and severally for such obligations, where these are in charge of the acquiring company or the new company.

4. Should the merger be so through a procedure of incorporation of a new company, this will be subject to the invalidity rules of the applicable state of incorporation.

Section 7. Effects of the merger on partners' responsibilities

Article 48. *Responsibility for company's debts prior to the merger.*

Unless the company's creditors have expressly agreed to the merger, the partners personally responsible for the company's debts expiring by the merger and incurred before said merger shall continue to answer for these debts. Such responsibility shall expire in five years from the publication of the merger in the "Official Journal of the Mercantile Registry".

Section 8. About special mergers

Article 49. *Take-over of a wholly owned company.*

1. Where the acquiring company is the holder, directly or indirectly, of all the corporate shares or stakes in which the disappearing company or companies' share capital is divided, the operation may be completed without the need for the following criteria to coincide:

1st. The incorporation in the merger project of the information in paragraphs 2nd and 6th of Article 31 and, except for intra-community cross-border mergers, information in paragraphs 9th and 10th of the same article.

2nd. The administrators' and experts' reports on the merger project. The administrators' report, nevertheless, shall be necessary in the event of an intra-community cross-border merger.

3rd. The acquiring company's capital increase.

4th. The approval of the merger by general meetings of the disappearing company or companies.

2. Where the acquiring company is the holder, directly or indirectly, of all the corporate shares or stakes in which the disappearing company's share capital is divided, besides taking into account the provisions in the above paragraph, the experts' report referred to in Article 34 shall be required in all cases and, where appropriate, the acquiring company's capital increase shall be required. Where the merger results in a reduction in the net equity of companies not partaking in the merger through shares they may hold in the disappearing company, the acquiring company must compensate the former for the reasonable value of said shares.

Article 50. *Take-over of a 90% investee company.*

1. Where the acquiring company is the direct holder of ninety per cent or more, but not the total, of the share capital of the joint stock or limited liability company or companies that are subject to the take-over, the administrators and experts' reports on the merger project shall not be necessary, provided the acquiring company offers to acquire the corporate shares or stakes of all partners of the disappearing companies, with an estimated reasonable value and within a specific term that cannot exceed one month from the date of registration of the merger at the Mercantile Registry.

2. The merger project must include the value established for the acquisition of the corporate shares and stakes. Any partners that communicate their will to transfer their shares or stakes to the acquiring company but that may not agree with the value set for them in the project shall be entitled to –at their own discretion and within six months from advising their will to sell their shares or stakes– choose either to request for the Mercantile Registry corresponding to the acquiring company's registered office to appoint an accounts auditor –other than the company's auditor– to determine the reasonable value of their shares and stakes or to take any relevant legal actions to demand that the company acquires them for the reasonable value that may be fixed in the proceedings.

3. Any shares or stakes held by the partners of the disappearing company that are not acquired must be swapped for treasury shares or stock in the acquiring company's portfolio. Alternatively, provided there is no need for a meeting at the request of a minority, the administrators are authorised to increase the capital to the extent strictly necessary for the exchange, if it is so stipulated in the merger project.

Article 51. *Meeting of partners of the acquiring company.*

1. Where the acquiring company is the direct holder of ninety per cent or more of the share capital of the joint stock or limited liability company or companies that are subject to the take-over, the approval of the merger by the meeting of partners of the acquiring companies shall not be necessary, provided that, at least one month prior to the planned date for the meeting or meetings of the disappearing companies set to decide on the merger project or, in the case of a wholly owned company, to the planned date for the completion of the acquisition, each of the companies taking part in the merger publishes the project by means of a notice, published on the company's website or, if not available, in the "Official Journal of the Mercantile Registry" or in one of the high-volume local newspapers of the province in which each of the companies have their registered offices, where the right corresponding to the partners of the acquiring company and the creditors of the companies taking part in the merger to examine the documents mentioned in numbers 1st and 4th and, where appropriate, 2nd, 3rd and 5th of paragraph 1, Article 39, is clarified, as well as the right to obtain free delivery or submission of the full text if not published on the website, under the terms provided in Article 32.

The notice must make a reference to the rights of the partners that represent at least one per cent of the share capital to demand that a meeting of the acquiring company be held for the approval of the acquisition, as well as the right of the creditors of said

company to oppose the merger within one month from the publication of the project, in accordance with the terms set forth in this Act.

2. The acquiring company's administrators shall be under an obligation to call for a meeting for the approval of the acquisition if, within fifteen days from the publication of the last of the notices referred to in the above paragraph, partners representing at least one percent of the share capital so request. In this scenario, the meeting must be called for its being held within two months from the receipt of the notarised request by the administrators.

Article 52. *Scenarios assimilated to the acquisition of wholly owned companies.*

1. The provisions for the acquisition of wholly owned companies shall be applicable, to the appropriate extent, to any type of merger of companies directly or indirectly owned wholly by the same partner, as well as the merger by acquisition where the disappearing company is the direct or indirect holder of all the shares and stakes of the acquiring company.

2. Where the disappearing company is the indirect holder of all the corporate shares or stakes in which the acquiring company's share capital is divided or where both the acquiring and the disappearing companies are indirectly owned by the same partner, the experts' report referred to in Article 34 shall be required in all cases and, where appropriate, the acquiring company's capital increase shall be required. Where the merger results in a reduction in the net equity of companies not partaking in the merger through shares they may hold in the disappearing or the acquiring company, the acquiring company must compensate the former for the reasonable value of said shares.

Section 9. Operations treated as mergers

Article 53. *Operations treated as mergers.*

The operation by which a company disappears by transferring its assets en bloc to the company holding all of the shares, stakes and securities corresponding to the former is also considered a merger.

SECTION II

About intra-community cross-border mergers

Article 54. *Concept.*

1. The merger of incorporated companies registered in accordance with the legislation of a State part of the European Economic Area and whose registered office, central management or main place of business is located within the European Economic Area is considered an intra-community cross-border merger where, at least two of the partaking companies being subject to the legislation of different Member States, one of the merging companies is subject to the Spanish Law.

2. Incorporated companies subject to the Spanish Law that can participate in cross-border mergers are joint stock, limited partnerships and limited liability companies.

Article 55. *Applicable legal system.*

Provisions in this Section and, additionally, provisions governing the merger in general shall apply to intra-community cross-border mergers.

Article 56. *Exclusion to the cross-border merger regime.*

1. The provisions in this Section shall not apply to cross-border mergers with the participation of a cooperative society.

2. The provisions in this Section shall neither apply to cross-border mergers with the participation of a company whose object is the collective investment of capital provided by the public, whose operation is subject to the risk allocation principle, and whose shares are directly or indirectly repurchased or redeemed at the company's assets account upon request of the holder. Such repurchases and reimbursements are equal to the fact that said collective investment company should act so that the value of its shares in the stock exchange is not considerably different to its net asset value.

Article 57. *Cash compensation.*

The fact that the legislation of at least one of the concerned Member States allows for cash compensation as part of the swap rate exceeding ten per cent of its nominal value or, failing this, the book value of the swapped stock or shares, shall not be an obstacle to engage in an intra-community cross-border merger.

Article 58. *Application of national regulations on public interest grounds.*

The rules allowing the Spanish Government to impose terms in a domestic merger on public interest grounds shall also apply to cross-border mergers in which at least one of the merging companies is governed by the Spanish Law.

Article 59. *Common cross-border merger project.*

1. The common cross-border merger project to be prepared by the administrators of each of the companies taking part in the merger shall include at least the information generally set out for the common project for the merger of companies.

2. The project must also include the following information:

1st. Specific advantages attributed to experts analysing the cross-border merger project, as well as to the members of the administration, management, supervision or control bodies of the merging companies.

2nd. Where appropriate, the information on the procedures by which the terms of the involvement of employees in the definition of their participation rights in the company resulting from the cross-border merger are established, in accordance with the provisions of Article 67 of this Act.

Article 60. *Management and administrative bodies' report.*

1. The report of the administrators of each of the companies taking part in the cross-border merger –which they shall prepare in accordance with the provisions in Article 33– shall be made available to the partners and the employees' representatives or, failing this, to the workers themselves, within a period that shall be no less than a

month prior to the date of the meeting of partners where the common cross-border merger project is to be decided upon.

2. Where the Spanish company's administrators may receive the opinion of the employees' representatives in good time, said opinion shall be attached to the report.

Article 61. *Approval in the meeting of partners.*

When reaching a decision on the common cross-border merger project, the meeting of partners of each of the companies taking part in the merger may condition the completion of the merger to the express approval of the provisions agreed for the participation of the employees in the company resulting from the cross-border merger.

Article 62. *Partners' right of separation.*

The partners of the Spanish companies taking part in an intra-community cross-border merger that may have voted against a merger agreement resulting in a company whose registered address is located in a different Member State may separate from the company, pursuant the provisions in Title IX of the Capital Company Act.

Article 63. *Merger of a company limited by shares.*

The rules generally governing mergers for joint stock companies and limited partnerships shall apply to limited liability companies taking part in a cross-border merger.

Article 64. *Pre-merger certification.*

In view of the details contained in the Mercantile Registry and in the public deed of merger produced, the Commercial Registrar corresponding to the registered office of the merging company shall certify the appropriate performance of the pre-merger acts and formalities by the companies subject to the Spanish Law, which will receive their respective certificate in due time.

Article 65. *Legality controls.*

1. Where the company resulting from the merger is subject to the Spanish Law, the Commercial Registrar, before proceeding to its registration, shall also verify the legality of the process in regard to the performance of the merger and the incorporation of the new company or to the amendments to the acquiring company, as well as the approval by all merging companies of the same terms of the merger project and, where appropriate, the suitability of the provisions on the employees participation. For these purposes, each of the partaking companies shall submit the certificate referred to in the above article to the Commercial Registrar within six months from its date of issue, as well as the common merger project approved by the meeting of partners.

2. In cases where, in accordance with the provisions of Article 67, the participation of the employees to the extent provided in Act 31/2006 of the 18th October on the involvement of employees on European joint stock companies and cooperative societies is required, the merger shall not be registered unless an employee participation agreement has been reached, the negotiation period has expired without any agreement being reached or competent bodies of the companies taking part in the

merger have opted to be directly subject to the supplementary provisions set forth in Act 31/2006 of the 18th October. Furthermore, the articles of association of the companies resulting from the cross-border mergers shall under no circumstance be contrary to the established provisions regarding employee participation.

3. Should any of the disappearing companies be Spanish, besides the company resulting from the merger, the legality of the merger process with regard to this shall be verified by the Commercial Registrar corresponding to the registered address of the company resulting from the merger and it should suffice for the title produced at the Mercantile Registry to include the absence of registration impediments for the intended merger duly authorised by the Commercial Registrar corresponding to the registered office of the disappearing company.

Article 66. *Publicity and registration of cross-border mergers.*

1. The provisions on the publication of mergers shall generally apply to the company or companies subject to the Spanish Law.

2. A mention regarding each of the companies merging on the terms for the creditors and, where appropriate, the partners of the companies merging, to exercise their rights, as well as the address where comprehensive information on said conditions can be obtained free of charge must be published in the "Official Journal of the Mercantile Registry".

3. Where the company resulting from the merger is subject to the Spanish Law, the Mercantile Registry that may have completed the registration shall immediately advice the Mercantile Registry where the partaking companies are registered to proceed to their cancellation.

Article 67. *Employees' involvement rights in the company resulting from the merger.*

1. Where the company resulting from the merger is registered in Spain, the employees' rights of involvement in the company shall be defined in compliance with the Spanish labour legislation.

Specifically, the employees' rights of involvement in the company shall be defined in compliance with the provisions in Title IV of Act 31/2006 of the 18th October.

2. Where at least one of the companies taking part in the merger is managed under an employee participation system and the company resulting from the cross-border merger is governed by said system, the latter shall adopt a legal form allowing for the exercise of the rights of participation.

3. For the purposes of the provisions of this Acts, the concepts of employee involvement and participation shall be those established in Article 2 of Act 31/2006 of the 18th October.

4. Rights of information and consultation of the employees in the company resulting from the merger providing their services in work places located in Spain shall be governed by the Spanish labour legislation, regardless of the place where said company may be registered.

TITLE III
About divisions

SECTION I

General provisions

Article 68. *Types and requirements.*

1. The division of a registered trading company shall take any of the following forms:

1st. Total division.

2nd. Partial division.

3rd. Separation.

2. Companies benefiting from the division may be of a different business type to the company being divided.

3. The division may only be agreed upon where the stock or contributions of the partners of the company being divided have been paid in full.

Article 69. *Total division.*

Total division is understood as the complete disappearance of a company after the division of its entire equity into two or more parts, each of which is transferred en bloc by universal succession to a newly incorporated company or is acquired by an existing company, and the distribution amongst the partners of a number of shares, stakes and securities in the beneficiary companies in proportion to their corresponding participation in the company being divided.

Article 70. *Partial division.*

1. Partial division is understood as the transfer en bloc by universal succession of one or several parts of a company's equity –each of them forming an economic unit– into one or more newly incorporated or existing companies, and the distribution amongst the partners of a number of shares, stakes and securities in the companies benefiting from the division in proportion to their corresponding participation in the company being divided, with the necessary share capital reduction.

2. Should part of the equity being transferred en bloc be formed by one or several companies or business, industrial or service establishments, debts incurred for the organisation and operation of the company being transferred may be attributed to the beneficiary company.

Article 71. *Separation.*

Separation is understood as the transfer en bloc by universal succession of one or several parts of a company's equity –each of them forming an economic unit– into one or more companies. The separated company shall in exchange receive shares, stakes and securities in the beneficiary companies.

Article 72. *Incorporation of a wholly owned company through transfer of assets.*

The rules for division shall also apply, where appropriate, to the transaction by which a company may transfer its equity en bloc to a newly incorporated company in exchange for all the shares, stakes and securities of the beneficiary company.

SECTION II

Legal system applicable to the division.

Article 73. *Legal regime applicable to the division.*

1. Division shall be governed by the rules for mergers set forth under this Act, with the exceptions expressed in this Section and it is understood that any mention to the company resulting from the merger shall be equivalent to a mention to companies benefiting from the division.

2. A division where trading companies of different nationalities are involved or result from shall be governed by the provisions in their respective personal laws. European joint stock companies shall be governed by the applicable system in each case.

Article 74. *Division project.*

On top of the information listed for the merger project, the division project must include:

1st. The name and, where appropriate, the exact distribution of assets and liabilities to be transferred to the beneficiary companies.

2nd. The distribution of the appropriate shares, stakes and securities in the beneficiary companies amongst the partners of the company being divided, as well as the criteria such distribution is based on. This information shall not apply to cases of separation.

Article 75. *Attribution of elements of the assets and liabilities.*

1. In case of total division, where an element of the assets may not have been attributed to any beneficiary companies in the division project and the interpretation of the latter does not allow for a decision on the distribution, said element or its exchange value shall be distributed amongst all beneficiary companies in proportion to the assets attributed to each of the in the division project.

2. In case of total division, where an element of the liabilities may not have been attributed to any beneficiary companies in the division project and the interpretation of the latter does not allow for a decision on the distribution, all beneficiary companies shall answer for them jointly and severally.

Article 76. *Attribution of the partners' shares, stakes and securities.*

In cases of total or partial division with multiple beneficiary companies, provided that the shares, stakes and securities of all beneficiary companies are not attributed to the partners of the company being divided, individual consent of the affected persons shall be required.

Article 77. *Administrators' report on the division project.*

The report on the division project that the administrators of the companies partaking in the division must prepare must express that the reports on the non-cash contributions stipulated in this Act where the companies benefiting from the division are limited partnerships or joint-stock companies have been issued. It shall also specify the Commercial Registry where said reports may have been or are to be filed.

Article 78. *Independent experts' reports.*

1. Where the companies taking part in the division are limited partnerships or joint-stock companies, the division project shall be subject to reports by one or several independent experts appointed by the Commercial Registrar corresponding to the registered office of each of them. Said report shall also comprise the valuation of non-cash assets transferred to each company.

2. Notwithstanding the foregoing paragraph, the administrators of all the companies taking part in the division may request the Commercial Registrar corresponding to the registered office of any of them to appoint one or several experts to prepare a single report.

3. The experts' report or reports shall not be required if all the voting partners and, where appropriate, the persons that may rightfully exercise the right to vote under the law or the articles of association of each of the companies taking part in the division so decide.

Article 78 *bis*. *Simplification of requirements.*

In the case of division by the incorporation of new companies, should the shares, stakes or securities of each of the new companies be attributed to the partners of the company being so divided proportionally to the rights they held over the equity of the latter, neither the administrators and independent experts' reports on the division project nor the division balance sheet shall be necessary.

Article 79. *Equity modifications subsequent to the division project.*

The administrators of the company being divided are under an obligation to inform their meeting of partners about any significant changes to the equity occurred between the date of preparation of the division project and the date of the meeting of partners. In the case of division by acquisition, the administrators of the beneficiary companies shall provide the same information to the administrators of the company so divided so that they, in turn, can inform their meeting of partners.

Article 80. *Joint and several responsibility for unfulfilled obligations.*

The rest of the beneficiary companies shall respond jointly and severally for any unfulfilled obligations assumed by a beneficiary company up to the amount of the net assets attributed to each of them upon division and, should it survive, by the divided company itself for the full amount of the obligation.

TITLE IV
About global disposal of assets and liabilities

SECTION I

General provisions

Article 81. *Global disposal of assets and liabilities.*

1. A registered company may transfer all its assets en bloc by universal succession to one or several partners or third parties in exchange for a compensation other than partners' shares, stakes or securities of the transferee.

2. The transferring company shall disappear if the partners receive the compensation fully and directly. At any rate, the compensation received by each partner must comply with the rules applicable to the liquidation preference.

Article 82. *Outright global disposal.*

Where global disposal is made to two or more transferees, each part of the transferred equity must form an economic unit.

Article 83. *Global disposal by companies in liquidation.*

Companies in liquidation may globally dispose of their assets and liabilities provided that the distribution of its assets amongst the partners has not begun.

Article 84. *International global disposal.*

Where the transferring company and the transferee or transferees may have different nationalities, the global disposal of assets and liabilities shall be governed by the provisions in their corresponding personal laws. European joint stock companies shall be governed by the applicable system in each case.

SECTION II

Legal system for global disposal

Article 85. *Global disposal project.*

1. The company's administrators must prepare and sign a global disposal project that must at least include the following information:

1st. The company's name, state of incorporation and registered office and the identifying details of the transferee or transferees.

2nd. The date on which the disposal will start having accounting effects, in accordance with the provisions of the Chart of Accounts.

3rd. The information on the valuation of all the assets and liabilities, the name and, where appropriate, the exact distribution of assets and liabilities to be transferred to each transferee.

4th. The compensation to be received by the company or the partners. Where the compensation is attributed to the partners, the criteria the distribution is based on shall be specified.

5th. Potential consequences on employment of the global disposal project.

2. The administrators must produce a copy of the global disposal project for its registration at the Mercantile Registry.

Article 86. *Administrators' report.*

Administrators shall prepare a report explaining and substantiating the global disposal project in detail.

Article 87. *Global disposal agreement.*

1. Global disposal must be necessarily agreed upon by the meeting of partners of the transferring company, strictly adhering to the global disposal project, under the requirements set out for the adoption of a merger agreement.

2. The global disposal project shall be published in the "Official Journal of the Mercantile Registry" and in a high-volume local newspaper of the province of the registered office, disclosing the identity of the transferee or transferees. The notice shall include the right of all partners and creditors to obtain the full text of the adopted agreement, as well as the right to oppose creditors are entitled to.

The publication of the global disposal project shall not be necessary if the agreement is individually advised in writing to all partners and creditors, by such means as may secure its reception at the address detailed in the company's documentation. Additionally, the global disposal project and the administrators' report must be made available to the employees' representative.

Article 88. *Creditors' right to oppose.*

1. Global disposal shall not be completed before the lapse one month starting on the date of publication of the latest notice of agreement, or, in the case of notice in writing to all partners and creditors, of the submission of the notice to the last of them.

2. Within this period, the transferring company's creditors and the transferee or transferees' creditors may oppose to the disposal, under the same terms and with the same expected effects as a merger.

Article 89. *Global disposal deed and registration.*

1. Global disposal shall be recorded in the public deed made by the transferring company and the transferee or transferees. The deed shall include the global disposal project approved by the transferring company.

2. The effect of the global disposal shall commence upon registration of the transferring company at the Mercantile Registry. Should the company disappear as a result of the transfer, its entry shall be cancelled.

Article 90. *Global disposal challenge.*

The provisions in Article 47 of this Act regarding mergers shall apply to global disposals.

Article 91. *Joint and several responsibility for unfulfilled obligations.*

1. The rest of the transferees shall respond jointly and severally for any unfulfilled obligations assumed by a transferee up to the amount of the net assets attributed to each of them upon disposal; and, as the case may be, the partners to the limit of the sum they may have received as a compensation for the disposal or by the company itself, should it have survived, for the full amount of the obligation.

2. The partners' joint and several responsibility shall expire after five years.

TITLE V
International transfer of registered office

SECTION I

General provisions

Article 92. *Legal system of the international transfer of registered offices.*

The transfer of the registered office of an incorporated Spanish trading company overseas or that of a foreign company to the Spanish territory shall be governed by the provisions on the international treaties or conventions in force in Spain and in this Title, without prejudice to the stipulations for European joint stock companies.

Article 93. *Transferring the registered office overseas.*

1. The transfer overseas of the registered office of a company registered and incorporated in accordance with the Spanish Law can only be completed if the State to whose territory it is transferred allows for the maintenance of the company's legal identity.

2. Companies in liquidation or companies in voluntary arrangement with creditors shall not transfer their registered office overseas.

Article 94. *Transferring the registered office to the Spanish territory.*

1. The transfer of the registered office of a company incorporated under the law of a different State comprised in the European Economic Area to the Spanish territory shall not affect the company's legal identity. Nevertheless, it must comply with the requirements of the Spanish law for the incorporation of a company under the state of incorporation held by it, unless the international treaties or conventions in force in Spain otherwise state.

Specifically, foreign capital companies intending to transfer their registered office to Spain from a State outside the European Economic Area must substantiate that their net equity covers the amount of share capital required by the Spanish Law by means of an independent expert's report.

2. The same rule shall apply to the transfer of registered office to Spain of companies incorporated under the law of other States, their personal law permitting the maintenance of the legal identity.

SECTION II

Legal system for transfers

Article 95. *Transfer project.*

1. The administrators of the company intending to transfer its registered office overseas must prepare and sign a transfer project. Any missing signatures shall be pointed out at the end of the project, detailing the reason.

2. The project must also include the following information, at least:

1st. The company's name and registered office, as well as reference details of its registration in the Mercantile Registry.

2nd. The proposed new registered office.

3rd. The articles of association that are to govern the companies after relocation, including the new corporate name, where appropriate.

4th. The planned scheduled for the transfer.

5th. All rights provided to protect partners and creditors, as well as employees.

3. The administrators are under an obligation to produce a copy of the transfer project for its registration at the corresponding Mercantile Registry. Once the filing and Registrar's statement of validity are completed, the Registrar will inform the Central Commercial Registrar for the immediate free publication of the fact of the registration and the date it may have taken place on in the "Official Journal of the Mercantile Registry". The publication of the call for a meeting of partners where the transfer is to be decided must not be done before its registration has been completed.

The notice in the "Official Journal of the Mercantile Registry" must detail the name, state of incorporation and registered office of the transferring company, the details of its registration in the Mercantile Registry, as well as a mention to the terms under which partners and creditors may exercise their rights and the address where the information on said terms may be obtained free of charge.

Article 96. *Administrators' report.*

The administrators shall prepare a report explaining in detail and accounting for legal and financial considerations of the transfer project, as well as its consequences for partners, creditors and employees.

Article 97. *Approval in the meeting of partners.*

The transfer of the registered office to a different State must necessarily be agreed upon by the meeting of partners, in compliance with all requirements and formalities set out in the regime of the transferring company.

Article 98. *Call for a meeting and right of information.*

1. The call for the meeting must be published in the "Official Journal of the Mercantile Registry" and in one of the high-volume local newspapers of the province in which the company has its registered office at least two months prior to the planned date for holding of the meeting.

2. Alongside the notice of call, the following information must also be published:

1st. The current registered office and the registered office that the company intends to have overseas.

2nd. The right held by partners and creditors to examine the transfer project and the administrators' report at the registered office, as well as to obtain copies of said documents, free of charge, upon request.

3rd. The partners' right of separation and the creditors' right to oppose and how to exercise such rights.

Article 99. *Partners' right of separation.*

Any partners having voted against the agreement to transfer the registered office overseas may separate from the company, in accordance with the provisions in Title IX of the Capital Company Act.

Article 100. *Creditors' right to oppose.*

Any creditors of the company whose credit may have arisen before the date of publication of the project to transfer the registered office overseas shall have the right to oppose the transfer under the terms set out for opposing a merger.

Article 101. *Certification prior to the transfer.*

In view of the information contained at the Mercantile Registry and in the public deed of transfer produced, the Commercial Registrar corresponding to the company's registered office shall certify the conformity with the acts and formalities to be completed before the transfer. Once said certification has been issued, registration of new entries shall become closed.

Article 102. *Effectiveness of the transfer of the registered office overseas.*

The transfer of the registered office, as well as the appropriate amendment to the memorandum of incorporation and articles of association, shall become effective on the date the company becomes registered in the Mercantile Registry corresponding to the new registered office.

Article 103. *Cancellation of an entry.*

Cancellation of the entry of the company at the Mercantile Registry shall take place once the certificate accrediting the company's registration at the Mercantile Registry corresponding to its new registered address and the notices of such registration in the "Official Journal of the Mercantile Registry" and in one of the high-volume local newspapers of the province in which the company may have had its registered office are produced.

First additional provision. *Employment rights deriving from structural changes.*

1. The provisions in this Act are to be interpreted without prejudice to the employees' rights to information and consultation set forth in labour legislation.

2. Assuming that structural changes governed by this Act entail a change in ownership of the company, of a place of work or of an independent production unit, the provisions set out in Article 44 of the consolidated text of the Statute of Workers Rights approved by the Royal Legislative Decree 1/1995 of the 24th March shall apply.

Second additional provision.

The conversion, merger, division or global disposal of assets and liabilities of unregistered collective companies and, generally speaking, irregular companies, shall require their prior registration.

Third additional provision. Applicable regime to conversion, merger, division or global or partial disposal of assets and liabilities transactions between credit institutions.

1. Merger transactions between credit institutions of the same nature, as well as division and global disposal of assets and liabilities between credit institutions of identical or different nature, shall be governed by the rules set forth in this Act for such transactions, without prejudice to the provisions in the specific legislation applicable to those institutions.

2. Where the transaction involves the transfer by universal succession of one or several parts of a credit institution's equity -whatever its nature- forming an economic unit to another credit institution of the same or different nature in exchange for a compensation other than shares, stakes or securities in the transferring institution, the regime on global disposal of assets and liabilities provided in Articles 85 to 91 of this Act shall apply, without prejudice to the provisions of its specific legislation.

Temporary provision. *Temporary regime.*

This Act shall apply to structural changes in trading companies whose projects may not have been yet approved prior to the coming into force of the Act by the company or companies involved.

Derogatory provision. *Repealed rules.*

The following will be repealed upon this Act coming into force:

1st. The second paragraph in Article 149, Section VIII (Articles 223 to 259); number 6 of the first paragraph in Article 260; and the second paragraph of the first additional provision of the Spanish Joint Stock Act consolidated text approved by the Royal Legislative Decree 1564/1989 of the 22nd December.

2nd. Section VIII (Articles 87 to 94); the second paragraph of article 111; Article 117; and Article 143 of the Act 2/1995 of the 23rd March on Limited Liability Companies.

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

First final provision. *Amendments to the Spanish Joint Stock Act consolidated text approved by the Royal Legislative Decree 1564/1989 of the 22nd December.*

Articles 11.1, 15.2, 38, 41.1, 42, 75, 76, 78, 79.3rd, 84, 103.1, 158.1, 166, 266 and 293 of the Spanish Joint Stock Act consolidated text approved by the Royal Legislative Decree 1564/1989 of the 22nd December are amended and new Articles 38bis, 38ter, 38quater and 50bis are introduced to this Act.

One. Paragraph 1 of Article 11 shall be phrased in the following way:

«1. The company's founding and developing members may reserve special economic rights whose aggregate value –whatever its nature– shall not exceed ten per cent of the net profit obtained according to the balance sheet, after deducting the share allocated to the statutory reserve and for a maximum duration of ten years. The articles of association must provide for a liquidation system in the event of early termination of these special rights.»

Two. Paragraph 2 of Article 15 should read as follows:

«2. The company being formed shall answer for the essential acts and contracts for the registration of the company, for those made by the administrators within the powers granted in the deed for the stage prior to the registration and for the stipulations under specific mandate of the persons appointed for this purpose by all the partners with the assets composed of the partners' contributions. Partners shall personally answer for the extent of whatever they are obliged to contribute.

However, if the date of commencement of corporate operations overlaps with the date of execution of the founding deed and, unless the articles or memorandum of incorporation state otherwise, it shall be understood that the administrators are entitled to the full implementation of the corporate object and to perform any kind of acts and contracts, for which the company being formed and the partners shall answer under the terms stated.»

Three. Article 38 shall be phrased in the following way:

«Article 38. Non-cash contributions: experts' report.

1. Non-cash contributions, whatever their nature, must be subject to a report prepared by one or several professionally competent independent experts appointed by the Commercial Registrar corresponding to the registered office, in compliance with any statutory procedure that may be determined.

2. The report shall include the description of the contribution, with the registration details, should they exist, and the valuation of the contribution, specifying the criteria used and whether it is consistent with the nominal value and, where appropriate, with the issue premium of shares issued as consideration.

3. The value given to the contribution in the memorandum of incorporation shall not exceed the valuation made by the experts.

4. The expert shall answer before the company, the partners and the creditors for any damages caused by said valuation and shall be exempt if it is verified that due diligence and appropriate standards for the activity committed to them.

The procedure to demand the above responsibility shall expire after four years of the date of the report.»

Four. A new Article 38bis that reads as follows will be introduced:

«Article 38bis. Exceptions to report requirements.

An experts' report shall not be necessary in the following cases:

1st. Where non-cash contributions consist of transferable securities quoted on an official secondary market, a regulated market or money-market instruments. These assets shall be valued for the weighted average price to which they may have been negotiated in one or more regulated markets in the last quarter prior to the effective completion of the contribution, in accordance with the certification issued by the governing body of the official secondary market or the regulated market concerned.

Should this price have been affected by exceptional circumstances that may have significantly altered the value of the assets on the effective date of the contribution, the company's administrators must request for an independent expert to be appointed to produce a report.

2nd. Where contributions consist of assets other than the ones noted in number 1st whose reasonable value may have been determined by a professionally competent independent expert not appointed by the parties in the six months prior to the effective completion date of the contribution, in accordance with the generally recognised valuation principles and rules for said assets.

If new circumstances coincide that may have significantly altered the value of the assets on the effective date of the contribution, the company's administrators must request for an independent expert to be appointed to produce a report.

In this case, should the administrators have failed to request for an independent expert to be appointed where it was due, the shareholder or shareholders representing at least five per cent of the share capital may request for the Commercial Registrar corresponding to the registered office to appoint an expert to perform the asset valuation –at the company's expense– on the date of adoption of the capital increase agreement. The request can be filed up to the effective completion date of the contribution, provided they continue to represent at least five per cent of the share capital at the time of filing.»

Five. A new Article 38ter that reads as follows will be introduced:

«Article 38ter. Administrators' report.

Where non-cash contributions have been made without an independent experts' report, the Mercantile Registry shall appoint the administrators to prepare a report including:

1st. Description of the contribution.

2nd. The value of the contribution, the source of the valuation and, where applicable, the method used to determine it.

If the contribution consisted of transferable securities quoted on an official secondary market, the concerned regulated market or on money-market instruments, the certification issued by its governing body shall be attached to the report.

3rd. A statement clarifying whether the obtained value corresponds at least to the number, nominal value and, where appropriate, the issue premium of shares issued as consideration.

4th. A statement clarifying that no new circumstances that may affect the initial valuation have arisen.»

Six. A new Article 38quarter that reads as follows will be introduced:

«Article 38 quarter. Reports' publicity.

1. An authenticated copy of the expert's report or, where appropriate, the administrators' report must be filed in the Mercantile Registry within a month from the effective date of the contribution.

2. The expert's report or, where appropriate, the administrators' report shall be incorporated as a Schedule to the company's memorandum of incorporation or to the deed of execution of a share capital increase.»

Seven. The first paragraph of Article 41 is modified and comes to read as follows:

«1. Asset acquisition for consideration made by a joint stock company from the execution of the memorandum of incorporation or as a result of the conversion to such a state of incorporation and up to two years from its registration in the Mercantile Registry must be approved by the General Assembly of Shareholders if the asset amount exceeds a tenth of the share capital.

Alongside the call for the assembly, a report substantiating the acquisition prepared by the administrators, as well as the requirements for the valuation of non-cash contributions under this chapter, must be made available to the shareholders. The provisions in Article 38quarter shall apply.»

Eight. Article 42 is modified and comes to read as follows:

«Article 42. Passive dividends.

1. The investor must pay the company the equity portion that may have remained outstanding in the manner and within the maximum period of time stipulated in the articles of association.

2. The demand for payment of the passive dividends shall be advised to the affected parties or published in the "Official Journal of the Mercantile Registry". A period of at least one month must lapse between the date of sending the communication or announcement and the payment date.»

Nine. A new Article 50bis that reads as follows will be introduced:

«Article 50bis. Equal treatment.

The company shall equally treat partners in identical conditions.»

Ten Article 75 is modified and comes to read as follows:

«Article 75. Acquisition of Company's treasury stock.

1. The company may purchase treasury stock and that issued by its parent company under the following terms:

1st. The acquisition has been authorised by agreement of the general meeting, that must establish the form of acquisition, the maximum number of stock to be purchased, the minimum and maximum exchange value in case of acquisition for consideration, and the duration of the authorisation, which may not exceed five years.

Where the object of the acquisition is stock of the parent company, the authorisation must also come from the general meeting of the latter.

Where the object of the acquisition is stock that is to be given directly to the company's employees or administrators or, as a result of the exercise of the option rights of the holders, the meeting's agreement must state that the authorisation is given for such purposes.

2nd. The acquisition, including the stock that the company or person acting in their own name but on behalf of it may have acquired and held in portfolio beforehand, does no result in the net equity being less than the share capital amount plus any reserves made unavailable by law or statutes.

To these purposes, the net equity shall be the amount described as such in accordance with the criteria used to prepare the yearly accounts, reducing the amount of any benefits directly attributed to it and increasing the uncalled issued capital amount, as well as the amount of the nominal capital and the issue primes of the issued capital recorded in accounting as liabilities.

2. The nominal value of stock acquired directly or indirectly, on top of the value of that already held by the acquiring company and its subsidiaries and, where appropriate, the parent company and its subsidiaries, shall not exceed twenty per cent or, in case of a quoted company, ten per cent of the issued capital.

3. Administrators must especially ensure that the terms set out in this article are complied with at the time of any authorised acquisition.

4. The acquisition by the company of partially paid treasury stock and stock not resulting in the obligation of making accessory services shall be void, unless said acquisition is gratuitous.»

Eleven Article 76 is modified and comes to read as follows:

«Article 76. Consequences of infringement.

1. Stock acquired in contravention of the provisions in the above articles must be sold within the maximum period of one year from the date of the first acquisition.

2. If the aforementioned period passes and no sale is made, the administrators shall immediately proceed to call for a General Assembly of Shareholders to agree on the repayment of the treasury stock, with the concomitant reduction in the share capital.

3. Should the company not have reduced the share capital within two months from the end of the maximum sale period, any interested party may request the capital reduction to the Commercial Court Judge corresponding to the place of its registered office. The administrators are under an obligation to request the judicial reduction of the share capital if the meeting's agreement is contrary to this reduction or may not have been reached.

4. The parent company's stock shall be judicially sold upon request of the interested party.»

Twelve. Article 78 is modified and comes to read as follows:

«Article 78. Obligation to dispose.

1. Any stock acquired in accordance with the provisions in items b) and c) of the previous article must be sold within a maximum period of three years from the date of acquisition, except where previously paid for by reduction of share capital or if, when added to that held by the acquiring company and its subsidiaries and, where appropriate, the parent company and its subsidiaries, does not exceed twenty per cent or, in case of a quoted company, ten per cent of the share capital.

2. The provisions in paragraphs 2 and 3 of Article 76 shall apply should the deadline referred to in the above paragraph has passed before the sale has been completed.»

Thirteen. The third rule of Article 79 is modified and comes to read as follows:

«3rd. An unavailable reserve equivalent to the amount of the parent company's stock booked under assets shall be established in the net equity. Said reserve must be maintained as long as stock remains unsold.»

Fourteen. Article 84 is modified and comes to read as follows:

«Article 84. Cross shareholding reserve.

A reserve equivalent to the amount of the cross shareholding exceeding ten per cent of the capital booked under assets in the net equity of the company under a reduction obligation shall be established.»

Fifteen. The first paragraph of Article 103 is modified and comes to read as follows:

«Article 103. Incorporation. Special cases.

1. In order for the ordinary or extraordinary general meeting to be able to rightfully agree on the capital increase or reduction, and any other amendments to the articles of association, bond issuance, removal or limitation of the right of first refusal of new stock, as well as conversion, merger, division or global disposal of assets and liabilities and transfer of the registered office overseas, the attendance upon first calling of

shareholders or their proxies holding, at least, fifty per cent of the issued capital attaching to voting rights shall be required.»

Sixteen. Paragraph 1 of Article 158 is modified and comes to read as follows:

«1. For share capital increases where new stock –ordinary or preferential– is issued at the expense of cash contributions, the former shareholders may exercise the right to subscribe any number of stock in proportion to the nominal value of stock held by them within the period granted for these purposes by the company's management, which shall not be less than fifteen days from the publication of the notice of the new issuance subscription offer in the "Official Journal of the Mercantile Registry" for quoted companies and one month in any other case.»

Seventeen. Article 166 is modified and comes to read as follows:

«Article 166. Right to oppose.

1. Creditors whose credit arisen before the date of the last notice of agreement to reduce the capital may not have expired at the time and until said credit is secured shall have a right to oppose the reduction.

Creditors whose credit is already sufficiently secured shall not enjoy the same right.

2. The right to oppose must be exercised within a month from the date of the last notice of agreement.

3. In cases where creditors have a right to oppose the reduction, this shall not take effect until the company provides a guarantee to the satisfaction of the creditor or until the company otherwise informs said creditor of the payment of a joint and several bond amounting to the credit held by the creditor by a duly authorised credit institution in favour of the company, and until the action to demand its application has expired.

Eighteen. Article 266 is modified and comes to read as follows:

«Article 266. Opening of the liquidation proceedings.

The company's dissolution starts the liquidation period.»

Nineteen. Article 293 is modified and comes to read as follows:

«1. The company's shareholders shall be entitled to preferential subscription of convertible bonds, with application of the provisions in Article 158 of this Act.

2. In cases where the company's interest so requires, the general meeting may agree to the total or partial removal of the preferential subscription right when deciding upon the issuance of convertible bonds. For this agreement –which must comply with the provisions in Article 144– to be valid, the following shall be necessary:

a) For the calling of the meeting to have expressed the proposal to remove the preferential subscription right.

b) For the administrators' report referred to in paragraph 2 of Article 292 to substantiate the removal proposal in detail.

c) For the accounts auditor's report referred to in paragraph 2 of Article 292 to make a technical judgement on the reasonableness of the data contained in the administrators' report and the suitability of the conversion rate and, where appropriate, detail the adjustment formulas to offset a potential dilution of the economic holding of the shareholders.»

Second final provision. *Amendment to Act 2/1995 of the 23rd of March on Limited Liability Companies.*

Article 21.5 and 53.2 of the Act 2/1995 of the 23rd March on Limited-Liability Companies are amended.

One. The fifth paragraph of Article 21 shall be phrased in the following way:

«5. Any partners whose non-cash contributions are valued as set out in the provisions of the Joint Stock Act are exempt of joint and several responsibility.»

Two. The second paragraph of Article 53 shall be phrased in the following way:

«2. By way of derogation from the provisions in the above paragraph:

1st. The capital increase or reduction and any other amendments to the articles of association shall require the positive vote of over half the votes corresponding to the shares in which the share capital is divided.

2nd. Authorising the administrators to pursue an activity which is identical, similar or complementary to the company's object, independently or as employees; removing or limiting preferential rights in capital increase; converting, merging, dividing or globally disposing of assets and liabilities and transferring the registered office overseas; and the exclusion of shareholders shall require the positive vote of at least a third of the votes corresponding to the shares in which the share capital is divided.»

Third final provision. *Amendment of Act 31/2006 of the 18th October on employee involvement in European joint stock companies and cooperative societies.*

One. A new title in Act 31/2006 of the 18th October on employee involvement in European joint stock companies and cooperative societies is introduced and reads as follows:

«TITLE IV

Provisions applicable to intra-community cross-border mergers in incorporated companies

SECTION I

Provisions applicable to companies resulting from intra-community cross-border mergers with registered office in Spain

Article 39. Employees' involvement rights in companies resulting from intra-community cross-border mergers.

1. The participation of employees in the company resulting from the intra-community cross-border merger that has or is to have its registered office in Spain, as well as their

involvement in the definition of the corresponding rights, shall be governed by the provisions stated in this Section should any of the following circumstances coincide:

a) At least one of the companies merging employs an average number of employees over 500 people and operates under an employee participation system for a period of six months before the publication of the common merger project.

b) In the case of the employees being involved in the company resulting from the cross-border merger, said involvement does not at least reach the same level of employment participation as is applied in the companies taking part in the merger, quantified on the basis of the proportion of members representing the employees at the administrative or control body or the committees thereof, of at the management body with power to decide on profit distribution within the companies.

c) In the case of the employees being involved in the company resulting from the cross-border merger, the employees of the establishments of said company located within other Member States may exercise fewer participation rights to the participation rights exercised by those employed in Spain.

2. The application of the provisions in this Section excludes the provisions of any other Member State where the company resulting from the merger or the merging companies may hold places of work, except where there is a specific reference to this Section.

Article 40. Process of negotiation of participation rights.

The provisions contained in Section I of Title I of this Law shall apply to the employees' participation right, including the following particularities:

1st. The competent bodies of the companies taking part in the merger shall have a right to opt, without prior negotiations, to be directly subject to the supplementary provisions contained in Article 20 for the participation of employees in company merger scenarios, or to observe said provisions from the date of registration of the company resulting from the company.

2nd. The provisions in paragraphs 2 and 3 of Article 8 regarding the roles of the negotiating panel shall not apply. Nevertheless, the negotiating panel shall have a right to decide, by majority of two thirds of the members representing at least two thirds of the employees, including the votes of members representing the employees in at least two different Member States, not to start negotiations or to end active negotiations and to rely on the current participation rules in the Spanish labour legislation.

3rd. The provisions in Article 9.2. shall not apply.» Should any of the merging companies apply an employee participation system in its administration or control bodies affecting at least 25 per cent of the total number of workers employed in the partaking companies altogether, where the outcome of negotiations may determine a reduction on the participation rights of existing employees in the partaking companies, the majority needed to reach such an agreement shall be two thirds of the members of the negotiating panel representing in turn at least two thirds of the employees and including the votes of members representing the employees in at least two different Member States.

For these purposes, a reduction in the rights of participation shall be understood as the set up of a number of members in the bodies of the company resulting from the merger lesser than the larger number existing in any of the partaking companies.

4th. The contents of the agreement must comprise:

a) Identification details of the parties entering into the agreement.

b) The scope of application of the agreement.

c) Essential aspects of the participation rules, including, where appropriate, the resolution on the number of members of the administrative body of the company resulting from the cross-border merger as the employees may have the right to decide, appoint or recommend or whose appointment they may have a right to oppose, the course of action for these purposes, and their rights.

d) The agreement's effective date, its term and reporting, extension and renegotiation conditions.

Article 41. Application of supplementary provisions in terms of participation.

1. In the following cases, supplementary provisions stipulated in Article 20 regarding the employees' participation shall apply to the company resulting from the intra-community cross-border merger from the date of its incorporation:

a) When the parties so agree.

b) When no agreement has been reached within six months and, where appropriate, within the extension period of said term, under the conditions provided in Article 10, so long as:

1st. The negotiating panel has failed to take the decision not to start negotiations or to end active negotiations and to rely on the current participation rules in the Spanish labour legislation.

2nd. The competent bodies of each of the companies taking part decide to accept the application of supplementary provisions. Should they refuse to apply said provisions, the merger process shall not move forward.

3rd. An employee participation system affecting at least 33.3 per cent of the total number of workers employed in the partaking companies altogether –or a lesser number, should the negotiating panel so decide– is applied to the administration or control bodies of any of the companies taking part prior to the registration of the company resulting from the merger.

2. For the purposes of the provisions in the above paragraph, all earlier participation systems corresponding to the stipulations in Article 2 I) shall be taken into consideration, regardless of their originating legally or by convention.

Should none of the partaking companies be governed by one such system of participation prior to the registration of the merger, the company resulting from the merger shall be under no obligation to set out provisions regarding employee participation.

Where there had been different employee participation systems within the various companies taking part, it is the negotiating panel's responsibility to decide which of those systems to apply to the company. The negotiating panel shall inform the competent bodies of the companies taking part about the decision taken to this effect.

Should the negotiating panel fail to inform the competent bodies of the companies taking part about a decision taken in accordance with the above paragraph by the date of registration of the company, the participation system having previously affected the greater number of employees of the companies taking part shall apply to the company resulting from the merger.

Article 42. Extension of certain provisions that apply to European companies to companies resulting from intra-community cross-border mergers.

The provisions contained in Section III of Title I for European companies shall apply to companies resulting from intra-community cross-border mergers registered in Spain, except for the references to the representation bodies and the employees' representatives carrying out their duties in the context of an information and consultation process.

Article 43. Protection in case of subsequent domestic mergers.

Where the company resulting from an intra-community cross-border merger operated under an employee participation system, said company must warrant the protection of employees' rights in the event of subsequent domestic mergers for three years after the intra-community cross-border merger has taken effect, in which case the provisions set out under this title shall apply as soon as practicable.

SECTION II

Provisions applicable to places of work of companies resulting from intra-community cross-border mergers located in Spain.

Article 44. Scope of application of the Section.

1. Except for any references to the representation body, the provisions in Title II shall apply to places of work of the companies resulting from cross-border mergers with registered office in any Member State of the European Economic Area located in Spain.

2. Furthermore, the provisions in Title III regarding legal proceedings shall apply to companies taking part in intra-community cross-border merger operations and the companies resulting from them, under the terms set out in said title.

3. The stipulations of the above paragraph shall only apply where employee participation in the company resulting from the merger must exist, in accordance with the provisions of the Member States by which Article 16 of the European Parliament and Council Directive 2005/56/EC of the 26th October 2005 on the cross-border merger of incorporated companies is implemented.

Article 45. Legal effectiveness of provisions of other Member States in Spain.

All places of work of the company resulting from the merger, including those within its scope of application and located within the Spanish territory, as well as their

corresponding employees, are bound by any agreements between the negotiating panel and the competent body of the participating companies reached in accordance with the provisions of the Member States and, failing this, the supplementary rules of the aforementioned provisions, for the duration of their enforcement period.

Nevertheless, the validity and effect of such agreements may under no circumstances be prejudicial or alter the negotiation, information or consultation powers that the Spanish Law vests on works councils, personnel delegates and trade unions, as well as any other representative body created by collective bargaining.»

Two. Paragraphs 3 and 4 of the first additional provision are amended and shall read as follow:

«3. This Act shall not affect:

a) The current employee involvement rights other than those of participation in the bodies of the European company that its employees may enjoy and those of its places of work and subsidiary companies, in accordance with domestic legislation and practices of the Member States.

It shall neither affect employee involvement rights other than those of participation in the bodies of company resulting from an intra-community cross-border merger that the company's employees may enjoy and those of its places of work, in accordance with domestic legislation and practices of the Member States.

b) The rights concerning participation in the bodies that the employees of subsidiaries to the European company may enjoy, in accordance with domestic legislation and practices.

4. In order to safeguard the rights mentioned in paragraph 3, the company's registration in itself shall not terminate the term of office of legal employees' representatives of the companies taking part that cease to be separate legal entities, and they shall continue carrying out their duties in the same manner and under the same terms previously governing them.»

Fourth final provision. *Amendment to Act 13/1989 of the 26th of May on Credit Unions.*

The tenth Article of Act 13/1989 of the 26th May on Credit Unions is reworded and shall read as follows:

«Tenth Article. Merger, division and conversion:

1. Mergers, divisions and conversions affecting a Credit Union shall require prior administrative authorisation, including a report by the Bank of Spain.

Should the institution resulting from the merger, division or conversion be a Credit Union, this shall request its registration at the corresponding Registry of the Bank of Spain, without prejudice to the appropriate registration in the registries of those Autonomous Communities holding powers on this matter, by virtue of their Statutes of Autonomy, and compliance with any other registry rules and obligations.

2. Where a Credit Union converts to another credit institution, the Obligatory Reserve Fund of the former shall be incorporated to the share capital of the institution resulting from such conversion.

Said conversion shall not entail the loss of its corresponding tax protection for the Corporation tax taxation period ending with the conversion of the institution's legal form, under the terms set forth in Article 26 of the consolidated text of the Corporation Tax Act approved by Royal Legislative Decree 4/2004 of the 5th March. Any part of the Obligatory Reserve Fund that may have reduced taxable income in previous tax years shall be incorporated to the taxable income corresponding to cooperative and extra-cooperative profits, as appropriate, during said taxation period.

Fifth final provision. *Jurisdictional authority.*

This Act is passed under the powers exclusively conferred to the State regarding commercial legislation by Article 149.1.6. of the Constitution.

Sixth final provision. *Incorporation of Community law.*

By this Act, the European Parliament and Council Directive 2005/56/EC of the 26th October 2005 on cross-border mergers of incorporated companies and the European Parliament and Council Directive 2006/68/EC of the 6th September 2006 by which the Council Directive 77/91/EEC are amended with reference to the formation of joint stock companies, as well as their maintenance and changes in its capital are incorporated to the Spanish Law. In addition, the European Parliament and Council Directive 2007/63/EC of the 13th November 2007 amending the Council Directives 78/855/EEC and 82/891/EEC with regard to the requirement to produce a report by an independent appraiser in the event of the merger or division of joint stock companies, is incorporated.

Seventh final provision. *Government authorisation:*

1. The Government may proceed to consolidate in one text entitled "Capital Company Act" regulatory laws for incorporated companies within twelve months, regularising, clarifying and harmonising the following legal texts:

– Section 4, Title I, Book II of the 1885 Commerce Code regarding joint-stock companies.

– Royal Legislative Decree 1564/1989 of the 22nd December by which the Spanish Joint Stock Act consolidated text is approved.

– Act 2/1995 of the 23rd of March on Limited-Liability Companies.

– And Title X of Act 24/1988 of the 28th July on the Stock Market, regarding quoted joint stock companies.

2. The Government is authorised to lay down as many provisions as may be necessary for the correct implementation and enforcement of the stipulations in this Act.

Eighth final provision. *Entry into force.*

This Act shall come into force three months after its publication in the "Official State Journal", except for provisions in Section II of Title II regarding intra-community cross-border mergers, which shall take effect on the day after its publication in the "Official State Journal".

Therefore,

I order all the Spaniards, private citizens and authorities to abide and enforce this Act.

Madrid, April 3rd, 2009.

JUAN CARLOS R.

The President or the Spanish Government,

JOSÉ LUIS RODRÍGUEZ ZAPATERO


GOBIERNO
DE ESPAÑA
MINISTERIO
DE JUSTICIA