

## Translation of Liechtenstein Law

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**Law on Persons and Companies (PGR)<sup>1</sup>**

of 20 January 1926

I hereby grant My consent to the following Resolutions adopted by Parliament in its meeting of 5 November 1925 pursuant to Articles 2, 14, 27, 38, 41, and 66(1) of the Constitution:

**Introduction**

## Article 1

*A. Application of the Act*

1) The Act applies to all questions under private law for which it contains a provision according to its wording or interpretation.

2) It is applicable to questions of public law only to the extent provided for in the Act itself.

3) In the absence of a provision in the Act, the judge shall decide in accordance with customary law and, in the absence of customary law, in accordance with the rule that the judge would make as legislator (judge-made law).

4) In doing so, the judge shall follow established doctrine and case law.

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<sup>1</sup> Title amended by LGBl. 2008 No. 224.

*B. Content of the legal relationships*

Article 2

*I. Acting in good faith*

- 1) Every person must act in good faith in the exercise of that person's rights and in the performance of that person's obligations.
- 2) The manifest abuse of a right is not protected by law.

Article 3

*II. Good faith*

- 1) Where the Act makes a legal effect conditional on the good faith of a person, there shall be a presumption of good faith.
- 2) No person may invoke the presumption of good faith if that person has failed to exercise the diligence required by the circumstances.

Article 4

*III. Judicial discretion*

- 1) Where the Act confers discretion on the judge or makes reference to an assessment of the circumstances or to important grounds, the judge must reach a decision in accordance with the principles of justice and equity.
- 2) This rule shall apply *mutatis mutandis* to decisions and decrees to be taken by administrative authorities under this Act.

Article 5

*C. General provisions of the law of obligations, practice and local custom*

- 1) The general provisions applicable to the law of obligations shall also apply *mutatis mutandis* to the legal relationships regulated herein, unless this Act provides otherwise.
- 2) Where the Act makes reference to practice or local custom, the law hitherto in force is deemed a valid expression thereof, provided no divergent practice or local custom is shown to exist.

## Article 6

*D. Rules of evidence*

1) Unless otherwise provided by the Act, the burden of proving the existence of an alleged and contested fact shall rest on the person who derives rights from that fact or who asserts it to defend against the claim of the opposing party.

2) Public registers and public documents constitute full proof of the facts evidenced by them, unless their content is shown to be incorrect.

3) Such proof of incorrectness does not need to be in any particular form.

## Article 7

*E. Authority with competence rationae materiae*

1) Unless otherwise provided by the law, the Court of Justice shall have jurisdiction.

2) The court shall decide on disputes arising from the application of this Act in litigation proceedings, unless otherwise provided for or unless subject to special non-contentious proceedings.<sup>2</sup>

3) The court's decisions and injunctions shall be subject to right to appeal to higher instances.

4) Unless otherwise provided by law, decisions or decrees of the municipal authorities may be appealed to the Government, those of the Government or other administrative authorities or bodies of the State to the Administrative Court in administrative proceedings.<sup>3</sup>

## Article 84

*F. International choice of law*

Repealed

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<sup>2</sup> Article 7(2) amended by LGBL 2010 No. 454.

<sup>3</sup> Article 7(4) amended by LGBL 2004 No. 33.

<sup>4</sup> Article 8 repealed by LGBL 1996 No. 194.

Part 1  
**Individuals (Natural persons)**

Title 1  
**Personality rights**

Section 1  
**Personality rights in general**

Article 9

*A. Legal capacity*

- 1) Every person has legal capacity.
- 2) Accordingly, within the limits of the law, every (natural) person has the same capacity to have rights and obligations under private law.
- 3) This provision is mandatory for purposes of international choice of law.

*B. Capacity to act*

*I. Legal responsibility*

Article 10

*1. Content*

- 1) A person who has the capacity to act has the capacity to create, change, set aside, or transfer rights and obligations under private law through that person's acts or omissions.
- 2) In the case of an agent, however, capacity of judgement is sufficient for this purpose.
- 3) Everyone is liable for their obligations to the full extent of their assets (without limitation), unless otherwise provided for in accordance with the law or transaction.

## *2. Preconditions*

### Article 11

#### *a) In general*

1) A person who has reached the age of majority and is capable of judgement has the capacity to act, unless an exception is provided for under the law in individual cases, such as in the case of limited capacity to act and the capacity to make a will.

2) The capacity to act is presumed unless its absence is obvious, as is the case with children.

### Article 12<sup>5</sup>

#### *b) Majority*

A person is of age who has reached the age of 18.

#### *c) Declaration of majority*

### Article 13<sup>6</sup>

Repealed

### Article 14<sup>7</sup>

Repealed

### Article 15

#### *d) Capacity of judgement*

1) A person is capable of judgement under private law if that person does not lack the capacity, by virtue of being a child or because of a mental disability, mental disorder, intoxication or similar circumstances, to recognise the reasons and consequences of that person's actions or to act

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<sup>5</sup> Article 12 amended by LGBl. 2000 No. 41.

<sup>6</sup> Article 13 repealed by LGBl. 2000 No. 41.

<sup>7</sup> Article 14 repealed by LGBl. 2000 No. 41.

in accordance with a correct insight.

2) The judge shall decide in specific cases whether this capacity to act rationally is lacking under the circumstances mentioned above.

## *II. Capacity to act*<sup>8</sup>

### Article 16<sup>9</sup>

#### *1. In general*

Persons do not have the capacity to act if they are not capable of judgement or have not yet reached the age of majority.

### Article 17

#### *2. Lack of capacity of judgement*

A person who is incapable of judgement cannot create legal effect by that person's actions, unless the law or the provisions on the liability of third parties provide otherwise.

#### *3. Persons who have not yet reached the age of majority or who are incapacitated but who are capable of judgement*<sup>10</sup>

### Article 18

#### *a) In general*<sup>11</sup>

1) Persons who have not yet reached the age of majority but who have reached the age of 14 are considered capable of judgement in case of doubt. They may enter into obligations through their actions or give up rights only with the consent of their legal representative.<sup>12</sup>

2) Without such consent, they may, however, accept advantages that are free of charge even without the involvement of their legal

<sup>8</sup> Heading preceding Article 16 amended by LGBl. 2010 No. 124.

<sup>9</sup> Article 16 amended by LGBl. 2010 No. 124.

<sup>10</sup> Heading preceding Article 18 amended by LGBl. 1993 No. 55.

<sup>11</sup> Article 18 heading amended by LGBl. 1993 No. 55.

<sup>12</sup> Article 18(1) amended by LGBl. 2010 No. 124.

representative and, where the law does not provide for an exception, exercise rights to which they are entitled for the sake of their personality.<sup>13</sup>

3) They are liable in damages for torts.<sup>14</sup>

4) The entitled persons are exclusively entitled to assert strictly personal rights, subject to the special involvement<sup>15</sup> of the legal representative provided for by law.<sup>16</sup>

5) Paragraphs 2 and 4 shall apply *mutatis mutandis* to persons for whom a trustee has been appointed.<sup>17</sup>

*b) Own actions of the person under guardianship or of the person for whom a trustee has been appointed*<sup>18</sup>

#### Article 19

##### *aa) Content of the guardian or trustee*<sup>19</sup>

1) If persons under guardianship or persons for whom a trustee has been appointed are capable of judgement, they may enter into obligations or give up rights as soon as their guardian or trustee has expressly or tacitly given consent in advance or retrospectively approves the transaction.<sup>20</sup>

2) The other party is relieved of any obligation if approval is not given by a reasonable deadline which that party sets upon providing a declaration of intent or retrospectively sets for the guardian or trustee or has set by a judge in special non-contentious proceedings.<sup>21</sup>

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<sup>13</sup> Article 18(2) amended by LGBL 1993 No. 55.

<sup>14</sup> Article 18(3) amended by LGBL 1993 No. 55.

<sup>15</sup> This should read "Mitwirkung" instead of "Mitwirkungen" in the German original.

<sup>16</sup> Article 18(4) amended by LGBL 1993 No. 55.

<sup>17</sup> Article 18(5) inserted by LGBL 2010 No. 124.

<sup>18</sup> Heading preceding Article 19 amended by LGBL 2010 No. 124.

<sup>19</sup> Article 19 heading amended by LGBL 2010 No. 124.

<sup>20</sup> Article 19(1) amended by LGBL 2010 No. 124.

<sup>21</sup> Article 19(2) amended by LGBL 2010 No. 124 and LGBL 2010 No. 454.

Article 20<sup>22</sup>*bb) Absence of consent*

1) If the guardian or trustee does not grant approval, either party may demand restitution of any performance already made. Persons under guardianship or for whom a trustee has been appointed are, however, liable only to the extent that they have already benefited from the performance or to the extent that they still are in possession of the performance or continue to be enriched at the time of the demand or have alienated the enrichment in bad faith.

2) If persons under guardianship or for whom a trustee has been appointed have induced the other party to erroneously assume that they have the capacity to act, they are liable for the loss or damage incurred under the provisions on torts.

Article 21<sup>23</sup>*cc) Profession or trade*

Persons under guardianship or for whom a trustee has been appointed, to whom the guardianship court expressly or implicitly permits the independent operation of a profession or trade, may carry out all transactions that are part of regular operation and shall be liable from this with their entire assets, unless exceptions are provided for or permitted.

## Article 22

*c) Limited capacity of the child to act*

1) Under parental authority, the child has the same limited capacity to act as a person under guardianship.

2) The provisions on representation by the guardian shall apply *mutatis mutandis*, excluding the provisions on the involvement of the guardianship authority.

3) The child's assets are liable for the child's obligations irrespective of parental property rights.

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<sup>22</sup> Article 20 amended by LGBI. 2010 No. 124.

<sup>23</sup> Article 21 amended by LGBI. 2010 No. 124.

Article 22a<sup>24</sup>*Provisions subject to General Civil Code*

More detailed provisions on Articles 9 to 22 are contained in the General Civil Code.

*III. International choice of law*

## Article 23

*1. In general*

1) Repealed<sup>25</sup>

2) The acquisition of Liechtenstein citizenship does not entail loss of majority once reached.

3) [Even if the law in her country of origin does not so provide, a foreign woman who has not yet reached the age of majority but who marries a Liechtenstein citizen shall acquire majority through marriage.]<sup>26</sup>

Article 24<sup>27</sup>*2. Exceptions*

Repealed

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<sup>24</sup> Article 22a inserted by LGBL 1993 No. 55.

<sup>25</sup> Article 23(1) repealed by LGBL 1996 No. 194.

<sup>26</sup> Article 23(3) is obsolete in light of § 2(3) of the Final Part as well as the deletion of Article 12(2) by Article 97(c) of the Marriage Act of 13 December 1973, LGBL 1974 No. 20.

<sup>27</sup> Article 24 repealed by LGBL 1996 No. 194.

*C. Kinship*

## Article 25

*I. Blood relatives*

1) The degree of kinship by blood is determined by the number of intermediary births.

2) Lineal kinship exists between two persons where one is descended from the other, and collateral kinship exists between two persons where both are descended from a third person and are not related lineally.

Article 26<sup>28</sup>*II. Kinship by marriage*

1) Where one person is a blood relative of another, that person is related as an in-law to the latter's spouse or registered partner in the same line and to the same degree.

2) Kinship by marriage is not ended by dissolution of the marriage or of the registered partnership which created it.

## Article 27

*III. International choice of law*

A person's kinship by blood and marriage are evaluated under the law to which the legal relationship in question is subject.

*D. Place of origin and domicile**I. Place of origin*

## Article 28

*1. In general*

1) The place of origin of a person is determined by the person's citizenship.

2) Citizenship is governed by public law.

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<sup>28</sup> Article 26 amended by LGBL 2011 No. 370.

*2. International choice of law*

## Article 29

*a) In general*

Whether a person has citizenship in another state is determined by the law of that state.

Article 30<sup>29</sup>*b) Multiple nationalities*

Repealed

Article 31<sup>30</sup>*c) Stateless persons*

Repealed

*II. Domicile*

## Article 32

*1. Definition under private law*

1) A person's domicile is the place in which the person resides with the intention of settling permanently.

2) No person may have more than one domicile at a time, but a person may have one or more places of business alongside the domicile in accordance with the law governing business and the Commercial Register.<sup>31</sup>

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<sup>29</sup> Article 30 repealed by LGBl. 1996 No. 194.

<sup>30</sup> Article 31 repealed by LGBl. 1996 No. 194.

<sup>31</sup> Article 32(2) amended by LGBl. 2013 No. 6.

## Article 33

*2. Other types of domicile*

1) The preceding article does not affect permanent residence and temporary residence under public law, domicile for tax purposes, and the like.

2) Depositing identity documents, obtaining a residence permit, relocating movables to a certain place, entry in the Commercial Register, participation in a business, renting of premises, and the like are not in themselves sufficient to establish a domicile.<sup>32</sup>

## Article 34

*3. Temporary residence*

1) Temporary residence under private law is the actual temporary stay at a location regardless of the strength of the connection with the location.

2) Temporary residence in a place for the purpose of attending an educational establishment and the placement of a person in an educational, care, medical or penal institution or for temporary work, such as seasonal work, do not establish a domicile.

## Article 35

*4. Change of domicile or temporary residence*

1) Persons retain their domicile until such time as a new one is acquired.

2) A person's domicile is deemed to be the place in which that person is temporarily resident if no previously established domicile can be proven or if the person was formerly domiciled abroad and has not yet established a new domicile in Liechtenstein.

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<sup>32</sup> Article 33(2) amended by LGBL 2013 No. 6.

## Article 36

5. *Domicile*<sup>33</sup>

1) The domicile of a minor child is deemed to be that of the parents or, if the parents have different domiciles, that of the parent who has custody of the child (§ 144 ABGB).<sup>34</sup>

2) If the minor child is under guardianship, the seat of the guardianship court shall be deemed the child's domicile.<sup>35</sup>

3) If justified on important grounds, the Court of Justice may, after hearing the parties involved in special non-contentious proceedings, allow a minor child to establish an independent domicile.<sup>36</sup>

4) Persons who have not yet reached the age of majority but who are capable of judgement and, with the consent of their legal representative, reside outside the family community with the intention of remaining permanently and who dispose of their income independently shall be deemed to have an independent domicile.<sup>37</sup>

## Article 37

6. *International choice of law*

Whether a foreigner lives or resides in Liechtenstein or a Liechtenstein citizen lives or resides abroad is to be determined exclusively under Liechtenstein law.

<sup>33</sup> Article 36 heading amended by LGBL 1993 No. 55.

<sup>34</sup> Article 36(1) amended by LGBL 1993 No. 55.

<sup>35</sup> Article 36(2) amended by LGBL 2010 No. 124.

<sup>36</sup> Article 36(3) amended by LGBL 2010 No. 124 and LGBL 2010 No. 454.

<sup>37</sup> Article 36(4) amended by LGBL 1993 No. 55.

## Section 2

**Protection of personality rights***A. In general*

## Article 38

*I. Inalienability*

1) No one may, in whole or in part, renounce their legal capacity or their capacity to act.

2) No one may through a transaction surrender their freedom or restrict the use of it to a degree which violates the law or public morals.

*II. Enforcement*

## Article 39

*1. In general*

1) Where persons are infringed or threatened in their personal circumstances (personal goods) without authorisation, for example with regard to their physical and mental integrity, honour, credit, domestic peace, freedom, name, coat of arms, house signs and similar signs, the right to their own image, correspondence, business, and similar relationships and in general the right to respect and validity of legal personality, unless personal goods, such as copyright, inventor's rights, and the like, are governed by special laws, and insofar as their protection is compatible with the interests of their fellow human beings, they may demand determination of the circumstances, elimination (cessation) of the interference, restoration of the earlier condition by revocation and the like, and omission of further interference, without having to prove that the other is at fault.

2) To prevent future interference, the judge may additionally, if damage has occurred, order the provision of an appropriate security as part of the judgment or equivalent deed, such as an injunction, using the means permitted under the law of compulsory execution.

3) Omission may also be enforced if the act to be prohibited also constitutes a criminal offence.

4) In all cases, the necessary protective measures may be taken upon application in summary proceedings in advance of the legal dispute.

#### Article 40

##### *2. Damages and satisfaction*

1) Anyone who is infringed in their personal circumstances without authorisation is also entitled to compensation for damages if the other party is culpable.

2) The claim for payment of a sum of money as satisfaction is admissible only in the cases provided for by law, unless justified by the particular gravity of the infringement (such as the special value of the injured good, the strength of the injury, or the like) and where the infringement is wilful.

3) In lieu of or in addition to this payment, the judge may, in the case of malice, also recognise satisfaction in another way, such as a court declaration of honour, publication of the judgment at the expense of the other party, payment of a sum of money to a charitable foundation or establishment designated by the injured party or to a fund for the poor, and the like.

### 3. *Right of reply*<sup>38</sup>

Articles 40a to 40e<sup>39</sup>

Repealed

### 4. Joint provisions<sup>40</sup>

Article 41

#### *a) In general*<sup>41</sup>

1) The various claims based on infringement of a personal good may be enforced jointly or individually or as an addendum to criminal proceedings, the provisions on torts also being applicable on a supplemental basis.

2) The claim for elimination, restoration, provision of security, and mere determination on both the plaintiff's and the defendant's side is neither transferable nor heritable, and the claim for personal injury is neither transferable nor heritable only on the plaintiff's side, but subject to the heirs' claim for attacks on the memory of a deceased and the dead body.

3) Claims for damages and satisfaction are transferable and heritable on both sides.

4) The claims shall be subject to a period of limitation of one year after the day on which the injured party becomes aware of the infringement and the identity of the injuring party, but in any case upon expiry of three years from the day of the infringing act, provided that the infringement can no longer be prosecuted under criminal law.

5) Insofar as other laws, such as the law of obligations, have established special provisions for the protection of personal circumstances, such as for death and bodily injury, the provisions given here are to be applied only on a supplemental basis.

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<sup>38</sup> Heading preceding Article 40a inserted by LGBL 1992 No. 57.

<sup>39</sup> Articles 40a to 40e repealed by LGBL 2005 No. 250.

<sup>40</sup> Heading preceding Article 41 amended by LGBL 1992 No. 57.

<sup>41</sup> Article 41 heading amended by LGBL 1992 No. 57.

Article 42<sup>42</sup>*b) International choice of law*

Repealed

## B. Right to use one's name in particular

*I. Protection of one's name*

## Article 43

*1. In general*

1) Insofar as the law does not permit exceptions, the right to one's name is not alienable, transferable, or heritable and is not subject to any other disposal by the bearer of the name.

2) Both the civil name and any alias that a person uses for the exercise of a certain activity or for the execution of certain enterprises in place of the ancestral name are protected.

3) However, the alias is not protected against the actual bearer of the name, where a mistaken identity is caused which is detrimental to the latter.

4) This article is subject to special provisions concerning business signatures, legal name or trademark protection, and the like, as well as concerning change of name.

*2. Enforcement*

## Article 44

*a) In general*

1) Anyone whose use of their name is disputed may apply for a court declaration confirming their rights (claim for recognition of one's name).

2) Anyone adversely affected because another person is using or misusing their name may demand remedy in accordance with the provisions on the enforcement of the protection of legal personality in general (misuse of name).

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<sup>42</sup> Article 42 repealed by LGBL 1996 No. 194.

3) If the name is disallowed by the court, the judge shall, where applicable, issue an order to rectify the Civil Register or Commercial Register or other public registers *ex officio*.<sup>43</sup>

4) The individual claims resulting from a violation of the name shall be subject to a period of limitation of one year after the violation; the right to one's name itself, however, is not subject to any period of limitation and may not be acquired by prescription.

#### Article 45

##### *b) International choice of law*

1) Repealed<sup>44</sup>

2) A Liechtenstein citizen who lives abroad but whose name is infringed in Liechtenstein may demand protection before the Court of Justice.<sup>45</sup>

## *II. Change of name*

#### Article 46

##### *1. In general*

1) The name may be changed on important grounds pertaining to personal, business, or professional circumstances. An important ground pertaining to personal circumstances exists in particular if the applicant wishes to receive the surname of a parent, the spouse of a parent, or a person from whom the applicant has derived their surname and whose surname has been changed.<sup>46</sup>

2) A change of name is required for any amendment of the name in the Civil Register (such as additions to the surname, changes of the first name).

3) The Government shall at the same time determine the scope and content of the change, for example with regard to the effect of the change of name of the father on his children and the like.<sup>47</sup>

<sup>43</sup> Article 44(3) amended by LGBl. 2013 No. 6.

<sup>44</sup> Article 45(1) repealed by LGBl. 1996 No. 194.

<sup>45</sup> Article 45(2) amended by LGBl. 1996 No. 194.

<sup>46</sup> Article 46(1) amended by LGBl. 2014 No. 273.

<sup>47</sup> Article 46(3) amended by LGBl. 1942 No. 1.

4) This article is subject to special provisions such as those governing marriage, divorce, adoption, and the like.

#### Article 47

##### 2. Procedure

1) Responsibility for the change of name lies with the Government in administrative proceedings.<sup>48</sup>

2) The change of name shall be notified *ex officio* to the Civil Registrar for entry of a note in the register of births and, if the change concerns a married person, for a note in the marriage register and published in the Official Journal.<sup>49</sup>

3) The entry does not entail a change of the status of the person under the law of persons and family law.

#### Article 48

##### 3. Challenge

1) A person adversely affected by a change of name may challenge the same in court within one year of learning thereof, in contentious proceedings against the person whose name has been changed.

2) The other legal remedies provided for the enforcement of the protection of names are inadmissible in addition.

#### Article 49

##### 4. International choice of law

1) A foreigner resident in Liechtenstein may be granted approval for a change of name by the Government only if the foreigner proves that the application of Liechtenstein law and the competence of the Liechtenstein authorities are recognised under the law or practice of the competent authorities of the foreigner's home country.<sup>50</sup>

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<sup>48</sup> Article 47(1) amended by LGBL 1942 No. 1.

<sup>49</sup> Article 47(2) amended by LGBL 2015 No. 275.

<sup>50</sup> Article 49(1) amended by LGBL 1942 No. 1.

2) A change of name granted by a foreign authority to a Liechtenstein citizen resident abroad under Liechtenstein or foreign law is recognised in Liechtenstein subject to the right of reciprocity.

3) The action to challenge a change of name against Liechtenstein citizens abroad may also be raised in Liechtenstein under domestic law.

Article 49a<sup>51</sup>

*Delegation of business*

By ordinance, the Government may transfer business referred to in Articles 46, 47, and 49 for an administrative office to handle autonomously, subject to the right of appeal to the collegial Government.

Section 3

**Beginning and end of personality rights**

Article 50

*A. Birth and death*

1) Personality rights begin upon the birth of the living child and end upon death.

2) An unborn child has legal capacity provided that it survives birth.

*B. Proof*

Article 51

*I. Burden of proof*

1) Any person who, in exercising a right, relies on the fact that another person is living or has died or was alive at a particular time or survived another person must produce proof thereof.

2) If it cannot be proven that, of a group of several deceased persons, one survived another, all are deemed to have died at the same time.

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<sup>51</sup> Article 49a inserted by LGBL 1995 No. 25.

## Article 52

*II. Evidence*

- 1) Proof of the birth or death of a person is established by the records kept by the Civil Register.
- 2) If records are missing or shown to be incorrect, proof may be brought in another form.
- 3) The death of a person is deemed proven, even if no one has seen the dead body, provided that the person has disappeared in circumstances in which the person's death may be considered certain.

Article 53<sup>52</sup>*III. International choice of law*

Repealed

*C. Declaration of presumed death*

## Article 54

*I. In general*

- 1) If it is highly probable that a person is dead because the person has disappeared in extremely life-threatening circumstances or has been missing for a period of at least five years without any sign of life, the judge may, in special non-contentious proceedings, declare that person presumed dead on application by any person deriving rights from the person's death.<sup>53</sup>
- 2) The inquisitorial principle shall apply in the special non-contentious proceedings. To protect the rights of the person presumed dead, the person shall be assigned counsel for the proceedings.<sup>54</sup>

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<sup>52</sup> Article 53 repealed by LGBL 1996 No. 194.

<sup>53</sup> Article 54(1) amended by LGBL 2010 No. 454.

<sup>54</sup> Article 54(2) amended by LGBL 2010 No. 454.

## Article 55

*II. Procedure*

- 1) The application may be made when at least one year has elapsed since the life-threatening event or five years have elapsed since the last sign of life.
- 2) The judge must, by suitable public means, call on any person who may provide information about the missing person to come forward within a specified period.
- 3) The period shall run for at least one year following the first public notice.
- 4) If the missing person comes forward within the set period or if news of the missing person is received or if the date of the person's death is proven, the application fails.

## Article 56

*III. Effect*

- 1) If no sign of life is received during the set period, the missing or absent person is declared presumed dead, and rights derived from the fact of the person's death may be enforced as if death were proven, unless the law provides for exceptions.
- 2) The declaration of presumed death has retroactive effect from the time of the life-threatening event or the last sign of life.

## Article 57

*IV. International choice of law*

- 1) The Court of Justice has exclusive jurisdiction for a declaration of presumed death of a Liechtenstein citizen.
- 2) The Court of Justice may declare foreigners presumed dead if they have property in Liechtenstein or if the surviving spouse or registered partner is domiciled in Liechtenstein and the preconditions for the Court of Justice to exercise jurisdiction in cases of marriage or dissolution are met.<sup>55</sup>

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<sup>55</sup> Article 57(2) amended by LGBL 2011 No. 370.

3) The Court of Justice may also declare a foreigner presumed dead if the foreigner's wife was or is domiciled in Liechtenstein and was in possession of Liechtenstein citizenship before the marriage or is still in possession thereof.<sup>56</sup>

4) Repealed<sup>57</sup>

## 2. Title

### Civil Register (Authentication of civil status)

#### Article 58

##### *A. Significance of authentication*

1) Civil registers shall be kept to authenticate the personal status of a natural person under law (civil status).

2) Entries correct as to form have full probative value as long as their inaccuracy has not been proven.

##### *B. Organisation and procedure*

###### *I. Civil Register Office<sup>58</sup>*

###### *1. Structure*

###### Article 59<sup>59</sup>

###### *a) Staffing*

1) The Principality of Liechtenstein shall form a single register district.

2) The register office (Civil Register Office) shall be run by a registrar (Civil Registrar) appointed by the Government and the registrar's deputy.

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<sup>56</sup> Article 57(3) amended by LGBL 1996 No. 194.

<sup>57</sup> Article 57(4) repealed by LGBL 1996 No. 194.

<sup>58</sup> Heading preceding Article 59 amended by LGBL 1972 No. 36.

<sup>59</sup> Article 59 amended by LGBL 1972 No. 36.

## Article 60

*b) Deputy*

1) The deputy shall act as registrar if the registrar is unable to act or if the authentication concerns the registrar, the registrar's spouse, the registrar's registered partner, or a person engaged to the registrar or related to the registrar by blood or marriage up to the second degree, or if the registrar submits the notification.<sup>60</sup>

2) If both the registrar and the deputy are unable to act or have recused themselves, the Government shall designate an extraordinary deputy upon notification by these persons or a person involved.

3) Where the registrar is mentioned below, the provisions shall apply *mutatis mutandis* to the deputy, unless the respective provisions indicate otherwise.

Article 61<sup>61</sup>*c) Duties*

1) The registrar shall keep the registers in accordance with the legislative provisions, administer the entries, prepare extracts, make notices, and execute all matters assigned to the registrar by law or as directed by the supervisory authority.

2) In particular, the Government may require the registrar to prepare periodic directories, such as records of citizens who have become eligible to vote, children subject to vaccination requirements and compulsory schooling, or children whose parents are married to each other or not married to each other, as well as statistical records for the competent authorities.<sup>62</sup>

Article 62<sup>63</sup>*2. Remuneration and expenses*

## Repealed

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<sup>60</sup> Article 60(1) amended by LGBL 2011 No. 370.

<sup>61</sup> Article 61 amended by LGBL 1972 No. 36.

<sup>62</sup> Article 61(2) amended by LGBL 2014 No. 201.

<sup>63</sup> Article 62 repealed by LGBL 1972 No. 36.

Article 63<sup>64</sup>

*3. Responsibility*

Repealed

*4. Supervision*

Article 64

*a) Supervisory authority and complaints<sup>65</sup>*

1) The Civil Register Office is under the regular supervision of the Government, which may give it the necessary instructions, shall have the registry periodically audited, and shall report on the audit to Parliament.<sup>66</sup>

2) Complaints against the registrar's official conduct, such as refusals, delays, or certain decrees, shall be decided by the Government and, on appeal, by the Administrative Court.<sup>67</sup>

Article 65<sup>68</sup>

*b) Disciplinary penalties*

Repealed

Article 66

*5. Authentication of civil status abroad*

1) The Government may entrust the diplomatic and consular representatives of Liechtenstein abroad in general or for individual cases with the tasks of a civil register office.

2) It may issue the necessary instructions regarding supervision and responsibilities.

3) The Government may also conclude the necessary agreements with the state representing Liechtenstein abroad and with other states.

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<sup>64</sup> Article 63 repealed by LGBL 1966 No. 24.

<sup>65</sup> Article 64 amended by LGBL 1972 No. 36.

<sup>66</sup> Article 64(1) amended by LGBL 1972 No. 36.

<sup>67</sup> Article 64(2) amended by LGBL 1972 No. 36 and LGBL 2004 No. 33.

<sup>68</sup> Article 65 repealed by LGBL 2004 No. 41.

## Article 67

*6. Procedure, administrative assistance, and announcements*

1) The provisions on administrative procedure shall apply to the procedure in civil register matters, unless otherwise specified in the individual provisions below.

2) All authorities must provide administrative assistance to the Civil Register Office.<sup>69</sup>

3) Unless otherwise required by law, announcements shall be published in the Official Journal by the registrar.<sup>70</sup>

*II. Organisation of register**1. Main and auxiliary register*

## Article 68

*a) In general*

1) The Civil Register comprises the registers of births, deaths, marriages, and domestic partnerships.<sup>71</sup>

2) Additional registers may be prescribed by the Government; in particular, the Government may order that a duplicate register be kept in accordance with more detailed instructions.

## Article 69

*b) Layout of the registers*

1) The registers must be established, bound, and provided with consecutively numbered pages as instructed by the Government.

2) The Government must officially certify the numbers of the pages on one side of the cover.

3) The numbering of entries shall start over again at the beginning of each year.

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<sup>69</sup> Article 67(2) amended by LGBL 1972 No. 36.

<sup>70</sup> Article 67(3) amended by LGBL 2015 No. 275.

<sup>71</sup> Article 68(1) amended by LGBL 2011 No. 370.

4) Once a volume has been completed, the completion shall be certified by the registrar after the last entry of the volume.

5) The opening of a new volume shall be certified by the registrar on the first page before the first entry with reference to the previous volume.

#### Article 70

##### *2. Inventory of persons*

1) For each register, an alphabetical inventory of the persons to whom the entries of civil status cases and the marginal notes thereto refer must be established and updated.

2) The table of contents must include the surname of each person, together with their first name, date of birth, domicile, and place of origin – or, in the case of foreigners, their nationality – and the page number.

3) Persons who have changed their name as a result of marriage, divorce, declaration of legitimacy, adoption, or for any other reason shall be listed in the inventory under the different names they have had.

#### Article 71

##### *3. Supporting documents*

1) All supporting documents on which entries in the register are based shall be arranged chronologically and numbered according to register in separate sections and according to years, unless they are to be published.

2) Each supporting document shall be assigned the entry number to which it relates.

3) The supporting documents and correspondence relating to each entry may also be combined in a file book or a bundle of files.

#### Article 72

##### *4. Language*

1) The Civil Register as well as the extracts and notices must be kept in the national language.

2) Extracts, copies, and notices may, however, be issued in foreign languages.

3) The registrar may consult interpreters who must in that case sign the entry or translated extracts.

#### Article 73

##### *5. Safekeeping*

1) All registers and supporting documents, unless they are published, shall be kept carefully and in accordance with the instructions of the Government and may not be destroyed.

2) Other documents and announcements, such as in particular in journals, public postings, and the like relating to the entries, shall also be kept with the relevant register files.

### *III. Administration of register*

#### Article 74<sup>72</sup>

##### *1. Competence*

Entries concerning births, deaths, marriages, and domestic partnerships shall be the sole responsibility of the Civil Register Office.

##### *2. Notices of domicile and place of origin*

###### *a) Notices to be made*

#### Article 75<sup>73</sup>

##### *aa) In Liechtenstein*

Repealed

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<sup>72</sup> Article 74 amended by LGBl. 2011 No. 370.

<sup>73</sup> Article 75 repealed by LGBl. 1972 No. 36.

## Article 76

*bb) Liechtenstein citizens abroad and notices to foreign authorities*

1) Civil status cases concerning Liechtenstein citizens domiciled or residing abroad shall not be notified to the foreign country unless international treaties or other conventions provide otherwise.

2) Unless Liechtenstein citizens are concerned, the registrar shall direct all notifications addressed to foreign countries through the Government.

## Article 77

*b) Notices received*

1) The registrar who receives notices of facts subject to the obligation to be entered from a foreign country shall enter them in the relevant register as soon as possible.<sup>74</sup>

2) The facts pertaining to civil status which have arisen abroad but have not been authenticated there by a civil register office may also be included in that register on the instruction of the Government, provided that the facts are otherwise duly evidenced.

## Article 78

*c) Indication of recipient or submitter of notices*

1) In the case of incoming notices, it shall always be indicated at the end of the entry or note by whom they were made.

2) Similarly, in the case of notices sent by the registrar, it shall be noted to whom they were addressed.

*3. Access, extracts*

## Article 79

*a) In general*

1) Anyone must be granted access to the registers upon request.

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<sup>74</sup> Article 77(1) amended by LGBL 1972 No. 36.

2) At the request of parties or public authority, the registrar shall issue register extracts in accordance with official forms.

3) The registrar may also make certified copies of the supporting documents and notices.

4) The extracts issued and certified by the registrar shall have the same probative value as the registers themselves.

5) The registrar may issue confirmations of life, domicile, or abode only for those persons who, according to the registrar's official knowledge, live, reside, or are domiciled in the register district.

#### Article 80

##### *b) Content of the extracts*

1) The extracts shall reflect the entry together with the marginal notes and, if they have been rectified, in accordance with the rectified wording.

2) Repealed<sup>75</sup>

3) In extracts requested from private individuals, a reference to the fact that a child's parents are not married to each other shall be given only if expressly requested.<sup>76</sup>

4) The extracts from the register of deaths shall not contain the cause of death.

#### *IV. Notifications*

#### Article 81

##### *1. In general*

1) The person subject to the notification requirement must make the notification verbally for the record or in writing or in the same manner through a representative stating the points to be entered.

2) The record to be taken via verbal notification, for which forms may be used, shall contain the information required for the entry as well as the exact date of notification and shall be read to the person making the notification and signed by that person and the registrar.

<sup>75</sup> Article 80(2) repealed by LGBl. 2014 No. 201.

<sup>76</sup> Article 80(3) amended by LGBl. 2014 No. 201.

3) If the persons required to sign the registrar's authentications in accordance with the following provisions are unable or unwilling to do so, the registrar shall certify this in the register.

4) Judicial and administrative authorities and their bodies are required to report facts subject to the obligation to be entered and any changes to the registrar in accordance with the existing provisions.<sup>77</sup>

#### Article 82

##### *2. Verification by the registrar*

1) If the registrar does not know the persons or the signature of the person making the notification or does not believe the notification is credible, the registrar shall not make the entry until satisfied that the notification is correct.

2) The registrar shall request presentation of the requisite documents and further explanations.

3) The registrar's competence shall always be verified by the registrar.

#### Article 83

##### *V. Ex officio procedure*

1) If the person responsible for filing the registration fails to make the notification and if the registrar becomes aware thereof, the registrar shall request the persons responsible to state the facts and circumstances which are subject to the notification requirement in compulsory administrative proceedings under threat of a fine in the event of omission.

2) The provisions on the procedure for entries in matters pertaining to the Commercial Register shall apply *mutatis mutandis* to the further procedure.<sup>78</sup>

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<sup>77</sup> Article 81(4) amended by LGBL 1972 No. 36.

<sup>78</sup> Article 83(2) amended by LGBL 2013 No. 6.

*VI. Entries*

## Article 84

*1. On the basis of forms*

- 1) Entries in the register shall be made using uniform forms, the wording and format of which shall be determined by the Government.
- 2) The parts of the form that remain blank are to be filled in with horizontal lines.
- 3) If the open lines of the form are not sufficient, they must be replaced by intermediate lines, which must also be filled in with horizontal lines if necessary.
- 4) If individual parts of the template cannot be used, they shall be crossed out.
- 5) If a fact to be indicated in the entry is not known, this must be noted in the text.

## Article 85

*2. Type of entry*

- 1) Entries shall be made immediately after receipt of the notification or notice, stating the date of entry, and shall be signed by the registrar personally.
- 2) The entries must be written out without abbreviations, the more important indications of time being written in words and numbers.
- 3) The entries in the registers shall be entered chronologically in the order of the notifications or notices.
- 4) Nothing may be entered in the registers that is outside their purpose.
- 5) Marriages, entries of domestic partnerships, births, and deaths shall be numbered consecutively.<sup>79</sup>
- 6) Notes shall be made in the cases provided for by law in the appropriate section or in the margin of an entry.

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<sup>79</sup> Article 85(5) amended by LGBL 2011 No. 370.

## Article 86

*3. Erasures, corrections, interspersed notes*

- 1) The entries shall be made in careful writing without erasures, corrections, or interspersed notes.
- 2) Where it is not possible to authenticate a fact within the space allocated to it in the template, it shall be made as a marginal note and, if the entry is made only in part in the margin, the connection with the part within the template shall be indicated, and the number of lines written in the margin shall be noted at the end of the entry.
- 3) Writing mistakes noticed before the signing of the entry may be rectified by a marginal note signed by the registrar or by a note at the foot of the entry before the signature.

## Article 87

*4. Rectifications*

- 1) A completed entry may be rectified only by order of the Government.
- 2) If, after entry, a notification proves to be incorrect or if an entry is otherwise to be rectified, both the registrar or the representative of public law and the parties themselves may apply to the Government for the rectification in administrative proceedings, unless the rectification is ordered in other proceedings.<sup>80</sup>
- 3) Rectification of a manifest oversight or error by the registrar shall be ordered by the Government on its own initiative, as soon as it becomes aware thereof.
- 4) This rectification shall be communicated to the parties, who shall be free to lodge an administrative complaint with the appellate body.
- 5) The rectification shall be made in the form of a marginal note, without alteration of the rectified entry.

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<sup>80</sup> Article 87(2) amended by LGBL 1972 No. 36.

Article 88<sup>81</sup>*5. Changes to municipal and national citizenship*

Changes to municipal and national citizenship shall be notified by the Government to the Civil Register Office.

## Article 89

*6. Foreign documents*

1) Where foreign decisions or other documents are presented concerning changes in the civil status, citizenship, or name of a person or in regard to a person's declaration of legitimacy, where that person's birth, marriage, or entry of a domestic partnership has been authenticated in a domestic register, those decisions or documents must be noted accordingly, provided that the Government or, on appeal, the appellate body grants its approval in accordance with the law.<sup>82</sup>

2) Approval shall, however, be granted only if the decision or document has been taken or established by the competent authority in accordance with the applicable law.

3) If the birth, marriage, or domestic partnership has been entered in a foreign register, the changes in civil status, citizenship, or name or the declaration of legitimacy, as well as corrections to birth, death, marriage, or partnership register entries may be noted in the register on the instruction of the Government.<sup>83</sup>

4) In the case of Liechtenstein citizens, this entry must be made if the change is to be deemed to have legal effect.

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<sup>81</sup> Article 88 amended by LGBL 1972 No. 36.

<sup>82</sup> Article 89(1) amended by LGBL 2011 No. 370.

<sup>83</sup> Article 89(3) amended by LGBL 2024 No. 263.

*C. Register of births**I. Notifications*

## Article 90

*1. Notification events*

- 1) Any birth and any miscarriage after the sixth month of pregnancy shall be reported to the registrar within three days after they have occurred, but late notifications shall be accepted.
- 2) If a child of unknown descent is found, the mayor of the municipality in whose territory the child was found shall be informed immediately; the mayor shall establish the information required for entry and notify that information to the registrar.
- 3) The date of birth or discovery shall not be included in the calculation of the deadline.
- 4) If the first name of the child is not known at the time of the notification, it must be notified subsequently and at the latest within one month after the birth.

## Article 91

*2. Persons subject to notification requirement*

- 1) Primarily the father, if married to the mother, shall be required to report the birth, then in turn the midwife, the physician, any other person present at the birth, the head of household or the owner of the accommodation or dwelling where the birth took place, and finally the mother, as soon as she is able to do so.
- 2) The birth of a child out of wedlock may be reported by the father, provided he acknowledges the child.
- 3) If the birth took place in a public institution, such as a prison, poorhouse, or hospital, the head or administrator of the institution is required to report the birth.

*II. Entry*

## Article 92

*1. In the case of known descent*

1) The following shall be entered in the register of births:

1. place, year, month, day, and hour of birth; in the case of multiple births, each child shall be entered with the exact time sequence to the extent possible;
2. family name (surname), first name, and gender of the child; for stillborn or children deceased prior to the notification, a first name is to be entered only on request;
3. family name, first name, place of origin, and domicile of the parents or, if the child was born out of wedlock, of the mother and her parents, as well as the year of birth of the mother and an indication that the parents of the child are not married to each other;<sup>84</sup>
4. family name and first name, occupation, and domicile of the person making the notification, with the capacity in which the person has made the notification, such as father or midwife.

2) Stillborn children after the sixth month of pregnancy shall be entered in the register of births.<sup>85</sup>

## Article 93

*2. In the case of foundlings*

1) In the case of children of unknown descent, the entry must contain the following in brief:

1. the place, time, and circumstances of the discovery;
2. the gender of the child, as well as the child's presumed age, physical traits, and characteristics;
3. a description of the clothes and other objects found with the child;
4. the names to be given to the child according to the decision of the competent mayor of the municipality;
5. the persons with whom the child is accommodated.

<sup>84</sup> Article 92(1)(3) amended by LGBL 2014 No. 201.

<sup>85</sup> Article 92(2) amended by LGBL 1972 No. 36, making the second phrase " , but without notification to other register offices" obsolete.

2) If the descent of the child can be determined subsequently by decision or in another manner, this shall be added by marginal note.<sup>86</sup>

3) If it turns out that the birth has already been registered in another place, the entry of the child's discovery must, on instruction of the Government, be crossed out with an explanatory marginal note.

4) If the birth has not yet been entered at the place where it occurred, this must be done after determination of the child's descent and referred to in a marginal note on the entry concerning the child's discovery.

### *III. Entry of changes*

#### Article 94

##### *1. In general*

1) Changes in civil status, such as in particular as a result of declaration of legitimacy, challenge of legitimacy, recognition of a child born out of wedlock, judicial grant of civil status, or adoption, as well as subsequent determination of descent and changes of names, must be noted in the register of birth pursuant to official notice or on notification by the parties concerned and, if the change concerns a married person, in the register of marriages in the margin.

2) Decisions on such changes shall be notified as an extract by the deciding authority to the registrar in whose registers the birth and, in the case of married persons, the marriage of the persons affected by the change is entered.<sup>87</sup>

#### Article 95

##### *2. Recognition of child out of wedlock*

1) The recognition of a child born out of wedlock must be notified by the Court of Justice or any competent authority to the civil register office responsible for the person recognising the child and the child for the purpose of making a note.<sup>88</sup>

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<sup>86</sup> Article 93(2) amended by LGBL 1972 No. 36, making the remaining phrase of Article 93(2) with the wording "... and communicated to the place of origin" obsolete.

<sup>87</sup> Article 94(2) amended by LGBL 1972 No. 36.

<sup>88</sup> Article 95(1) amended by LGBL 1972 No. 36.

2) If an objection raised against recognition under family law is not protected or is not appealed to a judge within the time limit provided, this must be entered as a marginal note and notified by the registrar of the place of origin of the person recognising the child to the other register offices at which recognition has also been noted.<sup>89</sup>

Article 96<sup>90</sup>

Repealed

*D. Register of deaths*

*I. Notifications*

Article 97

*1. Notification events and calculation of time limits*

1) Every death and every discovery of a dead body shall be notified to the register office within one day at the latest.

2) If there is an official investigation into the death, the entry shall be made on the basis of written notice by the competent authority.

3) The day of death or the day of discovery shall not be included in the calculation of the notification deadline.

Article 98

*2. Persons subject to notification requirement*

1) Primarily the head of the family shall be required to report the death or discovery of the dead body of a known person, then in turn the spouse or registered domestic partner, the closest local relative to the deceased, the head of household or owner of the accommodation or dwelling where the death occurred or the dead body was found, any person who was present at the time of death, and finally the mayor of the municipality.<sup>91</sup>

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<sup>89</sup> See, in this regard, Article V of LGBL 1972 No. 36, which reads: "Where laws and ordinances refer to the registrars, the civil register offices, and the register offices, these references shall be replaced by the registrar (Civil Registrar) and the Civil Register Office at the national level."

<sup>90</sup> Article 96 repealed by LGBL 2014 No. 201.

<sup>91</sup> Article 98(1) amended by LGBL 2011 No. 370.

2) If the dead body of an unknown person is discovered, the mayor of the municipality in whose territory the body was found must be informed, and the mayor must notify the registrar.<sup>92</sup>

## *II. Entry*

### Article 99

#### *1. In the case of known persons*

1) The following shall be entered in the register of deaths in the case of known persons:

1. place, year, month, day, and hour of death;
2. the family name, first names, and any supplemental names of the deceased and the deceased's parents, the deceased's place of origin and domicile together with house number, occupation, and civil status (single, married, in registered domestic partnership, widowed, divorced, or in dissolved domestic partnership), year, month, and day of birth;<sup>93</sup>
3. the family name, first name, and occupation of the surviving, deceased, or divorced spouse or of the surviving or deceased domestic partner or domestic partner living in a dissolved domestic partnership;<sup>94</sup>
4. the cause of death, if possible medically attested;
5. the family name, first name, occupation, and domicile of the person notifying the death and, if related to the deceased, the degree of kinship.

2) Repealed<sup>95</sup>

3) Stillborn children shall not be entered in the register of deaths.

### Article 100

#### *2. In the case of unknown persons*

1) If the person is unknown, the notification and entry shall include:

1. the place, time, and circumstances of the discovery of the dead body;
2. the gender and presumed age of the deceased;

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<sup>92</sup> Article 98(2) amended by LGBL 1972 No. 36.

<sup>93</sup> Article 99(1)(2) amended by LGBL 2011 No. 370.

<sup>94</sup> Article 99(1)(3) amended by LGBL 2011 No. 370.

<sup>95</sup> Article 99(2) repealed by LGBL 1972 No. 36.

3. the physical traits and special characteristics;
4. a description of the clothes and other objects found with the body;
5. the presumed cause of death and the presumed time of death.

2) If the identity of the deceased becomes known, the entry may be supplemented on instruction of the Government, and if it is established by decision, this must be noted in the margin.

3) Repealed<sup>96</sup>

#### Article 101

##### *3. Inability to locate the body*

1) If, in the given circumstances, the death of a missing person must be assumed to be certain, the death may be entered on instruction of the Government, even if no one has seen the dead body.

2) In any event, anyone who has an interest may request judicial determination of the life or death of the person in special non-contentious proceedings.<sup>97</sup>

3) Such a decision shall be noted as a rectification decision.

#### Article 102

##### *4. In the case of declaration of presumed death*

1) If a person is declared presumed dead, the Court of Justice shall notify the registrar of the decision for the purpose of entry *ex officio*.<sup>98</sup>

2) If the declaration of presumed death is overturned, either by determination that the person is still alive or by determination of the time of death of the person presumed dead, this decision must be noted in the margin.

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<sup>96</sup> Article 100(3) repealed by LGBL 1972 No. 36.

<sup>97</sup> Article 101(2) amended by LGBL 2010 No. 454.

<sup>98</sup> Article 102(1) amended by LGBL 1972 No. 36.

## Article 103

*5. After burial*

1) A burial prior to entry in the register of deaths may take place only with the approval of the mayor of the municipality where the burial is to take place.

2) If the burial took place without this approval, the death may be entered only on instruction of the Government after the facts of the case have been determined.

## Article 104

*E. Marriage register*

The facts and circumstances prescribed by marriage law and any changes thereto shall be entered in the marriage register.

Article 104a<sup>99</sup>*E.<sup>bis</sup> Domestic partnership register*

The facts and circumstances prescribed by domestic partnership law and any changes thereto shall be entered in the domestic partnership register.

## Article 105

*F. International choice of law*

1) Unless the preceding or following provisions specify otherwise, domestic law shall apply to the Civil Register.

2) Foreign public authentications shall be permitted for entries in the Civil Register.

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<sup>99</sup> Article 104a inserted by LGBL 2011 No. 370.

Article 105a<sup>100</sup>*G. Law of ordinances*

- 1) The Government may issue supplementary provisions by ordinance on the organisation, procedure, and administration of the register.
- 2) The municipalities may be involved in civil status matters.

Article 105b<sup>101</sup>*Delegation of business*

By ordinance, the Government may transfer business referred to in Articles 76, 77, 87, 88, 89, 93, 101, and 103 of this Act for an administrative office to handle autonomously, subject to the right of appeal to the collegial Government.

## Part 2

**Legal persons**

## Title 3

**General provisions***A. Legal personality**I. Preconditions*

## Article 106

*1. Entry*

1) Persons joined together in the form of corporate organisation (corporate bodies or corporations) and autonomous establishments, including foundations, endowed for a special purpose shall acquire the right of legal personality through entry in the Commercial Register (incorporation); in the absence of legislative provisions to the contrary,

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<sup>100</sup> Article 105a inserted by LGBL 1972 No. 36, amended by LGBL 1995 No. 25.

<sup>101</sup> Article 105b inserted by LGBL 1995 No. 25.

even if the preconditions of entry did not in fact exist, subject to voidability proceedings.<sup>102</sup>

2) No entry is required:<sup>103</sup>

1. for corporate bodies and establishments under public law;<sup>104</sup>
2. for associations which do not meet the conditions set out in Article 247(2);<sup>105</sup>
3. Repealed<sup>106</sup>
4. if an exception is otherwise provided by law.<sup>107</sup>

#### Article 107

##### *2. Object and purpose*

1) Persons joined together and asset endowments whose economic purpose is to conduct a trading, manufacturing, or other business in a commercial manner, unless an exception is permitted by law, may acquire the right of legal personality only as companies with legal personality (public limited company, partnership limited by shares, company limited by units, limited liability company, registered cooperative society, registered mutual insurance association, or registered ancillary fund) or as an establishment and, where legal personality has not been acquired and no preconditions have been met for another form of legal person or company, shall be subject to the provisions governing unregistered partnerships.

2) Companies with legal personality and establishments may also be established for purposes other than economic purposes.

3) Where the law refers to legal persons which are treated in the same way as companies with legal personality, this shall mean, in the absence of a legislative provision to the contrary, all other legal persons which have the main purpose of conducting a business in a commercial manner. Businesses not conducted in a commercial manner include in particular the investment and administration of assets or the holding of participations or other rights, unless the type and scope of the undertaking require a commercial operation and orderly bookkeeping.<sup>108</sup>

<sup>102</sup> Article 106(1) amended by LGBL 2013 No. 6.

<sup>103</sup> Article 106(2) introductory phrase amended by LGBL 2007 No. 38.

<sup>104</sup> Article 106(2)(1) amended by LGBL 2007 No. 38.

<sup>105</sup> Article 106(2)(2) amended by LGBL 2024 No. 370.

<sup>106</sup> Article 106(2)(3) repealed by LGBL 2008 No. 220.

<sup>107</sup> Article 106(2)(4) amended by LGBL 2007 No. 38.

<sup>108</sup> Article 107(3) amended by LGBL 1980 No. 39.

4) The object of the business may be any kind of business for economic or other purposes, and the articles of association may specify it in general or in particular.

4a) Where the law refers to public-benefit or charitable purposes, this shall include such purposes the fulfilment of which is of benefit to the general public. In particular, there is deemed to be a benefit to the general public if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral, social, sporting, or ecological sense, even if only a specific category of persons benefits from the activity.<sup>109</sup>

5) Persons joined together and establishments, including foundations, for immoral or unlawful purposes may not attain the right of legal personality by law.

#### Article 108

##### *II. Absence of the same*

1) If action has been taken on behalf of a legal person before or without the latter having acquired legal personality, the acting parties, in particular founders or persons already designated as governing bodies or, in the case of meetings, the parties passing the resolution shall be liable in accordance with the provisions on unregistered partnerships, subject to the right of recourse against the parties otherwise involved.

2) Anyone who has not acted themselves shall be liable only if, under the circumstances, it must be assumed that they have granted power of attorney to an agent.

3) Persons who have become liable without limitation through their actions with or without power of attorney may be relieved of this liability by the legal person within three months after it has acquired legal personality, if the obligation has been expressly entered into by the persons acting on behalf of the legal person to be formed and the legal person appears to be authorised to assume this liability under law or the articles of association.

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<sup>109</sup> Article 107(4a) inserted by LGBI. 2008 No. 220.

4) After this assumption, only the legal person shall be liable to the creditors, subject to the special provisions concerning non-cash contributions and asset acquisitions as well as torts.

5) If a person has been transferred assets for the purpose of establishing a legal person, that person shall, in case of doubt, be subject to the provisions governing the tacit trust relationship.

#### Article 109

##### *III. Legal capacity*

1) By law, legal persons are deemed to have the same legal capacity as natural persons in respect to all rights, such as property rights, the right to name or honour, membership rights, holdings in companies and all duties, insofar as these rights or duties do not as a necessary condition have the natural conditions or characteristics of a human being, such as gender, age, or kinship.

2) Subject to this restriction, the provisions applicable to natural persons also apply to legal persons.

3) In this sense, the legal persons may, through the bodies appointed to represent them or other representatives, act on their behalf or under their legal name before all judicial and administrative authorities and in all proceedings as party, intervener, joined party, participant or in a similar capacity to assert their rights and obtain entries in public registers, such as the Land Register, Commercial Register, Patent Register and the like and demand legal protection.<sup>110</sup>

4) In disputes involving the legal person, any member may by law act at the member's expense as an intervener, party, or joined party alongside one of the parties, but where the law recognises member minorities as parties, only members belonging to this minority may intervene in a dispute of the minority.

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<sup>110</sup> Article 109(3) amended by LGBI. 2013 No. 6.

*IV. Capacity to act and to be held liable*

## Article 110

*1. Precondition*

1) Legal persons are capable to act as soon as the bodies indispensable for this purpose have been appointed in accordance with the law and the articles of association.

2) In the absence of any derogation from the individual provisions, the by-laws, the company agreement, the deed of formation (foundation deed) and the like shall be deemed to be the articles of association for this purpose.

*2. Activity*

## Article 111

*a) In general*

1) Natural persons as well as legal persons and companies may be appointed as members of a governing body.

2) The governing bodies are appointed to express the will of the legal person.

3) Regardless of their competence and subject to the right of recourse to the culpable party as well as the special provisions on the liability of the principal, they by law create obligations for the legal person both through the conclusion of legal transactions and through their other conduct, provided that this constitutes the execution of their representative function or has taken place on the occasion and under the opportunity presented by the representative function.

4) Legal persons are also responsible under criminal law, within the limits of their legal capacity and capacity to act, for torts committed by a governing body or another representative appointed in accordance with the articles of association in the exercise of their representative function, subject to any right of recourse against the culpable parties.

5) If a legal person or company is a governing body or representative of another legal person, rights and duties directly arise to the legal person or company represented by the representative actions of its authorised governing bodies and persons, subject to any right of recourse against the culpable parties.

6) The acting persons are also personally responsible for their tortious culpable conduct and, if the requirements of the preceding paragraph apply, also the authorised legal person or company.

#### Article 112

##### *b) Passing of resolutions*

1) Unless otherwise provided by the law or articles of association, the subject matter of the resolution shall be stated when a multi-member body is convened.

2) Unless otherwise provided, the resolutions of a multi-member body require a simple majority of the countable votes to be valid.

3) Countable votes are those that are represented and have voted in individual cases and are not excluded from voting rights.

4) Unless otherwise provided by the law or articles of association, resolutions of the governing bodies may also be passed as follows:<sup>111</sup>

- a) by way of written consent to a motion submitted (circular resolution), unless a member of the governing body requests a meeting and oral deliberation; or
- b) using electronic means, applying Articles 177a to 177d *mutatis mutandis*.

#### *V. Domicile and legal venue*

#### Article 113

##### *1. Domicile (registered office)*

1) Unless its articles of association provide otherwise, the domicile (registered office) of a legal person shall be located at the place where it has its focus of management activity, subject to provisions concerning domicile or registered office in an international context.

2) The domicile of the legal person is by law deemed equivalent to the domicile of individuals for purposes of private law.

3) A legal person may in addition to its domicile have one or more branches.

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<sup>111</sup> Article 112(4) amended by LGBL 2022 No. 227.

4) Relocations of domiciles within the national borders must be registered for entry in the Commercial Register.<sup>112</sup>

#### Article 114

##### 2. *Legal venue, etc.*

1) Subject to special legislative provisions, the courts and administrative authorities at the place of their domicile are competent for legal persons.

2) For disputes between a legal person and its members arising from membership, as well as for claims of creditors arising from responsibility or dissolution or the like, unless an exception is provided for by law, such as in the case of legal persons under foreign law, the legal venue shall be the place where the legal person is domiciled, even if the articles of association otherwise provide for an arbitral tribunal.

3) Foreign legal persons which have a branch in Liechtenstein may by law be sued for all claims at the place of that branch, and insolvency proceedings may be carried out for the branch.<sup>113</sup>

4) The Liechtenstein judge is competent in all cases for actions arising from responsibility if the defendant is a Liechtenstein legal person or branch or if the defendant is domiciled in Liechtenstein.<sup>114</sup>

#### Article 115

##### VI. *Protection of personality rights*

1) Legal persons shall enjoy the same protection of personality rights as natural persons, unless a restriction results from the limitation of their legal capacity or capacity to act or from the nature of the circumstances.

2) In particular, legal persons are protected in their right to their name, legal name, style, honour, correspondence, business, and other secrets worthy of protection.

3) Insofar as a legal person uses a legal name, the permissibility of that legal name and any changes shall be governed by the law governing legal

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<sup>112</sup> Article 113(4) amended by LGBl. 2013 No. 6.

<sup>113</sup> Article 114(3) amended by LGBl. 2020 No. 369.

<sup>114</sup> Article 114(4) inserted by LGBl. 1997 No. 19.

names and the otherwise applicable provisions set out by law or in the articles of association.

4) The change of the name of a legal person not entered in the Commercial Register shall be governed, but without an obligation to be entered, by the rules laid down for the legal name, unless otherwise provided in the articles of association, subject to the prohibition of unfair competition.<sup>115</sup>

### *B. Formation*

#### *I. Articles of association*

#### Article 116

##### *1. In general*

1) Written articles of association are required for the formation of a legal person, unless otherwise provided by law.<sup>116</sup>

2) Repealed<sup>117</sup>

3) The articles of association must designate the legal person as an association, public limited company, partnership limited by shares, company limited by units, limited liability company, registered cooperative society, registered mutual insurance association or registered auxiliary fund, establishment, or foundation, unless an exception is permitted by law.

4) If a corporate structure is required or intended, it must be set out in the articles of association in a manner that complies with the law, and the will of the parties involved to have legal personality must be sufficiently evident from them.

5) Where, except in the case of the meeting of the supreme body, public authentication is prescribed for the articles of association, the founders or members may give their consent by signature in several public authentications, which may also differ in time and location.

6) The articles of association and their amendment must in all cases be signed by a founder or member.<sup>118</sup>

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<sup>115</sup> Article 115(4) amended by LGBL 2013 No. 6.

<sup>116</sup> Article 116(1) amended by LGBL 2000 No. 279.

<sup>117</sup> Article 116(2) repealed by LGBL 2000 No. 279.

<sup>118</sup> Article 116(6) amended by LGBL 2000 No. 279.

## Article 117

2. *Relationship to the law*

1) If there are no mandatory provisions of the law, and if the articles of association do not establish any supplementary provisions concerning the legal person, such as the organisation, the relationship of the legal persons among themselves, to their members or to third parties, the non-compulsory provisions of the law shall apply *mutatis mutandis*.

2) Provisions whose application is required by law or otherwise mandatory may not be amended by the articles of association.

3) Repealed<sup>119</sup>

II. *Entry in the Commercial Register*<sup>120</sup>Article 118<sup>121</sup>1. *Registration*

1) Insofar as an entry in the Commercial Register is necessary to obtain legal personality or such entry is requested on a voluntary basis, it shall be made at the domicile of the legal person, accompanied by the articles of association for safekeeping in the register files and stating the facts or circumstances to be entered and the persons of which the governing bodies of the administration and, if applicable, the audit office are composed.

2) The registration for entry in the Commercial Register shall be the responsibility of the persons entrusted with administration. The representative as well as notaries and substitute notaries shall also be entitled to make registrations. The Government shall provide further details by ordinance.<sup>122</sup>

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<sup>119</sup> Article 117(3) repealed by LGBL 2003 No. 63.

<sup>120</sup> Heading preceding Article 118 amended by LGBL 2013 No. 6.

<sup>121</sup> Article 118 amended by LGBL 2013 No. 6.

<sup>122</sup> Article 118(2) amended by LGBL 2024 No. 17.

## Article 119

*2. Entry of branches*

1) If, in addition to its registered office (domicile), a company with legal personality has branches, such as a business office, a branch with a certain degree of autonomy, which are not mere agencies, they must also be entered in the Commercial Register at the place of the latter with reference to the entry of the principal place of business.<sup>123</sup>

2) The registration shall be made with an extract from the register or the like in the name of the administration by the persons authorised to represent in accordance with the articles of association.

3) If another legal person conducts business in a commercial manner for its own purposes, it shall be obliged to have its branches entered in the Commercial Register.

4) If a domestic legal person operates a branch abroad, a reference to the branch must be entered for that legal person:<sup>124</sup>

1. at the request of the persons entitled to represent the legal person; or
2. *ex officio*, provided that the branch is located in an EEA Member State and a notification has been made via the system of interconnection of registers as referred to in Article 993(3).

## Article 120

*3. Amendments and dissolution*

1) As with the formation, any change to the articles of association, the composition of the governing bodies to be specified upon entry, and the dissolution must be registered for entry in the Commercial Register, provided that an obligation to register exists or entry has been requested on a voluntary basis and is permissible.<sup>125</sup>

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<sup>123</sup> Article 119(1) amended by LGBL 2013 No. 6.

<sup>124</sup> Article 119(4) inserted by LGBL 2024 No. 17.

<sup>125</sup> Article 120(1) amended by LGBL 2013 No. 6.

2) The amendments to the articles of association shall be dealt with in the same way as the original articles of association, insofar as they have been amended, by the persons with signing authority. The full wording of the articles of association in their currently valid version must be enclosed with the registration, also in the case of amendments that do not require entry.<sup>126</sup>

3) Repealed<sup>127</sup>

4) Repealed<sup>128</sup>

#### Article 120a<sup>129</sup>

##### *III. Information on correspondence, order forms, and websites*

1) All correspondence and order forms, whether created on paper or otherwise, as well as websites used by public limited companies, partnerships limited by shares, or limited liability companies, must state:

1. the legal name and legal form;<sup>130</sup>
2. the domicile of the company as set out in the articles of association;
3. the fact that the company is in liquidation, where applicable;
4. the necessary information to identify the register in which the company is entered; and
5. the number under which the company is entered in the register.

2) If the company's capital is indicated on these correspondences, order forms, and websites, the subscribed and paid-up capital must be indicated.

3) All letters, order forms, and websites used by a branch of a company as referred to in paragraph 1 domiciled abroad must include, in addition to information about the company:

1. the information necessary to identify the register in which the branch is entered; and
2. the number under which the branch itself is entered.

<sup>126</sup> Article 120(2) amended by LGBL 2003 No. 63.

<sup>127</sup> Article 120(3) repealed by LGBL 2003 No. 63.

<sup>128</sup> Article 120(4) repealed by LGBL 2003 No. 63.

<sup>129</sup> Article 120a amended by LGBL 2007 No. 38.

<sup>130</sup> Article 120a(1)(1) amended by LGBL 2016 No. 402.

## Article 121

*IV. Number of members*<sup>131</sup>

1) When a corporate body is formed, at least as many members must be present as are necessary to constitute the governing bodies of the administration, unless an exception is permitted by law.

2) If the number of members subsequently falls below this minimum number, this does not automatically result in the dissolution of the corporate body.

3) If, however, this situation persists so that, as a consequence, the arrangements required by law or the articles of association can no longer be made for more than one year, the court shall, at the request of a member or an unsatisfied creditor or creditor at risk of loss, set a reasonable time limit in special non-contentious proceedings for the corporate body to restore a lawful state of affairs, after hearing any parties involved, and if this does not happen, shall declare the corporate body to be dissolved by means of a decision once that decision becomes legally effective.<sup>132</sup>

## Article 122

*V. Minimum share capital, minimum own assets, and the like*<sup>133</sup>

1) The minimum capital or minimum assets must be at least CHF 50 000 for a public limited company and other legal persons whose capital is divided into shares, at least CHF 10 000 for a limited liability company, and at least CHF 30 000 for legal persons whose capital is not divided into shares.<sup>134</sup>

1a) In addition to the entry of the minimum capital or assets in the national currency, such entry may also be made in euros or US dollars. In that case, the minimum capital or minimum assets must be at least EUR 50 000 or USD 50 000 for public limited companies and other legal persons whose capital is divided into shares, at least EUR 10 000 or USD 10 000 for a limited liability company, and at least EUR 30 000 or USD 30 000 for legal persons whose capital is not divided into shares.<sup>135</sup>

<sup>131</sup> Article 121 heading amended by LGBL 2000 No. 279.

<sup>132</sup> Article 121(3) amended by LGBL 2010 No. 454.

<sup>133</sup> Article 122 heading amended by LGBL 2000 No. 279.

<sup>134</sup> Article 122(1) amended by LGBL 2016 No. 402.

<sup>135</sup> Article 122(1a) amended by LGBL 2016 No. 402.

2) Minimum capital and minimum assets must be fully paid up or contributed.<sup>136</sup>

3) If the minimum share capital (minimum own assets) falls below the required amount, members or creditors may, on important grounds, submit an application for dissolution to the courts in special non-contentious proceedings in the same way as in the absence of the required number of members.<sup>137</sup>

4) Where the law refers to share capital, this shall be understood as a numerical sum expressed as a monetary value; where the law refers to own assets, this shall be understood as assets existing in any property or rights, which are generally estimated as a monetary value only for accounting and other purposes.<sup>138</sup>

5) The provisions of this article may be applied *mutatis mutandis* to the minimum amount or the minimum quota of a share.

6) Repealed<sup>139</sup>

### *C. Termination*

#### *I. Reasons for dissolution*

#### Article 123

##### *1. In general*

- 1) Legal persons shall be dissolved:
1. in accordance with the law or the articles of association;
  2. by a resolution of the supreme body, which, in the absence of any other provision of the articles of association, shall be adopted by two thirds of the votes to be determined in accordance with the following subparagraph, and on which, where the law also provides, a public document shall be drawn up;
  3. by a court judgment if, on important grounds arising from the circumstances of the legal person, a general partner, or members who hold at least one tenth of the share capital or own assets (non-required monetary capital, to be expressed in numbers), or if there is no such share capital or own assets, at least one tenth of the members, demand

<sup>136</sup> Article 122(2) amended by LGBL 1963 No. 17.

<sup>137</sup> Article 122(3) amended by LGBL 2000 No. 279 and LGBL 2010 No. 454.

<sup>138</sup> Article 122(4) amended by LGBL 2000 No. 279.

<sup>139</sup> Article 122(6) repealed by LGBL 2003 No. 63.

dissolution after prior provision of a security for any damage, in order to avoid imminent serious damage; however, instead of dissolution, the judge may order other measures, such as dissolution or exclusion of the complainant members in compliance with the provisions for the reduction of the share capital, sale of the membership shares in favour of the complainant members, appointment of an administrator;<sup>140</sup>

4. by opening bankruptcy proceedings, to the extent not otherwise provided by law;<sup>141</sup>
5. by a court judgement, if all partners involved in the formation were legally incompetent.<sup>142</sup>

2) The provisions on the provision of securities, joining of several actions, effect of the judgment, and damages in voidability actions, or challenge of resolutions of the supreme body shall apply *mutatis mutandis* to the dissolution action pursuant to subparagraph 3.

3) If a legal person is dissolved for other reasons, such as cancellation by members or third parties as reserved in the articles of association, the provisions on liquidation shall also apply, unless otherwise prescribed by law.

4) In the event of tacit continuation of a legal person beyond the period stipulated in the articles of association, and subject to forfeiture otherwise of this right, one of the minority referred to in paragraph 1(3) may demand dissolution within six months of the expiry of that period, unless such dissolution or exclusion takes place at the discretion of the judge in compliance with any provisions on the reduction of share capital.<sup>143</sup>

#### Article 124

##### 2. *On grounds of unlawfulness or immorality of the purpose, etc.*

1) If the actual object of a legal person is unlawful or immoral, withdrawal of legal capacity and dissolution shall be carried out without compensation:<sup>144</sup>

1. upon administrative action brought by the representative of public law before the Administrative Court;

<sup>140</sup> Article 123(1)(3) amended by LGBl. 2003 No. 63.

<sup>141</sup> Article 123(1)(4) amended by LGBl. 2020 No. 369.

<sup>142</sup> Article 123(1)(5) inserted by LGBl. 2000 No. 279.

<sup>143</sup> Article 123(4) amended by LGBl. 2003 No. 63.

<sup>144</sup> Article 124(1) introductory phrase amended by LGBl. 2000 No. 279.

2. upon action by a party or the representative under public law by ordinary legal process.

2) In any case, this shall be subject to an order for precautionary measures, such as cessation of business operations, appointment and announcement of a receiver, confiscation of books and records, assets and the like prior to the final decision by the Government in compulsory administrative proceedings or, if so chosen by the applicant, by the Court of Justice in special non-contentious proceedings.<sup>145</sup>

3) If dissolution proceedings against one legal person are pending before one authority, they may no longer be initiated with the other, and if both are pending at the same time, the Administrative Court shall have the final decision.

4) The action for dissolution may be entered in the Commercial Register with the legal persons entered in the Commercial Register upon application or *ex officio* before or during the dispute until the final settlement of the proceedings.<sup>146</sup>

5) As soon as the decision has become final, the judge shall order the Office of Justice to enter the dissolution in the Commercial Register *ex officio*; after the liquidation has taken place, the entry of the legal person shall be deleted *ex officio*.<sup>147</sup>

6) The above provisions shall also apply if the purposes or means of a legal person constitute a threat to the State.

3. *On grounds of material defects in the articles of association  
(voidability)*

Article 125

*a) In general*

1) If the original or amended articles of association do not contain the provisions designated as material by law, or if a provision of the articles of association contradicts such provisions, voidability proceedings may be initiated, unless it concerns the form, the lack of a provision on announcement to the members or to third parties, or the minimum number of members.

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<sup>145</sup> Article 124(2) amended by LGBl. 2010 No. 454.

<sup>146</sup> Article 124(4) amended by LGBl. 2013 No. 6.

<sup>147</sup> Article 124(5) amended by LGBl. 2013 No. 6.

2) Any member or any other person entitled to vote of a legal person, its administration, or the audit office may, in administrative proceedings, after hearing the governing bodies authorised to represent the legal person and any counsel specially appointed by the Office of Justice, have the Office of Justice impose a reasonable deadline for the competent governing body to remedy the defect, where such deadline may not be less than three months from service and may be extended as necessary, and, if the defect is not remedied by the deadline, bring an action for its dissolution.<sup>148</sup>

3) The legal person may through its governing bodies remedy the defect at any time, even during voidability proceedings until a final decision, but if the defect is remedied only after expiry of the time period referred to in the preceding paragraph, the legal person shall pay all costs incurred by the opponents, without prejudice to its right of recourse against the culpable parties.

4) In all cases, the legal person shall retain the right of legal personality until the termination of its liquidation under the other provisions of this Act, subject to bankruptcy.

5) This applies in particular to the status of any members and third parties.

6) No action may be brought after a period of five years from the date on which a provision designated as material is established.

#### Article 126

##### *b) Voidability action*

1) A voidability action must be brought against the legal person, which shall be represented by the administration, and if the administration brings the action, then by the audit office, if there is one; but if both the members of the administration and those of the audit office bring an action or, if the latter does not exist and there is no other representative for the legal person, the court shall appoint a counsel for the proceedings in accordance with the code of procedure.<sup>149</sup>

2) Several actions shall be joined for simultaneous hearing and decision; the filing of the action and the date of the hearing itself may also, at the discretion of the court, be published in the manner specified in the articles of association for announcements and, if such a provision is missing, in the

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<sup>148</sup> Article 125(2) amended by LGBL 2013 No. 6.

<sup>149</sup> Article 126(1) amended by LGBL 2000 No. 279.

official publication medium and shall be entered in the Commercial Register *ex officio*.<sup>150</sup>

3) The court may, on application by the legal person and on account of the threat of prejudice to the legal person, order the complainant to provide a security to be determined at the complainant's own discretion, to the provision and compensation of which the provisions of the Code of Civil Procedure governing security deposits for the costs of litigation shall apply *mutatis mutandis*.

4) Conversely, the court may postpone the execution of the challenged provision by way of a mandatory injunction procedure if an irreversible prejudice threatening the legal person is credibly demonstrated.

5) Any member or any other person entitled to vote of the legal person may join the legal dispute at their own expense as an intervening party on one side or the other.

#### Article 127

##### c) *Ex officio proceedings*

1) The Office of Justice may, pursuant to a report or on its own initiative, order the dissolution of the legal person without compensation in administrative proceedings under the same conditions as in a voidability action.<sup>151</sup>

2) The Office of Justice shall first set a reasonable deadline of at least three months, which may be extended on important grounds, for the legal person to make a written or oral statement and, depending on the circumstances, to remedy the defect, and shall order the entry of the voidability proceedings in the Commercial Register if the legal person is entered there.<sup>152</sup>

3) If the defect is not remedied and no statement is made and no voidability action has become final in the meantime, the party reporting the defects and the legal person shall be summoned to a hearing to discuss the defects, and a decision on the dissolution must be taken.

4) The provisions set out for the voidability action shall apply *mutatis mutandis* to the procedure and the decision.

<sup>150</sup> Article 126(2) amended by LGBL 2022 No. 227.

<sup>151</sup> Article 127(1) amended by LGBL 2013 No. 6.

<sup>152</sup> Article 127(2) amended by LGBL 2013 No. 6.

## Article 128

*d) Effect and responsibility*

1) Insofar as the decision pronounces or rejects voidability, it shall have legal effect for and against all members and governing bodies of a legal person, irrespective of whether they have participated in the proceedings or not.

2) In the case of legal persons entered in the Commercial Register, the decision pronouncing the dissolution must be communicated to the Office of Justice *ex officio* or upon application for the purpose of entry and publication, unless the Office of Justice has itself issued the decision and insofar as the entered provision has been published.<sup>153</sup>

3) The complainants or parties reporting the defects shall, unless the latter is the representative of public law or unless another procedure has been initiated *ex officio*, be jointly and severally liable, without limitation, to the legal person for all damages arising from intentionally or grossly negligent unfounded legal action or reporting of defects, in accordance with the provisions on torts.

## Article 129

*II. Appropriation of assets*

1) If a legal person is abolished, its assets shall, unless the law, the articles of association, or the competent bodies determine otherwise, be transferred to the State, which, as the legal successor, is liable for the liabilities only up to the value of the assets taken over and equal to a *bona fide* owner.

2) The assets shall be used in accordance with the provisions on the tacit trust relationship and as far as possible in accordance with the previous purpose, and this use may be demanded by the parties previously involved in the abolished legal person by way of an administrative procedure.

3) If a legal person is abolished by the court for pursuing immoral or unlawful purposes, the assets shall be transferred to the State for its free disposal after the official liquidation, even if specified otherwise.

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<sup>153</sup> Article 128(2) amended by LGBI. 2013 No. 6.

*III. Liquidation*

## Article 130

*1. In general*

1) The dissolution of a legal person for reasons other than bankruptcy shall result in its liquidation, unless otherwise provided for by law.

1a) If a domestic branch of a foreign company with legal personality is discontinued, liquidation must be carried out in the same way as for a domestic company with legal personality, unless the Office of Justice grants exceptions.<sup>154</sup>

2) If assets remain after the end of a legal person's bankruptcy, those assets shall also be liquidated unless a decision is taken to continue the legal person.

3) The procedure for the liquidation of the assets of the legal person shall be governed by the following provisions, unless special provisions have been established for individual legal persons or their applicability is partially excluded, as in the case of associations or foundations not entered in the Commercial Register or in the absence of an obligation to keep books.<sup>155</sup>

4) If it becomes apparent during the liquidation proceedings that the assets do not cover the liabilities to third parties, the liquidators must file a report with the courts for the opening of insolvency proceedings in respect of the assets of the legal person, ceasing their activities.<sup>156</sup>

5) If the application does not come from all liquidators, the court must hear the members of the administration and the other liquidators before opening insolvency proceedings and, if they are not of the same opinion, shall open insolvency proceedings only if it has satisfied itself that the legal person is insolvent or overindebted.<sup>157</sup>

6) Unless otherwise provided by law or the articles of association, a legal person may, with the consent of all members, convert itself without liquidation into another legal person or company with a legal name, subject in all cases to the rights of third parties existing prior to the conversion.

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<sup>154</sup> Article 130(1a) amended by LGBL 2013 No. 6.

<sup>155</sup> Article 130(3) amended by LGBL 2013 No. 6.

<sup>156</sup> Article 130(4) amended by LGBL 2020 No. 369.

<sup>157</sup> Article 130(5) amended by LGBL 2020 No. 369.

## Article 131

*2. State of liquidation*

1) When legal persons enter into liquidation, they shall retain their legal personality and keep their previous legal name with the suffix "in Liquidation", "in Liq.", or "i.L." until liquidation has been carried out vis-à-vis the third parties and among any members.<sup>158</sup>

2) They may be sued under their previous name and compulsory execution may be sought against them as long as, in the case of a legal person entered in the Commercial Register, the suffix "in Liquidation" or "in Liq." or "i.L." is not entered in the Commercial Register, even if they have attached the aforementioned suffix to their signature on documents.<sup>159</sup>

3) The governing bodies of the legal person, with the exception of the administration, whose powers as a governing body are transferred to the liquidation office, shall have the same powers in the state of liquidation as before liquidation, but with the limitation by law to such acts which can be justified by the purpose of liquidation by their nature.

4) Acquisition of membership shall no longer take place, but members shall remain obliged, even during the liquidation, to make payments such as payment of membership shares not fully paid up, additional performances, and the like, which, by virtue of their purpose, appear to be continuously enforceable for the duration and state of the liquidation and insofar as they serve to satisfy the creditors or for adjustment among the members.

*3. Liquidators*

## Article 132

*a) Regular appointment and removal*

1) Liquidators of the legal person shall be the members responsible for business management and representation, unless the liquidation is transferred to other persons in the articles of association or by a resolution of the supreme body.

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<sup>158</sup> Article 131(1) amended by LGBl. 2003 No. 63.

<sup>159</sup> Article 131(2) amended by LGBl. 2013 No. 6.

1a) At least one of the liquidators referred to in paragraph 1 must meet the requirements pursuant to Article 180a or, as a legal person, hold a licence pursuant to Article 13 of the Trustee Act (TrHG).<sup>160</sup>

2) The power of attorney of such liquidators may be extended, restricted, or revoked at any time by the supreme body or on important grounds, in particular in cases of inactivity or endangerment of national interests, at the request of a member or other party involved, or *ex officio* by the Office of Justice in administrative proceedings.<sup>161</sup>

3) The Office of Justice may, on the application of creditors representing at least one third of all assets not covered, of representatives of professional associations, of members, or *ex officio* on important grounds, in particular in cases of inactivity or endangerment of national interests, order an official liquidation under its supervision or under that of a creditors' committee to be appointed and have it carried out under appropriate application of the rules established for liquidation.<sup>162</sup>

4) In the case of official liquidation, the court may order the suspension of all compulsory executions pending against the legal person.

5) The provisions on liquidators shall apply *mutatis mutandis* to the replacement liquidators.

#### Article 133

##### *b) Official appointment and status in bankruptcy*

1) If no liquidators are designated in the aforementioned manner, or if the legal person is abolished for pursuing unlawful or immoral purposes, or its dissolution and liquidation is ordered pursuant to Article 971, the liquidators shall be appointed by the Office of Justice in administrative proceedings and may in such case be removed only by the latter on important grounds, in particular in case of inactivity or endangerment of national interests.<sup>163</sup>

1a) The officially appointed liquidator must be a member of the administration that meets the requirements pursuant to Article 180a or, as a legal person, holds a licence pursuant to Article 13 of the Trustee Act (TrHG). The Office of Justice may, on the application of the parties or *ex*

<sup>160</sup> Article 132(1a) amended by LGBL 2019 No. 18.

<sup>161</sup> Article 132(2) amended by LGBL 2013 No. 6.

<sup>162</sup> Article 132(3) amended by LGBL 2013 No. 6.

<sup>163</sup> Article 133(1) amended by LGBL 2013 No. 6.

*officio*, appoint another suitable person as liquidator if there are important grounds to do so.<sup>164</sup>

2) The entry of the official appointment or removal of liquidators shall be carried out *ex officio*.

2a) If the dissolution and liquidation of a legal person or a trust enterprise takes place on the basis of point 2 or 2a of Article 971(1), the address of the liquidator shall be entered *ex officio* in the Commercial Register as an address for service, provided that it is an address in Liechtenstein.<sup>165</sup>

3) When opening bankruptcy proceedings in respect of the assets of the legal person, the insolvency administrator shall provide for liquidation under insolvency law; however, the governing bodies, including any liquidators, of a legal person, shall have the same status as before the opening of bankruptcy proceedings, unless disposals of components of the estate are involved.<sup>166</sup>

4) The liquidators shall have the status of a natural person as a debtor in relation to the insolvency administrator.<sup>167</sup>

5) The costs of the officially appointed liquidators shall be borne by the legal person.<sup>168</sup>

6) If the assets of the legal person are not sufficient to cover the costs of liquidation, the State shall bear the costs of the liquidator, provided that the latter was not previously a governing body of the legal person. To the extent of the payments made by the State, any liability claims of the company against the culpable governing body shall pass to the State. If further assets arise after the liquidation has been completed, the State shall have a preferential claim to compensation for the liquidator's costs.<sup>169</sup>

#### Article 134

##### *c) Duties and responsibility*

1) The provisions concerning the obligation of entry in the Commercial Register, the registration, and the rights and duties of the liquidators established in respect of the general partnership shall also

<sup>164</sup> Article 133(1a) amended by LGBL 2019 No. 18.

<sup>165</sup> Article 133(2a) inserted by LGBL 2022 No. 227.

<sup>166</sup> Article 133(3) amended by LGBL 2020 No. 369.

<sup>167</sup> Article 133(4) amended by LGBL 2020 No. 369.

<sup>168</sup> Article 133(5) inserted by LGBL 2005 No. 257.

<sup>169</sup> Article 133(6) amended by LGBL 2009 No. 268.

apply to legal persons, subject to the following provisions and with the proviso that the registrations for entry in the Commercial Register are made by the administration.<sup>170</sup>

2) Any change in the composition of the liquidators and the termination of their power of representation must be registered by them.

3) Unless otherwise provided for by law, the same rules apply to the liquidators as to the administration, with the exception of the prohibition of competition.

4) Liquidators who violate or neglect the obligations imposed on them by law or the articles of association shall be jointly and severally liable, without limitation, to the legal person, and after the dissolution of the legal person to the members and creditors of the dissolved legal person where applicable, for the damage incurred, in the same way as the governing bodies of the legal person.

5) Unless otherwise provided, the liquidators shall act collectively and decide by a simple majority of votes.

#### *4. Liquidation activity*

##### Article 135

###### *a) Preparation of the balance sheet*

1) The liquidators shall draw up a liquidation balance sheet when taking up their function, for which the administration shall assist them and make all relevant books and business papers available.

2) Creditors who can be identified from the account books or who are otherwise known and whose whereabouts can be determined shall be called upon by way of a special notice to file their claims, and unknown creditors shall be called upon to do so by the Office of Justice *ex officio* by way of publication in the official publication medium stating the address, unless the Office of Justice permits another method to do so in administrative proceedings, or if all creditors give their consent to such a method.<sup>171</sup>

3) At the same time, creditors may apply to the court for suspension of all compulsory executions.

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<sup>170</sup> Article 134(1) amended by LGBl. 2013 No. 6.

<sup>171</sup> Article 135(2) amended by LGBl. 2022 No. 227.

4) Repealed<sup>172</sup>

5) The notice pursuant to the above paragraphs shall also apply to legal persons that do not conduct business in a commercial manner.<sup>173</sup>

Article 135a<sup>174</sup>

*b) Liquidation balance sheet*

1) The liquidation balance sheet shall, unless exceptions are provided or they arise from the circumstances, be composed of assets on the one hand and debts to third parties as liabilities on the other hand, not including equity, special funds without legal personality, or special funds without a fiduciary purpose.

2) The valuation in the liquidation balance sheet for all assets, without distinction, shall be based on their realisable value at the time the balance sheet is drawn up.

3) The time-balancing distribution of organisational costs, price losses arising from the issue of bonds, depreciation, and the like shall not be permitted.

4) Undisclosed reserves may likewise no longer be maintained.

Article 136

*c) Procedure*<sup>175</sup>

1) The liquidators must terminate the current business, satisfy the obligations of the legal person, insofar as the assets permit, in accordance with the ranking of claims under insolvency law, realise the assets, and collect outstanding membership payments, insofar as they are necessary to cover liabilities.<sup>176</sup>

2) In the realisation of the assets, real property or rights equivalent to real property may also be sold by private sale with the consent of the supreme body or another governing body authorised under the articles of association.

<sup>172</sup> Article 135(4) repealed by LGBl. 2022 No. 227.

<sup>173</sup> Article 135(5) amended by LGBl. 2010 No. 352.

<sup>174</sup> Article 135a inserted by LGBl. 2000 No. 279.

<sup>175</sup> Article 136 heading amended by LGBl. 2000 No. 279.

<sup>176</sup> Article 136(1) amended by LGBl. 2020 No. 369.

3) A balance sheet shall be drawn up annually concerning the assets of the legal person in liquidation, but no profits may be distributed or allocations made to the reserve fund during liquidation.

4) Funds received that are not necessary to pay the creditors may also be deposited with the Landesbank (the savings and loan bank of the State) or, on important grounds, deposited in another manner or, with the consent of the court, used for partial payments in special non-contentious legal proceedings.<sup>177</sup>

#### Article 137

##### *d) Securing of creditors*<sup>178</sup>

1) If known creditors have failed to register their claims, the amount of their claims must either be deposited in court or paid to them without registration.

2) Similarly, a corresponding amount must be deposited for the legal person's pending and not yet due liabilities and for the liabilities in dispute, unless the distribution of the legal person's assets remains suspended until the legal person is disposed of or a security equivalent to that deposited in court is provided to the creditors.

3) In order to supervise the liquidators and accelerate the liquidation process, a creditors' committee may be appointed on the application of creditors on important grounds, where such creditors' committee is appointed by a simple majority of the represented votes in a creditors' meeting convened under the chairmanship of the court and is made available to the liquidators, and which has exclusive authority to assert responsibility against the liquidators.

#### Article 138

##### *e) Distribution of assets and removal*<sup>179</sup>

1) After repayment of the debts, if the members are entitled to certain shares and to the extent they and not the legal person itself are so entitled and it is not otherwise determined, the assets of a dissolved legal person shall be distributed among the members in proportion to the amounts paid in on these shares, and in case of doubt per capita.

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<sup>177</sup> Article 136(4) amended by LGBL 2010 No. 454.

<sup>178</sup> Article 137 heading amended by LGBL 2000 No. 279.

<sup>179</sup> Article 138 heading amended by LGBL 2000 No. 279.

2) Distribution may not take place before six months have elapsed from the date on which the announcement of the dissolution with a call to file the claims appeared in the official publication medium, or, unless exceptions are permitted, by order of the Office of Justice in administrative proceedings.<sup>180</sup>

3) Distribution before the end of this six-month period may be authorised by the Office of Justice in administrative proceedings if, under the circumstances, any risk to creditors can be completely ruled out.<sup>181</sup>

4) Upon termination of their activities, the liquidators must apply for removal of the legal person's entry in the Commercial Register. This entry must be announced for legal persons that are subject to the publication obligation.<sup>182</sup>

5) Removal may take place already before the end of the six-month waiting period.

6) Upon termination of the liquidation, the liquidators shall, unless otherwise provided by the articles of association or the competent governing body, convene the supreme body, if it exists, for the purpose of approving the final accounts and discharge; if the discharge resolution is refused for no reason, the liquidators may file an action against the legal person for discharge.

#### Article 139

##### 5. Subsequent liquidation

1) If, after the removal and the entry thereof in the Commercial Register, further assets subject to distribution surface, the Office of Justice shall, on the application of parties involved such as members, creditors, or *ex officio*, by way of administrative proceedings have the assets distributed by officially appointed liquidators in accordance with the ranking of claims under insolvency law. The provisions of Article 130(4) and (5) shall apply *mutatis mutandis*.<sup>183</sup>

2) This provision shall apply *mutatis mutandis* if a legal person has been dissolved as a result of bankruptcy and no special liquidators are appointed by the supreme body, or the continuation of the legal person is decided.

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<sup>180</sup> Article 138(2) amended by LGBL 2022 No. 227.

<sup>181</sup> Article 138(3) amended by LGBL 2013 No. 6.

<sup>182</sup> Article 138(4) amended by LGBL 2013 No. 6.

<sup>183</sup> Article 139(1) amended by LGBL 2020 No. 369.

3) If undistributed assets of the legal person still exist, no period of limitation entering into effect since the distribution may be asserted against a creditor, provided that the creditor seeks satisfaction only from those undistributed assets.

#### Article 140

##### *6. Disposal of the assets as a whole*

1) In the absence of a provision to the contrary in the articles of association, the assets may be transferred in their entirety in accordance with the provisions on a resolution to dissolve, and the resolution shall result in the dissolution of the legal person, unless such dissolution has already been resolved or the entire assets are transferred for the purpose of disposal to a professional trustee in order to satisfy the creditors.

2) Unless the law specifies otherwise, the sale agreement must be in simple written form, and the transfer of the assets to the acquirer shall take place in accordance with the transfer provisions applicable to the individual asset components.

3) The provisions on liquidation shall apply to the extent that the liquidators shall also be authorised to carry out the transactions and legal acts entailed by the execution of the agreed sale, but the handover of the assets to the transferee may only take place under observation of the provisions established for the distribution of the assets among the members.

#### Article 141

##### *IV. Enforcement of claims against a removed legal person<sup>184</sup>*

1) If a legal entitlement is asserted against a legal person removed from the Commercial Register, for example as a result of an action for resumption or nullity, the court must, on the application of the parties, appoint a counsel for the removed legal person, who shall represent the legal person in the proceedings and be entered in the Commercial Register. With regard to the costs of the counsel, the provisions on the guardian ad litem (curator) shall apply *mutatis mutandis*.<sup>185</sup>

<sup>184</sup> Article 141 heading amended by LGBL 2016 No. 402.

<sup>185</sup> Article 141(1) amended by LGBL 2016 No. 402.

2) With respect to liability for the unjustified receipt of liquidation shares, this provision is subject to the relevant provisions on responsibility.

3) If legal successors or other persons (companies, legal persons) are liable for the debts of the legal person removed from the Commercial Register, and if the period of limitation has not yet expired, they may be sued as joint litigants in addition to the legal person or separately individually or together in accordance with their liability.<sup>186</sup>

4) Paragraphs 1 to 3 shall apply *mutatis mutandis* to foundations and associations not entered in the Commercial Register.<sup>187</sup>

#### Article 142

##### *V. Retention of account books, business papers, and founding documents*<sup>188</sup>

1) The account books and business papers of a dissolved company with legal personality or a legal person equivalent thereto shall be retained at the expense of the liquidation estate at a secure place to be determined by the liquidators in accordance with Article 1059 for a period of ten years and shall be used at the discretion of the liquidators after expiry of this period.<sup>189</sup>

1a) Paragraph 1 shall apply *mutatis mutandis* to the retention of founding documents and materials relating to subsequent amendments to the founding documents as referred to in Article 182(3). During the retention period, the liquidators must ensure that the founding documents and materials as referred to in Article 182(3) are available within a reasonable period of time in Liechtenstein.<sup>190</sup>

2) If a legal person is dissolved by bankruptcy, the insolvency administrator shall issue a more detailed order on retention at the expense of the insolvency estate.<sup>191</sup>

3) Anyone who credibly demonstrates an interest worthy of protection may be authorised by the Court of Justice in special non-

<sup>186</sup> Article 141(3) amended by LGBL 2013 No. 6.

<sup>187</sup> Article 141(4) inserted by LGBL 2016 No. 402.

<sup>188</sup> Article 142 heading amended by LGBL 2024 No. 370.

<sup>189</sup> Article 142(1) amended by LGBL 2022 No. 227.

<sup>190</sup> Article 142(1a) inserted by LGBL 2024 No. 370.

<sup>191</sup> Article 142(2) amended by LGBL 2020 No. 369.

contentious proceedings to inspect the same account books and business papers as, for example, former members, legal successors, and creditors.<sup>192</sup>

#### *VI. Takeover by the polity*

##### Article 143

###### *1. By acquisition of the shares*

1) If a polity (the State or municipalities) has acquired all the membership shares of a legal person, such as shares of a public limited company or cooperative society, the dissolution of the legal person may also be waived if the polity remains the sole member of the legal person without, however, losing the status of a legal person under private law.

2) The polity or the persons designated by it shall then perform the functions of the various governing bodies of the legal person.

3) In the event of dissolution of the legal person, liquidation may be effected in such a way that the polity declares that it assumes all obligations of the legal person.

4) This article is subject to the provisions on legal persons with a sole member.

###### *2. Takeover of assets and liabilities*

##### Article 144

###### *a) Effects*

1) If a polity has taken over the assets of a legal person as a whole with assets and liabilities, only the polity shall be liable to the creditors of the legal person after the transfer of liabilities.

2) If, however, the members of a legal person are not personally liable for its obligations, the liability of the polity is limited to the assets taken over, in the absence of other provisions.

3) The liabilities of the legal person, if entered in the Commercial Register, are transferred to the polity ten days after the publication of the

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<sup>192</sup> Article 142(3) amended by LGBl. 2010 No. 454.

entry of the takeover in the Commercial Register, but otherwise immediately after the takeover.<sup>193</sup>

4) This article is subject to the formation of a legal person with a sole member.

#### Article 145

##### *b) Procedure*

1) Any requisite application for entry in the Commercial Register shall be made jointly by the competent representative of the polity and the legal person, accompanied by the takeover agreement.<sup>194</sup>

2) Entry and publication may take place only after the liquidation of the legal person has been entered in the Commercial Register.<sup>195</sup>

3) The liquidation may be carried out in such a way that the polity pays either a certain sum or the active surplus of the assets of the legal person to the legal person in liquidation or to its members.

#### Article 146

##### *VII. Continuation of a dissolved legal person*

1) If a legal person has been dissolved in its entirety for the purpose of selling its assets or for the purpose of conversion into another legal person or by resolution of the competent governing body, the governing body responsible for dissolution may decide to continue the existence of the legal person by the majority required for a resolution amending the articles of association, provided that the intended purpose is not achieved or no longer sought and the distribution of the assets has not yet begun.

2) The same shall apply in the event that the legal person is dissolved by the opening of bankruptcy proceedings, but the bankruptcy proceedings are suspended after the conclusion of a recovery plan or on the application of the creditors, provided that the capital or assets required by law for the continuation are still available.<sup>196</sup>

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<sup>193</sup> Article 144(3) amended by LGBL 2013 No. 6.

<sup>194</sup> Article 145(1) amended by LGBL 2013 No. 6.

<sup>195</sup> Article 145(2) amended by LGBL 2013 No. 6.

<sup>196</sup> Article 146(2) amended by LGBL 2020 No. 369.

3) If the legal person is entered in the Commercial Register, the governing body required or competent to register the entry must also register the continued existence for entry in the Commercial Register.<sup>197</sup>

#### *D. Membership*

##### *I. Accession*

#### Article 147

##### *1. In general*

1) A declaration to join a legal person with shares as a member or to otherwise participate in its assets, with the exception of the tacit condition of formation, must be unequivocal and may not contain any conditions, but it may contain a time up to which the subscription or other declaration remains binding.

2) The formalities for acquiring membership shall also apply with regard to the preliminary agreements thereto.

3) Conditional declarations may be taken into account when determining membership only if other binding declarations of membership or participation exist in the event that the condition is not fulfilled.

4) If the time by which the declaration to join a legal person in the process of formation is intended to be binding, but is not fixed and does not arise from the circumstances, the declaration shall be limited to a period of six months.

5) Where the law or the articles of association refer to the members, this shall mean membership of the legal person and not membership of a collegial body, unless meant otherwise in individual cases.

#### Article 148

##### *2. Challenge*

1) Unless otherwise provided by the law, a member's declaration of membership by subscription to shares and the like, as well as the articles of association, may not be challenged by a member on the grounds of vitiated consent (error, deception, creation of fear) or by a creditor or heir on the grounds of disadvantage after the formation of a legal person.

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<sup>197</sup> Article 146(3) amended by LGBl. 2013 No. 6.

2) This provision is subject to the right to claim damages against those who are responsible for the vitiated consent, as well as the right of compulsory execution of the creditor and other means of challenge provided for by law.

## *II. Membership shares*

### Article 149

#### *1. In general*

1) Unless otherwise provided by the law or the articles of association, legal persons may grant their members share rights to which the provisions applicable to shares in registered cooperative societies apply, in the absence of other provisions, in particular with regard to rights and duties.

2) Unless otherwise provided by law or the articles of association, membership shall be indivisible, alienable, and heritable.

3) The transfer of membership and the appointment of a limited right *in rem* shall be effected by written contract, provided that there are no securities concerning membership and the articles of association do not establish any more restrictive provisions, such as in particular a right of first refusal or approval by governing bodies or members.

4) In the event of bankruptcy of a member, the transfer shall require the consent of the receiver in so far as it contains a disposal of the estate.

5) In case of doubt, the distribution of profits shall be in proportion to the financial benefits paid by a member in respect of membership shares.

6) Unless otherwise provided by the law, profit-sharing certificates with or without membership may be issued in the case of legal persons, and the provisions on profit-sharing certificates apply to them if membership is not associated therewith, but otherwise the provisions on bonus shares in public limited companies shall apply *mutatis mutandis*.

7) This article is subject to the appointment of trusteeships with or without the issue of trust certificates for shares in the profit, liquidation proceeds, and the like and the transfer of membership by operation of law.

## Article 150

*2. Securities concerning membership*

1) Securities concerning membership may be issued only if expressly permitted by law.

2) If securities are issued in violation of this provision or prior to the acquisition of legal personality, they shall be null and void; the issuers and, insofar as they are at fault, the other parties shall be jointly and severally liable, without limitation, to the owners for all damage caused by the issue, without prejudice to the obligations and entitlements arising from the joining or from any subscription.

3) The provisions governing shares as securities, in particular those relating to share certificates, shall apply *mutatis mutandis* to other membership securities.

Article 151<sup>198</sup>*3. Own shares*

1) In the absence of other provisions of the law or the articles of association, a legal person may neither acquire its own shares against payment or as a pledge.

2) This prohibition does not apply:

1. if the acquisition is made for amortisation in accordance with provisions of the law or the articles of association;
2. if it is made in accordance with the provisions of the law and the articles of association for the purpose of partial repayment of the share capital;
3. if it is made to satisfy the legal person's own claims and is necessary to safeguard the interests of the legal person;
4. if the acquisition or the acceptance of the pledge is connected with the operation of a line of business falling within the object of the company in accordance with the articles of association;
5. if it is in conjunction with aggregated assets.

3) The repurchased shares shall be rendered immediately unusable for any further sale in the cases under paragraph 2(1) and (2), and they shall be sold as quickly as possible in the cases under paragraph 2(3) to (5).

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<sup>198</sup> Article 151 amended by LGBl. 2000 No. 279.

4) The own shares in the possession of a legal person shall not be taken into account in the distribution of profits and other benefits arising from membership, also in relation to liquidation shares.

5) The legal person may also not appoint a trustee for the purpose of circumventing the law or the articles of association with regard to the own shares belonging to it.

6) Where a reserve fund is required by law, the fund may only with the consent of the Office of Justice be invested in whole or in part in own shares.<sup>199</sup>

7) This article is subject to other provisions on own shares.

#### Article 152

##### *4. Share belonging to several parties*

1) A membership share to which several members are entitled without divisions shall be represented by them jointly with regard to rights and duties.

2) As long as there has been no dispute among them regarding the membership share, they shall be jointly and severally liable to the legal person for the benefits arising from the membership share.

3) Several members shall appoint a joint representative.

4) If they fail to appoint a representative and to report this to the legal person, declarations of intent may be given to another member and the judge may appoint a joint representative in special non-contentious proceedings.<sup>200</sup>

##### *5. Trust certificates*

#### Article 153

##### *a) In general*

1) If the articles of association do not provide otherwise, the members with membership shares under property law may appoint an actual trust in accordance with the relevant provisions and accordingly transfer the

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<sup>199</sup> Article 151(6) amended by LGBl. 2013 No. 6.

<sup>200</sup> Article 152(4) amended by LGBl. 2010 No. 454.

shares to the trustee for the limited or unrestricted exercise of personal (sovereign) rights arising from membership, in particular voting rights, subject to the rights and duties arising from membership under property law.

2) Unless the deed of trust provides otherwise, the trustee shall deposit the handed over securities with the legal person against delivery of trust certificates, which are transferable in the same way as the securities concerning membership or in another manner, in favour of the members (settlers).

3) If the articles of association do not prohibit it, trust certificates having the characteristics of securities and relating to claims arising from membership under property law may be issued by a member as trustee or by a specially appointed trustee even if the membership is not linked to a security or is indivisible.

#### Article 154

##### *b) Form and effect*

1) The trust certificate must specify the powers of the trust body from where the benefits under property law arising from membership may be obtained and shall, *mutatis mutandis*, contain the same content as the deposited securities concerning membership, unless there are derogations resulting from the issue of several trust certificates for a single membership or otherwise.

2) The deposited securities shall not be transferable by operation of law as long as trust certificates have been issued for them; if they are issued contrary to this provision, the issuers and, insofar as they are at fault, the other parties involved are jointly and severally liable to the owner for all damage caused.

3) With regard to the obligation to provide benefits to the legal person, the members are in the same position as other members; in the absence of other provisions in the deed of trust, however, only the trustee may assert the rights arising from membership or have them asserted by others.

4) Enforcement of claims arising from membership in the event of compulsory execution against the member or in the event of opening of bankruptcy proceedings in respect of the member's assets, if a trust exists,

is permissible only in accordance with the provisions governing the trust.<sup>201</sup>

5) This provision is subject to the formation of other trusts.

#### Article 155

##### *III. Vested and other rights*

1) Vested rights to which the members as such are entitled may not be withdrawn or limited by an amendment to the articles of association without their consent, unless all equally entitled members are equally affected by the withdrawal or limitation.

2) Unless otherwise provided by the law or the articles of association, if a member resigns or is excluded without dissolution of the legal person and is entitled to dissolution, compensation, or the like, this claim shall be determined on the basis of a liquidation balance sheet drawn up for this purpose, with legal reserves being included accordingly on the liabilities side.

3) By law, every member has the right to inspect and copy the articles of association and, where they have been reproduced, to receive a copy against appropriate payment.

##### *IV. Liability and additional performance obligations*

#### Article 156

##### *1. In general*

1) Only the legal person's assets are liable for the legal person's obligations, unless otherwise stipulated or permitted by law and in the latter case stipulated by the articles of association.

2) The articles of association may therefore stipulate liability or an additional performance obligation on the part of individual members only if permitted by law, and individual members shall be subject to joint and several liability only where provided for by law or the articles of association.

3) In the absence of any other provision, the assertion thereof shall be in accordance with the provisions on the allocation procedure.

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<sup>201</sup> Article 154(4) amended by LGBl. 2020 No. 369.

4) If own shares are in the possession of the legal person, the liability and additional performance obligation, but also any subscription rights which, in the absence of any other provision in the articles of association, are based on the provisions established for this purpose at a public liability company, shall be suspended during the period of possession.

## 2. Allocation procedure

### Article 157

#### a) *In general*

1) Insofar as it might not be possible to satisfy the insolvency creditors owing to their claims to the assets of the legal person existing at the time of the opening of insolvency proceedings having to be taken into account at the time of the later final distribution in insolvency proceedings, members with liability or an additional performance obligation shall be liable to effect contributions (allocations) to the insolvency estate in order to cover the shortfall pursuant to the insolvency liquidation balance sheet, namely, in the absence of any other provision laid down in the articles of association, in proportion to the sums involved in the liability or the further contributions where limited liability or an additional performance obligation is involved, but otherwise per capita (contributed assets).<sup>202</sup>

2) If individual members, including those liable for contributions who are no longer members pursuant to the law or the articles of association, are unable to pay contributions, such as due to insolvency or for other reasons, the contributions shall be distributed among the other members, unless there is a limited liability or limited additional performance obligation.

3) Voluntary payments made by the members in excess of the contributions due under the above provisions shall be reimbursed to them from the contributions in advance after the creditors have been satisfied and may, if necessary, be enforced by calculating additional performances.

4) A member may offset a claim against the legal person against the contributions, provided that the conditions are met under which the member, as an insolvency creditor, can claim satisfaction on account of the claim from the contributions.<sup>203</sup>

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<sup>202</sup> Article 157(1) amended by LGBl. 2020 No. 369.

<sup>203</sup> Article 157(4) amended by LGBl. 2020 No. 369.

5) If the allocation procedure applies outside the insolvency proceedings in accordance with individual provisions of this Act, the administration or the liquidators shall take the place of the insolvency administrator with the proviso that the powers and obligations otherwise due to them under the provisions governing the allocation procedure shall cease to apply.<sup>204</sup>

*b) Calculation of advances*

Article 158

*aa) In general*

1) Immediately after the opening of insolvency proceedings and on the basis of the liquidation balance sheet drawn up, the insolvency administrator shall calculate the contributions to be made by the members in advance to cover the shortfall shown in the balance sheet, taking into account the various liability and additional performance obligations for groups of members, such as mixed cooperative societies.<sup>205</sup>

2) All members with their name (legal name) and domicile (registered office) and the contributions attributable to them must be stated in the calculation, and the amount of the contributions must be calculated in such a way that any foreseeable inability of individual members to make a contribution, irrespective of whether such inability has been determined by a court or not, does not result in a default in regard to the total amount to be covered.

Article 159

*bb) Writ of execution*

1) At the request of the insolvency administrator, the calculation shall be declared enforceable by execution by the Court of Justice in special non-contentious proceedings by means of a decision which may only be challenged by way of legal action.<sup>206</sup>

2) For this purpose, the court shall immediately order a hearing (court date) to be made public in the official journal in order to explain the calculation to the parties, to which it shall summon the members quoted

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<sup>204</sup> Article 157(5) amended by LGBl. 2020 No. 369.

<sup>205</sup> Article 158(1) amended by LGBl. 2020 No. 369.

<sup>206</sup> Article 159(1) amended by LGBl. 2020 No. 369.

in the calculation or their legal successors, the members of the administration or the liquidation office, any audit office, the insolvency administrator and, if a creditors' committee or the like has been appointed by the Court of Justice, also these members, and in which they shall be heard briefly without actual evidentiary proceedings.<sup>207</sup>

3) In the public announcement and in the summonses, it shall be indicated that the calculation is available for inspection at the court registry one week before the hearing.

4) The court shall decide on the objections raised, shall correct the calculation if necessary or shall order the correction thereof, and finally shall declare the calculation enforceable by execution by means of a decision.

5) The decision shall be announced at the same hearing or at a hearing specially ordered in accordance with the second paragraph, to which the parties to the first hearing may be summoned orally, and at the same time it shall be declared that the calculation, along with the decision declared enforceable by execution, which shall not be served, is available for inspection by the parties at the court registry.

#### Article 160

##### *cc) Execution*

1) After the calculation has been declared enforceable by execution, the insolvency administrator must collect the contributions from the members without delay.<sup>208</sup>

2) Compulsory execution against a member shall take place in accordance with the provisions applicable to the member on the basis of an enforceable copy of the decision to be served on the member, together with a statement of the calculation showing at least the total shortfall, the name (legal name) of the member, and the amount attributable to the member.

3) Legal remedies, such as legal action, complaints and the like, against an execution deed, to which the member as a debtor in the execution proceedings is entitled, shall remain.

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<sup>207</sup> Article 159(2) amended by LGBl. 2020 No. 369.

<sup>208</sup> Article 160(1) amended by LGBl. 2020 No. 369.

4) Contributions collected must be deposited or invested at the Landesbank or another institution or body designated by the insolvency administrator or the creditors' committee.<sup>209</sup>

#### Article 161

##### *dd) Action for rescission*

1) Any member or member's legal successor may challenge the calculation declared enforceable by execution and the decision by way of an action against the insolvency administrator by filing an application to rescind the calculation of contributions and the decision enforceable against the member or member's legal successor, for example because the person is not or no longer a member, because the calculation does not comply with the provisions under law or the articles of association, because the balance sheet is incorrect, or because not contributions but other payments are demanded, and the like.<sup>210</sup>

2) The challenge shall take place only within the peremptory period of one month since the judgment was announced and only to the extent that the plaintiff asserted the ground for the challenge at the hearing on the writ of execution or was unable to assert it through no fault of the plaintiff's, for example, if the ground arose only after the hearing or due to ignorance of the law.

3) The oral hearing in the proceedings to rescind shall not take place before the end of the peremptory period, and several proceedings to rescind shall be combined for simultaneous hearing and decision.

4) During the legal dispute, the court may, upon application and against any security to which the provisions on securing the costs of litigation shall apply *mutatis mutandis*, suspend compulsory execution or order the repeal of enforcement measures.

5) The final judgment shall be effective for and against all members liable to pay contributions, irrespective of whether or not they acted as intervening parties in the proceedings.

6) Upon expiry of the one-month peremptory period without action being instituted, the membership of the members listed in the inventory of members shall be legally binding for the allocation procedure.

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<sup>209</sup> Article 160(4) amended by LGBl. 2020 No. 369.

<sup>210</sup> Article 161(1) amended by LGBl. 2020 No. 369.

## Article 162

*ee) Supplementary calculation*

1) If the total amount to be covered is not reached due to the inability of individual members to pay contributions, or if the calculation has to be changed in accordance with the judgments following an action for rescission or for other reasons, the insolvency administrator may prepare a supplementary calculation.<sup>211</sup>

2) The supplementary calculation shall be drawn up repeatedly if necessary.

3) The preceding provisions on the calculation of advances, the writ of execution, execution, and the action for rescission shall apply to the supplementary calculations.

## Article 163

*c) Calculation of additional performances*

1) As soon as the final distribution in accordance with the provisions of the Insolvency Act is commenced, the insolvency administrator shall determine how much the members still have to pay under the applicable provisions in terms of contributions, including the costs of the insolvency and allocation proceedings, in addition to and correcting the advance calculation and the calculations supplementing that calculation, unless the members have already been obligated up to the limit of their liability or additional performance obligation in proceedings concerning advance payments.<sup>212</sup>

2) The last paragraph of the preceding article shall apply to this calculation of additional performances, with the proviso that contributions are not allocated to members whose inability to pay contributions becomes evident.

3) Apart from enforcement of claims otherwise, rights of recourse by virtue of membership arising from liability or the additional performance obligation may also be asserted by means of the calculation of additional performances.

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<sup>211</sup> Article 162(1) amended by LGBl. 2020 No. 369.

<sup>212</sup> Article 163(1) amended by LGBl. 2020 No. 369.

## Article 164

*d) Distribution of the contributed assets*

1) The insolvency administrator shall, after the calculation of any additional performances required has been declared enforceable by execution, or otherwise after calculation of the advance, immediately distribute among the creditors the existing balance of contributions and, whenever a sufficient balance of the outstanding contributions has been received, by means of supplementary distribution in accordance with the provisions of the Insolvency Act.<sup>213</sup>

2) Apart from the insolvency dividends allocated to the claims designated pursuant to the Insolvency Act which are to be retained, the shares allocated to claims which were contested by the administration or the liquidators in the proceedings concerning the claims of the insolvency creditors shall be retained.<sup>214</sup>

3) The insolvency creditor shall be free to remedy the objection of the administration or the liquidators within one month from the contestation of the action against the legal person and with effect for the contributed assets; however, if the objection has been declared justified in a final ruling, the shares shall be released for distribution among the other creditors of the additionally contributed assets.<sup>215</sup>

4) Creditors not involved in the action and the insolvency administrator may intervene in a dispute concerning the objection.<sup>216</sup>

5) Any surpluses not required to satisfy the creditors, unless voluntary payments by members or third parties are to be reimbursed in advance, shall be repaid to the members by the insolvency administrator in proportion to the amount of the contributions paid.<sup>217</sup>

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213 Article 164(1) amended by LGBl. 2020 No. 369.

214 Article 164(2) amended by LGBl. 2020 No. 369.

215 Article 164(3) amended by LGBl. 2020 No. 369.

216 Article 164(4) amended by LGBl. 2020 No. 369.

217 Article 164(5) amended by LGBl. 2020 No. 369.

## Article 165

*V. Default in performance in kind, exclusion of offset, of right of retention, etc.*

1) Unless ordered otherwise, default in performance in kind resulting from membership, such as non-cash contributions or other non-cash ancillary performances, shall be governed in general by the provisions of the law of obligations on the consequences of default, and liability shall be borne only by the person who has undertaken to render such a performance.

2) For the contribution in kind that is attributable to the share capital or own assets, the legal person may, after it arises from the warranty, claim a right of reduction and compensation for defects under the principles of the contract of sale, but not conversion, and if the contribution is completely worthless, performance of the payment in cash.<sup>218</sup>

3) No offset or right of retention to an object belonging to the legal person may be enforced against a claim of the legal person arising from a member's obligation to pay capital shares or arising from any other obligation to contribute or make additional performances.

4) If a performance other than a contribution in kind is owed, no objection of any unfulfilled consideration may be raised.

5) If the withdrawal of a member has been delayed or prevented through the fault of governing bodies and if, as a result, the member has been harmed, firstly the members of the governing body concerned and, secondarily, the legal person shall be liable.

*E. Organisation**I. Supreme body*

## Article 166

*1. In general*

1) In the case of legal persons with membership, the general meeting of the members shall be the supreme body, unless otherwise provided by law or the articles of association, such as general meetings of delegates, circular resolutions, and the like.

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<sup>218</sup> Article 165(2) amended by LGBl. 2000 No. 279.

2) The articles of association may delegate all or part of the powers of the general meeting of members to a committee or member council consisting of members or non-members which has been elected by all of the members in the general meeting of members or in the sectional or departmental meetings provided for by the articles of association and separated geographically, professionally, or according to similar aspects (representative constitution).

3) For these committee, sectional, or departmental general meetings, the same provisions as for the general meeting of members, including minority rights, shall apply, unless otherwise provided or resulting from the nature of the matter.

4) In the case of legal persons without membership which have a supreme body, the provisions laid down for the supreme body of corporate bodies shall apply *mutatis mutandis* to the latter, unless otherwise provided.

## 2. Convening

### Article 167

#### a) *In general*

1) The supreme body shall be convened by the administration (executive board), the liquidators, or by operation of law by the representatives of the bondholders or other governing bodies authorised to do so under the articles of association or their individual members or third parties and, for the duration of the insolvency proceedings, also by the insolvency administrator, as often as required by law or the articles of association or in the interest of the legal person; in the event of imminent danger, the audit office may also convene the supreme body.<sup>219</sup>

2) In the case of companies with legal personality and equivalent legal persons, the supreme body shall be convened at least once a year, unless, in the case of legal persons with fewer than 20 members, every resolution is passed by circular, or unless the articles of association expressly provide for an ordinary general meeting of the supreme body once and for all according to time, place, and with an indication of the agenda.

3) The form in which the supreme body is convened, whether orally, in writing, or by public announcement, may be specified in further detail by the articles of association, unless otherwise provided by the law, and

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<sup>219</sup> Article 167(1) amended by LGBI. 2020 No. 369.

this shall specify the place, time, and purpose of the meeting, and in particular in the case of intended amendments to the articles of association, its essential content; however, unless otherwise provided by law or the articles of association, each general meeting shall be announced in the Liechtenstein national newspapers at least one week before it is held.<sup>220</sup>

4) No resolutions may be passed on matters for which negotiations have not been announced in the manner required by law or the articles of association (agenda), with the exception of a resolution on the chairmanship and keeping of minutes, a motion made at the general meeting of the supreme body to convene an extraordinary general meeting, and a motion made for opening of an investigation into the business management and appointment of agents for this purpose.

5) Proposals and negotiations without a resolution shall not require prior notice.

6) If all members or representatives are assembled and no objection is lodged by an authorised person, they may form a general meeting of the supreme body without observing the formalities otherwise prescribed for convening the meeting, and the matters within its sphere of activity may be validly negotiated and decided upon (universal general meeting).

#### Article 168

##### *b) Minority rights*

1) The meeting shall be convened if the representatives of at least one tenth of the countable votes or, if less than 30 countable votes are available, at least three votes so request, stating the purpose, in a submission signed by the applicants.

2) If the request is not adequately complied with by the competent governing bodies, the general meeting may be convened by the Office of Justice in administrative proceedings at the request of the persons entitled to vote and after hearing the members of the administration, with the simultaneous appointment of a chair, and damages may also be claimed against the offending governing bodies on the basis of their contractual relationship, if necessary in accordance with the provisions on torts.<sup>221</sup>

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<sup>220</sup> Article 167(3) amended by LGBL 2016 No. 402.

<sup>221</sup> Article 168(2) amended by LGBL 2013 No. 6.

## Article 169

*3. Participation*

1) Unless otherwise provided, members or other persons entitled to vote may be represented by such persons or by third parties with written power of attorney.

2) The legal representatives, representatives as provided in the articles of association, or company representatives of persons who do not have the capacity to act, of legal persons, or of companies must be admitted to participate in the negotiations and resolutions without special powers of attorney, even if the articles of association do not permit representation or only by other persons entitled to vote.

3) Persons unable to negotiate, such as intoxicated persons, may be excluded from the general meeting.

4) The members of the audit office may participate in an advisory capacity if they are not members of the legal person.<sup>222</sup>

5) The articles of association may, within the framework of the law, determine to what extent non-members, such as bondholders and the like, are entitled to participate in the deliberation and voting.

6) A list of the attendees present or represented at the general meeting of the supreme body of a company with legal personality and of the votes attributable to them must be signed by the chair and presented during the general meeting (attendance list).

*4. Powers and passing of resolutions*

## Article 170

*a) In general*

1) If the law or the articles of association do not provide otherwise, the supreme body shall have the powers conferred on registered cooperative societies, in particular to supervise the activities of other bodies and to decide on the competence of the bodies.

2) Voting may take place either at the general meeting or, if no public authentication is required for the resolutions, without a general meeting, by means of ballot boxes or in such a way that, in the case of legal persons

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<sup>222</sup> Article 169(4) amended by LGBI. 2000 No. 279.

with fewer than 20 members, the expressly formulated resolutions are sent to the voters by registered mail in lieu of the general meeting of the supreme body, and the minimum number of eligible voters required for a resolution give their written approval.

3) The same rules as for voting shall also apply to elections.

4) A minority in accordance with the provision on minority rights may, by means of a submission signed and sent to the administration or other convening bodies at least five days before the meeting, request that specified items be placed on the agenda for deliberation and resolution.

4a) Members of large companies as defined in Article 1064(3) that are not covered by Article 339d and together represent at least 5% of the share capital have the right to demand by means of signed submissions that:<sup>223</sup>

1. an auditor or an audit firm that is neither the auditor of the company nor a member of the auditor's network performs an audit on certain components of the sustainability reporting;
2. the report on the audit in accordance with point 1 is submitted to the supreme body of the company.

5) Unless otherwise provided by law or the articles of association, the rules of parliamentary negotiations apply to chairmanship, deliberation, and passing of resolutions.

#### Article 171

##### *b) Chairmanship and taking of minutes*

1) Unless the articles of association provide otherwise, a member elected by the general meeting shall chair the general meeting.

2) The administration shall ensure that minutes are kept, which provide brief information on the negotiations, resolutions, and elections, and it shall take the necessary steps to determine the form of voting and the voting rights.

3) In the absence of any other provision, the minutes shall be kept by a member and signed by the chair and the secretary of the general meeting.

4) The minutes shall be made available to each person entitled to vote during business hours, and copies shall be permitted upon request.

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<sup>223</sup> Article 170(4a) inserted by LGBL 2024 No. 170.

*c) Required majority*

## Article 172

*aa) In general*

1) Unless otherwise provided, resolutions shall require the approval of a simple majority of the countable votes present to be valid, at least one tenth of all votes being represented, unless, at the request of the administration, a judge in special non-contentious proceedings permits an exception on important grounds.<sup>224</sup>

2) Unless otherwise provided by law or the articles of association, as in the case of multiple voting rights or proportional representation, each member shall have one vote.

3) The articles of association may grant bondholders or lenders, with or without the right to convert their creditors' rights into membership rights, a right to vote specified in more detail, to which the provisions on the exercise of voting rights by members shall be applied on a supplemental basis; however, the totality of such voting rights may not exceed half of all votes, and if more than one third of all voting rights are to be granted, the approval of at least three quarters of all votes is required.

4) If membership is linked to securities, the majority shall in case of doubt be calculated according to the number of shares; but in case of general meetings of delegates, each delegate shall have one vote in case of doubt.

5) The articles of association may also provide that certain groups of members or shares shall have different voting rights, but one member must have at least one vote.

6) If the law or the articles of association require the presence of a minimum number of votes for a resolution, and if not enough votes are represented in a first general meeting, this resolution on the same items may, subject to other provisions of the articles of association, be passed by the simple majority of a second general meeting to be convened within a reasonable period of at least eight days, irrespective of that minimum number of votes, unless otherwise provided.

7) In the event of a tie, the chair's opinion shall be deemed to be the resolution.

8) The preceding paragraph shall apply in particular where circular resolutions are permissible.

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<sup>224</sup> Article 172(1) amended by LGBI. 2010 No. 454.

## Article 173

*bb) Special entitlements and obligations*

1) If a legal person has members or shares with different entitlements or obligations, such as preference and ordinary shares or limited and unlimited liability or an additional performance obligation, the persons with equal entitlements or equal obligations shall among themselves form one party in contentious proceedings and special groups (classes) for the purpose of voting, provided that their rights or duties are affected in an unequal way by the resolution to be taken, and the approval of all groups required for amendments to the articles of association shall be required for such a resolution to be valid.<sup>225</sup>

2) In the absence of other provisions of the articles of association, these special general meetings shall be convened by the administration and presided over by a participant elected by the general meeting; the provisions governing the supreme body shall apply to these meetings *mutatis mutandis*.

3) In the absence of other provisions of the articles of association, the provisions of the preceding article shall apply to the passing of resolutions.

4) If the difference in entitlement consists only of an unequal number of votes, only a joint resolution shall be adopted, taking into account the difference in entitlement to vote.

## Article 174

*cc) Amendments to the articles of association*

1) Unless the articles of association provide otherwise, they may be amended with the approval of three quarters of all those present at the general meeting of the supreme body, representing at least half of all shares or, if there are no such shares, of all members.

2) Unless otherwise provided, new performance obligations of the members may be established or increased only with their approval, otherwise a resolution is valid only if it has not been challenged.

3) Amendments to the by-laws must merely be made in writing, even if such provisions were drawn up in a public document.

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<sup>225</sup> Article 173(1) amended by LGBL 2005 No. 257.

4) Amendments to the articles of association must be drafted in writing to the same extent as the original articles of association and, if necessary, publicly authenticated and entered in the Commercial Register.<sup>226</sup>

5) Amendments affecting only the wording may be delegated to another body by resolution of the supreme body.

6) A clearly distinguishable suffix to the legal name of a branch in accordance with company law shall not be considered an amendment to the articles of association.

#### Article 175

##### *d) Exclusion from voting rights*

1) Without prejudice to the right to attend the general meeting and to deliberate, every person entitled to vote shall, by operation of law, be excluded from the right to vote in their own name or in the name of another person when a resolution is passed on a legal transaction or dispute between that person, the person's spouse, registered domestic partner, fiancé(e), or a person directly related to the person in a straight line on the one hand and the legal person on the other, and when a resolution is passed on a legal transaction or dispute between a third party and the legal person from which a person entitled to vote derives a personal advantage or disadvantage.<sup>227</sup>

2) Own shares in the possession of the legal person itself shall not be entitled to vote and shall not be considered among the countable votes, but a legal person appointed as trustee may exercise the voting right.

3) By law, persons who have participated in business management in any way shall not have the right to vote in resolutions on the discharge of the administration regarding business management and the accounts.

4) A resolution that violates these provisions may be challenged under the rules on challenges against the resolutions of the supreme body.

5) These restrictions shall not apply to legal persons with fewer than 30 eligible voters, to members of the audit office, in elections and dismissals, or if the Office of Justice otherwise permits an exception in administrative proceedings.<sup>228</sup>

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<sup>226</sup> Article 174(4) amended by LGBL 2013 No. 6.

<sup>227</sup> Article 175(1) amended by LGBL 2011 No. 370.

<sup>228</sup> Article 175(5) amended by LGBL 2013 No. 6.

## Article 176

*e) Voting rights in case of usufruct, pledge, and other rights*

1) If there is a limited right *in rem* to membership rights, only the member or the trustee treated as equal to the member shall be entitled to vote, subject to representation.

2) If negotiable securities concerning membership are available, the holder of the security shall be obliged to permit exercise of the voting right, provided that immediate return of the unchanged security is guaranteed after the voting right has been exercised.

3) If a membership right is in usufruct, only the member shall be entitled to vote; however, the member must obtain the approval of the usufructuary for all resolutions which do not constitute normal administrative actions, and the member shall become liable for damages if this obligation is violated.

4) The depository may exercise voting rights for securities held in custody (custody account votes) only if the depository has a special power of attorney for this purpose from the custody account holder, unless exceptions are permitted by law, for example in the case of fiduciary deposits.

5) In the absence of any provision or agreement to the contrary, the exercise of other personal (sovereign) rights arising from membership shall be equivalent to the exercise of voting rights.

6) This provision shall apply *mutatis mutandis* to other voting rights.

## Article 177

*f) Public authentication of resolutions*

1) Resolutions of the supreme body concerning the constitution, amendment of the articles of association, and dissolution of a legal person shall, in all cases where membership consists of a share under property law or where the law otherwise requires it, establish a public document, unless the law itself provides for an exception, such as in the case of cooperative societies, small insurance associations, and establishments, and in the case of authentication by circular.

2) The notary shall attend the passing of the resolution in person and shall take minutes stating the place and time of the general meeting and shall briefly and precisely list the resolutions passed, as well as all events that occurred in the notary's presence at the general meeting and statements

made which are of significance for the assessment of the regularity of the procedure.

3) The minutes shall be signed by the chair of the general meeting and a person designated as the minutes taker.

4) If the requirements for this are met and if specifically requested, it may also be considered sufficient for the minutes to contain confirmation of the identity of the chair and other persons present at the general meeting.

5) The public document must be accompanied, where applicable, by the draft articles of association of the founders, declarations of joining, the signed subscription prospectus, the articles of association approved by the general meeting, and the like.

5a) Public authentication may also be carried out electronically via the authentication and certification system (Article 6d E-GovG) in accordance with the provisions of the Notaries Act and the Legal Protection Code. Paragraphs 1, 2, 4 and 5 shall apply *mutatis mutandis* with the proviso that the physical presence of the parties is not required.<sup>229</sup>

6) In all cases, with the exception of public limited companies, partnerships limited by shares, and limited liability companies, a declaration signed by all parties and certified may replace the public document.<sup>230</sup>

#### *4a. Use of electronic means*<sup>231</sup>

##### Article 177a<sup>232</sup>

###### *a) In general*

1) The administration may provide that participants who are unable to attend a physical meeting (Article 170(2)) may exercise their rights using electronic means.

2) The meeting, including the adoption of resolutions, may be held by electronic means, regardless of the number of members, even without the

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<sup>229</sup> Article 177(5a) inserted by LGBL 2024 No. 17.

<sup>230</sup> Article 177(6) amended by LGBL 2003 No. 63.

<sup>231</sup> Heading preceding Article 177a inserted by LGBL 2022 No. 227.

<sup>232</sup> Article 177a inserted by LGBL 2022 No. 227.

physical presence of the participants and without a place of meeting, if this is provided for in the articles of association.

Article 177b<sup>233</sup>

*b) Convening of the meeting*

The meeting shall be convened in accordance with Article 167(3), with the proviso that it must contain the precise modalities for participation and voting, but not the place of the meeting in the cases referred to in Article 177a(2).

Article 177c<sup>234</sup>

*c) Preconditions*

The administration shall arrange the electronic means and ensure that:

1. the identity of the participants is established;
2. the voting in the meeting is transmitted directly;
3. each participant can submit proposals and participate in discussions;
4. the voting result cannot be falsified.

Article 177d<sup>235</sup>

*d) Technical problems*

If technical problems occur during a meeting so that it cannot be conducted properly, the meeting must be repeated. Resolutions adopted before the occurrence of the technical problems shall remain valid.

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<sup>233</sup> Article 177b inserted by LGBL 2022 No. 227.

<sup>234</sup> Article 177c inserted by LGBL 2022 No. 227.

<sup>235</sup> Article 177d inserted by LGBL 2022 No. 227.

### 5. Challenge of resolutions

#### Article 178

##### a) *In general*

1) The administration and, if it does not institute legal action itself, the audit office of the legal person may challenge resolutions of the supreme body or other body which violate the provisions of the law or the articles of association, by bringing an action, counterclaim, plea, or application for injunction against the legal person before the judge with jurisdiction over the registered office.<sup>236</sup>

2) If the resolution concerns a measure the execution of which would make the members of the administration or the audit office liable to prosecution or liable to the creditors or members of the legal person, any member of the administration and the audit office may by law challenge it or refuse its execution.<sup>237</sup>

3) Furthermore, in the case of legal persons with members and subject to the provisions on vested rights, the representatives of at least one twentieth of all votes, but at least three votes, and if there are fewer than ten votes or members, each vote or each member, may by law contest a resolution to which they have not agreed and seek its rescission; the judge may, by analogy with the provisions of the Code of Civil Procedure on the provision of a security for the costs of litigation, impose on them a security, and if such security is not made, the right of challenge shall lapse.

4) Similarly, if individual persons eligible to vote were not convened for the general meeting in accordance with the law or the articles of association or their participation at the general meeting or vote was otherwise made impossible or unreasonably difficult, and as a result they did not participate in the meeting or the vote, or if, in the case of a circular resolution, persons entitled to vote voted against it or were passed over, or finally, if persons unauthorised to participate participated in a resolution, whether or not an objection was raised, those persons may challenge a resolution and seek to have it rescinded, if at the same time they credibly demonstrate that these shortcomings had an influence on the passing of the resolution.

5) The court may postpone the execution of the contested provision by way of a mandatory injunction procedure if an irreversible prejudice threatening the legal person is credibly demonstrated.

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<sup>236</sup> Article 178(1) amended by LGBl. 2000 No. 279.

<sup>237</sup> Article 178(2) amended by LGBl. 2000 No. 279.

## Article 179

*b) Enforcement, liability for damages, etc.*

1) The right of challenge of those entitled to vote shall expire if they do not, within one month after the resolution has been passed, announce their intention to the administration to institute legal action or, if the articles of association provide for a special rescission procedure, announce this immediately after exhaustion of the appeal process, and then bring the action before the judge within one further month after the resolution has been passed.

2) If the contested resolution is entered in the Commercial Register, the judgment shall be entered in the Commercial Register at the request of the contesting parties and published by the register authority, amending the previous entry, insofar as the latter step is necessary.<sup>238</sup>

3) The voidability judgment shall be effective for and against all persons entitled to vote of a legal person.

4) The plaintiffs who acted negligently by bringing the action shall be jointly and severally liable to the legal person, without limitation, for any damage caused by unfounded challenge of the resolution of the legal person, in accordance with the provisions on torts.

5) The provisions on voidability actions shall apply *mutatis mutandis* to the action for rescission.

6) Resolutions may also be repealed *ex officio* by the Office of Justice in accordance with the *ex officio* provisions set out in the case of voidability.<sup>239</sup>

Article 179a<sup>240</sup>*6. Presentation of annual financial statement*

Where the legal person is subject to generally accepted accounting requirements (Article 1045), the draft financial statement and, if applicable, the annual report and consolidated business report must be submitted to the supreme body for approval within six months of the end of the financial year, unless there are important grounds for an exception.

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<sup>238</sup> Article 179(2) amended by LGBl. 2013 No. 6.

<sup>239</sup> Article 179(6) amended by LGBl. 2013 No. 6.

<sup>240</sup> Article 179a inserted by LGBl. 2000 No. 279.

## *II. Administration*

### *1. In general<sup>241</sup>*

#### Article 180

##### *a) Principle<sup>242</sup>*

1) Each legal person must have an administration (executive board, general manager, and the like) which, unless otherwise specified, may consist of one or more natural or legal persons or companies and shall be appointed by the supreme body for a period of three years from among members of the legal person or third parties; the members of the administration may be reappointed and may or may not be remunerated.

2) Subject to the provisions on the participation of the polity, the articles of association may also grant other third parties, such as loan and bond creditors or public-benefit undertakings, the right to appoint individual members of the administration or its chair (reserved seats).

3) Where during the course of a financial year individual members of an administration comprised of several members cease to be members or are prevented from participating in business management, the remaining members may, insofar as the articles of association do not provide to the contrary, continue business management and representation until the next general meeting of the supreme body.

4) The members of the administration or other authorised signatories and the expiry or change of their power of representation must be notified without delay in the case of legal persons entered in the Commercial Register, enclosing proof of the appointment, such as an extract from the minutes or the like, other than in the case of a reappointment.<sup>243</sup>

5) The provisions established for the members of the administration shall also apply to their possible deputies if they act or are intended to act as members of the administration.

6) No separate administration may be appointed for a branch, but a separate authorised representative may be appointed with registered power of attorney.

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<sup>241</sup> Heading preceding Article 180 inserted by LGBl. 2024 No. 17.

<sup>242</sup> Article 180 heading amended by LGBl. 2024 No. 17.

<sup>243</sup> Article 180(4) amended by LGBl. 2013 No. 6.

7) Unless otherwise provided by the law or the articles of association, the power of business management also includes the power of representation.

8) The articles of association may declare the provisions governing the board of directors of public limited companies applicable.

#### Article 180a

##### *b) Qualified member of the administration<sup>244</sup>*

1) At least one member of the administration of a legal person authorised to manage and represent must be a citizen of a Contracting Party to the Agreement on the European Economic Area, a person considered equivalent under an international agreement, or a legal person and must have a licence issued pursuant to the Trustee Act.<sup>245</sup>

2) Persons with a licence under the Law on the Supervision of Persons under Article 180a of the Law on Persons and Companies shall be deemed equivalent.<sup>246</sup>

3) Legal persons shall be exempt from the obligation under paragraph 1 which, pursuant to the Business Act or another specialised law, are required to have a general manager or which are supervised by the Government, a municipality, the land transfer authority, or another authority. This shall not apply to foundations subject to supervision in accordance with Article 552 § 29.<sup>247</sup>

4) Also exempt from the obligation under paragraph 1 are associations which:<sup>248</sup>

1. are not obliged to be entered in the Commercial Register;
2. are obliged to be entered in the Commercial Register under Article 247(2)(3), provided that all payments by the association are made via one or more accounts in its name in Liechtenstein, another EEA Member State, or Switzerland.

5) Repealed<sup>249</sup>

<sup>244</sup> Article 180a heading inserted by LGBL 2024 No. 17.

<sup>245</sup> Article 180a(1) amended by LGBL 2013 No. 427.

<sup>246</sup> Article 180a(2) amended by LGBL 2019 No. 18.

<sup>247</sup> Article 180a(3) amended by LGBL 2015 No. 363.

<sup>248</sup> Article 180a(4) amended by LGBL 2024 No. 370.

<sup>249</sup> Article 180a(5) repealed by LGBL 2013 No. 427.

Article 180b<sup>250</sup>*c) Grounds for disqualification*

1) Natural persons shall not be a member of the administration of a public limited company, a partnership limited by shares, or a limited liability company with power of representation if they:

1. do not have the capacity to act within the meaning of Article 16; or
2. have been convicted of one or more intentional criminal offences:
  - a) pursuant to §§ 156 to 158, §§ 160 to 163 and § 292a of the Criminal Code (insolvency offences); or
  - b) pursuant to §§ 146 to 148 and §§ 153 and 153a of the Criminal Code to an unconditional sentence of imprisonment of at least one year.

2) The exclusion pursuant to paragraph 1(2) shall apply for a period of five years from the date on which the judgment becomes final.

3) Natural persons shall likewise not be a member of the administration of a public limited company, a partnership limited by shares, or a limited liability company with power of representation if there is a ground for disqualification in another EEA Member State that corresponds to a ground for disqualification under paragraph (1).

4) Natural persons who have been appointed as a member of the administration of a public limited company, a partnership limited by shares, or a limited liability company with power of representation must declare with the registration for entry in the Commercial Register that there are no grounds for disqualification pursuant to paragraph 1 or 3. If a ground for disqualification pursuant to paragraph 1 or 3 arises after entry in the Commercial Register, the person concerned must either resign as a member of the administration of the public limited company, the partnerships limited by shares, or the limited liability company or renounce their power of representation and arrange for their removal or the removal of their power of representation from the Commercial Register.

5) In justified individual cases, the Office of Justice may request that a certificate of capacity to act or a criminal register certificate be presented, or may use the European system of interconnection of registers to ask individual EEA Member States whether there are grounds for disqualification for a particular person under their law.

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<sup>250</sup> Article 180b inserted by LGBl. 2024 No. 17.

6) If the declaration under paragraph 4 or, despite demand by the Office of Justice, the certificate of capacity to act or the criminal record certificate is not submitted or if an enquiry under paragraph 5 shows that there is a ground for disqualification, the Office of Justice must refuse to enter the person concerned as a member of the administration of a public limited company, a partnership limited by shares, or a limited liability company with power of representation.

Article 180c<sup>251</sup>

*d) Processing of personal data*

1) The Office of Justice may process personal data of persons as referred to in Article 180b in accordance with the provisions of data protection law to the extent necessary to fulfil its statutory duties.

2) Personal data transmitted for the purposes of Article 180b shall be stored for no longer than necessary and for no longer than personal data relating to the formation of a company, the entry of a branch, or the filing of documents and information by a company or branch.

*2. Business management*

Article 181

*a) In general*

1) Unless otherwise provided or ordered by a resolution of the competent body, all members of the administration are entitled to exercise business management.

2) If the administration consists of several members, and the articles of association do not specify otherwise, no member alone may carry out an action which appertains to business management, unless danger is imminent.

3) If, in accordance with the articles of association or regulations drawn up on the basis thereof, each member of the administration is authorised to exercise business management individually, then, if one of the members of the administration objects to an act which appertains to business

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<sup>251</sup> Article 180c inserted by LGBl. 2024 No. 17.

management, this action must be refrained from, unless the articles of association provide otherwise.

4) This shall be without prejudice to effects on third parties, however.

*b) Powers and duties*<sup>252</sup>

Article 182

*aa) In general*<sup>253</sup>

1) The administration shall have all powers and duties which are not delegated or reserved to another body, such as, for example, the appointment and revocation of registered power of attorney. In particular, the administration must also ensure preservation of the share capital and the maintenance and success of the company within the framework of its legal obligations and the available possibilities.<sup>254</sup>

2) It shall carefully manage and promote the business of the legal person and shall be liable for the observation of the principles of careful business management and representation. A member of the administration shall be deemed to act in accordance with these principles if the business decision was not guided by interests beyond that of the business and if the member of the administration could reasonably have expected to be acting on the basis of appropriate information for the benefit of the legal person.<sup>255</sup>

3) The founders must hand over to the administration all documents and materials relating to the formation of the legal person. The administration must retain the founding documents and materials relating to subsequent amendments to the founding documents and ensure that the founding documents and materials are available within a reasonable period of time in Liechtenstein. Article 1059 shall apply *mutatis mutandis*.<sup>256</sup>

4) The administration is obliged vis-à-vis the legal person to comply with all restrictions laid down by law, the articles of association, a resolution of the competent body, or in any other way.

<sup>252</sup> Heading preceding Article 182 inserted by LGBL 2000 No. 279.

<sup>253</sup> Article 182 heading amended by LGBL 2000 No. 279.

<sup>254</sup> Article 182(1) amended by LGBL 2000 No. 279.

<sup>255</sup> Article 182(2) amended by LGBL 2008 No. 220.

<sup>256</sup> Article 182(3) amended by LGBL 2024 No. 370.

5) Unless otherwise provided, the administration of a legal person shall have the same powers and duties as the administration of registered cooperative societies.

#### Article 182a

##### *bb) Compliance with accounting provisions<sup>257</sup>*

1) The members of the administrative, management, and supervisory bodies of an entity subject to generally accepted accounting obligations (Article 1045) have a collective obligation to ensure that the necessary accounting documents, namely the annual financial statement, the consolidated annual financial statement, the annual report, the consolidated annual report and, if presented separately, the corporate governance statement, are prepared and disclosed in accordance with the provisions of Title 20 on accounting.<sup>258</sup>

2) The members of the administration must ensure that the account books (Article 1046) or records and supporting documents (Article 552 § 26, Article 1045(3)) are available within a reasonable period at the registered office of the legal person.<sup>259</sup>

#### Article 182b<sup>260</sup>

Repealed

#### Article 182c<sup>261</sup>

##### *dd) Interim dividends*

1) Interim dividends (including interim distributions, interim payments on current profit, and the like) may be paid out during the financial year.

2) In the case of legal persons subject to generally accepted accounting obligations (Article 1045), interim dividends may be distributed only on

<sup>257</sup> Article 182a heading amended by LGBL 2008 No. 224.

<sup>258</sup> Article 182a(1) amended by LGBL 2008 No. 224.

<sup>259</sup> Article 182a(2) amended by LGBL 2012 No. 124. This provision shall apply from 1 January 2014. For earlier financial years, see the transitional provisions.

<sup>260</sup> Article 182b repealed by LGBL 2022 No. 227. The repeal shall apply for the first time to financial years commencing after 31 December 2022.

<sup>261</sup> Article 182c inserted by LGBL 2000 No. 279.

the basis of an interim financial statement (interim balance sheet and interim income statement).

3) The articles of association may provide that the administration may distribute interim dividends on certain dates during the financial year on current profits or from profit carried forward from previous years or from special reserve funds, without prior resolution of the supreme body.

4) Interim dividends may be distributed only if this does not affect the share capital and any legal reserves.

#### Article 182d<sup>262</sup>

##### *ee) Inspection of annual financial statement by members*

1) The administration of legal persons subject to generally accepted accounting obligations (Article 1045) shall by law ensure that the annual financial statement and, if applicable, the consolidated business report, with notification to the members in accordance with the articles of association, are available for inspection by the members at least twenty days before the general meeting of the supreme body that has to decide on approval of the annual financial statement or before a resolution is passed by circular and, additionally, for a quarter year after the general meeting.

2) Any member of the company may by law request a copy of the annual financial statement and, if applicable, of the annual report and the consolidated annual report or the report on the business progress report of the board of directors, if such request is accompanied by proof of the member's participation.

#### Article 182e<sup>263</sup>

##### *ff) Loss of capital, overindebtedness, and insolvency*

1) If the last annual balance sheet of a legal person shows that half of its share capital is no longer covered, the administration shall immediately notify the members of the supreme body and inform them of the recovery measures to be taken.

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<sup>262</sup> Article 182d inserted by LGBl. 2000 No. 279.

<sup>263</sup> Article 182e inserted by LGBl. 2000 No. 279.

2) If there is reasonable concern that a legal person is overindebted or insolvent, the administration shall without delay prepare an interim balance sheet on the going concern and liquidation values. At the same time, the administration must convene a general meeting of the supreme body and apply for these recovery measures.

3) In the case of legal persons, the interim balance sheet shall be audited by an audit office within the meaning of the Auditors Act:<sup>264</sup>

1. if bonds have been issued;
2. if the capital shares are listed on an exchange; or
3. for medium-sized and large companies within the meaning of Article 1064.

4) All other legal persons shall be audited by the statutory audit office.

#### Article 182f<sup>265</sup>

##### *gg) Notification of the court*

1) If the interim balance sheets on going concern and liquidation values show that the legal person is overindebted or is insolvent, the administration must notify the court.

2) The court shall not be notified if the creditors of the legal person rescind their rank relative to all other creditors to the extent of the shortfall at going concern values and defer their claims, or if there is a concrete prospect that the overindebtedness or insolvency will be remedied within two months from the preparation of the interim balance sheets or from the determination of the insolvency.

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<sup>264</sup> Article 182e(3) amended by LGBl. 2019 No. 18.

<sup>265</sup> Article 182f inserted by LGBl. 2000 No. 279.

3) If there is an additional performance obligation, the court shall be notified only if the overindebtedness or insolvency is not remedied within two months of the determination by the parties liable to make additional performances.

Article 182g<sup>266</sup>

Repealed

Article 183

*c) Prohibition of competition*

1) Unless otherwise provided in the articles of association, in the case of companies with legal personality that conduct a business in a commercial manner, and in the case of other legal persons deemed equivalent, the members of the administration may not, without the consent of the supreme body or in the absence of such, and without the consent of the judge in special non-contentious proceedings, conduct business for their own account or that of third parties, or participate as general partners or members in a company without legal personality or in a legal person in the same line of business, or hold a position in the administration or in the audit office.<sup>267</sup>

2) Consent may be expressed in a general manner in the articles of association; it must also be assumed if such an activity or participation of the member was known at the time of appointment as a member of the administration of the legal person and, nevertheless, its cancellation has not been expressly stipulated.

3) Members of the administration who violate the prohibition laid down in the first paragraph may be dismissed at any time without any obligation to pay compensation; in addition, the legal person may claim damages or instead demand that the transactions carried out for the account of the member of the administration be regarded as concluded for its own account and, with regard to transactions concluded for the account of third parties, may demand that the remuneration received for this purpose be handed over or that the claim to remuneration be assigned.

4) The rights of the legal person designated above shall expire in three months from the date on which the other members of the administration

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<sup>266</sup> Article 182g repealed by LGBL 2020 No. 369.

<sup>267</sup> Article 183(1) amended by LGBL 2000 No. 279 and LGBL 2010 No. 454.

and, if there are none, the members of the audit office gain knowledge of the substantiated facts, and in all cases after the expiry of one year.<sup>268</sup>

5) This shall be subject to more far-reaching contractual arrangements, such as a non-competition clause and the like.

### *3. Representation*

#### Article 184

##### *a) In general*

1) Representation of legal persons shall be the responsibility of the bodies appointed for this purpose or other special representatives in accordance with the provisions of the articles of association; but the administration shall not require any special power of attorney such as provided for by law.

2) If the administration consists of several members, the operation of business of the legal person as well as the representation of the legal person in this business operation may also be transferred to individual members or other authorised persons or employees of the legal person.

3) Legal persons or companies may also be appointed as authorised representing bodies or managing bodies, such as executive boards or administrations, or as members or other representatives of such bodies, whose authorised representing or managing persons shall then carry out all actions on behalf of them as governing bodies or representatives, unless special delegates are designated for this purpose.

4) Unless otherwise provided by law, the administration shall have the position of a legal representative.

5) Legal persons not entered in the Commercial Register shall be obliged, upon request by the Office of Justice and under threat of the administrative penalties permitted in the Commercial Register procedure, to disclose their members of the administration (executive board) appointed to represent them.<sup>269</sup>

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<sup>268</sup> Article 183(4) amended by LGBl. 2000 No. 279.

<sup>269</sup> Article 184(5) amended by LGBl. 2013 No. 6.

## Article 185

*b) Standing as a party*

1) A legal person shall be deemed to act in bad faith if one of the persons acting as a governing body or representative acts in bad faith or if a person authorised to represent the legal person neglects in bad faith to draw the attention of the competent persons to the defect.

2) The provision in the preceding paragraph shall apply *mutatis mutandis* to the assessment of the knowledge, culpability, or good faith of the legal person.

3) Oaths, affirmations, and the like on behalf of the legal persons shall be made by the members of the body authorised to represent the legal persons in the same way as a party.

4) If insolvency proceedings have been opened in respect of the assets of the legal person, the members of the administration shall have the same duties towards the Court of Justice as a natural person who is a debtor. The administration shall safeguard the rights of the legal person vis-à-vis the insolvency administrator.<sup>270</sup>

## Article 186

*c) Exclusion*

1) When concluding legal transactions of the legal person in which a member of the administration is interested, for example when concluding legal transactions with the member, the member may by law not participate, except in cases of urgency.

2) If, as a result, a valid decision cannot be taken, the transaction must be submitted to a body provided by the articles of association and, in the absence of such a provision, to the supreme body, which entrusts one or more special authorised persons with the representation of the legal person or concludes the transaction itself.<sup>271</sup>

3) This provision shall not apply in the event of provisions to the contrary in the articles of association or to legal persons with fewer than thirty members.<sup>272</sup>

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<sup>270</sup> Article 185(4) amended by LGBl. 2020 No. 369.

<sup>271</sup> Article 186(2) amended by LGBl. 2000 No. 279.

<sup>272</sup> Article 186(3) amended by LGBl. 2000 No. 279.

## Article 187

*d) Power of attorney of the governing bodies and representatives*

1) The governing bodies as well as the other persons appointed for the entire business management and representation (representative bodies) shall be authorised by law vis-à-vis *bona fide* third parties to conclude all transactions for the legal person. This is subject to the provisions of the law and the articles of association regarding the manner in which representation is exercised.<sup>273</sup>

2) Third parties shall also include legal persons or companies in which the legal person is a member.

3) In the relationship between the representative bodies and the legal person, the representative bodies are obliged to comply with the restrictions imposed by the articles of association or corresponding resolutions of the competent bodies within the framework of legislative provisions.<sup>274</sup>

4) The legal transactions carried out by them shall be valid for the legal person even if they were not expressly carried out in the name of the legal person but it is evident from the circumstances of the execution that they were to be carried out for the legal person according to the intent of the parties.

5) The power of representation of the persons authorised to act shall be based on the power of attorney granted to them; in case of doubt, it shall extend to all legal acts which the execution of such transactions customarily entails.<sup>275</sup>

Article 187a<sup>276</sup>*e) Limitations of the representative effect*

1) The legal person shall not be bound by acts of representative bodies which exceed the powers which are or may be assigned to these bodies by law.

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<sup>273</sup> Article 187(1) amended by LGBL 2000 No. 279.

<sup>274</sup> Article 187(3) amended by LGBL 2000 No. 279.

<sup>275</sup> Article 187(5) amended by LGBL 2000 No. 279.

<sup>276</sup> Article 187a inserted by LGBL 2000 No. 279.

2) The legal person shall not be bound by acts of representative bodies which exceed the scope of the object of the company if the legal person proves that the third party was aware or should have been aware under the circumstances that the object of the company was exceeded by the act. Disclosure of the articles of association and corresponding resolutions of the competent bodies shall not be sufficient as evidence.

3) If the representative body exceeds its powers internally defined by the articles of association or by resolutions of the competent bodies, the legal person shall not be bound by such actions if it proves that the third party was aware or should have been aware under the circumstances that the internally defined powers were exceeded by the act.

#### Article 188

##### *f) Exercise<sup>277</sup>*

1) For each legal person, the articles of association shall determine the form in which the administration has to declare its intent, who is authorised to sign and, if several are authorised to sign, whether one individual or several together (collectively) provide a legally binding signature. In the case of public limited companies, partnerships limited by shares, and limited liability companies, the articles of association must in any case contain such provisions.<sup>278</sup>

2) In particular, the articles of association may provide that a member of the multi-member administration has binding signing authority only in conjunction with a person with registered power of attorney; this must, however, be registered for entry in the Commercial Register, entered there, and published.<sup>279</sup>

3) Unless the law or the articles of association provide otherwise, and if the administration has several members, representation of the legal person and a binding signature on its behalf require the participation and signature of at least two members of the administration; however, even in the case of joint business management and representation, declarations of intent, such as in particular summonses and other documents served upon the legal person, shall be deemed valid if they are made to only one of the members authorised to represent the legal person or to a representative.

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<sup>277</sup> Article 188 heading amended by LGBl. 2000 No. 279.

<sup>278</sup> Article 188(1) amended by LGBl. 2000 No. 279.

<sup>279</sup> Article 188(2) amended by LGBl. 2013 No. 6.

## Article 189

*g) Proof of identity and signature*<sup>280</sup>

1) If the administration has been entered in the Commercial Register, a certificate from the register authority stating that the persons designated therein are entered in the Commercial Register as members of the administration shall be sufficient to prove their identity to the authorities; in the case of unregistered legal persons, however, a certificate of appointment by the competent body, such as minutes of the general meeting or certified copies or extracts must be provided.<sup>281</sup>

2) The signature must be made in such a way that the signatories attach their personal signatures to the legal name or name of the legal person, regardless of by whom such name is written or otherwise attached, unless exceptions are permitted by law.

3) If in the case of a legal person or company another legal person or company is entitled to provide the signature, the signature shall be sufficient in such a way that the representative of the latter personally attaches their personal signature to the name or legal name of the legal person or company represented.

*4. Appointment of counsel*

## Article 190

*a) In general*

1) If an existing legal person temporarily lacks the necessary managing or representative bodies or even a representative pursuant to this Title, or if the persons who form the administration are not known, or if the representatives are excluded from representation in individual cases, the court shall, on application of the parties and at the expense of the legal person, appoint a counsel in special non-contentious proceedings if the interest of the legal person, its members or creditors, or the public so requires, and if business management or representation is not otherwise ensured.<sup>282</sup>

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<sup>280</sup> Article 189 heading amended by LGBL 2000 No. 279.

<sup>281</sup> Article 189(1) amended by LGBL 2013 No. 6.

<sup>282</sup> Article 190(1) amended by LGBL 2010 No. 454.

2) The counsel shall without delay convene the competent body for the appointment, and by law the counsel shall have all powers as those of the missing governing body or representative.

3) This article is subject to the provisions on the formation and dissolution of legal persons.

#### Article 191

##### *b) Withdrawal of business management and representation*

1) On the application of members and at the discretion of the judge, business management and representation may be temporarily withdrawn from the governing body of a legal person, against provision of a security for any damage, by appointing a counsel, if it is credibly demonstrated that the governing body endangers the interests of the legal person and that danger is imminent.

2) The withdrawal of representation and business management, as well as the appointment of a counsel, with the exception of cases involving merely a counsel for individual transactions, such as representation in litigation, must in the case of legal persons entered in the Commercial Register be entered in the Commercial Register and published, stating the counsel and the counsel's power of representation.<sup>283</sup>

### *III. Audit office<sup>284</sup>*

#### Article 191a<sup>285</sup>

##### *1. Exercise of audit function*

1) Unless otherwise provided by law, the following shall be qualified to act as an audit office:

1. auditors;
2. audit firms;<sup>286</sup>
3. professional trustees;
4. legal persons and trust enterprises with a professional trustee licence.

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<sup>283</sup> Article 191(2) amended by LGBL 2013 No. 6.

<sup>284</sup> Heading preceding Article 191a inserted by LGBL 2000 No. 279.

<sup>285</sup> Article 191a inserted by LGBL 2000 No. 279.

<sup>286</sup> Article 191a(1)(2) amended by LGBL 2019 No. 18.

2) Where the law refers to recognised audit offices or experts, this shall mean persons under the Auditors Act, provided that companies within the meaning of Article 1063 and Article 182c(3) are concerned.<sup>287</sup>

## Article 192

### 2. *Appointment*<sup>288</sup>

1) The supreme body may appoint as an audit office one or more auditors who may neither belong to the administration nor be the employees of the legal person subject to the administration, and who exercise their powers and duties in accordance with the law, the articles of association or, where applicable, the resolutions of the supreme body with or without remuneration.<sup>289</sup>

2) The audit office may not hold rights to shares in the company to be audited, including through third parties, through which they could exert influence on the administration or management of the company in any way.<sup>290</sup>

3) No audit office may be elected in which the company to be audited holds rights to shares, including through third parties, through which it could exert influence on the administration or management of the audit firm in any way.<sup>291</sup>

3a) Any contractual clause limiting the supreme body's choice in the appointment of auditors to carry out the statutory audit within the meaning of Article 1058(1) and the sustainability reporting audit within the meaning of Article 1096k at that company to certain categories or lists of auditors or audit firms shall be null and void.<sup>292</sup>

4) The articles of association may also provide for a special audit office with their own responsibility for individual lines of business, business departments, or branches.<sup>293</sup>

5) In addition to the participation of the polity, the articles of association may also grant other third parties, such as loan and bond

<sup>287</sup> Article 191a(2) amended by LGBl. 2019 No. 18.

<sup>288</sup> Article 192 heading amended by LGBl. 2000 No. 279.

<sup>289</sup> Article 192(1) amended by LGBl. 2000 No. 279.

<sup>290</sup> Article 192(2) amended by LGBl. 2000 No. 279.

<sup>291</sup> Article 192(3) amended by LGBl. 2019 No. 18.

<sup>292</sup> Article 192(3a) amended by LGBl. 2024 No. 170.

<sup>293</sup> Article 192(4) amended by LGBl. 2000 No. 279.

creditors or public-benefit undertakings, the right to appoint individual members of the audit office or its chair (reserved seats).<sup>294</sup>

6) For companies that are required to disclose information pursuant to Article 1057, an audit office must necessarily be provided for. An auditor or an audit firm within the meaning of the Auditors Act must be appointed as the audit office.<sup>295</sup>

7) If the audit office has not been appointed or is not complete in accordance with the law or the articles of association, the court shall, on the application of one of a parties involved of the legal person, set a three-month period for appointing or adding to the audit office and, if the period expires without compliance, the court shall appoint the necessary members of the audit office itself for the period until the appointment is made.<sup>296</sup>

8) A legal person conducting business in a commercial manner or whose purpose under the articles of association permits the operation of such a business must appoint an audit office in accordance with paragraph 1. Legal persons are exempt from this requirement which have waived a review in accordance with Article 1058a.<sup>297</sup>

9) Resolutions or other documents concerning the appointment and withdrawal of the audit office as well as the personal details of the auditors must be registered and deposited with the Commercial Register.<sup>298</sup>

10) Where the audited public-interest entity has a nomination committee in which the members or shareholders have significant influence and whose function is to make recommendations for the selection of auditors, the nomination committee may perform the functions of the audit committee set out in this article. In that case, it shall be obliged to submit to the supreme body the recommendation referred to in Article 16(2) of Regulation (EU) No 537/2014.<sup>299</sup>

11) By way of derogation from Article 17(1) of Regulation (EU) No 537/2014, the maximum duration of the audit engagement may be extended in the case of public-interest entities to:<sup>300</sup>

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<sup>294</sup> Article 192(5) amended by LGBL 2000 No. 279.

<sup>295</sup> Article 192(6) amended by LGBL 2019 No. 18.

<sup>296</sup> Article 192(7) amended by LGBL 2000 No. 279 and LGBL 2010 No. 454.

<sup>297</sup> Article 192(8) amended by LGBL 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

<sup>298</sup> Article 192(9) amended by LGBL 2013 No. 6.

<sup>299</sup> Article 192(10) inserted by LGBL 2019 No. 18.

<sup>300</sup> Article 192(11) inserted by LGBL 2019 No. 18.

a) 20 years, where a public tendering process for the statutory audit is conducted in accordance with Article 16(2) to (5) of Regulation (EU) No 537/2014 and takes effect upon the expiry of the maximum duration referred to in Article 17(1)(2) of Regulation (EU) No 537/2014; or

b) 24 years, where, after the expiry of the maximum duration referred to in Article 17(1)(2) of Regulation (EU) No 537/2014, more than one statutory auditor or audit firm is simultaneously engaged, provided that the statutory audit results in the presentation of the joint report as referred to in Article 196.

12) "Network" as referred to in Article 17(3) of Regulation (EU) No 537/2014 shall also include networks within Switzerland.<sup>301</sup>

#### Article 193<sup>302</sup>

##### 3. Status

1) The auditors may not be appointed for more than one year for the first time and for more than three years thereafter in the case of companies with legal personality and equivalent legal persons.

2) In case of doubt, this latter period shall apply to the audit office of all legal persons.

3) The members of the audit office may not delegate the exercise of their duties, unless in the case of representation before judicial or administrative authorities or unless the articles of association provide otherwise.

4) The provisions established for the members of the audit office shall apply *mutatis mutandis* to their deputies if they act or are intended to act as members of the audit office.

5) Unless exceptions are provided, the audit office shall act externally as a single entity and be represented by its chair.

#### Article 194<sup>303</sup>

Repealed

<sup>301</sup> Article 192(12) inserted by LGBl. 2019 No. 18.

<sup>302</sup> Article 193 amended by LGBl. 2000 No. 279.

<sup>303</sup> Article 194 repealed by LGBl. 2000 No. 279.

#### 4. Responsibilities<sup>304</sup>

##### Article 195<sup>305</sup>

###### *a) In general*

1) The annual financial statement and, if applicable, the annual report, as well as, if applicable, the consolidated annual financial statement and the consolidated annual report of the public limited company, the limited liability company, and the partnership limited by shares as well as of companies without legal personality, provided that their general partners are legal persons within the meaning of Article 1063, shall be audited by the appointed audit office to determine whether they comply with the law and the articles of association.

2) Other legal persons conducting business in a commercial manner shall be subject to the provisions of paragraph 1 unless otherwise provided by law.

3) For the purposes of the audit, the audit office or individual members may request that the account books and supporting documents be submitted to them, that they be consulted as far as possible for the inventory, and that they be provided with information on specific individual items by the administration.

4) The audit office may request that certain audit items be dealt with by the administration or that such items be included in the agenda of the supreme body for the purpose of deliberation and resolution.

##### Article 196<sup>306</sup>

###### *b) Reporting for statutory audits*

1) For a statutory audit, the auditor or audit firm shall report in writing to the supreme body on the result of the audit of the business report (annual financial statement and, if applicable, annual report) submitted to the auditor or audit firm by the administration. The written report shall:

- a) state in the introduction which annual financial statement of which company was the subject of the audit, the date or period of the financial statement, and the accounting standards in accordance with which it was prepared. The persons who conducted the audit must then be

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<sup>304</sup> Heading preceding Article 195 inserted by LGBL 2000 No. 279.

<sup>305</sup> Article 195 amended by LGBL 2000 No. 279.

<sup>306</sup> Article 196 amended by LGBL 2019 No. 18.

named, and it must be confirmed that the requirements of qualification and independence are fulfilled. Furthermore, the nature and scope of the audit must be described; this description must at least contain information on the auditing principles by which the audit was carried out;

- b) include an opinion as to whether the annual financial statement submitted to the supreme body complies with the law and the articles of association and, where applicable, whether the annual financial statement gives a true and fair view of the assets and liabilities, financial position, and profit and loss in accordance with the relevant accounting standards; the report shall contain an audit opinion thereon, which shall be either unqualified, qualified, or adverse; if the auditor or audit firm is unable to express an audit opinion, the report shall state this;
- c) point out other circumstances to which the auditor or audit firm has drawn attention in a particular way, without qualifying the audit opinion;
- d) include a statement of material uncertainties related to events or conditions that may cast significant doubt on the undertaking's ability to continue as a going concern;
- e) include an additional opinion as to whether the annual report submitted to the supreme body pursuant to Article 1096, if such a report is required to be prepared, is consistent with the annual financial statement for the financial year in question and whether the annual report has been prepared in accordance with the applicable legal requirements, with the exception of the requirements for sustainability reporting in accordance with Article 1096b et seq. Furthermore, the report shall state whether, in light of the knowledge and understanding of the entity and its environment gained in the audit, material misstatements in the annual report have been identified, indicating the nature of such misstatements;<sup>307</sup>
- f) indicate whether the information to be provided in the corporate governance statement in accordance with Article 1096a(1)(3) and (1)(4), if such a report must be prepared, is in line with the annual report; with regard to the other information referred to in Article 1096a(1), the report must provide information as to whether the corporate governance statement has been prepared;
- g) include a recommendation to the supreme body to approve the annual financial statement with or without qualification or to reject it to the administration if it was unable to express an audit opinion;

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<sup>307</sup> Article 196(1)(e) amended by LGBL 2024 No. 170.

h) provide information as to whether the proposal of the administration with regard to the appropriation of profits complies with the law and the articles of association.

2) If the statutory audit has been carried out by more than one auditor or audit firm, they shall agree on the results of the audit and issue a joint report and opinion. In case of disagreement, each auditor or audit firm shall express their own opinion in a separate paragraph of the report and shall state the reasons for the disagreement.

3) The report shall be signed by the auditor, stating the date and place of the establishment. If a statutory audit is carried out by an audit firm, the report shall be signed at least by the auditor in charge.

4) If more than one auditor or audit firm has been engaged at the same time, the report shall be signed by all the auditors or at least by the auditors who conducted the statutory audit for the respective audit firm.

5) Insofar as a consolidated annual report is to be prepared, paragraphs 1 to 3 and paragraphs 6 to 8 shall apply *mutatis mutandis*. In assessing whether the annual report is consistent with the annual financial statement, the auditor or audit firm shall take into account the consolidated annual financial statement and the consolidated annual report. Where the annual financial statement of the parent undertaking is annexed to the consolidated annual financial statement, the reports of the auditors and audit firms required under this article may be combined.

6) If the auditor or the audit firm discovers violations of the law and the articles of association during the performance of the statutory audit, they must report this in writing to the administrative or supervisory body, and in important cases also to the general meeting.

7) The annual financial statement may not be approved by the supreme governing body without prior presentation of a report in accordance with paragraph 1. In addition, the auditor must be present at the meeting of the supreme governing body in the case of medium-sized and large companies within the meaning of Article 1064(2) and (3). If the auditor is not present, the resolution of the supreme body shall be contestable. The supreme body may waive the presence of an auditor by unanimous resolution.

8) A minority equal to that which may request the convening of the supreme body shall have the right to draw the attention of the auditor or audit firm to certain matters to be audited, providing that the auditor or audit firm must report to the next meeting of the supreme body for the purpose of passing a resolution.

9) Repealed<sup>308</sup>Article 196a<sup>309</sup>*c) Reporting for a review*

1) For a review in accordance with Article 1058(2), the audit office shall report in writing to the supreme body on the result of the audit of the business report (annual financial statement and, if applicable, annual report) submitted to it by the administration.

2) The report shall state in the introduction which annual financial statement was the subject of the review and the accounting standards in accordance with which they were prepared. The persons who conducted the audit must then be named, and it must be confirmed that the requirements of qualification and independence are fulfilled, and the nature and scope of the review must be described. The report must be dated and signed by the auditor or auditors in charge.

3) The report shall also provide information on whether:

- a) nothing has come to the attention of the audit office as a result of the review that causes it to believe that the annual financial statement submitted to the supreme governing body is not in accordance with the law and the articles of association (negative assurance);
- b) the annual report, if any, prepared in accordance with the requirements of the law is consistent with the annual financial statement;
- c) the audit office recommends that the supreme governing body approve or reject the annual financial statement.

Article 196b<sup>310</sup>*c<sup>bis</sup>) Preparation of a sustainability reporting audit certificate*

1) The auditor or the audit firm shall present the results of the sustainability reporting audit as referred to in Article 1096k in a sustainability reporting audit certificate.

2) The sustainability reporting audit certificate shall be in writing and shall contain the following information:

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<sup>308</sup> Article 196(9) repealed by LGBL 2024 No. 170.

<sup>309</sup> Article 196a inserted by LGBL 2019 No. 18.

<sup>310</sup> Article 196b inserted by LGBL 2024 No. 170.

- a) the name of the undertaking whose annual or consolidated sustainability reporting is the subject of the audit engagement; whether the sustainability reporting is annual or consolidated; the date and period it covers; and the sustainability reporting framework that has been applied in its preparation;
  - b) a description of the scope of the sustainability reporting audit which shall, as a minimum, identify the audit standards in accordance with which the sustainability reporting audit was conducted;
  - c) an opinion on whether:
    1. the sustainability reporting complies with the legal requirements;
    2. the sustainability reporting complies with the standards for reporting referred to in Article 1096c and 1096f (2);
    3. the undertaking's process for the determination of the information reported is consistent with the reporting standards referred to in paragraph 2;
    4. the requirement to mark up sustainability reporting in accordance with Article 1096h or Article 1121(3d) is complied with; and
    5. the reporting requirements under Article 8 of Regulation (EU) 2020/852<sup>311</sup> are complied with.
- 3) Where the sustainability reporting audit was carried out by more than one auditor or audit firm, the auditor(s) or the audit firm(s) shall agree on the results of the sustainability reporting audit and submit a joint report and opinion. In the case of disagreement, each auditor or audit firm shall submit their opinion in a separate paragraph of the sustainability reporting audit certificate and shall state the reason for the disagreement.
- 4) The sustainability reporting audit certificate shall be signed and dated by the auditor carrying out the sustainability reporting audit.
- 5) Where an audit firm carries out the sustainability reporting audit, the sustainability reporting audit certificate shall bear the signature of at least the auditor(s) in charge carrying out the sustainability reporting audit on behalf of the audit firm.
- 6) Where more than one auditor or audit firm have been simultaneously engaged, the sustainability reporting audit certificate shall be signed by all auditors or at least by the auditors carrying out the sustainability reporting audit on behalf of every audit firm.

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<sup>311</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

7) The report of the auditor or the audit firm on the consolidated sustainability reporting shall comply with the requirements set out in paragraphs 1 to 6.

Article 197<sup>312</sup>

*c) Confidentiality*<sup>313</sup>

Outside the general meeting of the supreme body, notifications by the auditors concerning their findings to persons other than members of the administration and the audit office shall be inadmissible; auditors shall be held responsible in the event of breaches, in particular under the provisions on the protection of personality.

Article 198<sup>314</sup>

*5. Farther-reaching provisions of the articles of association*

1) The right shall be reserved for the articles of association to make further provisions regarding the organisation of the audit office, to extend its powers and duties and, in particular, to provide for interim audits.

2) In addition to the regular auditors (audit office), the supreme body may at any time appoint special commissioners or experts to audit the business management or individual parts thereof.

Article 199

*6. Supervisory board*<sup>315</sup>

1) The articles of association may, in addition to the administration, provide for a supervisory board, which shall be appointed in accordance with the provisions governing the administration and to which the function of permanent supervision of business management and participation in the administration may be assigned.<sup>316</sup>

2) The supervisory board may also bring a liability action against the members of the administration.

<sup>312</sup> Article 197 amended by LGBL 2003 No. 52.

<sup>313</sup> Article 197 heading amended by LGBL 2019 No. 18.

<sup>314</sup> Article 198 amended by LGBL 2000 No. 279.

<sup>315</sup> Article 199 heading amended by LGBL 2000 No. 279.

<sup>316</sup> Article 199(1) amended by LGBL 1980 No. 39.

3) The members of the supervisory board must be entered in the Commercial Register.<sup>317</sup>

#### Article 200

##### *IV. Other bodies and applicable law*

1) Unless otherwise provided by law, the articles of association may also provide for other direct or indirect bodies, such as a directorate, committees, and other representatives.

2) For the relationship between the governing bodies and the legal person, except with regard to the supreme body and the status of minorities as a body or other categories of members, and unless otherwise provided, the provisions governing a tacit trust relationship and on a supplemental basis those governing an agency agreement or, if remuneration has been agreed or can be assumed under the circumstances, the provisions governing a service contract shall apply.

#### Article 201

##### *V. Appointment, removal, and resignation<sup>318</sup>*

1) Unless otherwise provided by the law or unless the articles of association designate another body, the supreme body shall be entitled at any time to remove the members of the administration, the audit office, or other bodies, as well as other authorised persons or agents appointed by it.<sup>319</sup>

2) The right to appoint a body, a member of such a body, or an authorised person shall include the right to remove or terminate such body or person; in the event of appointment by public authorities, this right shall be by operation of law, otherwise only to the extent nothing else has been provided.

3) Contrary to any derogating provisions of the articles of association, this right of removal shall exist by operation of law if important grounds justify it, such as gross breach of duty or inability to perform business management functions properly.

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<sup>317</sup> Article 199(3) amended by LGBl. 2013 No. 6.

<sup>318</sup> Article 201 heading amended by LGBl. 2011 No. 7.

<sup>319</sup> Article 201(1) amended by LGBl. 2000 No. 279.

3a) An audit office appointed to conduct a statutory audit within the meaning of Article 1058(1) or a sustainability reporting audit pursuant to Article 1096k may be dismissed only if there is an important ground. Disagreements over accounting methods or audit procedures are not sufficient grounds for removal. In the event of the removal or resignation of an audit office, the legal person and the audit office are required to inform the Financial Market Authority (FMA), stating the reasons.<sup>320</sup>

4) The administration may also at any time remove the committees, delegates, directors, and other authorised persons appointed by it and terminate the functions of the authorised persons appointed by the supreme body with notice to the latter.

5) This shall be subject to any claims for compensation by the removed persons pursuant to contracts, such as service contracts or agency agreements or arising from torts, and the temporary withdrawal of business management and representation by the judge.

6) If the judge dismisses members or bodies, the judge shall at the same time order a new appointment by the competent bodies and shall take appropriate measures in the meantime in accordance with the provisions on the appointment of a counsel.

7) In the case of the statutory audit or sustainability reporting audit of a public-interest entity, shareholders holding at least 5% of the voting rights or of the share capital or the FMA may apply for the judicial dismissal of the auditor or the audit firm, provided that there are important reasons, subject to the requirements stated under paragraph 3a.<sup>321</sup>

#### *F. Accounting*

Article 202<sup>322</sup>

#### *I. In general*

Repealed

<sup>320</sup> Article 201(3a) amended by LGBl. 2024 No. 170.

<sup>321</sup> Article 201(7) amended by LGBl. 2024 No. 170.

<sup>322</sup> Article 202 repealed by LGBl. 2000 No. 279.

*II. Annual balance sheet requirements*Articles 203 to 209<sup>323</sup>

Repealed

*III. Official audit*

Article 210

*1. Precondition and appointment*

1) If an application for the appointment of expert auditors has been rejected by resolution of the competent body of any legal person, or if the application submitted in due time has not been put to the vote, the Court of Justice may by law appoint one or more auditors in special non-contentious proceedings on the application of members representing at least one tenth of the share capital, own assets, or votes within two months of the rejection or the general meeting, if the members at the same time credibly demonstrate that dishonesty or gross violations of the law or the articles of association have taken place.<sup>324</sup>

2) Before appointing the auditors, the court must hear the administration and the audit office, may require the applicants to provide a security to be determined at its discretion in accordance with the provisions of the Code of Civil Procedure concerning the provision of a security for the costs of litigation and may appoint one or more auditors, depending on the circumstances.<sup>325</sup>

3) The members concerned may, under penalty of lapse of their application and liability for costs and damages, transfer their membership only with the consent of the legal person, or, if negotiable securities such as shares have been issued, they must deposit these with the court or at a place determined by the court.

4) If a legal person conducts a bank, insurance, savings bank, or proper fiduciary business in a commercial manner, the Government may, on its own initiative and at the expense of the legal person, order an official audit by way of an administrative procedure without being required to pay compensation.<sup>326</sup>

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<sup>323</sup> Article 203 to 209 repealed by LGBL 2000 No. 279.

<sup>324</sup> Article 210(1) amended by LGBL 2000 No. 279 and LGBL 2010 No. 454.

<sup>325</sup> Article 210(2) amended by LGBL 2000 No. 279.

<sup>326</sup> Article 210(4) amended by LGBL 2010 No. 352.

## Article 211

*2. Status of auditors*

1) Before commencing their work, the auditors shall affirm to the judge that they will faithfully perform the duties incumbent upon them and, in particular, that they will keep secret from everyone any business and operating relationships which may come to their knowledge in the course of the audit, and they shall be equally responsible as the members of an audit office.<sup>327</sup>

2) The auditors shall have the right to inspect the books, accounting documents, and inventories, to request information and explanations from the members of the administration and internal audit and from each employee of the legal person entrusted with accounting in order to establish the accuracy of the last annual balance sheet and to examine the cash position, as well as the position of other assets.

3) The requested clarifications and information must be provided accurately and truthfully by those requested without delay, under penalty of responsibility for all damages.

4) The members of any internal audit shall be involved in the audit, and the court may, at its discretion, permit the involvement of one or more of the applicants.

5) The remuneration of the auditors shall be determined by the courts in special non-contentious proceedings, and they may not otherwise receive any other remuneration.<sup>328</sup>

## Article 212

*3. Treatment of the audit report*

1) The written report on the result of the audit, stating whether all wishes of the auditors in relation to carrying out the audit have been fulfilled and whether the last annual balance sheet provides a true and correct picture of the financial situation of the legal person, shall be communicated without delay by the auditors to the administration and the internal audit.

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<sup>327</sup> Article 211(1) amended by LGBI. 2000 No. 279.

<sup>328</sup> Article 211(5) amended by LGBI. 2010 No. 454.

2) Applicants shall have the right to inspect the auditors' report at the business premises and, in the absence thereof, at a place to be determined by the judge in special non-contentious proceedings.<sup>329</sup>

3) The administration and the internal audit shall, when convening the next general meeting of the supreme body, include the auditors' report for the purpose of resolution, to have it read out in full at the general meeting, and to explain the result of the audit and the steps taken to remedy any infringements or grievances that may have been discovered.

4) It shall be the duty of the internal audit to report to the general meeting on any compensation claims to which the legal person is entitled.

5) If the auditors' reports show that a gross violation of the law or the articles of association has taken place, the general meeting of the supreme body must be convened without delay.

#### Article 213

##### *4. Costs and compensation*

1) The court shall, applying the provisions on the costs of litigation *mutatis mutandis*, decide whether the costs of the investigation shall be borne in whole or in part by the legal person, in the absence of an agreement in special non-contentious proceedings, depending on the result of the audit and after an appraisal of all circumstances.<sup>330</sup>

2) If, according to the results of the audit, the application for the audit turns out to be unfounded, the applicants shall be jointly and severally liable without limitation for the damage caused to the legal person by the application together with any satisfaction, provided that they are guilty of malicious intent or gross negligence.

##### *G. Social policy right to shares and profit*

#### Article 214

##### *I. Workers' shares*

1) The articles of association of legal persons with an entitlement to shares for members may provide for the issue of workers' shares to

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<sup>329</sup> Article 212(2) amended by LGBl. 2010 No. 454.

<sup>330</sup> Article 213(1) amended by LGBl. 2010 No. 454.

employees and workers, to whom the provisions governing workers' shares in a public liability company shall apply *mutatis mutandis*.

2) Inalienable registered workers' shares may also be provided for under the articles of association as the property of the individual or a cooperative society on the basis of the work performance in such a way that there is no share in the share capital or own assets, but rather a claim to personal rights arising from membership, to profit, to subscription rights, and to a share upon cessation of employment or to the liquidation proceeds, with or without preferential rights, of the other capital or asset shares.<sup>331</sup>

## II. Welfare funds

### Article 215

#### 1. Preconditions

1) The articles of association of a legal person may provide for funds to establish and support welfare institutions for members, workers, and employees or for similar purposes.

2) Such funds as welfare institutions for members, workers, and employees shall have the character of foundations without further formalities, and their assets shall be legally segregated from the assets of the legal person and shall no longer be liable for the debts of the legal person.

3) Repealed<sup>332</sup>

4) Contributions to the formation and support of welfare institutions for members, employees, and workers or for other welfare purposes may be decided by the supreme body from the net profits achieved even if they are not provided for in the articles of association.

5) This article is subject to the special provisions concerning trusts and protected cell companies.<sup>333</sup>

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<sup>331</sup> Article 214(2) amended by LGBL. 2000 No. 279.

<sup>332</sup> Article 215(3) repealed by LGBL. 2020 No. 369.

<sup>333</sup> Article 215(5) amended by LGBL. 2014 No. 362.

## Article 216

*2. Structure and dissolution*

1) These foundations shall not be subject to the supervisory authority but, unless otherwise provided in the articles of association, remain under the administration of the legal person, and their balance sheet may not be included in that of the legal person.

2) If the purpose of such a foundation has lapsed, the fund shall revert to the legal person in the absence of a provision set out in the articles of association.

3) The articles of association may establish further provisions governing the foundation.

## Article 217

*III. Other profit participation*

1) The articles of association of a legal person may also provide that its employees and workers participate in the net profits, which shall be paid to them in cash or otherwise.

2) By resolution of the supreme body of a legal person, its employees and workers may be awarded voluntary benefits in cash or otherwise, even if this is not provided for in the articles of association.

*H. Responsibility**I. In the case of companies with legal personality and equivalent legal persons*

## Article 218

*1. Nature of culpability, etc.*

1) The bodies of a company with legal personality and equivalent legal persons shall be liable to the legal person for the damage they have caused, if they have caused it intentionally or negligently.

2) They shall be liable to the members for intent and negligence only if the legal person is not entitled to compensation.

3) If, on the other hand, the legal person is entitled to such compensation, the members shall have an independent claim only in the event of intentional damage.

4) Third parties which participated in the issue of shares, unit certificates, or bonds shall be liable to all only in the event of intentional damage.

## 2. Liability cases

### Article 219

#### a) *In general*

1) Anyone who is involved in the formation of a company with legal personality or an equivalent legal person shall be liable for damages:

1. if the person has made or distributed untrue statements in prospectuses or circulars;
2. if the person has contributed to the fact that a contribution or the takeover of part of assets or a beneficial interest of individual members or other persons has been incorrectly or incompletely stated, withheld, or concealed in the articles of association or a founder's report, or if the person has otherwise acted in contravention of the law in approving such a measure;
3. if the person was aware of the subscribers' inability to pay or other inability to perform in respect of the share capital or own assets;<sup>334</sup>
4. if the person contributed to the entry of the company in the Commercial Register on the basis of a certificate or document that in fact contains untrue information.<sup>335</sup>

2) This provision shall apply *mutatis mutandis* if the same acts or omissions have caused damage after the formation.

3) If such a company with legal personality or legal person has issued shares, unit certificates, or bonds, either itself or through a third party, each person involved shall be liable for the damage caused or circulated by the person concerned by way of untrue statements in prospectuses or circulars.

4) Anyone who has received payments from the legal person in violation of the provisions of the law, such as profits and building interest,

<sup>334</sup> Article 219(1)(3) amended by LGBI. 2000 No. 279.

<sup>335</sup> Article 219(1)(4) amended by LGBI. 2013 No. 6.

is obliged to return the payments if it is shown that the person acted in bad faith at the time of receipt.

5) If, on the other hand, a liquidation share has been obtained by members or, insofar as it concerns free legal transactions, by third parties contrary to the provisions of the law, they shall be liable to the extent of enrichment, even if they acted in good faith.

#### Article 220

##### *b) In the business management and audit*

1) The persons entrusted with the administration and audit of a company shall be responsible for the damage they cause by not fulfilling the duties incumbent on them.

2) If the breach of duty is committed by passing or failing to pass a resolution of a multi-member body (collegial body), all members of the collegial body who were obliged to participate in the resolution in question shall be responsible.

3) The members who voted against passage of the resolution giving rise to the responsibility or, if failure to pass a resolution gave rise to the breach of duty, the members who voted in favour of the resolution rejected by the majority shall remain free of liability.

4) Members of a collegial body who have also participated in its negotiations shall be liable if they, through their own fault, fail to exercise votes which could have prevented a breach of duty on the part of the collegial body or if other members, in demonstrable agreement with them, brought about a liability establishing a breach of duty on the part of the collegial body.

5) Where the failure to pass a resolution in breach of duty is involved, without the collegial body having deliberated on the resolution, each member shall be liable from the time the member became aware of the matter and failed to take steps within the member's authority to bring about the deliberation of the matter by the collegial bodies.

6) If the administration or one of its members receives a mandate from a superordinate body, such as the supreme body or the audit office, the execution of which would violate the duties incumbent according to the first paragraph, the execution may be rejected without the legal person being able to assert any responsibility as a result.<sup>336</sup>

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<sup>336</sup> Article 220(6) amended by LGBI. 2000 No. 279.

7) This article is subject to the provisions on the liability of the liquidators.

8) Anyone who is liable only for minor negligence in audits within the meaning of Article 1058(1) or (2) shall be liable up to a maximum amount of 1.5 million Swiss francs. When auditing public limited companies whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU, liability for slight negligence shall be limited to 6 million Swiss francs.<sup>337</sup>

#### Article 221

##### *c) Liability of major shareholders*

1) If, in the case of bank undertakings or trust companies, a major shareholder who is not a member of the administration but who directly or indirectly causes members of the administration of such an undertaking to violate the diligence of a prudent businessperson in their management, the major shareholder shall be jointly and severally liable with such members of the administration for the resulting damage to the legal person, subject to the right of recourse to the major shareholder of the members held responsible by the legal person.

2) A major shareholder for the purposes of this Act is a shareholder who, on the basis of the shareholder's own shareholding or other title, has the right to vote for at least a tenth part or at least for a part of the share capital or own assets of the legal entity which is so large that the votes to which the shareholder is entitled count decisively at the general meetings of the supreme body of the company concerned, in light of the amount of share capital or own assets normally represented at such meetings.<sup>338</sup>

3) Shares transferred to another person for the purpose of circumventing this provision shall be deemed to be in the possession of the major shareholder; the intention to circumvent the law shall be presumed if the transfer is made to the spouse, the registered domestic partner, or a relative up to the second degree.<sup>339</sup>

4) By ordinance, the Government may extend this liability to undertakings other than those referred to in the first paragraph where the circumstances justify it on important grounds.

<sup>337</sup> Article 220(8) amended by LGBL 2017 No. 420.

<sup>338</sup> Article 221(2) amended by LGBL 2000 No. 279.

<sup>339</sup> Article 221(3) amended by LGBL 2011 No. 370.

### 3. *Liability claim*

#### Article 222

##### *a) Claim of the company and individual members*

1) Primarily the injured company and, where insolvency proceedings are opened, its estate shall be entitled to claim damages.<sup>340</sup>

2) If the company does not have a claim, as well as in the case of malicious damage, each individual member may demand that the damage inflicted on that member be compensated directly.

3) To the extent that the company waives the enforcement of a claim or does not assert the same within three months of a member's request, each individual member may, subject to a binding discharge resolution, bring an action for damages in favour of the company for the damage intentionally caused to the company.

4) If the Company does not enforce its claim, however, the individual member shall have the right of action to claim intentional damages only if the member can prove that the member did not participate in or voted against the resolution, or that the member only became a member after the resolution and without having been aware of the resolution.

5) If such an action is brought by a member, further actions may be brought in the same matter within the defined period of time only to the extent that the damage was not fully asserted in the first action, whereas the other injured members are entitled to join the first action as interveners.

6) This claim of the individual member shall be subject to a period of limitation of six months after the members become aware of the resolution.

#### Article 223

##### *b) Claim of creditors*

1) If the creditors of the company are injured, they may, if the company has no claim, demand that the damage caused to them be compensated directly.

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<sup>340</sup> Article 222(1) amended by LGBI. 2020 No. 369.

2) In the event of intentional damage to the company, the individual creditors may demand compensation for the damage caused to the company in favour of the company if insolvency proceedings have been opened with respect to the company's assets and the insolvency estate waives enforcement of the claim or does not assert it within one month despite being requested to do so.<sup>341</sup>

3) Creditors shall also be entitled to an injunction against the violation of the provisions established for the protection of creditors.

*c) Discharge*

Article 224

*aa) Relationship to the right of action*

1) Unless there is malicious damage, the supreme body may discharge the persons liable by waiving the claim, concluding a settlement with the responsible persons, or in any other way, as long as no insolvency proceedings have been opened in respect of the company's assets, but subject to the right to challenge the discharge resolution itself.<sup>342</sup>

2) A discharge resolution of the company may, in the case of damage to the company, be set up as a bar under all circumstances to the member or creditor entitled to bring action insofar as the injured party fails to prove that no liability whatsoever was imposed upon the discharged persons to effect compensation or, in accordance with their culpability and their ability to pay, an evidently inadequate liability to effect compensation was imposed, or that malicious injury exists.

3) If at least three quarters of all countable votes have approved the discharge resolution, the claim may be enforced only if both insufficient compensation and malicious intent can be proven.

4) Repealed<sup>343</sup>

5) The discharge granted to the administration by the competent bodies on the basis of an audit report shall include only the transactions identifiable to the audit office.<sup>344</sup>

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<sup>341</sup> Article 223(2) amended by LGBL 2020 No. 369.

<sup>342</sup> Article 224(1) amended by LGBL 2020 No. 369.

<sup>343</sup> Article 224(4) repealed by LGBL 2020 No. 369.

<sup>344</sup> Article 224(5) amended by LGBL 2000 No. 279.

## Article 225

*bb) Entitlement to discharge*

1) If business management and representation as well as the audit have been exercised in accordance with the law and the articles of association and other permissible instructions, the members of the administration and the audit office shall be entitled to discharge from liability towards the company by the competent body and with effect towards the company, its members, and its creditors.<sup>345</sup>

2) Discharge may be granted in a court judgment.

## Article 226

*4. Nature of liability*

1) The liability of the persons responsible under the preceding provisions shall be governed by the provisions on liability under the contract and shall be subject to a period of limitation of three years from the time at which the injured party becomes aware of the damage and the identity of the injuring party or party liable to damages, but in any event after ten years since the damaging act. In the case of knowingly false information or intentional infliction of damage, the period of limitation for liability shall be ten years from the time at which the damage and the identity of the injuring party or party liable for damages became known.<sup>346</sup>

2) If several persons are liable to damages for an injury, each of them shall be jointly and severally liable with the others to the extent that the damage is personally attributable to them on account of their own culpability and the circumstances.<sup>347</sup>

3) Liability arising from unlawful receipt of payments by the legal person shall be subject to a period of limitation of ten years in the case of the liquidation share, five years in the other cases, and two years for the *bona fide* recipient of a liquidation share, calculated from the date of receipt.

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<sup>345</sup> Article 225(1) amended by LGBl. 2000 No. 279.

<sup>346</sup> Article 226(1) amended by LGBl. 2022 No. 227.

<sup>347</sup> Article 226(2) amended by LGBl. 2012 No. 198.

## Article 227

*5. Procedure*

1) For the duration of the legal dispute, any members bringing the action may not surrender their membership rights, and any creditors bringing the action may not surrender their other receivables constituting their creditor status, otherwise the legal dispute and liability for all damages incurred by the company or the members of company bodies shall lapse.

2) The provisions governing actions to rescind resolutions of the supreme body shall apply *mutatis mutandis* to the provision of security on grounds of damage accruing to the company or the other defendants, to the joining of several actions, and to liability for damage.

## Article 228

*II. In the case of other legal persons*

1) Insofar as companies with legal personality or equivalent legal persons are not under consideration, the principles of liability corresponding to the underlying contractual relationship between the bodies and the legal person shall apply with respect to the responsibility of the bodies; in case of doubt those principles relating to agency agreements shall be applicable.

2) With regard to the claim of the legal person and the individual members, discharge, and the nature of liability, the preceding provisions shall apply *mutatis mutandis*.

*J. Participation of legal persons under public law*Article 229<sup>348</sup>*I. In general*

A legal person may, in its articles of association, by special agreement with the polity, with or without involving it in membership, grant the polity a special legal status with regard to the obligation to contribute, voting rights, participation in the administration and audit office or the

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<sup>348</sup> Article 229 amended by LGBl. 2000 No. 279.

appointment thereof, liability towards creditors, termination of the relationship, and participation in the liquidation proceeds.

#### Article 230

##### *II. Responsibility*

1) In the case of such legal persons and mixed-activity undertakings in which a legal person under public law is involved as a member, the liability of the members of the administration and audit office shall be directed:<sup>349</sup>

1. towards the legal person, the members, and the creditors, unless the Government stipulates otherwise in individual cases, in accordance with the provisions applicable to the members elected by the supreme body;
2. towards the legal person under public law in accordance with the contractual relationships existing between that legal person and the member, such as a service contract, agency agreement, and the like.

2) The legal person under public law may, however, assume liability under the articles of association for its representatives in the bodies of the legal person to exercise their functions with due care, subject to the right of recourse to the culpable parties.

3) The representatives of the legal person under public law shall remain liable in all circumstances for intentional violation or neglect of their duties.

4) This article is subject *mutatis mutandis* to the special provisions on public service undertakings.

#### Article 231

##### *K. Announcement*

1) If the articles of association do not specify a form of announcement to members of the legal person or third parties required by law, the announcement must, in case of doubt, be made by the administration and in the Liechtenstein national newspapers, but in the case of associations, small cooperative societies, and small insurance associations limited to a local sphere of activity, it shall suffice if the announcement is made in the manner customary to the locality.<sup>350</sup>

<sup>349</sup> Article 230(1) amended by LGBL 2000 No. 279.

<sup>350</sup> Article 231(1) amended by LGBL 2016 No. 402.

2) In the case of legal persons which do not conduct business in a commercial manner, publication shall be made in the Official Journal in special non-contentious proceedings.<sup>351</sup>

3) If a form of notification provided for by law or the articles of association ceases to apply, the Office of Justice shall, at the request of the administration, determine a means of announcement for as long as the law or the articles of association do not do so themselves.<sup>352</sup>

4) The public announcement shall be made in the national language, with the exception of legal persons who do not conduct business in a commercial manner or if the Office of Justice does not otherwise permit an exception.<sup>353</sup>

#### *L. International choice of law*<sup>354</sup>

##### Article 232<sup>355</sup>

###### *I. Foreign or domestic legal persons and applicable law*

1) According to how a legal person is organised under foreign or domestic law, i.e. its articles of association declare that foreign or domestic law is applicable or they fulfil foreign or domestic publicity or registration provisions or it has organised itself under foreign or domestic law where such provisions do not exist, it shall be treated under private law as a foreign or domestic legal person, and the relevant foreign or domestic law shall apply to it. In an international context its registered office shall also be deemed situated there.

2) If a legal person does not meet these preconditions, it shall be governed by the law of the state in which it is in fact managed.

3) This article is subject to the provisions concerning diplomatic protection and the protection of personality.

<sup>351</sup> Article 231(2) amended by LGBL 2015 No. 275.

<sup>352</sup> Article 231(3) amended by LGBL 2013 No. 6.

<sup>353</sup> Article 231(4) amended by LGBL 2013 No. 6.

<sup>354</sup> Heading preceding Article 232 amended by LGBL 1997 No. 19.

<sup>355</sup> Article 232 amended by LGBL 1997 No. 19.

*II. Relocation of a legal person*<sup>356</sup>

## Article 233

*1. Relocation of the legal person from abroad to Liechtenstein*<sup>357</sup>

1) A foreign legal person may, with the approval of the Office of Justice, by entry in the Commercial Register and appointment of a representative, if both are required, subordinate itself under domestic law without dissolution abroad and new formation in Liechtenstein, or without relocating its business activities or administration, and thereby relocate its registered office to Liechtenstein.<sup>358</sup>

2) This approval may be granted only if the legal person proves that it has adapted to domestic law and that foreign law permits a relocation of the legal person.<sup>359</sup>

3) Prior to entry in the Commercial Register, a legal person must prove that the share capital declared in the articles of association as fully paid up is covered at the time of relocation of the legal person.<sup>360</sup>

4) A legal person which is not subject to entry in the Commercial Register under domestic law shall be subject to domestic law as soon as the intent to be subject to domestic law is clearly discernible, there is a sufficient relationship with Liechtenstein, and adaptation to domestic law has taken place.<sup>361</sup>

## Article 234

*2. Relocation of the legal person from Liechtenstein abroad*<sup>362</sup>

1) The subordination of a domestic legal person under foreign law and thus the relocation of its registered office abroad without dissolution shall be permissible only with the approval of the Office of Justice.<sup>363</sup>

2) Approval to relocate the registered office of a domestic legal person abroad shall be granted only if:

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<sup>356</sup> Heading preceding Article 233 amended by LGBL 1997 No. 19.

<sup>357</sup> Article 233 heading amended by LGBL 1997 No. 19.

<sup>358</sup> Article 233(1) amended by LGBL 2013 No. 6.

<sup>359</sup> Article 233(2) amended by LGBL 1997 No. 19.

<sup>360</sup> Article 233(3) amended by LGBL 1997 No. 19.

<sup>361</sup> Article 233(4) amended by LGBL 1997 No. 19.

<sup>362</sup> Article 234 heading amended by LGBL 2003 No. 63.

<sup>363</sup> Article 234(1) amended by LGBL 2013 No. 6.

1. the legal person continues to exist under foreign law;
2. the competent body of the legal person has passed a resolution to relocate the registered office abroad;
3. the legal person has publicly called upon its creditors to register existing claims with reference to the upcoming amendment of the company's articles of association;
4. it is credibly demonstrated that the receivables of all creditors who assert a claim for securing their receivables have been adequately secured, insofar as the creditors cannot demand satisfaction. Creditors shall be entitled to security only if:
  - a) the receivables have arisen before or one working day after the call pursuant to subparagraph 3;
  - b) they credibly demonstrate that the fulfilment of their receivables is jeopardised by the relocation of the registered office abroad; and
  - c) they submit their claim in writing within two months of the date of the request, stating the reason for and the amount of the claim.Creditors shall be informed of this right as part of the call referred to in subparagraph 3;
5. in the case of legal persons subject to accounting requirements, the annual financial statement and the annual report of the last financial year, including the audit report, announced by the Office of Justice in accordance with Articles 956 et seq., are attached to the application; the members and creditors shall have the right to inspect these documents and to request that copies be provided free of charge;<sup>364</sup>
6. the legal person submits a certificate from the Fiscal Authority stating that all taxes due have been paid in Liechtenstein.<sup>365</sup>
  - 3) Legal persons may be removed from the Commercial Register due to relocation of their registered office abroad only if it is credibly demonstrated that:
    1. the creditors have been satisfied in accordance with paragraph 2(4) or their receivables have been adequately secured; or
    2. the creditors agree to the removal.<sup>366</sup>

<sup>364</sup> Article 234(2)(5) amended by LGBl. 2013 No. 6.

<sup>365</sup> Article 234(2) amended by LGBl. 2006 No. 28.

<sup>366</sup> Article 234(3) amended by LGBl. 2006 No. 28.

*III. Legal capacity and capacity to act*<sup>367</sup>Article 235<sup>368</sup>*1. In general*

1) Legal capacity and capacity to act, including the capacity to be held liable, shall be governed by the law applicable to the legal person (Article 232).

2) The aforementioned law shall determine in particular the formation, change, and dissolution of a legal person, the organisation, rights, and duties of the individual bodies, the legal status of a member, and acquisition and loss of membership.

3) However, it may not acquire rights and assert claims to legal protection in Liechtenstein that go beyond what is possible for domestic legal persons, and a foreign legal person shall have at least the same capacity to be held liable as domestic legal persons.

4) Legal persons may not assert privileges acquired abroad in Liechtenstein.

5) If, in accordance with the law applicable to the legal person, the assets fall to a polity after the dissolution of the legal person, the assets located in Liechtenstein shall not fall to the foreign polity, but must be treated in accordance with domestic law.

6) If a foreign legal person does not have legal capacity, capacity to act, or capacity to be held liable under the law applicable to it, but it does under domestic law, the latter shall apply to its domestic field of activity.

## Article 236

*2. Branch*<sup>369</sup>

1) Liechtenstein law shall apply to the formation, change, and dissolution of the branch of a foreign legal person in Liechtenstein.<sup>370</sup>

2) The relationship between the branch and the principal place of business shall, however, be governed by the law of the registered office.<sup>371</sup>

<sup>367</sup> Heading preceding Article 235 amended by LGBl. 1997 No. 19.

<sup>368</sup> Article 235 amended by LGBl. 1997 No. 19.

<sup>369</sup> Article 236 heading amended by LGBl. 1997 No. 19.

<sup>370</sup> Article 236(1) amended by LGBl. 1997 No. 19.

<sup>371</sup> Article 236(2) amended by LGBl. 1997 No. 19.

3) The power of representation of a branch shall be governed by Liechtenstein law. At least one person authorised to represent the branch must be an EEA national resident in an EEA Contracting Party or a person deemed equivalent under an international treaty and must be entered in the Commercial Register.<sup>372</sup>

4) If a branch of a foreign legal person is entered in the domestic register, the legal person shall be deemed to have legal capacity and capacity to act with regard to the obligations entered into or to be fulfilled in Liechtenstein, even if it is not under the law applicable to the principal place of business.<sup>373</sup>

5) Branches may be formed in Liechtenstein also by foreign legal persons that do not correspond to Liechtenstein law.<sup>374</sup>

6) If a foreign legal person is dissolved by a measure which violates public policy and morality in the state of the principal place of business, the effects of dissolution shall not be recognised in Liechtenstein, but if there is a branch in Liechtenstein, the branch must form itself as an independent legal person within a period to be determined by the Office of Justice, otherwise it shall be subject to official liquidation.<sup>375</sup>

#### Article 237<sup>376</sup>

##### *3. Protection of personality rights*

1) A foreign legal person may assert the protection of personality rights in Liechtenstein only under the law applicable to it, and at most to the extent of Liechtenstein law.

2) Liechtenstein law shall apply to the domestic branch of a foreign legal person with regard to the protection of personality rights.

<sup>372</sup> Article 236(3) amended by LGBL 2013 No. 6.

<sup>373</sup> Article 236(4) amended by LGBL 1997 No. 19.

<sup>374</sup> Article 236(5) amended by LGBL 1997 No. 19.

<sup>375</sup> Article 236(6) amended by LGBL 2013 No. 6.

<sup>376</sup> Article 237 amended by LGBL 1997 No. 19.

Article 237a<sup>377</sup>*4. Protection of name and legal name*

1) If the name or the legal name of a legal person entered in the domestic Commercial Register is infringed in Liechtenstein, the protection thereof shall be governed by domestic law.

2) If a legal person is not entered in the domestic Commercial Register, the protection of its name or legal name shall be governed by the law applicable to unfair competition or violation of the right of personality.

Article 237b<sup>378</sup>*5. Limitation of power of representation*

A legal person may not invoke the limitation of the power of representation of a governing body or representative unknown to the law of the country of habitual abode or establishment of the other party, unless the other party was aware of or should have been aware of that limitation. This provision shall not apply to transactions relating to the disposition of real property situated in another state or a right equivalent thereto.

Article 237c<sup>379</sup>*6. Liability for foreign legal persons*

If a legal person established under foreign law appears to be subject to domestic law and its business is conducted in or from within Liechtenstein, the liability of the persons acting on its behalf for such business shall be subject to domestic law.

Article 237d<sup>380</sup>*7. Claims arising from the public issue of equity securities and bonds*

Claims arising from the public issue of equity securities and bonds on the basis of prospectuses, circulars, and similar announcements may be

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<sup>377</sup> Article 237a amended by LGBL 2013 No. 6.

<sup>378</sup> Article 237b inserted by LGBL 1997 No. 19.

<sup>379</sup> Article 237c inserted by LGBL 1997 No. 19.

<sup>380</sup> Article 237d inserted by LGBL 1997 No. 19.

enforced under the law applicable to the legal person or under the law of the country in which the issue took place.

Article 238<sup>381</sup>

Repealed

*IV. Legal representative and address for service*<sup>382</sup>

Article 239

*1. Obligation to appoint*<sup>383</sup>

1) Domestic legal persons and registered trust enterprises as well as branches of foreign legal persons must appoint a national of an EEA member state permanently resident in Liechtenstein to represent the legal person vis-à-vis the authorities as a representative.<sup>384</sup>

2) Instead, a domestic legal person may also be designated as representative, which in turn appoints a natural person as a representative for the purposes of paragraph 1.<sup>385</sup>

3) Without prejudice to the provision on the appointment of a counsel, compliance with the provisions of this article may be supervised by the Government in administrative proceedings.<sup>386</sup>

4) The obligation to appoint a representative may be waived with the approval of the Government if the other representation of the legal person offers sufficient guarantee as a substitute for the representative or if a domestic address for service has been designated. By ordinance, the Government may delegate this task to an administrative office for autonomous execution, subject to the right of appeal to the collegial Government.<sup>387</sup>

5) Paragraph 4 shall not apply to associations as referred to in Article 247(2)(3).<sup>388</sup>

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381 Article 238 repealed by LGBL 2005 No. 257.

382 Heading preceding Article 239 amended by LGBL 2006 No. 28.

383 Article 239 heading amended by LGBL 2000 No. 279.

384 Article 239(1) amended by LGBL 2006 No. 28.

385 Article 239(2) amended by LGBL 2000 No. 279.

386 Article 239(3) amended by LGBL 2000 No. 279.

387 Article 239(4) amended by LGBL 2006 No. 28.

388 Article 239(5) inserted by LGBL 2024 No. 370.

## Article 240

*2. Entry in the Commercial Register*<sup>389</sup>

1) Where a legal person is not entered in the domestic Commercial Register, the bodies of that legal person entitled to represent shall, accompanied by an extract from the registers kept abroad concerning the legal person or, where applicable, an otherwise credible statement of its existence, register the representatives or the domestic address for service (Article 239(2)) for entry in the Commercial Register, stating:<sup>390</sup>

1. the company or the name of the legal person or – in the case of domestic address for service – the exact address, consisting of the street name and house number and other information necessary to ensure proper service;
2. the name, domicile, and nationality of the representative or – in the case of a domestic address for service – the exact address, consisting of the street name and house number and other information necessary to ensure proper service.<sup>391</sup>

2) Repealed<sup>392</sup>

3) Unless the personal or company signature of the representative is not enclosed with the application in certified form, the representative must submit it to the director of the Office of Justice for the record.<sup>393</sup>

4) Repealed<sup>394</sup>

## Article 241

*3. Legal power of attorney and presumption*<sup>395</sup>

1) The representative shall be authorised by law vis-à-vis all domestic judicial and administrative authorities in all matters, without prejudice to any obligation to pay damages to the legal person, to receive declarations and communication of any kind, including service and the like, and to keep files and books, if and to the extent required by the domestic business operation.

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389 Article 240 heading amended by LGBL 2013 No. 6.

390 Article 240(1) introductory phrase amended by LGBL 2013 No. 6.

391 Article 240(1) amended by LGBL 2006 No. 28.

392 Article 240(2) repealed by LGBL 1996 No. 68.

393 Article 240(3) amended by LGBL 2013 No. 6.

394 Article 240(4) repealed by LGBL 1996 No. 68.

395 Article 241 heading amended by LGBL 2006 No. 28.

2) Apart from representation vis-à-vis the authorities, the representative may oblige the legal person only if the representative has been authorised to do so by the legal person.

3) Communications and documents from authorities and private individuals requiring receipt, which are addressed to a legal person or a trust enterprise, shall be deemed to have been served with legal effect if they are delivered to the address for service designated under Article 240. Service by the authorities shall be effected in accordance with the provisions of the Service of Official Documents Act.<sup>396</sup>

4) In case of doubt, several representatives appointed by a legal person shall have collective power of attorney.

5) Representatives shall sign on behalf of the legal person by signing their own name and adding a subscript indicating the representative office to the wording or the legal name or name written or otherwise attached by whomever.

6) The provisions on company signature for legal persons shall apply *mutatis mutandis* to the signature by the representative.

#### Article 242

##### 4. Responsibility

1) The representative shall be liable to the legal person for all damage caused by the representative's activity in the same way as an agent.

2) Several representatives shall be jointly and severally liable for all damage caused by their activities.

#### *L. bis Protected cell companies; PCCs*<sup>397</sup>

#### Article 243<sup>398</sup>

##### Formation

1) Legal persons subject to entry in the Commercial Register under this Act, or having been entered voluntarily, may be established as

<sup>396</sup> Article 241(3) amended by LGBL 2008 No. 342.

<sup>397</sup> Title preceding Article 243 inserted by LGBL 2014 No. 362.

<sup>398</sup> Article 243 amended by LGBL 2014 No. 362.

protected cell companies (PCCs), provided that they exclusively pursue one or more of the following aims:

1. public-benefit or charitable purposes as referred to in Article 107(4a);
2. acquisition, management, and realisation of holdings in other undertakings (subsidiaries);
3. utilisation of copyrights, patents, trademarks, patterns, or models;
4. deposit guarantee and investor protection schemes in accordance with the applicable EEA law.

2) A protected cell company may have one or more cells (segments) with specific assets being expressly and exclusively assigned to each cell.

3) Each cell shall be classified within a specific area of activity that is to be described more specifically in the articles of association or regulations. The individual cells shall not have separate legal personality.

4) A protected cell company must have an audit office as referred to in Article 191a and is obliged to keep proper accounts pursuant to Article 1045 et seq.

#### Article 243a<sup>399</sup>

##### *Conversion*

1) An existing legal person that meets the conditions set out in Article 243(1) may be converted into a protected cell company by means of a provision in its articles of association.

2) The conversion into a protected cell company shall be made by a resolution of the supreme body, unless another body is specified in the articles of association. The resolution shall be announced pursuant to Article 956(2).<sup>400</sup>

3) A resolution as referred to in paragraph 2 may be passed only if it has been established by means of a special audit report, or if there is no audit office, by an expert report, that creditors' claims are fully covered notwithstanding the conversion into a protected cell company. The audit report must be prepared by a recognised audit office or an expert.

4) Creditors whose claims were established before the announcement of the resolution must be provided with security if they register for that purpose within two months from the announcement, unless they can

<sup>399</sup> Article 243a inserted by LGBL 2014 No. 362.

<sup>400</sup> Article 243a(2) amended by LGBL 2022 No. 227.

demand satisfaction. The creditors shall be referred to this right in the announcement. Creditors shall have the right to demand security only if they have credibly demonstrated that the fulfilment of their claims will be jeopardised by the conversion to a protected cell company.

5) The conversion may be entered in the Commercial Register only after expiry of the time limit set for the creditors and after satisfaction has been given or security has been provided to the registered creditors. The application for entry of the conversion in the Commercial Register and the other documentation required for the entry shall be submitted to the Office of Justice, together with the conversion resolution referred to in paragraph 2 and the special audit or expert report referred to in paragraph 3.

6) In the event of conversion from a protected cell company into a non-segmented legal person, paragraphs 2 to 5 shall apply *mutatis mutandis*.

#### Article 243b<sup>401</sup>

##### *Legal name or name*

The legal name or name of a protected cell company must contain either the suffix "Segmentierte Verbandsperson" or the abbreviation "SV" or the suffix "Protected Cell Company" or the abbreviation "PCC". The suffix must be quoted on all correspondence and order forms, irrespective of whether they are produced on paper or otherwise, as well as the websites used by the protected cell company.

#### Article 243c<sup>402</sup>

##### *Legally required content of the articles of association and regulations*

1) The articles of association of a protected cell company shall, in addition to the provisions required for the relevant legal form, contain the following information:

1. a statement to the effect that it is a protected cell company;
2. provisions concerning the organisation and representation of the protected cell company;
3. designation of the individual cells by name;
4. the areas of activity of the individual cells.

<sup>401</sup> Article 243b inserted by LGBL 2014 No. 362.

<sup>402</sup> Article 243c inserted by LGBL 2014 No. 362.

2) The information referred to in paragraph 1(3) and (4) may also be incorporated in the regulations issued on the basis of the articles of association, provided that a reference to that effect is included in the articles of association.

3) If the information referred to in paragraph 1(3) and (4) is included in the regulations referred to in paragraph 2, it shall be submitted to the Office of Justice with the registration for entry. The regulations need not, however, be deposited.

4) If the information referred to in paragraph 1(3) and (4) is amended in the regulations, this must be notified to the Office of Justice, otherwise the amendments shall not have legal effect.

#### Article 243d<sup>403</sup>

##### *Administration and representation*

1) The administration and representation of the protected cell company shall be the responsibility of the bodies authorised by law or the articles of association.

2) The provisions on trusts set out in Article 897 et seq. shall apply *mutatis mutandis* to the relationship between the protected cell company and the assets of each individual cell, unless otherwise provided by law or the articles of association.

#### Article 243e<sup>404</sup>

##### *Assets and capital*

1) The assets of the protected cell company shall be made up of the core assets of the legal person and the assets of the individual cells (cell assets). The core assets shall be understood as the assets that are not assigned to the individual cells.

2) The provisions on minimum capital shall apply to the protected cell company with regard to its core assets. Moreover, each cell shall have at its disposal a legal reserve equivalent to the minimum capital of the protected cell company.

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<sup>403</sup> Article 243d inserted by LGBl. 2014 No. 362.

<sup>404</sup> Article 243e inserted by LGBl. 2014 No. 362.

3) This legal reserve may be used only to cover losses or for measures that are likely to sustain the company during times when the course of business is poor. As soon as half of the legal reserve referred to in paragraph 2 is no longer covered, the administration shall inform all known creditors, whose claims are limited to the relevant cell, of this circumstance, unless precisely those creditors rescind their rank relative to all other creditors to the extent of the shortfall at going concern values and defer their claims, or if there is a concrete prospect that the shortfall will be remedied within two months from when it was noted.

4) The assets of the individual cells must be clearly identifiable and shall be kept separate from one another and from the core assets. The administration may apply to a judge in special non-contentious proceedings for transfers of assets between cells, provided there are material grounds that so warrant.

5) If the protected cell company is a public limited company, separate shares may be issued in respect of individual or all cells, which will be shares of the protected cell company. The shareholders shall, however, be entitled only to the assets of the cells in which they have a holding. The provisions concerning preference shares shall apply *mutatis mutandis* to the issue of separate shares in respect of individual cells. The articles of association must contain relevant provisions concerning the issue of separate shares in respect of individual cells and the rights associated therewith.

#### Article 243f<sup>405</sup>

##### *Relationship with third parties and liability*

1) Upon entering into contractual negotiations, a protected cell company shall inform in writing third parties with which it comes into contact in the course of its transactions of its status as a protected cell company. When doing so, the contracting party must be informed of the cell with whose assets the protected cell company is liable for the legal relationship in question, at penalty of personal but subordinated liability of the culpable body. If the core assets are liable, this shall also be indicated accordingly.

2) Contractual claims of third parties against the protected cell company shall be confined to the assets of the cell in the area of activity on which the claim is based. If the assets are insufficient to satisfy the claim, the core assets shall be liable on a subordinated basis.

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<sup>405</sup> Article 243f inserted by LGBL 2014 No. 362.

3) Non-contractual third party claims shall be limited to the core assets. If the core assets are insufficient to satisfy the claim, the assets of the cell in the area of activity in which the protected cell company has caused the claim shall be liable on a subordinated basis. The administration shall give any entitled claimants the information required to enforce the claim. If the administration does not meet this obligation, it may upon application be requested by the court to present all the documents required for the enforcement of the claim, in addition to the necessary information.

4) Bankruptcy may be conducted in respect of the assets of any of the individual cells in accordance with the provisions of the Insolvency Act.<sup>406</sup>

5) In the event of bankruptcy of the protected cell company, Article 915 shall apply *mutatis mutandis* to the relationship between the protected cell company and the assets of the individual cells. The articles of association shall lay down rules on the further appropriation of the assets of the individual cells. The judge shall decide on the segregation and transfer to another protected cell company or any beneficiaries, taking all circumstances into consideration.

#### Article 243g<sup>407</sup>

##### *Transfer of shares*

Unless otherwise indicated by the articles of association or legislative provisions, the entire cell assets or parts thereof may be transferred to third parties. However, the legal reserves of the cells may be disposed of only as set out in Article 243e(3).

#### Article 243h<sup>408</sup>

##### *Dissolution*

If an individual cell is dissolved, its assets shall accrue to the core assets, unless specified otherwise in the articles of association.

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<sup>406</sup> Article 243f(4) amended by LGBL 2020 No. 369.

<sup>407</sup> Article 243g inserted by LGBL 2014 No. 362.

<sup>408</sup> Article 243h inserted by LGBL 2014 No. 362.

*M. Reservation and scope of application*

## Article 244

*I. Reservation*

1) These provisions are subject to public law with respect to legal persons governed by public law, ecclesiastical law, and this Act.

2) The provisions of this Title shall not apply to corporate bodies or establishments (banks, insurance associations, etc.) established by special laws and administered with the involvement of public authorities, provided that the State assumes subsidiary liability for their obligations, with the exception of the provision on the capacity to act and the capacity to be held liable, even if the required capital is divided in whole or in part into shares or other units and is raised through the participation of private individuals, unless the laws provide otherwise.

3) However, legal persons governed by public law and ecclesiastical law shall be considered to have legal capacity and the capacity to act as soon as they would be under the provisions of this Act, unless otherwise provided by public or ecclesiastical law, subject to the reservation of ecclesiastical foundations.

4) The provisions on the capacity of legal persons to be held liable shall, however, also apply to legal persons governed by public law and ecclesiastical law in the field of their activities under private law if the administration or a member thereof or another representative appointed under law commits a tortious act or omission within the scope of their powers.

5) This is subject to the special provisions concerning the liability of such legal persons for compensation under public law for the unlawful or lawful exercise of public authority entrusted to their bodies, officials, and employees.

## Article 245

*II. Scope of application*

1) All corporate bodies and establishments, including foundations, governed by the following titles shall also be subject to the general provisions of this title, unless a derogation results from the special provisions laid down for them or from the individual provisions of this title.

2) Legal persons other than those provided for by law shall not exist.

Title 4  
**Corporate bodies**

Section 1  
**Associations**

*A. Formation*

Article 246<sup>409</sup>

*I. Corporate joining of persons*

1) Associations dedicated to a political, religious, scientific, artistic, charitable, sociable, or other non-economic task acquire legal personality as soon as the will to exist as a corporate body is evident from the articles of association. Associations which are obliged to be entered in the Commercial Register under Article 247(2) acquire legal personality upon entry.<sup>410</sup>

2) The articles of association must be established in writing and provide information on the purpose of the association, its resources, and its organisation.

3) To the extent that the articles of association do not establish any provisions on the organisation and the relationship between the association and its members, the following provisions shall apply.

4) The articles of association may not amend legally binding provisions.

Article 247<sup>411</sup>

*II. Entry in the Commercial Register<sup>412</sup>*

1) Once the association's articles of association are ratified and the executive board (the administration) has been appointed, the association

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<sup>409</sup> Article 246 amended by LGBL 2007 No. 38.

<sup>410</sup> Article 246(1) amended by LGBL 2024 No. 370.

<sup>411</sup> Article 247 amended by LGBL 2007 No. 38.

<sup>412</sup> Article 247 heading amended by LGBL 2013 No. 6.

shall be authorised to be entered in the Commercial Register by decision of the competent governing body.<sup>413</sup>

2) The association is obliged to be entered if it:

1. conducts a commercial operation in pursuit of its purpose;
2. is subject to an audit requirement; or<sup>414</sup>
3. predominantly collects or distributes assets that are intended for public-benefit purposes, unless an exemption pursuant to paragraph 4 applies.<sup>415</sup>

3) Predominance for the purposes of paragraph 2(3) shall be assessed according to the ratio of assets intended for public-benefit purposes to assets intended for other purposes. If it is not clear whether the assets of the association are wholly or predominantly intended for purposes other than public-benefit purposes at a particular time, the association shall be regarded as a public-benefit association for the purposes of paragraph 2(3).<sup>416</sup>

4) Upon application, the Office of Justice may exempt associations as referred to in paragraph 2(3) from the obligation to be entered if they are exposed to a low risk of abuse for the purpose of the financing of terrorism, in particular due to the following criteria:<sup>417</sup>

1. amount of the assets collected or distributed;
2. origin or destination of the assets collected or distributed;
3. intended use of the assets collected or distributed.

5) The articles of association and the list of the members of the executive board must be attached to the registration, as well as, if applicable, a statement that the association is an association as referred to in paragraph 2(3).<sup>418</sup>

6) By way of an ordinance, the Government shall provide further details governing the obligation to be entered and the exceptions to the obligation to be entered, in particular:<sup>419</sup>

1. the conditions for the granting of an exemption;

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<sup>413</sup> Article 247(1) amended by LGBL 2013 No. 6.

<sup>414</sup> Article 247(2)(2) amended by LGBL 2024 No. 370.

<sup>415</sup> Article 247(2)(3) inserted by LGBL 2024 No. 370.

<sup>416</sup> Article 247(3) amended by LGBL 2024 No. 370.

<sup>417</sup> Article 247(4) inserted by LGBL 2024 No. 370.

<sup>418</sup> Article 247(5) inserted by LGBL 2024 No. 370.

<sup>419</sup> Article 247(6) inserted by LGBL 2024 No. 370.

2. the reporting obligation when the conditions for an exemption no longer apply;
3. the withdrawal of an exemption.

Article 247a<sup>420</sup>

*Ila. List of members*

1) Associations which are obliged to be entered in the Commercial Register under subparagraph 2 or 3 of Article 247(2) shall keep a list in which the members are entered with their surname, first name, and domicile address or legal name and registered office.

2) The executive board shall retain the list of members and ensure that:

1. the list is available within a reasonable period of time in Liechtenstein; and
2. the representative of an association as referred to in Article 247(2)(3) has access to the list.

3) The executive board shall retain the information on each member as referred to in paragraph 1 for ten years after the member in question has been removed from the list and ensure that:

1. this information is available within a reasonable period of time in Liechtenstein; and
2. the representative of an association as referred to in Article 247(2)(3) has access to this information.

4) Article 1059 shall apply *mutatis mutandis* to the maintenance and retention of the list of members.

Article 248<sup>421</sup>

*III. Associations without legal personality*

Associations that do not have legal personality or that have not yet acquired it are treated in the same way as unregistered partnerships.

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<sup>420</sup> Article 247a inserted by LGBl. 2024 No. 370.

<sup>421</sup> Article 248 amended by LGBl. 2007 No. 38.

*B. Organisation*<sup>422</sup>*I. Association meeting*<sup>423</sup>Article 249<sup>424</sup>*1. Significance and convening*

- 1) The member's meeting is the supreme body of the association.
- 2) It shall be convened by the executive board.
- 3) The meeting shall be convened in accordance with the provisions of the articles of association and, in addition, by law if one fifth of the members request that the meeting be convened.

Article 249a<sup>425</sup>*2. Competence*

- 1) The association meeting shall decide on the admission and expulsion of members, elect the executive board, and decide on all matters that are not delegated to other governing bodies of the association.
- 2) The association meeting shall supervise the activities of the governing bodies and may remove them at any time, without prejudice to the claims to which the dismissed persons are entitled under existing contracts.
- 3) The right of dismissal exists by law where justified on important grounds.

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422 Heading preceding Article 249 amended by LGBL 2007 No. 38.

423 Heading preceding Article 249 amended by LGBL 2007 No. 38.

424 Article 249 amended by LGBL 2007 No. 38.

425 Article 249a inserted by LGBL 2007 No. 38.

*3. Resolution of the association*<sup>426</sup>

Article 249b<sup>427</sup>

*a) Passing of resolutions*

- 1) The resolutions of the association shall be taken by the association meeting.
- 2) If all members have given their written consent to a motion, this shall be deemed equivalent to a resolution of the association meeting.

Article 250<sup>428</sup>

*b) Voting rights and majority*

- 1) All members shall have the same voting rights in the association meeting.
- 2) The resolutions of the association shall be taken by a majority of the votes of the members present.
- 3) A resolution may be made on items that have not been duly announced only if expressly permitted by the articles of association.

Article 250a<sup>429</sup>

*c) Exclusion from voting rights*

Every member is excluded from voting rights by law in the event of a resolution on a legal transaction or a legal dispute between the association and a member, a member's spouse, a member's registered domestic partner, or a person related lineally with a member.

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<sup>426</sup> Heading preceding Article 249b inserted by LGBL 2007 No. 38.

<sup>427</sup> Article 249b inserted by LGBL 2007 No. 38.

<sup>428</sup> Article 250 amended by LGBL 2007 No. 38.

<sup>429</sup> Article 250a amended by LGB 2011 No. 370.

*II. Executive board*<sup>430</sup>

## Article 251

*1. In general*<sup>431</sup>

1) In the case of doubt, the executive board shall be deemed to be the governing body which is entrusted with regular general management and representation in accordance with the content of the articles of association and which is authorised to sign.

2) The executive board may consist of one or more members or non-members and shall have the right and duty, in accordance with the powers conferred upon it by the articles of association, to conduct the association's affairs, such as accounting, cash management, and the like, and to represent the association.

3) In the absence of any provision to the contrary in the articles of association, it may, under its own responsibility, entrust other persons with the details of general management and representation.

4) Unless otherwise provided by the entry in the Commercial Register, or if a third party has assumed the power of representation of the executive board in good faith, the association shall be obliged by its actions, without prejudice to any claims for compensation of the association arising from a contract or tort.<sup>432</sup>

5) Complaints may be lodged at any time with the executive board against orders and resolutions of the governing bodies reporting to the executive board, and complaints may be lodged at any time with the supreme body against orders and resolutions of the executive board or other governing bodies.

Article 251a<sup>433</sup>*2. Accounting*

The executive board shall keep an account of the income and expenditure as well as the financial situation of the association in accordance with Article 1045(3).

<sup>430</sup> Heading preceding Article 251 inserted by LGBl. 2007 No. 38.

<sup>431</sup> Article 251 heading amended by LGBl. 2007 No. 38.

<sup>432</sup> Article 251(4) amended by LGBl. 2013 No. 6.

<sup>433</sup> Article 251a amended by LGBl. 2012 No. 124. This provision shall apply from 1 January 2014. For earlier financial years, see the transitional provisions.

Article 251b<sup>434</sup>*III. Audit office*

- 1) The accounting must be audited at the association's expense by an audit office to be elected by the association meeting, if:
1. two of the following quantities are exceeded in two consecutive financial years:
    - a) balance sheet total of 6 million Swiss francs,
    - b) sales revenue of 12 million Swiss francs,
    - c) annual average of 50 full-time equivalent positions; or
  2. a member of the association who is subject to personal liability or additional performance obligations so demands.
- 2) The association shall in other respects be free to provide for the audit.

*C. Membership*

## Article 252

*I. Joining and leaving the association*

- 1) Members may join the association at any time.
- 1a) Associations which, in accordance with their articles of association, are intended to exercise the interests of employees must determine the preconditions for membership in their articles of association. If an applicant who satisfies these preconditions is not admitted, the applicant shall have the rights set out in Article 255(4) and (5) *mutatis mutandis*.<sup>435</sup>
- 2) Leaving the association is permitted upon announcement at the end of a calendar quarter if a three-month notice period is observed, or at the end of an administrative period where one is provided, and restrictions on leaving the association are permitted only in accordance with the provisions applicable to registered cooperative societies.
- 3) Membership is neither alienable nor heritable.<sup>436</sup>
- 4) Sale of voting rights without transfer of membership is not permitted.

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<sup>434</sup> Article 251b inserted by LGBL 2007 No. 38.

<sup>435</sup> Article 252(1a) inserted by LGBL 2017 No. 405.

<sup>436</sup> Article 252(3) amended by LGBL 2024 No. 370.

5) The provisions on membership shall apply to honorary, passive, and similar members only to the extent that the articles of association so provide.

#### Article 253

##### *II. Liability of the association and its members*

1) Only the association's assets shall be liable for the association's liabilities.<sup>437</sup>

2) However, the articles of association may introduce limited liability or a limited additional performance obligation for all members or for certain groups pursuant to the provisions applicable to registered cooperative societies.

3) In that case, the executive board shall keep an accurate directory of members joining and leaving the association.

4) In that case, each member shall sign a declaration of liability or obligation to make additional performances – when joining the association or when such a provision is introduced – if such provision is to be applicable to such member; otherwise, such member shall be considered to have left the association, subject to the member's existing obligations and in the absence of other provisions in the articles of association.

#### Article 254<sup>438</sup>

##### *III. Contribution obligation*

Contributions may be demanded of the members only if the articles of association so provide.

#### Article 255

##### *IV. Expulsion*

1) The articles of association may determine the reasons for which a member may be expelled, but they may also permit exclusion without stating the reasons.

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<sup>437</sup> Article 253(1) amended by LGBl. 2007 No. 38.

<sup>438</sup> Article 254 amended by LGBl. 2007 No. 38.

2) In the latter cases, the expulsion may not be challenged on the grounds thereof.

3) If the articles of association do not contain any provision in this respect, expulsion may be effected only by resolution of the supreme body on important grounds and with notification to the member.

4) The expelled member may, however, within one month from the notification of the expulsion, challenge this decision by way of legal action.

5) This article shall also be subject to any complaint to the supreme body and claims for damages arising from a tort or for violation of personal circumstances against the association, the governing bodies acting in a personal capacity, or any other person.

#### Article 256

##### *V. Status of former members*

1) Unless the articles of association provide otherwise, members who resign or are expelled have no claim to the association's assets, in the absence of provisions in the articles of association to the contrary.

2) If the assets of a dissolved association are to be distributed among the members, the members who left the association during the previous year must be taken into account accordingly.

3) They shall be liable for the contributions or for other performances in accordance with the time of their membership.

#### Article 257

##### *VI. Protection of the purpose of the association and of membership*

1) By law, a conversion of the purpose of the association may be decided only with three quarters of all votes.

2) Members who have demonstrably not approved such a resolution are entitled by law to leave the association without further ado within a period of one month after the resolution has been passed or a possible challenge to it has been dealt with.

3) Resolutions of the supreme body that violate the law or the articles of association, even if they have been duly enacted, may by law be challenged by any member who has not given consent within one month after the member has become aware of the resolution. This challenge must be filed before a judge against the association for the purpose of annulment, the general provisions governing actions challenging the resolutions of the supreme body being applicable *mutatis mutandis*.

4) Likewise, a member may have a resolution be replaced by judicial decision through legal action if the association, contrary to law or the articles of association, fails to pass a resolution.

5) This article is subject to any claims for damages arising from a contract or tort.

#### Article 258

##### *D. Dissolution*

1) The dissolution of the association may also take place *ex officio* by the judge in special non-contentious proceedings if, in breach of the law, it only operates a business conducted in a commercial manner.<sup>439</sup>

2) If the association is entered in the Commercial Register, the executive board and the judge must register the dissolution with the Office of Justice or notify it thereof for the purpose of removal of the entry.<sup>440</sup>

#### Article 259

##### *E. Special associations*

1) Repealed<sup>441</sup>

2) Repealed<sup>442</sup>

3) Mutual associations, unless they are mutual insurance associations subject to a licence, are governed by the provisions on associations.

4) This article is subject to the special provisions on small cooperative societies and insurance associations, including auxiliary funds.

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<sup>439</sup> Article 258(1) amended by LGBL 2010 No. 454.

<sup>440</sup> Article 258(2) amended by LGBL 2013 No. 6.

<sup>441</sup> Article 259(1) repealed by LGBL 2024 No. 370.

<sup>442</sup> Article 259(2) repealed by LGBL 2008 No. 220.

## Article 260

*F. Subsidiary scope of application*

The provisions governing associations shall, to the extent not otherwise provided by the special legislative provisions or the articles of association or otherwise arising from the nature of the matter, apply *mutatis mutandis* to all legal persons under private law.

## Section 2

**Public limited company***A. General provisions**I. Definition*

## Article 261

*1. Fixed shares*

1) A public limited company is a company with its own name, whose capital determined in advance (share capital) is divided into partial amounts (shares) and for whose liabilities only the company assets are liable.<sup>443</sup>

2) The shareholders are obliged only to the performances set out in the articles of association and are not personally liable for the company's liabilities.

3) This article is subject to provisions to the contrary concerning special legal persons under foreign law, investment companies with variable share capital, ancillary performance shares, and the like.<sup>444</sup>

## Article 262

*2. Non-par value shares*

1) The share capital of a public limited company determined in advance may be divided into fractions (quotas), which may be equal or unequal, instead of partial amounts (non-par value shares).<sup>445</sup>

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<sup>443</sup> Article 261(1) amended by LGBL 2000 No. 279.

<sup>444</sup> Article 261(3) amended by LGBL 2016 No. 61.

<sup>445</sup> Article 262(1) amended by LGBL 2000 No. 279.

2) The non-par value share amounts to a fraction of the share capital without having to include a certain partial amount.<sup>446</sup>

3) Fixed shares and non-par value shares may also be combined, and the provisions on fixed shares apply to non-par value shares to the extent those provisions do not entail that they are inapplicable.

4) In the case of securities issued as non-par value shares, the amount of the share capital and any reserves must also be stated in words in addition to the quota.<sup>447</sup>

#### Article 262a<sup>448</sup>

##### 3. *Listed shares*

1) Public limited companies whose shares are admitted to trading on a regulated market situated or operated within an EEA Member State as referred to in Article 4(1)(21) of Directive 2014/65/EU are deemed to be public limited companies listed in the EEA.<sup>449</sup>

2) Public limited companies whose shares are admitted to trading on an exchange located outside the European Economic Area may apply the provisions set out in Article 332(2a), (5), and (6), Article 332a, Article 334(5), Articles 339a to 339e, and Article 340a.

## II. *Share*

### Article 263

#### 1. *Type of shares*

1) The shares are registered or issued to the bearer and may also consist simultaneously of both classes in the proportions provided for in the articles of association.

2) The articles of association may provide that the registered shares shall or may be converted into bearer shares or bearer shares into registered shares.

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<sup>446</sup> Article 262(2) amended by LGBL 2000 No. 279.

<sup>447</sup> Article 262(4) amended by LGBL 2000 No. 279.

<sup>448</sup> Article 262a inserted by LGBL 2010 No. 142.

<sup>449</sup> Article 262a(1) amended by LGBL 2017 No. 420.

3) This article is subject to the provisions on special classes of shares, such as ordinary and preference shares.

#### Article 264

##### *2. Division, consolidation, and change of shares or share components*

1) A division or consolidation of shares or share components by a shareholder is not permissible, subject to subparticipation between a shareholder and a third party and the trust certificates.

2) By way of an amendment to the articles of association, however, the general meeting is authorised to divide the shares into shares with smaller nominal values or into share components or, with the consent of the shareholders, to merge the shares into shares of larger nominal value while keeping the share capital unchanged.<sup>450</sup>

#### Article 265

##### *3. Reduction of the nominal value*

1) A reduction of the nominal value of the individual shares is permissible if the existing amount of the share capital is kept unchanged by simultaneously issuing new shares in the amount or quota equivalent to the reduction of the existing shares.<sup>451</sup>

2) In contrast, a reduction of the nominal value of the individual shares without such a simultaneous new issue of shares may be made only in accordance with the rules laid down for the repayment and reduction of the share capital.<sup>452</sup>

3) Any reduction in the quota is governed by the provisions of the preceding article.

#### Article 266

##### *4. Amount of the share*

1) The issue of shares for an amount lower than the nominal amount or the notional par value of non-par value shares is permissible only for

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<sup>450</sup> Article 264(2) amended by LGBl. 2000 No. 279.

<sup>451</sup> Article 265(1) amended by LGBl. 2000 No. 279.

<sup>452</sup> Article 265(2) amended by LGBl. 2000 No. 279.

registered shares that are transferable with the consent of the company and only to persons who are professionally involved with the placement of shares. This procedure is subject to approval by the Office of Justice.<sup>453</sup>

2) The conversion of such registered shares into others may be effected by reducing the share capital set out in the articles of association to the share capital actually paid up or still existing or if the share capital set out in the articles of association is actually available through further contributions from profits and the like.<sup>454</sup>

3) If shares have been issued below the nominal value or the notional par value of non-par value shares, the nominal value or the notional par value of all issued shares must be included on the liabilities side of the balance sheet.<sup>455</sup>

4) The issue of a higher amount is permissible if it is provided for in the articles of association or if it is so decided by the general meeting or another body authorised to do so by the general meeting.

5) The surplus value exceeding the nominal value may not be distributed as profit, but must be used to cover the expenditure items or for depreciation or reserve formation.

### *5. Share certificate*

#### *Article 267*

##### *a) In general*

1) The company is obliged to issue a share certificate only if not otherwise stipulated in the articles of association.

2) The articles of association may specify the form and content of the share certificates in detail.

3) The share certificates must bear the signature of at least one member of the administration or the mechanical reproduction of the handwritten signature of that member.

4) The share certificate must consist of the certificate proper and may also be accompanied by a renewal coupon (talon) and coupon sheet (-dividend right certificate).

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<sup>453</sup> Article 266(1) amended by LGBL 2013 No. 6.

<sup>454</sup> Article 266(2) amended by LGBL 2000 No. 279.

<sup>455</sup> Article 266(3) amended by LGBL 2000 No. 279.

## Article 268

*b) Share certificate proper*

1) The share certificate proper (main share certificate) contains the certification of membership in a public limited company, in particular the right to equity participation, dividends, and voting rights.

2) In the case of registered shares, the more detailed provisions of the articles of association governing transfer and, in the case of ancillary performance shares, the ancillary performances shall be included in the share certificate.

3) Where the exercise of voting rights and the like requires the shares to be deposited, in case of doubt it shall suffice if the share certificate proper is deposited, unless the articles of association expressly provide otherwise, such as presentation of the main certificate together with the coupon, or participation in the general meeting is permitted only to the holders of the coupons covering the past financial year.

4) With regard to cancellation, the provisions applicable to bearer, order, or registered securities shall apply, depending on the type of shares, unless the articles of association provide otherwise; the person who effected the cancellation may, unless otherwise provided in the articles of association, demand the issue of a new certificate at that person's own expense.

## Article 269

*c) Talon*

1) The talon (renewal coupon) is an authorisation to obtain new coupon sheets if the old coupons have been used up, misplaced, or otherwise lost.

2) The renewal coupon may be transferred only together with the main share certificate.

3) The cancellation procedure shall be governed by the provisions applicable to bearer securities.

4) In the absence of special authorisation, only the shareholder is entitled to obtain a renewal coupon from the company.

*d) Coupon*

## Article 270

*aa) In general*

1) The issued coupons certify the right of membership to dividends and, after declaration of the dividend by the competent body, an independent right of claim that cannot be withdrawn by the company.

2) As long as they are attached to the share certificate proper, the coupons form part of it and share its legal fate; after they are separated, however, or if they are issued independently, they shall be deemed independent securities and, in case of doubt, shall be subject to the provisions on bearer securities, in particular with regard to cancellation.

3) With the expiry of the share, such as by drawing, mandatory redemption, withdrawal, and the like, the right arising from the coupon also expires, even if it is independent, provided that at the time of the expiry the distribution of a dividend has not yet been decided.

4) An independent coupon may be cancelled independently of the share, a coupon attached to the share only together with it.

## Article 271

*bb) Legal status of the coupon*

1) The coupon of the individual share has the same legal status with regard to dividend subscription rights as the individual share itself, so that the coupon of the preference share has priority over the coupon of the ordinary share, and the coupon of the ordinary share has priority over that of the profit-sharing certificate or bonus share, unless the articles of association provide otherwise.

2) In the absence of any provisions to the contrary in the articles of association, such as the existence of profit-sharing certificates, the right to advance or subsequent dividend payment and the final dividend payment shall be determined by the legal status of the share and, subject to other provisions of the articles of association, only the shareholder shall have the right to contest a dividend resolution of the competent body.

3) If the shares are pledged, coupons shall, unless otherwise agreed, be deemed to be pledged as well, to the extent the lien has been properly established.

4) In case of doubt, the profitability or dividend guaranteed to a company shall accrue to the coupon holder.

#### 6. *Workers' shares*

##### Article 272

###### *a) In general*

1) Employees and workers of a company may be provided with workers' shares in accordance with the more detailed provisions laid down in the articles of association, even without the subscription and capital contribution of at least 25% having to be determined at the time of issue and without entry in the Commercial Register.<sup>456</sup>

2) The workers' shares have the same nominal amount or the same quota as other capital shares of the company, but shall be shown in the balance sheet only at the amount paid up.

##### Article 273

###### *b) Registered shares, transfer, and payment*

1) The workers' shares are registered and, as long as the shareholder is an employee or worker of the company, may not be transferred at all, and subsequently only with the approval of the administration.

2) This transfer authorisation may not be refused if the acquirer of the shares pays the amount not paid up at the time of the transfer.

3) An obligation to pay in these shares exists only to the extent that the owner must credit the participation in the net profit of the company due to that owner in accordance with the articles of association, as well as the dividends attributable to the paid-up share amounts themselves, until the nominal value (the quota) of the workers' share has been paid up in full.

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<sup>456</sup> Article 272(1) amended by LGBl. 2013 No. 6.

## Article 274

*c) Entry in the Commercial Register, voting, and exchange*

1) As soon as the workers' shares are paid up at 25%, the resulting capital increase must be entered in the Commercial Register.<sup>457</sup>

2) The shareholder's right to vote commences at that time.

3) With each additional 25% payment, a new entry must be made in the Commercial Register.<sup>458</sup>

4) After the workers' share is fully paid up, it will be converted into an ordinary capital share of the same nominal value (quota) and with the characteristics of the shares issued by the company at that time or in the future with the best entitlement.

## Article 275

*d) Dividend right*

1) During the existence of the workers' share, the workers' share is entitled to dividends at the same rate as the capital shares with the best entitlement issued by the company, depending on the paid-up amount of the worker's share.

2) The dividend is paid by crediting the outstanding capital contribution on the value date of the past balance sheet date.

## Article 276

*e) Workers' shares in connection with a workers' cooperative society*

1) The articles of association may provide that a certain portion of the annual profit may be used to form a fund for the purpose of issuing shares to workers and employees, who in this case may form a workers' cooperative society in accordance with the rules on small cooperative societies.

2) In case of doubt, the issued shares shall be in the joint ownership of this cooperative society.

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<sup>457</sup> Article 274(1) amended by LGBl. 2013 No. 6.

<sup>458</sup> Article 274(3) amended by LGBl. 2013 No. 6.

3) The articles of association must in particular include provisions on the representation of the workers' shares in the company's governing bodies.

Article 277<sup>459</sup>

Repealed

Article 278<sup>460</sup>

Repealed

### *III. Articles of association*

Article 279<sup>461</sup>

#### *1. Legally required content*

1) The articles of association of the public limited company must contain information or provisions concerning the following:

1. the legal name;
2. the registered office of the company;
3. the purpose of the company;
4. the founders;
5. the amount of the share capital and the amount of contributions made to it;
6. if the company has authorised and/or conditional capital, the amount of the authorised and/or conditional capital;
7. the number, nominal value or quota, and type of shares and the associated rights;
8. the convening of the general meeting, the voting rights of the shareholders, and the passing of resolutions;
9. the number and manner of appointment of the members of the administration, representation, supervision, or audit as well as the

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<sup>459</sup> Article 277 repealed by LGBl. 2000 No. 279.

<sup>460</sup> Article 278 repealed by LGBl. 2000 No. 279.

<sup>461</sup> Article 279 amended by LGBl. 2000 No. 279.

distribution of responsibilities among these bodies (to the extent this does not arise from the law);

10. the manner in which the representation is exercised;
11. the manner in which the company's announcements are made to shareholders and third parties;
12. at least approximately the total amount of all costs to be borne by or invoiced to the company on the occasion of its formation, including, where applicable, costs incurred before the date on which the company takes up business;
13. the balance sheet date.<sup>462</sup>

2) The provisions set out in paragraph 1(1), (3), and (5) shall be deemed material for the purposes of voidability proceedings (Articles 125 et seq.).

#### Article 280

##### *2. Provisions to be included as needed*<sup>463</sup>

1) Provisions or information that are valid according to the law only if they are provided for in the articles of association (by-laws) include in particular the following:<sup>464</sup>

1. information concerning non-cash contributions, stating the name of the depositor, asset acquisitions with notification of the takeover price, acceptance of shares or other payments in lieu of payment, stating the number of shares, and precise information about any kind of founder's benefits;<sup>465</sup>
2. permissible provisions derogating from the law regarding revision of the articles of association, business expansion, or business contraction;<sup>466</sup>
3. rules on authorised and conditional capital increases;<sup>467</sup>
4. if a company grants employees participation in the capital of the company, derogations from the legislative provisions governing the minimum deposit obligation, capital increases (Article 173, Article

<sup>462</sup> Article 279(1)(13) inserted by LGBL 2019 No. 258.

<sup>463</sup> Article 280 heading amended by LGBL 2000 No. 279.

<sup>464</sup> Article 280(1) introductory phrase amended by LGBL 2000 No. 279.

<sup>465</sup> Article 280(1)(1) amended by LGBL 2000 No. 279.

<sup>466</sup> Article 280(1)(2) amended by LGBL 2000 No. 279.

<sup>467</sup> Article 280(1)(3) amended by LGBL 2000 No. 279.

- 295(1) and (7), Articles 295a and 295b), acquisition of own shares (Article 306a(1)(1) and subscription rights for shareholders;<sup>468</sup>
5. if, in addition to capital shares, a company issues workers' shares for the benefit of all employees represented at the general meeting by proxies with voting rights, derogations from the legislative provisions on capital reduction (Article 173, Article 355(1) and (2), Article 358, and Article 359) and acquisition of own shares (Article 306a(1)(1));<sup>469</sup>
  6. permissibility and provisions regarding the conversion of shares;<sup>470</sup>
  7. the number of shares, if any, to be deposited by the members of the administration;<sup>471</sup>
  8. promise of building interest;<sup>472</sup>
  9. limitation of the duration of the company;<sup>473</sup>
  10. contractual penalties for late payment for the shares;<sup>474</sup>
  11. release from the obligation to pay in more than half or a higher proportion of the share capital;<sup>475</sup>
  12. prohibition or restriction of the transfer of registered shares;<sup>476</sup>
  13. issue of founder's unit certificates, profit-sharing certificates, and bonus shares as well as the issue of preference and ordinary shares below nominal value or shares with multiple voting rights, ancillary performance shares, bonds or similar debt instruments to which conversion or option rights are attached, stating the number of shares of each class;<sup>477</sup>
  14. limitation of shareholders' voting and proxy rights;<sup>478</sup>
  15. cases not provided for by law in which the general meeting may pass resolutions only by a qualified majority;<sup>479</sup>

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<sup>468</sup> Article 280(1)(4) amended by LGBL 2009 No. 4.

<sup>469</sup> Article 280(1)(5) amended by LGBL 2000 No. 279.

<sup>470</sup> Article 280(1)(6) amended by LGBL 2000 No. 279.

<sup>471</sup> Article 280(1)(7) amended by LGBL 2000 No. 279.

<sup>472</sup> Article 280(1)(8) amended by LGBL 2000 No. 279.

<sup>473</sup> Article 280(1)(9) amended by LGBL 2000 No. 279.

<sup>474</sup> Article 280(1)(10) amended by LGBL 2000 No. 279.

<sup>475</sup> Article 280(1)(11) amended by LGBL 2000 No. 279.

<sup>476</sup> Article 280(1)(12) amended by LGBL 2000 No. 279.

<sup>477</sup> Article 280(1)(13) amended by LGBL 2000 No. 279.

<sup>478</sup> Article 280(1)(14) amended by LGBL 2000 No. 279.

<sup>479</sup> Article 280(1)(15) amended by LGBL 2000 No. 279.

16. authorisation to delegate individual powers of the administration to individual members or third parties and the appointment of a directorate;<sup>480</sup>
17. rules going beyond the legislative provisions concerning the organisation of the audit office and the extension of the audit office's powers and duties;<sup>481</sup>
18. rules supplementing the legislative provisions on accounting and auditing and on the calculation and payout of profits.<sup>482</sup>

2) The provisions and information referred to in paragraph 1(1) to (6), (9), (12), and (13) must be provided for in the articles of association themselves or in by-laws to be notarised and announced in accordance with Article 956(2).<sup>483</sup>

### *B. Formation*

#### *I. Successive formation*

#### Article 281

##### *1. Formation requirements in general*

1) Without prejudice to simultaneous formation, the formation of a public limited company requires:

1. specification of the articles of association by the founders in a public document, the draft articles of association being signed by the founders;<sup>484</sup>
2. subscription of the shares constituting the share capital;<sup>485</sup>
3. the resolution of the general meeting of subscribers to approve the subscriptions and payments made, as well as to appoint the necessary bodies of the company.

2) At the time of formation, the public limited company must have at least two founders.<sup>486</sup>

<sup>480</sup> Article 280(1)(16) amended by LGBL 2000 No. 279.

<sup>481</sup> Article 280(1)(17) amended by LGBL 2000 No. 279.

<sup>482</sup> Article 280(1)(18) amended by LGBL 2000 No. 279.

<sup>483</sup> Article 280(2) amended by LGBL 2022 No. 227.

<sup>484</sup> Article 281(1)(1) amended by LGBL 2000 No. 279.

<sup>485</sup> Article 281(1)(2) amended by LGBL 2000 No. 279.

<sup>486</sup> Article 281(2) inserted by LGBL 2000 No. 279.

## *2. Subscription of shares*

### Article 282<sup>487</sup>

#### *a) Public invitation to subscribe*

Repealed

### Article 283

#### *b) Subscription and payment*

1) In order to be valid, share subscriptions, including non-cash contributions, require a written declaration referring to the draft articles of association and, in the case of public subscription, to the prospectus.

2) Except for the tacit condition of the successful formation of the public limited company, they must not be subject to conditions and they must contain the issue price and the time up to which the subscription remains binding.

3) At the time of subscription or at the latest at the constituent general meeting, an amount of at least 25% of the subscribed share capital must be paid up for each share at a place to be indicated in the invitation for the exclusive disposal of the future administration of the company, to the extent that the amount owed by the subscribers for the minimum payment is covered for the non-cash assets to be taken over by the company.<sup>488</sup>

### Article 284

#### *3. Constitutive resolution*

1) After the end of the share subscription, a general meeting of subscribers to be convened in accordance with the provisions set out by law and in the articles of association shall, on the basis of the certifications to be submitted to it, resolve that the share capital is fully subscribed and that the minimum amount set out in the articles of association, but at least 25% for each share, is paid up in cash or covered by the non-cash contributions described in more detail in the articles of association.<sup>489</sup>

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<sup>487</sup> Article 282 repealed by LGBl. 1997 No. 210.

<sup>488</sup> Article 283(3) amended by LGBl. 2000 No. 279.

<sup>489</sup> Article 284(1) amended by LGBl. 2000 No. 279.

2) Furthermore, the necessary bodies shall be designated at the same meeting, and the draft articles of association on which the share subscription is based shall be discussed and conclusively established, significant changes being made only with the consent of all subscribers represented at the general meeting.

3) The draft shall be put to the vote and a public document shall be drawn up for the resolution and the final version of the articles of association.<sup>490</sup>

#### *4. Procedure relating to non-cash contributions and asset acquisitions*<sup>491</sup>

##### Article 285

###### *a) Expert report*<sup>492</sup>

1) If the contribution of items of property or rights is to be made by offsetting against part of the share capital, or if special advantages are to be granted to individual shareholders, an expert must report in writing to the general meeting before the resolution is voted on.<sup>493</sup>

2) The expert report to the general meeting must contain:

1. the description of the object of each contribution;
2. the valuation methods used to determine the value of the contributions;
3. information as to whether the values determined correspond at least to the number and the nominal amount or the notional par value and, if applicable, the surplus amount of the shares to be issued for this purpose;
4. information on the advantages granted to founders and their reason and appropriateness.<sup>494</sup>

3) The original or certified copy of this report must be available for inspection at every subscription agent from the beginning of the subscription period. It must be announced in accordance with Article 956(2).<sup>495</sup>

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<sup>490</sup> Article 284(3) amended by LGBl. 2000 No. 279.

<sup>491</sup> Heading preceding Article 285 amended by LGBl. 2000 No. 279.

<sup>492</sup> Article 285 heading amended by LGBl. 2000 No. 279.

<sup>493</sup> Article 285(1) amended by LGBl. 2000 No. 279.

<sup>494</sup> Article 285(2) amended by LGBl. 2000 No. 279.

<sup>495</sup> Article 285(3) amended by LGBl. 2022 No. 227.

Article 285a<sup>496</sup>*b) Asset acquisitions*

1) The acquisition of assets from the founders that correspond to an equivalent value of more than one tenth of the subscribed capital shall be treated equivalent to non-cash contributions.

2) If such asset acquisitions are made within two years of the company's formation, they require the approval of the general meeting.

3) Paragraphs 1 and 2 do not apply to the acquisition of assets in the course of the company's day-to-day business, to the acquisition of assets on an exchange, and to acquisitions effected by order or under the supervision of an administrative authority or a court.

## Article 286

*c) Exceptions<sup>497</sup>*

An expert report as referred to in Article 285(1) may be waived if nine tenths of the nominal or notional par value (in the case of non-par value shares) of all shares are issued to one or more companies with legal personality against non-cash contributions and if:<sup>498</sup>

1. the founders waive the preparation of the expert report and this waiver is announced in accordance with Article 956(2);<sup>499</sup>
2. the contributing companies have reserves which, pursuant to the law or the articles of association, cannot be distributed and which correspond at least to the nominal value or the notional par value (in the case of non-par value shares) of the shares issued against the non-cash contributions;<sup>500</sup>
3. the contributing companies undertake to be liable for the debts of the company up to the amount specified under point 2 above which arise from the time of the issue of the shares against non-cash contributions up to one year after the announcement of the annual accounts relating to the financial year in which the contributions were made, any transfer

<sup>496</sup> Article 285a inserted by LGBl. 2000 No. 279.

<sup>497</sup> Article 286 heading amended by LGBl. 2000 No. 279.

<sup>498</sup> Article 286 introductory phrase amended by LGBl. 2000 No. 279.

<sup>499</sup> Article 286(1) amended by LGBl. 2022 No. 227.

<sup>500</sup> Article 286(2) amended by LGBl. 2000 No. 279.

of these shares within this period being inadmissible, and this obligation being announced in accordance with Article 956(2);<sup>501</sup>

4. the contributing companies form a reserve in the amount referred to in point 2 above. The distribution of this reserve may take place at the earliest three years after the announcement of the annual accounts of the company relating to the financial year in which the contributions were made or, if applicable, at a later time after which all claims asserted within the period arising from the obligations referred to under point 3 above have been fulfilled.<sup>502</sup>

Article 286a<sup>503</sup>

*d) Simplified report*

1) An expert report as referred to in Article 285 may be waived if the board of directors determines by resolution that:

1. negotiable securities or money market instruments as defined in Directive 2014/65/EU are contributed in kind and their valuation corresponds to the weighted average price on a regulated market as defined in that directive or other exchange venue in the 30 days preceding the actual contribution. If the average price has been affected by exceptional circumstances causing a material change in the value of the contribution at the time it is actually made, the board of directors shall revalue the contribution; Article 285 shall apply *mutatis mutandis* to this revaluation;<sup>504</sup>
2. assets other than those referred to in point 1 are contributed in kind and have already been valued by a recognised expert. The valuation must be in accordance with generally accepted valuation principles and may not have been carried out more than six months before the actual date of contribution. If material new circumstances arise which significantly change the indicated fair value of the asset at the date of its actual contribution, the board of directors shall revalue the asset; Article 285 shall apply *mutatis mutandis* to this revaluation;
3. assets other than those referred to in points 1 and 2 are contributed in kind, the valuation of which is shown in the statement of assets in the statutory annual accounts for the previous financial year, provided that the accounts have been audited in accordance with the provisions of

<sup>501</sup> Article 286(3) amended by LGBL 2022 No. 227.

<sup>502</sup> Article 286(4) amended by LGBL 2000 No. 279.

<sup>503</sup> Article 286a amended by LGBL 2009 No. 4.

<sup>504</sup> Article 286a(1)(1) amended by LGBL 2017 No. 420.

Title 20 (Accounting). If the indicated fair value has been affected by exceptional circumstances causing a material change in the value of the contribution at the time it is actually made, the board of directors shall revalue the asset; Article 285 shall apply *mutatis mutandis* to this revaluation.

2) If no revaluation was performed pursuant to paragraph 1, one or more shareholders who together hold at least more than 5% of the company's subscribed capital on the day of the resolution concerning a capital increase may apply for an expert valuation pursuant to Article 285. This application may be submitted by the entitled persons until the date of the actual contribution in kind, provided that the entitled persons together hold at least 5% of the subscribed capital of the company at the time of the application, as previously on the day of the resolution concerning a capital increase.

3) If a contribution in kind has been made in accordance with paragraph 1(1) or (2), a report must be filed with the Office of Justice within one month of the actual contribution of the assets; this report must be announced in accordance with Article 956(2) and contain the following:<sup>505</sup>

1. a description of the contribution in kind concerned;
2. the value, basis and, where applicable, method of the valuation;
3. information as to whether the value determined corresponds at least to the number and the nominal amount or – if no nominal amount is available – the notional par value and, if applicable, the surplus amount of the shares to be issued for such a contribution in kind;
4. a statement that no new material circumstances have arisen in relation to the original assessment.

#### Article 286b<sup>506</sup>

##### *e) Deadline for making a contribution in kind*

Non-cash contributions must be made in full within five years of the company's entry in the Commercial Register.

<sup>505</sup> Article 286a(3) amended by LGBl. 2022 No. 227.

<sup>506</sup> Article 286b amended by LGBl. 2013 No. 6.

## Article 287

*f) Resolution of the general meeting*<sup>507</sup>

1) The provisions of the articles of association concerning non-cash contributions, acquisitions, and founder's benefits require special approval at the general meeting to be held after the end of the share subscription, to which the following provisions apply by law:

1. at the vote, each person present shall have only one vote;
2. there must be a special vote on each item, and the member who makes the contribution in question or appears as the seller of an investment to the company or claims special benefits may not cast a vote either on that member's own behalf or as a proxy;
3. the approval of the contribution or acquisition or benefit must take place with a majority of at least three quarters of the votes present or represented;
4. a public document, or a document signed by all members voting in favour, shall be drawn up, and the original of the expert report shall be attached.<sup>508</sup>

2) This article does not apply if no public subscription of shares has taken place.<sup>509</sup>

3) The judge may, at the request of founders in special non-contentious proceedings, grant exemptions from the provisions set out in the first paragraph, for example if all founders make non-cash contributions or if the required majority of the founders entitled to vote who are not involved in the contributions, acquisitions, or benefits could otherwise not be reached.<sup>510</sup>

*II. Simultaneous formation*

## Article 288

*1. Formation of the company*

1) The formation of a public limited company may be effected in such a way that all founders, at least two in number, declare in a public document signed by them that they intend to form a public limited

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<sup>507</sup> Article 287 heading amended by LGBL 2009 No. 4.

<sup>508</sup> Article 287(1)(4) amended by LGBL 2000 No. 279.

<sup>509</sup> Article 287(2) amended by LGBL 2000 No. 279.

<sup>510</sup> Article 287(3) amended by LGBL 2010 No. 454.

company, and at the same time stipulate the articles of association thereof in that public document, confirm the acquisition of all shares and the payment of at least 25% or, if applicable, more for each share, either in cash or by the transfer of non-cash contributions according to the expert report on the basis of bank records and the like, approve the granting of founder's benefits, and appoint the necessary bodies of the company.<sup>511</sup>

2) The drawing up of such a document shall take the place of the constituent general meeting.

3) If the contribution of items of property or rights is to be made by offsetting against part of the share capital, an expert must report in writing to the founder's meeting before the resolution is voted on. The report must describe the object of each contribution, indicate the valuation methods used to determine the value and whether the values to which these procedures give rise correspond at least to the number and the nominal amount or notional par value (in the case of non-par value shares) and, if applicable, the surplus amount of the shares to be issued for this purpose. The report must be announced in accordance with Article 956(2).<sup>512</sup>

4) Articles 285 to 286b apply.<sup>513</sup>

Article 289<sup>514</sup>

Repealed

### *III. Entry of the company in the Commercial Register*

Article 290

#### *1. Registration for entry*

1) The registration by the members of the administration with signing authority must, together with the complete instrument of formation, be accompanied by an original or certified copy of the articles of association and the minutes of the general meeting or of the public document or a declaration containing:

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<sup>511</sup> Article 288(1) amended by LGBL 2000 No. 279.

<sup>512</sup> Article 288(3) amended by LGBL 2022 No. 227.

<sup>513</sup> Article 288(4) amended by LGBL 2009 No. 4.

<sup>514</sup> Article 289 repealed by LGBL 2017 No. 204.

1. the determination that the entire amount of the share capital is covered by signatures, subject to the issue below nominal value and the authorisation of the administration to issue further share capital without a resolution of the general meeting;
2. the determination that at least 25% or a higher minimum amount set out in the articles of association is actually paid up or covered by non-cash contributions for each share;
3. evidence that the administration and the audit office have been appointed, stating the surnames, first names, and domiciles, and in the case of the members of the administration also their nationalities, or the legal name and registered office of the members;
4. where applicable, the resolutions of the general meeting regarding contributions, acquisitions, and founder's benefits and the associated expert reports.<sup>515</sup>

2) If representatives are appointed by the administration, they must also be registered, where applicable accompanied by the minutes of the administration.

3) The articles of association and the minutes of the general meeting or the public document or declaration must be announced after successful entry in accordance with Article 956(2).<sup>516</sup>

#### Article 291

##### *2. Entry and publication*<sup>517</sup>

1) The following must be entered in the Commercial Register and published in the official publication medium:<sup>518</sup>

1. the date of approval of the articles of association;
2. the legal name, legal form, and registered office of the company;
3. the object and, if applicable, the duration of the company;
4. the amount of the share capital and the amount of contributions made to it;

<sup>515</sup> Article 290(1) amended by LGBL 2000 No. 279.

<sup>516</sup> Article 290(3) amended by LGBL 2022 No. 227.

<sup>517</sup> Article 291 heading amended by LGBL 2000 No. 279.

<sup>518</sup> Article 291(1) introductory phrase amended by LGBL 2022 No. 227.

5. the number, nominal value or quota, as well as the type of shares, the restriction on transferability, and the preferential rights and conversion rights of individual categories;<sup>519</sup>
6. the object of the contribution in kind and the shares issued for that contribution, the object of the asset acquisition and the consideration of the company, as well as the content and value of the special benefits;
7. the number of profit-sharing certificates and the content of the associated rights;
8. the members of the administration, supervision, and the representatives, stating their surnames, first names, domiciles, and nationalities, or the legal name and registered office;
9. the manner in which representation is exercised;
10. the name or the legal name of the audit office, stating the domicile, registered office, or a branch entered in the Commercial Register;<sup>520</sup>
11. the form in which the company's announcements are made to shareholders and third parties;
12. the balance sheet date.<sup>521</sup>

2) In the case of public limited companies which do not conduct business in a commercial manner, announcement of the entry in accordance with Article 956(1) is sufficient.<sup>522</sup>

#### *IV. Branches*<sup>523</sup>

##### Article 291a

###### *1. Registered office in the European Economic Area*<sup>524</sup>

1) Branches of public limited companies with registered offices in the European Economic Area must be entered in the Commercial Register with reference to the entry of the company.<sup>525</sup>

2) The registration shall be made by a member of the administration with individual signing authority or by two members with joint signing

<sup>519</sup> Article 291(1)(5) amended by LGBL 2022 No. 227.

<sup>520</sup> Article 291(1)(10) amended by LGBL 2013 No. 6.

<sup>521</sup> Article 291(1)(12) inserted by LGBL 2019 No. 258.

<sup>522</sup> Article 291(2) amended by LGBL 2022 No. 227.

<sup>523</sup> Heading preceding Article 291a inserted by LGBL 2000 No. 279.

<sup>524</sup> Article 291a heading inserted by LGBL 2000 No. 279.

<sup>525</sup> Article 291a(1) amended by LGBL 2013 No. 6.

authority, with an extract from the register of the company or the equivalent.<sup>526</sup>

2a) The Office of Justice may check the information on the company via the European system of interconnection of registers.<sup>527</sup>

3) The following must be entered in the Commercial Register and published in the official publication medium:<sup>528</sup>

1. the address of the branch;
2. the object of the branch;
3. the register and the registration number of the entry of the principal place of business;
4. the legal name of the principal place of business and the legal name of the branch, if different from that of the principal place of business;
5. the members of the administration and the persons appointed to represent the principal place of business, stating their surnames, first names, domiciles, and nationalities, or the legal name and registered office;
6. persons of the branch appointed to act as permanent representatives, stating their surnames, first names, domiciles, nationalities, and powers;
7. where applicable, the dissolution of the principal place of business, the surnames, first names, and domiciles of the liquidators as well as the completion of the liquidation or the removal of the company;
8. any insolvency or similar proceedings concerning the principal place of business;<sup>529</sup>
9. the dissolution of the branch.

4) If the Office of Justice receives notification of a change at the company via the European system of interconnection of registers (Article 993(3)), it must, if no registration has yet been made in respect of the notified changes when the notification is received, immediately request the company to register the changed facts.<sup>530</sup>

5) The accounting documents of the principal place of business must be disclosed in accordance with Article 1128, unless they are disclosed in

<sup>526</sup> Article 291a(2) amended by LGBL 2003 No. 63.

<sup>527</sup> Article 291a(2a) inserted by LGBL 2024 No. 17.

<sup>528</sup> Article 291a(3) introductory phrase amended by LGBL 2022 No. 227.

<sup>529</sup> Article 291a(3)(8) amended by LGBL 2020 No. 369.

<sup>530</sup> Article 291a(4) amended by LGBL 2024 No. 17.

the EEA Member State in which the principal place of business is registered.<sup>531</sup>

6) If several branches of the same principal place of business exist, it suffices to announce the documents in accordance with Article 956(2) for one of the branches. For the other branches, the announcement shall be limited to the registration number of the branch which publishes the aforementioned documents.<sup>532</sup>

7) If the disclosure for the branch differs from the disclosure for the foreign principal place of business, the disclosure for the branch is controlling for business transactions with the branch.<sup>533</sup>

#### Article 291b

##### *2. Registered office outside the European Economic Area*<sup>534</sup>

1) If a public limited company or a company whose legal form is comparable with that of a public limited company has branches in addition to its registered office outside the European Economic Area, the following provisions must be observed in addition to the provisions set out in Article 291a.<sup>535</sup>

2) The act of formation and, if they are the object of a separate act, the articles of association of the principal place of business as well as any amendment of these documents must be submitted to the Commercial Register and announced in accordance with Article 956(2).<sup>536</sup>

3) In addition, the following must be entered in the Commercial Register and published:<sup>537 538</sup>

1. the law of the state to which the principal place of business is subject;
2. the legal form, the registered office, and the object of the principal place of business as well as, annually, the amount of the share capital, unless this information is provided in the documents referred to in paragraph 2;

<sup>531</sup> Article 291a(5) amended by LGBL 2024 No. 17.

<sup>532</sup> Article 291a(6) amended by LGBL 2022 No. 227.

<sup>533</sup> Article 291a(7) inserted by LGBL 2000 No. 279.

<sup>534</sup> Article 291b heading inserted by LGBL 2000 No. 279.

<sup>535</sup> Article 291b(1) inserted by LGBL 2000 No. 279.

<sup>536</sup> Article 291b(2) amended by LGBL 2022 No. 227.

<sup>537</sup> Article 291b(3) inserted by LGBL 2000 No. 279.

<sup>538</sup> Article 291b(3) introductory phrase amended by LGBL 2013 No. 6.

3. the scope of the power of representation of the administration and the representatives of the principal place of business as well as the manner in which representation is exercised at the principal place of business;
4. the manner in which representation is exercised at the branch.

Article 291c<sup>539</sup>

*V. Conversion into a public limited company*

For the conversion of a legal person into a public limited company, the provisions concerning the form and content of the articles of association, the object of the company, the founder's liability, the minimum capital, the contributions in cash or in kind, and the obligation to contribute must be observed as in the case of the formation of a public limited company.

*C. Protection of share capital and shareholders*<sup>540</sup>

*I. Protection of vested rights*<sup>541</sup>

Article 292

*1. Protection of the individual*

1) Vested rights of one or more shareholders are those claims under law or the articles of association which are independent of the resolutions of the general meeting and the administration according to the provisions of the law or the articles of association, or which constitute a prerequisite for participation in the general meeting.

2) These include membership, voting rights, the right of challenge, the right to building interest, dividends, and a share in the liquidation proceeds, unless the articles of association restrict or exclude individual claims within the scope of this Act.

3) Shareholders shall be treated equally under the same conditions.<sup>542</sup>

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<sup>539</sup> Article 291c inserted by LGBl. 2000 No. 279.

<sup>540</sup> Heading preceding Article 292 amended by LGBl. 2000 No. 279.

<sup>541</sup> Heading preceding Article 292 amended by LGBl. 2000 No. 279.

<sup>542</sup> Article 292(3) inserted by LGBl. 2000 No. 279.

## Article 293

*2. Requirement of qualified majority of the general meeting*

In the absence of provisions to the contrary in the articles of association, the approval of three quarters of the votes represented at a general meeting, and at least the representative of two thirds of all shares, is required for the validity of a resolution of the general meeting in the following cases:

1. conversion of the company purpose;
2. transformation of the public limited company into another form of legal person;
3. the removal of requirements provided for in the articles of association which make it more difficult to pass resolutions of the general meeting.

## Article 294

*II. Business expansion and business contraction*<sup>543</sup>

1) Unless the articles of association or the law provide otherwise, an expansion of the company's field of business by including related objects or a contraction of the company's field of business, changes to the legal name or registered office of the company, or dissolution before the date stipulated in the articles of association may be resolved only at a general meeting in which at least two thirds of all shares are represented.<sup>544</sup>

2) If two thirds of all shares are not represented at a first general meeting, a second meeting must be convened at least eight days in the future, at which the resolutions referred to in the preceding article or in this article may be passed, even if only one third of all shares are represented.

*III. Issue of new shares*

## Article 295

*1. General preconditions*

1) Unless special rules are set out below, an existing public limited company may issue new shares only under observation of the provisions

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<sup>543</sup> Article 294 heading amended by LGBl. 2000 No. 279.

<sup>544</sup> Article 294(1) amended by LGBl. 2000 No. 279.

laid down for the formation of a public limited company, without the share capital specified in the articles of association having to be fully paid up.<sup>545</sup>

2) If shares have been issued below the nominal value, new shares of this type may be issued again only after the shortfall resulting from the sub-par issue has been covered by reserves or profit.

3) Registration for entry in the Commercial Register is sufficient, however, if it is made by a person authorised to represent or sign.<sup>546</sup>

4) Share subscriptions must be made with reference to the resolution approving the capital increase.

5) If a capital increase is not fully subscribed, the capital shall be increased by the amount of the subscriptions received only if the terms of issue expressly so provide.<sup>547</sup>

6) The capital increase may be carried out alone or in conjunction with a reduction of the existing share capital, for example in the case of recovery measures.<sup>548</sup>

7) The resolution approving the capital increase as well as the implementation of the increase must be announced in accordance with Article 956(2).<sup>549</sup>

## 2. *Authorised capital*<sup>550</sup>

### Article 295a

#### a) *General preconditions*<sup>551</sup>

1) The general meeting may, insofar as the authorisation is not already included in the act of formation or in the articles of association, authorise the board of directors to increase the share capital up to a certain amount by amending the articles of association. The articles of association state the nominal amount or notional par value (in the case of non-par value shares)

545 Article 295(1) amended by LGBL 2000 No. 279.

546 Article 295(3) amended by LGBL 2013 No. 6.

547 Article 295(5) amended by LGBL 2000 No. 279.

548 Article 295(6) inserted by LGBL 2000 No. 279.

549 Article 295(7) amended by LGBL 2022 No. 227.

550 Heading preceding Article 295a inserted by LGBL 2000 No. 279.

551 Article 295a heading inserted by LGBL 2000 No. 279.

by which the board of directors may increase the share capital. The authorised capital may not exceed half of the previous share capital.<sup>552</sup>

2) The authorisation may be granted for at most five years. It may be extended by the general meeting for at most five years at a time. It must be announced in accordance with Article 956(2).<sup>553</sup>

#### Article 295b<sup>554</sup>

##### *b) Adjustment of articles of association*

1) After each capital increase, the board of directors shall reduce the nominal amount or the notional par value (in the case of non-par value shares) of the authorised capital in the articles of association accordingly.

2) Upon expiry of the period stipulated for the implementation of the capital increase, the provision on the authorised capital increase shall be deleted from the articles of association by resolution of the board of directors.

### *3. Consideration for non-cash contributions and rights*<sup>555</sup>

#### Article 296

##### *a) In general*<sup>556</sup>

1) If the issue of new shares is consideration for the contribution of items of property or rights, the resolution on the capital increase and the approval of non-cash contributions and rights may be passed only at a general meeting at which at least two thirds of the share capital are represented, after deduction of the part in possession of non-cash contributions, and the majority must be at least two thirds of the votes represented.

2) Shareholders involved in the contribution of items of property or rights are not counted and have no voting rights.

3) Information on the contributed items of property and rights must be included in the articles of association and, as with the formation of the

<sup>552</sup> Article 295a(1) inserted by LGBL 2000 No. 279.

<sup>553</sup> Article 295a(2) amended by LGBL 2022 No. 227.

<sup>554</sup> Article 295b inserted by LGBL 2000 No. 279.

<sup>555</sup> Heading preceding Article 296 amended by LGBL 2000 No. 279.

<sup>556</sup> Article 296 heading amended by LGBL 2000 No. 279.

company, an expert must report in writing to the general meeting before the resolution is voted on. The report must describe the object of each contribution, indicate the valuation methods used to determine the value and whether the values to which these procedures give rise correspond at least to the number and the nominal amount or notional par value (in the case of non-par value shares) and, if applicable, the surplus amount of the shares to be issued for this purpose.<sup>557</sup>

4) If, as part of an authorised capital increase, the non-cash contributions are known at the time of the authorisation, the expert report shall be submitted to the general meeting before the resolution is voted on, otherwise to the board of directors.<sup>558</sup>

5) The original or certified copy of this report must be available for inspection at every subscription location from the beginning of the subscription period. It must be announced in accordance with Article 956(2).<sup>559</sup>

6) Paragraphs 3 to 5 do not apply if the capital increase is for the implementation of a merger for which a report of an independent expert on the terms of merger is prepared in accordance with Article 351c, a public takeover, or an exchange offer with the purpose of paying the consideration to the shareholders of one of the participating companies.<sup>560</sup>

#### Article 296a

##### *b) Exceptions to the expert report<sup>561</sup>*

An expert report as referred to in Article 296(3) may be waived if all the shares are issued to one or more companies with legal personality against non-cash contributions and if:<sup>562</sup>

1. all shareholders of the receiving company waive the preparation of the expert report and this waiver is announced in accordance with Article 956(2);<sup>563</sup>
2. the contributing companies have reserves which, pursuant to the law or the articles of association, cannot be distributed and which correspond at least to the nominal value or the notional par value (in

<sup>557</sup> Article 296(3) amended by LGBL 2000 No. 279.

<sup>558</sup> Article 296(4) amended by LGBL 2000 No. 279.

<sup>559</sup> Article 296(5) amended by LGBL 2022 No. 227.

<sup>560</sup> Article 296(6) amended by LGBL 2011 No. 537.

<sup>561</sup> Article 296a heading inserted by LGBL 2000 No. 279.

<sup>562</sup> Article 296a introductory phrase inserted by LGBL 2000 No. 279.

<sup>563</sup> Article 296a(1) amended by LGBL 2022 No. 227.

the case of non-par value shares) of the shares issued against the non-cash contributions;<sup>564</sup>

3. the contributing companies undertake to be liable for the debts of the company up to the amount specified under point 2 above which arise from the time of the issue of the shares against non-cash contributions up to one year after the announcement of the annual accounts relating to the financial year in which the contributions were made, any transfer of these shares within this period being inadmissible, and this obligation being announced in accordance with Article 956(2);<sup>565</sup>
4. the contributing companies form a reserve in the amount referred to in point 2 above. The distribution of this reserve may take place at the earliest three years after the announcement of the annual accounts of the company relating to the financial year in which the contributions were made or, if applicable, at a later time after which all claims asserted within the period arising from the obligations referred to under point 3 above have been fulfilled.<sup>566</sup>

Article 296b<sup>567</sup>

c) *Simplified report*

1) An expert report as referred to in Article 296(3) may be waived if the board of directors determines by resolution that:

1. negotiable securities or money market instruments as defined in Directive 2014/65/EU are contributed in kind and their valuation corresponds to the weighted average price on a regulated market as defined in that directive or other exchange venue in the 30 days preceding the actual contribution. If the average price has been affected by exceptional circumstances causing a material change in the value of the contribution at the time it is actually made, the board of directors shall revalue the contribution; Article 296(3) shall apply *mutatis mutandis* to this revaluation;<sup>568</sup>
2. assets other than those referred to in point 1 are contributed in kind and have already been valued by a recognised expert. The valuation must be in accordance with generally accepted valuation principles and may not have been carried out more than six months before the actual date of contribution. If material new circumstances arise which

<sup>564</sup> Article 296a(2) inserted by LGBL 2000 No. 279.

<sup>565</sup> Article 296a(3) amended by LGBL 2022 No. 227.

<sup>566</sup> Article 296a(4) inserted by LGBL 2000 No. 279.

<sup>567</sup> Article 296b amended by LGBL 2009 No. 4.

<sup>568</sup> Article 296b(1)(1) amended by LGBL 2017 No. 420.

significantly change the indicated fair value of the asset at the date of its actual contribution, the board of directors shall revalue the asset; Article 296(3) shall apply *mutatis mutandis* to this revaluation;

3. assets other than those referred to in points 1 and 2 are contributed in kind, the valuation of which is shown in the statement of assets in the statutory annual accounts for the previous financial year, provided that the accounts have been audited in accordance with the provisions of Title 20 (Accounting). If the indicated fair value has been affected by exceptional circumstances causing a material change in the value of the contribution at the time it is actually made, the board of directors shall revalue the asset; Article 296(3) shall apply *mutatis mutandis* to this revaluation.

2) If no revaluation was performed pursuant to paragraph 1, one or more shareholders who together hold at least more than 5% of the company's subscribed capital on the day of the resolution concerning a capital increase may apply for an expert valuation pursuant to Article 296(3). This application may be submitted by the entitled persons until the date of the actual contribution in kind, provided that the entitled persons together hold at least 5% of the subscribed capital of the company at the time of the application, as previously on the day of the resolution concerning a capital increase.

3) If a contribution in kind has been made in accordance with paragraph 1, a report must be filed with the Office of Justice within one month of the actual contribution of the assets; this report must be announced in accordance with Article 956(2) and contain the following:<sup>569</sup>

1. a description of the contribution in kind concerned;
2. the value, basis and, where applicable, method of the valuation;
3. information as to whether the value determined corresponds at least to the number and the nominal amount or – if no nominal amount is available – the notional par value and, if applicable, the surplus amount of the shares to be issued for such a contribution in kind;
4. a statement that no new material circumstances have arisen in relation to the original assessment.

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<sup>569</sup> Article 296b(3) amended by LGBL 2022 No. 227.

Article 296c<sup>570</sup>*d) Deadline for making a contribution in kind*

Non-cash contributions must be made in full within five years of the capital increase resolution.

## Article 297

*4. Issue without contribution in cash or in kind*<sup>571</sup>

The issue of new shares, whether they are to be added to the old ones or to replace the old ones in equal or modified number or quota or in equal or modified amount, may take place without payment of cash capital and without contribution of items of property:

1. if shares with or without preference are issued to the approving creditors in lieu of company debts (debt repayment by shares);<sup>572</sup>
- 1a. if conversion rights are exercised as part of a conditional capital increase;<sup>573</sup>
2. by using the reserve fund, other provisions, and retained profits, to the extent that a minimum reserve is not required by law (restamping upwards or increase);
3. by adjusting the nominal value to the actual value of the assets, such as in particular in the case of monetary devaluation and conversion of the undisclosed reserves contained therein into shares (revaluation or renumbering upwards);
4. by reducing the share capital and the amount of the shares (restamping downwards or devaluation);<sup>574</sup>
5. by changing the share capital or part thereof into another currency and likewise the nominal values of the shares or share quota (restamping);<sup>575</sup>
6. conversion of preference shares into fully entitled ordinary shares and the like.

<sup>570</sup> Article 296c inserted by LGBl. 2009 No. 4.

<sup>571</sup> Article 297 heading amended by LGBl. 2000 No. 279.

<sup>572</sup> Article 297(1) amended by LGBl. 2000 No. 279.

<sup>573</sup> Article 297(1a) inserted by LGBl. 2000 No. 279.

<sup>574</sup> Article 297(4) amended by LGBl. 2000 No. 279.

<sup>575</sup> Article 297(5) amended by LGBl. 2000 No. 279.

5. *Conditional capital increase*<sup>576</sup>

Article 297a<sup>577</sup>

*a) Principle*

1) The general meeting may by resolution decide on a conditional capital increase by granting, in the articles of association, the creditors of new bonds or similar debt instruments vis-à-vis the company or its group companies and employees the right to subscribe for new shares (conversion or option rights).

2) The share capital shall increase without further action at the time and to the extent that these conversion or option rights are exercised and the contribution obligations are fulfilled by offsetting or payment.

Article 297b<sup>578</sup>

*b) Thresholds*

1) The nominal amount or the notional par value (for non-par value shares) by which the share capital may be conditionally increased may not exceed half of the previous share capital.

2) The contribution made must at least correspond to the nominal value or the notional par value (in the case of non-par value shares).

Article 297c<sup>579</sup>

*c) Basis in the articles of association*

1) The articles of association must state:

1. the nominal amount or the notional par value of the conditional capital increase;
2. the number, nominal value or quota, and type of shares;
3. the group of persons with conversion or option rights;
4. cancellation of the subscription rights of previous shareholders;
5. the preferential rights of individual categories of shares;

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<sup>576</sup> Heading preceding Article 297a inserted by LGBL 2000 No. 279.

<sup>577</sup> Article 297a inserted by LGBL 2000 No. 279.

<sup>578</sup> Article 297b inserted by LGBL 2000 No. 279.

<sup>579</sup> Article 297c inserted by LGBL 2000 No. 279.

6. restrictions on the transferability of new registered shares.

2) If the bonds or similar debt instruments with conversion or option rights are not offered in advance to the shareholders for subscription, the articles of association must also state the following:

1. the conditions for exercising the conversion or option rights;
2. the basis on which the issue price is to be calculated.

3) Conversion or option rights granted prior to entry in the Commercial Register of the provisions of the articles of association concerning the conditional capital increase are null and void.<sup>580</sup>

Article 297d<sup>581</sup>

*d) Protection of shareholders*

1) If bonds or similar debt instruments with conversion or option rights are to be issued for the purpose of a conditional capital increase, these debt instruments must first be offered to the shareholders for subscription in accordance with their previous participation pursuant to Article 303 and Article 303a.

2) This right of advance subscription may be limited or withdrawn pursuant to Article 303b.

3) The cancellation of subscription rights necessary for a conditional capital increase and the restriction or cancellation of shareholders' advance subscription rights for bonds or similar debt instruments with conversion or option rights may not place anyone at an undue advantage or disadvantage.

Article 297e<sup>582</sup>

*e) Protection of persons with conversion or option rights*

1) A creditor or employee entitled to a conversion or option right to acquire registered shares may not be denied the exercise of that right due to a restriction on the transferability of registered shares, unless this is reserved in the articles of association and the issue prospectus.

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<sup>580</sup> Article 297c(3) amended by LGBl. 2013 No. 6.

<sup>581</sup> Article 297d inserted by LGBl. 2000 No. 279.

<sup>582</sup> Article 297e inserted by LGBl. 2000 No. 279.

2) Conversion or option rights may be impaired by increasing the share capital, issuing new conversion or option rights, or in any other way only if the conversion price is reduced or appropriate compensation is otherwise granted to the beneficiaries or if the same impairment also affects the shareholders.

*f) Execution of the capital increase*<sup>583</sup>

Article 297f

*aa) Exercise of rights; contribution*<sup>584</sup>

1) Conversion or option rights are exercised by means of a written declaration referring to the provision of the articles of association concerning the conditional capital increase; if the law requires an issue prospectus, the declaration shall also refer to that prospectus.<sup>585</sup>

2) The contribution must be made by cash or offsetting with a bank as defined in Article 4(1)(a) of the Banking Act.<sup>586</sup>

3) Shareholder rights arise upon fulfilment of the obligation to make the contribution.<sup>587</sup>

Article 297g<sup>588</sup>

*bb) Confirmation of compliance*

1) After the end of each financial year, and at the request of the board of directors even at an earlier date, an expert shall verify whether the issue of the new shares has complied with the law, the articles of association and, where applicable, the issue prospectus.

2) The expert shall confirm this in writing.

583 Heading preceding Article 297f inserted by LGBL 2000 No. 279.

584 Article 297f heading inserted by LGBL 2000 No. 279.

585 Article 297f(1) inserted by LGBL 2000 No. 279.

586 Article 297f(2) amended by LGBL 2025 No. 98.

587 Article 297f(3) inserted by LGBL 2000 No. 279.

588 Article 297g inserted by LGBL 2000 No. 279.

Article 297h<sup>589</sup>*cc) Adjustment of the articles of association*

1) Upon receipt of the confirmation of compliance, the board of directors shall determine in a public document the number, nominal value or quota, and type of the newly issued shares as well as the preferential rights of individual categories and the balance of the share capital at the end of the financial year or at the time of the confirmation. The board of directors shall make the necessary adjustments to the articles of association.

2) In the public document, the notary public shall state that the confirmation of compliance contains the required information.

Article 297i<sup>590</sup>*dd) Entry in the Commercial Register*

The board of directors shall notify the Commercial Register of the amendment to the articles of association at the latest three months after the end of the financial year and shall submit the public document and the confirmation of compliance.

Article 297k<sup>591</sup>*ee) Repeal*

1) If the conversion or option rights have expired and this is confirmed by an expert in a written report, the board of directors shall repeal the provisions of the articles of association concerning the conditional capital increase.

2) In the public document, the notary public shall state that the expert's report contains the required information.

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<sup>589</sup> Article 297h inserted by LGBl. 2000 No. 279.

<sup>590</sup> Article 297i amended by LGBl. 2013 No. 6.

<sup>591</sup> Article 297k inserted by LGBl. 2000 No. 279.

Article 298<sup>592</sup>

Repealed

*IV. Issue of preference shares*

## Article 299

*1. Power to issue*

1) The general meeting may, by way of a resolution and in accordance with the articles of association or by way of an amendment to the articles of association, decide to raise new share capital or to change the existing share capital by issuing preference shares (preferred or priority shares), subject to the provisions on subscription rights. The resolution must be announced in accordance with Article 956(2).<sup>593</sup>

2) When preference shares are issued, their conversion into other shares (in particular ordinary shares) or into bonds may but need not be attached to voting rights or profit participation. Public limited companies with variable share capital shall be subject to the provisions of the Law on Certain Undertakings for Collective Investment in Transferable Securities, the Investment Undertakings Act, and the Alternative Investment Fund Managers Act.<sup>594</sup>

3) Unless otherwise stipulated in the articles of association, once preference shares have been issued, shares that are to take precedence over those shares may be issued only with the approval of both the general meeting of all shareholders and a special general meeting of the preference shareholders.

4) The same provision must also be observed in the event that special rights conferred by preference shares as set out in the articles of association are subsequently to be amended.

5) The articles of association may stipulate that, for the purpose of raising new funds without carrying out a capital increase, shareholders are to be invited to voluntarily contribute a certain amount in excess of the nominal value of the share (additional performances) and that those shares for which an additional performance has been made are to be converted into preference shares.

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<sup>592</sup> Article 298 repealed by LGBl. 1997 No. 210.

<sup>593</sup> Article 299(1) amended by LGBl. 2022 No. 227.

<sup>594</sup> Article 299(2) amended by LGBl. 2016 No. 61.

## Article 300

*2. Resolution*

1) Resolutions on the issue of preference shares or on the modification or cancellation of the preference rights granted to preference shares shall be subject to the same provisions as those established for resolutions on the expansion of the company's field of business.

2) Repealed<sup>595</sup>

## Article 301

*3. Status of preference shares*

1) The preference shareholders enjoy the preference expressly granted to them over ordinary shareholders in the original articles of association or in the resolution amending the articles of association governing the issue of the preference shares, and are otherwise equal to ordinary shareholders.

2) Preference may be granted in particular in regard to voting rights, the exclusive election of certain bodies such as the administration, or the passing of resolutions on certain subject matters specified in the articles of association, dividends, with or without a right to subsequent dividend payment, liquidation proceeds, and subscription rights in the event of the issue of new shares.

3) Unless vested rights are at stake, the preference shareholders are bound by any resolutions of a special general meeting of the preference shareholders with regard to the enforcement of their claims or the waiver of such claims.

4) Unless otherwise provided by the articles of association, these latter resolutions must be passed with three quarters of all the votes of the preference shareholders.

5) Unless otherwise provided by the articles of association, in the event of insolvency proceedings the insolvency administrator shall first and foremost demand payment of arrears on the ordinary shares, and then, if these payments are insufficient, the arrears on the preference and other shares according to the order of their legal status.<sup>596</sup>

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<sup>595</sup> Article 300(2) repealed by LGBI. 2000 No. 279.

<sup>596</sup> Article 301(5) amended by LGBI. 2020 No. 369.

*V. Issue of free shares*<sup>597</sup>

## Article 301a

*1. General meeting*<sup>598</sup>

1) The general meeting may, by way of a resolution and in accordance with the original articles of association or by way of an amendment to the articles of association, decide on a capital increase in such a form that shareholders or third parties may receive shares whose amounts are covered by the company itself from available funds, retained earnings, and the like apart from the share capital, without consideration or only against reimbursement of fees (free shares). The resolution must be announced in accordance with Article 956(2).<sup>599</sup>

2) Evidence of coverage for the amount of the increase must be provided in the annual accounts in the version approved by the shareholders or, if the balance sheet date is more than six months prior, in audited interim accounts.<sup>600</sup>

## Article 302

*2. Issue*<sup>601</sup>

1) Shares issued to shareholders or third parties without consideration or only against reimbursement of fees and the amounts of which are covered by the company itself from available funds, retained earnings, and the like apart from the share capital (free shares) may be issued in accordance with the original or amended articles of association.<sup>602</sup>

2) They may also be issued with partial restamping upwards, revaluation upwards, or similar transactions, or in lieu of dividend subscription rights (dividend shares) or profit-sharing certificates.

3) With the exception of the obligation to contribute, the bonus shareholders have all the obligations and rights as other shareholders, such as voting rights, the right to dividends, and the right to subscribe for new shares, unless the articles of association provide otherwise.

<sup>597</sup> Heading preceding Article 301a inserted by LGBL 2000 No. 279.

<sup>598</sup> Article 301a heading inserted by LGBL 2000 No. 279.

<sup>599</sup> Article 301a(1) amended by LGBL 2022 No. 227.

<sup>600</sup> Article 301a(2) inserted by LGBL 2000 No. 279.

<sup>601</sup> Article 302 heading amended by LGBL 2000 No. 279.

<sup>602</sup> Article 302(1) amended by LGBL 2000 No. 279.

4) The formal distribution to shareholders of the accumulated reserves set out in the articles of association for this purpose (bonus) and immediate repayment or offsetting of the amount against the transfer of shares by the company (inauthentic free shares) is also permitted.

*VI. Subscription rights and obligation to subscribe*<sup>603</sup>

Article 303<sup>604</sup>

*1. Subscription rights*

1) Each shareholder is entitled to that part of the newly issued shares which corresponds to that shareholder's existing shareholding.

2) The offer to exercise the subscription rights and a period within which the subscription rights may be exercised, which may not be shorter than fourteen days, must be published in the Liechtenstein national newspapers. If all shares of the company are registered shares, written notification of all shareholders is sufficient.<sup>605</sup>

3) Special negotiable securities may be issued via the subscription rights of shareholders.

Article 303a<sup>606</sup>

*2. Exceptions*

Article 303 does not apply to shares for which the right to dividends and/or the right to participate in the distribution of company assets in the event of liquidation is restricted.

Article 303b

*3. Exclusion from subscription rights*<sup>607</sup>

1) With a majority of two thirds of the represented votes, the resolution of the general meeting on the increase of the share capital may

<sup>603</sup> Heading preceding Article 303 inserted by LGBl. 2000 No. 279.

<sup>604</sup> Article 303 amended by LGBl. 2000 No. 279.

<sup>605</sup> Article 303(2) amended by LGBl. 2016 No. 402.

<sup>606</sup> Article 303a inserted by LGBl. 2000 No. 279.

<sup>607</sup> Article 303b heading inserted by LGBl. 2000 No. 279.

exclude subscription rights in whole or in part. The resolution must be announced in accordance with Article 956(2).<sup>608</sup>

2) Before the resolution is voted on, the board of directors must submit to the general meeting a written report on the reasons for the exclusion of subscription rights in whole or in part. The report must provide a justification of the proposed issue price.<sup>609</sup>

3) The resolution of the general meeting on the introduction of authorised capital or on a conditional capital increase may authorise the board of directors, subject to the conditions set out in paragraphs 1 and 2, to exclude subscription rights in whole or in part within the context of authorised capital. The authorisation shall be granted for a maximum period of five years. It may be renewed, each renewal being for a maximum period of five years.<sup>610</sup>

4) Subscription rights are not considered excluded if the shares are assumed by a bank or other financial institution after the capital increase resolution with the obligation to offer them to shareholders for subscription in accordance with Article 303.<sup>611</sup>

Article 303c<sup>612</sup>

#### 4. *Applicability*

Articles 303 to 303b apply *mutatis mutandis* to the issue of all securities which may be converted into shares or to which a right to subscribe for shares is attached, but not to the conversion of those securities or the exercise of subscription rights.

Article 303d<sup>613</sup>

#### 5. *Obligation to subscribe*

Registered shareholders may be subject to an obligation to subscribe for new shares to the extent stipulated in the articles of association in accordance with the provisions governing ancillary performance shares.

<sup>608</sup> Article 303b(1) amended by LGBL 2022 No. 227.

<sup>609</sup> Article 303b(2) inserted by LGBL 2000 No. 279.

<sup>610</sup> Article 303b(3) inserted by LGBL 2000 No. 279.

<sup>611</sup> Article 303b(4) inserted by LGBL 2000 No. 279.

<sup>612</sup> Article 303c inserted by LGBL 2000 No. 279.

<sup>613</sup> Article 303d inserted by LGBL 2000 No. 279.

Article 304<sup>614</sup>*VII. Profit-sharing certificates*

1) The articles of association may provide for the creation of profit-sharing certificates for the benefit of persons who are affiliated with the company through previous capital participation or as shareholders, creditors, employees or the like. They must indicate the number of profit-sharing certificates issued as well as the content of the attached rights.

2) Profit-sharing certificates may be used only to grant the beneficiaries claims to a share in the balance sheet profit or liquidation proceeds or to the subscription of new shares.

3) The profit-sharing certificate may not have a nominal value; it may not be referred to as a participation certificate nor issued against a contribution shown under assets on the balance sheet.

4) By law, the beneficiaries form a community to which the provisions governing communities of bond creditors shall apply *mutatis mutandis*. However, only the bearers of the majority of all profit-sharing certificates in circulation may make a binding decision to waive individual rights or all rights arising from the profit-sharing certificates.

5) Profit-sharing certificates for the benefit of the founders of the company may be created only on the basis of the original articles of association.

*VIII. Participation certificates<sup>615</sup>*Article 304a<sup>616</sup>*1. Definition; applicable provisions*

1) The articles of association may provide for participation capital divided into partial amounts (participation certificates). These participation certificates are issued against contributions, have a nominal value, and do not grant voting rights.

2) The provisions on the share capital, the share, and the shareholder also apply to the participation capital, the participation certificate, and the holders of participation certificates, unless otherwise provided for by law.

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<sup>614</sup> Article 304 amended by LGBL 2000 No. 279.

<sup>615</sup> Heading preceding Article 304a inserted by LGBL 2000 No. 279.

<sup>616</sup> Article 304a inserted by LGBL 2000 No. 279.

- 3) Participation certificates must be designated as such.

Article 304b<sup>617</sup>

*2. Participation and share capital*

- 1) The participation capital may not exceed twice the share capital.
- 2) The provisions on the minimum capital and the minimum total contribution do not apply.
- 3) In the provisions on restrictions on the acquisition of own shares, the general reserve, the initiation of an official audit against the will of the general meeting, and the obligation to report any loss of capital, the participation capital must be included in the share capital.
- 4) An authorised or conditional increase of the share capital and the participation capital may not exceed half of the total of the existing share capital and participation capital.
- 5) Participation capital may be created according to the procedure for an authorised or conditional capital increase.

*3. Legal status of holders of participation certificates<sup>618</sup>*

Article 304c<sup>619</sup>

*a) In general*

- 1) Holders of participation certificates shall have no voting rights and, unless the articles of association provide otherwise, none of the related rights.
- 2) Rights relating to voting rights include the right to convene a general meeting, the right to participate, the right to information, the right to inspection, and the right to propose motions.
- 3) If the articles of association do not grant holders of participation certificates any right to information or inspection or any right to request the initiation of an official audit, a holder of a participation certificate may

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<sup>617</sup> Article 304b inserted by LGBI. 2000 No. 279.

<sup>618</sup> Heading preceding Article 304c inserted by LGBI. 2000 No. 279.

<sup>619</sup> Article 304c inserted by LGBI. 2000 No. 279.

request information or inspection or the initiation of an official audit in writing for the attention of the general meeting.

Article 304d<sup>620</sup>

*b) Announcement of convening and resolutions of the general meeting*

1) The convening of the general meeting together with the items on the agenda and the motions must be announced to the holders of participation certificates.

2) Every resolution of the general meeting must immediately be made available for inspection by the holders of participation certificates at the registered office of the company and at the registered branches. This must be communicated to the holders of participation certificates in the announcement.

Article 304e<sup>621</sup>

*c) Representation on the board of directors*

The articles of association may grant the holders of participation certificates the right to a representative on the board of directors.

*d) Property rights<sup>622</sup>*

Article 304f<sup>623</sup>

*aa) In general*

1) The articles of association may not place the holders of participation certificates in a worse position than the shareholders when distributing the balance sheet profit and the liquidation proceeds or when subscribing for new shares.

2) If there are several categories of shares, the participation certificates must be at least equivalent to the category which enjoys the lowest preference.

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<sup>620</sup> Article 304d inserted by LGBL 2000 No. 279.

<sup>621</sup> Article 304e inserted by LGBL 2000 No. 279.

<sup>622</sup> Heading preceding Article 304f inserted by LGBL 2000 No. 279.

<sup>623</sup> Article 304f inserted by LGBL 2000 No. 279.

3) Amendments to the articles of association and other resolutions of the general meeting which worsen the position of the holders of participation certificates are permissible only if they also affect the position of the shareholders to whom the holders of participation certificates are equal.

4) Unless otherwise provided by the articles of association, the preferential rights and participation rights set out in the articles of association of holders of participation certificates may be limited or withdrawn only with the approval of a special meeting of the holders of participation certificates concerned and the general meeting of shareholders.

#### Article 304g<sup>624</sup>

##### *bb) Subscription rights*

1) If participation capital is created, the shareholders have a subscription right in the same way as for the issue of new shares.

2) The articles of association may provide that shareholders may only receive shares and holders of participation certificates may only receive participation certificates if the share capital and participation capital are increased simultaneously and in the same proportion.

3) If the participation capital or the share capital is increased alone or proportionately more than the other, the subscription rights must be allocated in such a way that shareholders and holders of participation rights can continue to participate in the entire capital in the same way as before.

#### Article 305

##### *IX. Authentication and entry of amendments to articles of association<sup>625</sup>*

1) A public document shall be drawn up in respect of any resolution of the general meeting or the administration concerning amendment of the provisions of the articles of association.<sup>626</sup>

2) The resolution must be registered with the Commercial Register either by the entire administration or by a member authorised to represent and sign and must be entered in the Commercial Register and published

<sup>624</sup> Article 304g inserted by LGBI. 2000 No. 279.

<sup>625</sup> Article 305 heading amended by LGBI. 2000 No. 279.

<sup>626</sup> Article 305(1) amended by LGBI. 2000 No. 279.

on the basis of the same documents as the original articles of association, and the resolution shall have legal effect only after it has been entered in the Commercial Register.<sup>627</sup>

3) If the resolution concerns an increase of the share capital, the entry of the resolution concerning amendment of the articles of association shall, subject to the provisions on the issue of new shares as consideration for non-cash contributions and rights, be accompanied by entry of the determination of the subscription and the necessary and actual contributions on the basis of a declaration by a person authorised to represent and sign.

4) After each amendment, the current version of the articles of association must be announced in accordance with Article 956(2).<sup>628</sup>

#### Article 306<sup>629</sup>

##### *X. Subscription of own shares*

1) A public limited company or third parties acting in their own name but for the account of the company may not subscribe for shares in the company.

2) If a public limited company, a partnership limited by shares, a limited liability company, or a company which is not subject to the law of an EEA Member State but whose legal form is comparable to the aforementioned legal forms subscribes for shares of a public limited company, and if that public limited company directly or indirectly holds the majority of the voting rights of the former company or can exercise a controlling influence on it directly or indirectly, this shall be equivalent to the subscription of own shares under paragraph 1. General partnerships and limited partnerships are treated equally to the companies mentioned in the first sentence, provided that all of the general partners are companies as referred to in the first sentence or companies which are not subject to the law of an EEA Member State but whose legal form is comparable to the legal forms as referred to in the first sentence. Subscription is permissible only in accordance with Article 306d(3) (suspension of voting rights with indirect majority of votes or indirect controlling influence).

3) Article 306b(1)(10) applies.

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<sup>627</sup> Article 305(2) amended by LGBl. 2013 No. 6.

<sup>628</sup> Article 305(4) amended by LGBl. 2022 No. 227.

<sup>629</sup> Article 306 amended by LGBl. 2000 No. 279.

4) If the shares of the company are subscribed by a person acting in the person's own name but for the account of that company, the subscription shall be deemed to have been made for the account of the person subscribing.

5) If, in violation of these provisions, shares are subscribed in accordance with paragraph 2, the founders or, in the case of a capital increase, the members of the board of directors shall be liable for the full contribution. This does not apply to those founders or members of the board of directors who prove that they are not at fault.

### *XI. Acquisition of own shares<sup>630</sup>*

#### *Article 306a<sup>631</sup>*

##### *1. Principle*

1) Without prejudice to the principle of equal treatment of all shareholders in the same situation and without prejudice to Directive 2003/6/EC, a public limited company or third parties acting in their own name but for the account of the company may acquire shares of the company only if the following conditions are met cumulatively:

1. if the general meeting gives its approval; the approval must contain the details of the acquisition, in particular the maximum number of shares to be acquired, the period of validity of the approval, which may not exceed five years, and, in the case of acquisition for consideration, must specify the lowest and highest consideration;
2. the acquisition of shares, including shares which the public limited company has previously acquired and still holds, and shares which the third party has previously acquired and still holds in its own name but for the account of the company, may not result in net assets, as shown in the annual accounting, falling below the amount of subscribed capital plus reserves whose distribution is not permitted by law or the articles of association;
3. if the acquisition relates to fully paid-up shares.

2) The board of directors must satisfy itself that compliance with the conditions set out in paragraph 1(2) and (3) is ensured at the time of each authorised acquisition.

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<sup>630</sup> Heading preceding Article 306a inserted by LGBL 2000 No. 279.

<sup>631</sup> Article 306a amended by LGBL 2009 No. 4.

3) If the acquisition is necessary to avert serious, imminent damage to the company, it shall be sufficient for the board of directors to inform the next general meeting of the reasons and the purpose of the acquisition, the number and nominal value or notional par value (in the case of non-par value shares) of the shares acquired, their proportion of the share capital, and the equivalent value of the shares.

4) If a company referred to in Article 306(2) acquires shares in a public limited company and that public limited company directly or indirectly holds the majority of voting rights in the other company or can exercise, directly or indirectly, a controlling influence over that company, this shall be deemed equivalent to the acquisition of own shares. The acquisition is permissible only in accordance with Article 306d(3) (suspension of voting rights with indirect majority of votes or indirect controlling influence).

#### Article 306b

##### 2. *Exceptions*<sup>632</sup>

1) The acquisition of own shares is permissible without consideration of Article 306a if the acquisition:<sup>633</sup>

1. is for the purpose of amortisation provided for by law or the articles of association;<sup>634</sup>
2. is in accordance with the provisions of the law and the articles of association for the purpose of partial repayment of the share capital;<sup>635</sup>
3. is carried out through the transfer of assets by way of universal succession;<sup>636</sup>
4. in the case of fully paid-up shares, is either free of charge or is carried out by banks on the basis of a purchasing commission;<sup>637</sup>

<sup>632</sup> Article 306b heading inserted by LGBL 2000 No. 279.

<sup>633</sup> Article 306b(1) introductory phrase inserted by LGBL 2000 No. 279.

<sup>634</sup> Article 306b(1)(1) inserted by LGBL 2000 No. 279.

<sup>635</sup> Article 306b(1)(2) inserted by LGBL 2000 No. 279.

<sup>636</sup> Article 306b(1)(3) inserted by LGBL 2000 No. 279.

<sup>637</sup> Article 306b(1)(4) amended by LGBL 2007 No. 265.

5. is based on a legal obligation or a court decision to protect the minority shareholders, in particular in the event of a merger, a change of purpose or legal form, relocation of the registered office abroad, or introduction of restrictions on the transferability of shares;<sup>638</sup>
  6. serves to acquire the shares from a shareholder who fails to make the required contribution;<sup>639</sup>
  7. serves to compensate minority shareholders of affiliated companies;<sup>640</sup>
  8. serves to acquire fully paid-up shares at a court auction for the purpose of settling a claim of the company against the owner of these shares;<sup>641</sup>
  9. serves to acquire fully paid-up shares of an investment undertaking with fixed capital within the meaning of the Investment Undertakings Act at the request of the investors, directly or via a company affiliated with it. This acquisition may not result in net assets falling below the amount of the share capital plus the reserves whose distribution is not permitted by law;<sup>642</sup>
  10. is for the account of a person other than the acquirer and the person concerned is neither a public limited company nor another company in which that public limited company directly or indirectly holds the majority of the voting rights or over which it may exercise, directly or indirectly, a controlling influence; or if the other company acquires shares in its capacity or in the course of its business as a professional securities dealer, provided that it is a member of a securities exchange situated or operating in a Contracting Party of the European Economic Area or is authorised or supervised by a body competent for the supervision of professional securities dealers in a Contracting Party of the European Economic Area;<sup>643</sup>
  11. is carried out before the limiting provisions set out in Article 306a have come into effect.<sup>644</sup>
- 2) In the cases set out in paragraph 1(1) and (2), the repurchased shares must be rendered immediately unusable for any further sale.<sup>645</sup>

<sup>638</sup> Article 306b(1)(5) inserted by LGBL 2000 No. 279.

<sup>639</sup> Article 306b(1)(6) inserted by LGBL 2000 No. 279.

<sup>640</sup> Article 306b(1)(7) inserted by LGBL 2000 No. 279.

<sup>641</sup> Article 306b(1)(8) inserted by LGBL 2000 No. 279.

<sup>642</sup> Article 306b(1)(9) inserted by LGBL 2000 No. 279.

<sup>643</sup> Article 306b(1)(10) inserted by LGBL 2000 No. 279.

<sup>644</sup> Article 306b(1)(11) inserted by LGBL 2000 No. 279.

<sup>645</sup> Article 306b(2) inserted by LGBL 2000 No. 279.

Article 306c<sup>646</sup>*3. Sale and mandatory redemption of own shares*

1) If the company has acquired own shares in violation of Article 306a and 306b, they must be sold within one year of their acquisition.

2) If the nominal amount or the notional par value of the shares which the company has acquired and still holds in a permissible manner in accordance with Article 306b(1)(3) to (8) exceeds 10% of the share capital, the part of the shares which exceeds that threshold must be sold within three years after the acquisition of the shares.

3) If own shares have not been sold by the deadlines set out in paragraphs 1 and 2, they must be cancelled in a reduction procedure.

## Article 306d

*4. Consequences of acquisition and possession<sup>647</sup>*

1) The company is not entitled to any rights from own shares.<sup>648</sup>

2) For its own shares, the company must place an amount equal to the book value in an unavailable reserve, unless international accounting standards in accordance with Article 1139 are applied.<sup>649</sup>

3) If a public limited company indirectly holds the majority of the voting rights of a company or can indirectly exercise a controlling influence over that company, the voting rights associated with the shares of the public limited company held by the other company shall be suspended (Article 306(2) and Article 306a(4)).<sup>650</sup>

Article 306e<sup>651</sup>*5. Acquisition by third parties*

1) A legal transaction involving the granting of an advance or a loan or the provision of collateral by the company to a third party for the purpose

<sup>646</sup> Article 306c inserted by LGBL 2000 No. 279.

<sup>647</sup> Article 306d introductory phrase inserted by LGBL 2000 No. 279.

<sup>648</sup> Article 306d(1) inserted by LGBL 2000 No. 279.

<sup>649</sup> Article 306d(2) amended by LGBL 2004 No. 141.

<sup>650</sup> Article 306d(3) inserted by LGBL 2000 No. 279.

<sup>651</sup> Article 306e amended by LGBL 2009 No. 4.

of acquiring shares of that company is permissible, provided the following conditions are met cumulatively:

1. The board of directors is responsible for the execution of the legal transaction. The transaction must be carried out at fair market conditions, in particular with regard to the interest and collateral paid to the company for the loans or advances granted. The creditworthiness of the third party or parties involved must be adequately verified.
2. The acquisition or subscription of shares in the event of an increase by the third party must be at an appropriate price.
3. The board of directors submits a report to the general meeting stating the reasons for the transaction, the interest of the company in the transaction, the terms and conditions of the transaction, the risks to the company's liquidity and solvency associated with the transaction, and the price at which the third party is to acquire the shares.
4. The resolution of the general meeting to approve the legal transaction must be taken by a two-thirds majority of the votes represented. After approval, this report must be submitted to the Office of Justice and announced in accordance with Article 956(2).<sup>652</sup>
5. The total financial support granted to third parties may at no time result in net assets falling below the amount of the subscribed capital plus the reserves whose distribution is not permitted by law or the articles of association. Any reduction in net assets that may have occurred as a result of the acquisition of its own shares by the company or for the company's account must also be taken into account. The company establishes a provision that cannot be distributed on the liabilities side of the balance sheet in the amount of the total financial support granted.

2) Legal transactions carried out in the course of the ongoing business of banks and for the purpose of acquiring shares by or for employees of the company or a company affiliated with it are also permissible; however, such legal transactions are null and void if they result in net assets falling below the amount of subscribed capital plus reserves whose distribution is not permitted by law or the articles of association.

3) If an individual member of the board of directors is a party to a legal transaction as referred to in paragraph 1, or if members of the board of directors of an undertaking referred to in Article 1097(1) or such an undertaking itself or a person acting in the person's own name but for the account of such members or such undertaking are a party to such a legal

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<sup>652</sup> Article 306e(1)(4) amended by LGBL 2022 No. 227.

transaction, the legal transaction may not be contrary to the interests of the company and otherwise shall be null and void.

4) Paragraph 2 does not apply to transactions carried out under Article 306b(1)(9).

#### Article 306f

##### *6. Acceptance of pledge of own shares<sup>653</sup>*

1) The acceptance of a pledge of own shares is treated equally to the acquisition of own shares.<sup>654</sup>

2) Exceptions are the acceptance of pledges of own shares in the course of the ongoing business of banks.<sup>655</sup>

#### *D. Rights and duties of shareholders*

##### *I. Share of profit and liquidation proceeds*

#### Article 307

##### *1. In general*

1) As long as the company exists, each shareholder is entitled to a pro rata share of the net profit calculated on the basis of the annual balance sheet, insofar as that profit is intended for distribution among the shareholders in accordance with the law and the articles of association.

2) In the event of dissolution of the company, the shareholder shall have the right to a pro rata share of the result of liquidation, unless, subject to vested rights, the articles of association provide otherwise.

3) This article is subject to the preferential rights provided for in the articles of association for individual classes of shares.

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<sup>653</sup> Article 306f heading inserted by LGBL 2000 No. 279.

<sup>654</sup> Article 306f(1) inserted by LGBL 2000 No. 279.

<sup>655</sup> Article 306f(2) amended by LGBL 2007 No. 265.

## Article 308

*2. Calculation method*

1) Unless otherwise provided in the articles of association, the shares in the profit and in the liquidation proceeds shall be calculated in proportion to the amounts paid in.

2) The shareholder has no right to reclaim the paid-up amount or the non-cash contributions, either before or upon dissolution of the company.

3) In the case of public announcements of dividends by the company, with the exception of public limited companies which do not conduct business in a commercial manner, the dividends shall, provided the amount is stated in per cent, be stated per hundred of the nominal value of the shares, if they are not non-par value shares, and also per hundred of the share capital plus all reserves.<sup>656</sup>

*II. Reserves*<sup>657</sup>Article 309<sup>658</sup>*1. Legal reserve*

1) By law, an amount of one twentieth of the net profit must be allocated annually to the legal reserve until it reaches one tenth of the share capital.

2) If shares are issued below the nominal value, an additional amount of one twentieth of the net profit must be allocated annually to the legal reserve until the nominal value of the shares is reached.

3) Any additional proceeds generated from the issue of shares above their nominal value must be allocated to the capital reserves, to the extent that the additional proceeds are not used to cover the issue costs or for depreciation or welfare purposes or for the profit participation of employees. The same applies to the amount remaining from the payments made on shares declared invalid after any shortfall in proceeds from the shares issued for that purpose has been covered.

4) Provided that combined they do not exceed half of the share capital, the legal reserve and the capital reserves may be used only to cover losses

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<sup>656</sup> Article 308(3) amended by LGBI. 2010 No. 352.

<sup>657</sup> Heading preceding Article 309 amended by LGBI. 2000 No. 279.

<sup>658</sup> Article 309 amended by LGBI. 2000 No. 279.

or for measures that are likely to maintain the company in times of poor business performance, to counteract unemployment, or to mitigate the consequences thereof.

#### Article 310

##### *2. Reserve fund provided in the articles of association*

- 1) The articles of association may prescribe higher contributions to the reserve fund.
- 2) The articles of association may provide for the formation of other funds, such as welfare, renewal, and amortisation funds, and determine their purpose and use.

#### Article 311

##### *3. Ratio of profit share to reserve assets*

- 1) The dividend may be determined only after the contributions to the legal reserve and to the reserve fund established by the articles of association and other funds in accordance with the law and the articles of association have been deducted from the net profit.<sup>659</sup>
- 2) Before declaring the dividend, the general meeting is also authorised to establish reserve assets that are not provided for in the law or the articles of association, provided that doing so is likely to contribute to securing the company or ensuring a dividend that is as uniform as possible.
- 3) This article is subject to the provisions on social policy rights to shares and profit.

#### Article 311a<sup>660</sup>

##### *4. Offsetting of losses*

- 1) Losses from the reporting period or earlier periods may be carried forward.
- 2) Losses from previous periods must be set off against the profit for the reporting period.

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<sup>659</sup> Article 311(1) amended by LGBl. 2000 No. 279.

<sup>660</sup> Article 311a inserted by LGBl. 2000 No. 279.

3) If losses are set off against reserves, the following order must be observed:

1. reserves set out in the articles of association and other reserves with a corresponding purpose;
2. legal reserve;
3. capital reserve.

*III. Dividends, building interest, directors' fees, etc.*<sup>661</sup>

*1. Dividends*<sup>662</sup>

Article 312<sup>663</sup>

*a) Principle*

1) Interest on the share capital may neither be paid nor guaranteed.

2) Dividend payments shall be made only from the net profit resulting from the annual financial statement, plus profit carried forward and withdrawals from reserves created for that purpose, taking into account losses incurred in previous financial years and allocations to reserves set out by law or in the articles of association.

3) Dividend payments may not be made to shareholders, except in the event of a capital reduction, if this would result in net assets according to the annual accounts falling below the amount of the share capital plus reserves whose distribution is not permitted by law or the articles of association.

4) The articles of association may provide that the administration may, on the basis of an interim balance sheet, distribute dividends during the year, to an extent further specified, from the retained earnings in the past financial year brought forward and withdrawals from reserves formed for that purpose, plus the interim result achieved since the previous financial year, taking into account losses from previous financial years and allocations to reserves established by law or in the articles of association.

5) This article is subject to the special provisions on the increase of the share capital from company assets.

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<sup>661</sup> Heading preceding Article 312 amended by LGBl. 2000 No. 279.

<sup>662</sup> Heading preceding Article 312 inserted by LGBl. 2000 No. 279.

<sup>663</sup> Article 312 amended by LGBl. 2000 No. 279.

6) Unless otherwise provided in the articles of association, dividends must be paid out in cash.

7) The articles of association may provide for the payout of dividends by coupon or by other means such as cheques and the like.

8) Any dividend whose payout was decided in accordance with the law and the articles of association before the opening of insolvency proceedings of the company may be asserted as an insolvency claim.<sup>664</sup>

#### Article 312a

##### *b) Exceptions<sup>665</sup>*

1) Article 312(3) does not apply to investment companies with fixed capital within the meaning of the Law on Certain Undertakings for Collective Investment in Transferable Securities, the Investment Undertakings Act, and the Alternative Investment Fund Managers Act.<sup>666</sup>

2) If the net assets of investment companies fall below the amount referred to in Article 312(3), a dividend payout to the shareholders may be made only if this does not result in total assets according to the annual accounts falling below one and a half times the total amount of the company's liabilities according to the annual accounts.<sup>667</sup>

3) If net assets fall below the amount referred to in the preceding paragraph, a corresponding note must be included in the annual accounts.<sup>668</sup>

#### Article 313

##### *2. Building interest*

1) For the period required for the construction and preparation of the undertaking until the start of full operation, the shareholders may be paid interest of a certain amount from the investment account.

2) The articles of association must determine the date on which the payment of interest ceases at the latest.

<sup>664</sup> Article 312(8) amended by LGBL 2020 No. 369.

<sup>665</sup> Article 312a heading inserted by LGBL 2000 No. 279.

<sup>666</sup> Article 312a(1) amended by LGBL 2016 No. 61.

<sup>667</sup> Article 312a(2) amended by LGBL 2016 No. 61.

<sup>668</sup> Article 312a(3) inserted by LGBL 2000 No. 279.

3) If the undertaking is expanded by issuing new shares, the resolution on the capital increase may grant the new shares a certain interest at the expense of the investment account for the period up to the opening of operations of the new facility. Article 312(2) must be observed.<sup>669</sup>

4) For payments of building interest, an item must be allocated on the assets side which must be repaid as quickly as possible from the profit made.

5) Interest accrued before the opening of insolvency proceedings of the company may be asserted as an insolvency claim.<sup>670</sup>

#### Article 314<sup>671</sup>

##### *3. Directors' fees*

The distribution of profit shares to members of the administration, the audit office, or other bodies provided in the articles of association is permissible only after the contribution has been made to the legal reserve fund and a dividend of 5% or a higher amount stipulated in the articles of association has been paid to the shareholders.

#### Article 315<sup>672</sup>

##### *4. Other claims*

In addition to or in lieu of the dividend claim, shareholders may be granted rights of use or usufruct of the company assets, which may not, however, reduce the company's capital stock and shall lapse in the event of opening of insolvency proceedings in respect of the company's assets.

#### Article 316

##### *IV. Period of limitation*

1) The claim to dividends, building interest, and directors' fees, and in the case of rights of use and usufruct the claim to individual benefits, shall be subject to a period of limitation of three years after they become due.

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<sup>669</sup> Article 313(3) amended by LGBL 2000 No. 279.

<sup>670</sup> Article 313(5) amended by LGBL 2020 No. 369.

<sup>671</sup> Article 314 amended by LGBL 2000 No. 279.

<sup>672</sup> Article 315 amended by LGBL 2020 No. 369.

2) The content of any rights of use and usufruct as such is governed by membership rights.

#### *V. Shareholder performance obligations*

##### Article 317

###### *1. Object*

1) With the exception of ancillary performance shares, the shareholder is not obliged to contribute more for the purposes of the company and for the company to meet its obligations than the amount determined by the company for the subscription of a share when it is issued.

2) Except in the event of a reduction of the share capital, this amount may neither be waived nor deferred, subject to the provisions on shareholder liability.<sup>673</sup>

###### *2. Ancillary performance shares*

##### Article 318

###### *a) In general*

1) Apart from the fixed share amount, the articles of association may, but without inclusion in the share capital and without consideration in the balance sheet, impose on a shareholder the obligation to render one-off or recurring monetary or other performances, including omissions, or limited additional performance obligations or limited liability, where such liability may be joint and several if so stipulated in the articles of association, up to twice the nominal value of the shares, in accordance with the relevant provisions for the cooperative society; the liability or additional performance obligation is asserted by way of an allocation procedure.

2) In the case of such companies, only registered shares may be issued which are transferable with the consent of the company, insofar as they relate to shares to which ancillary performances are attached.

3) The obligation and the scope of performance must be evident from the shares or interim certificates; an amendment to the articles of association, as a result of which such obligations are newly established or

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<sup>673</sup> Article 317(2) amended by LGBl. 2000 No. 279.

existing ones are extended, is permissible only with the consent of all shareholders affected by the amendment.

4) In the event that this obligation to make other than monetary payments is not or not properly fulfilled or that a shareholder wishes to waive shares even after they have been fully paid up, the articles of association must define contractual penalties; in all other respects, each shareholder is entitled to the right to surrender shares after they have been fully paid up, unless a limited liability exists, in the same way as a member of a company limited by units.

5) The company may refuse to approve the transfer of the shares only on important grounds. Under these conditions, the transfer may be approved by the judge in special non-contentious proceedings if approval is refused.<sup>674</sup>

6) The obligation to render individual performances of this kind shall be subject to a period of limitation of three years after they become due.

#### Article 319

##### *b) Compensation*

1) For recurring, non-monetary performances to which the shareholders are obliged in addition to the capital contributions, compensation not exceeding the value of the performance, where such compensation constitutes a creditor claim, may be paid irrespective of whether the annual balance sheet shows a net profit.

2) Only dividends may be paid out for recurring monetary performances.

3) The claim for compensation or return of individual performances is subject to a period of limitation of three years after they become due.

### *3. Consequences of default*

#### Article 320

##### *a) According to law and articles of association*

1) A shareholder who fails to pay in the amount of the shareholder's share in due time is obliged by law to pay default interest.

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<sup>674</sup> Article 318(5) amended by LGBl. 2010 No. 454.

2) In all cases, the administration also has the right to declare forfeit the defaulting shareholder's rights arising from the subscription of the shares and the partial payments made and to issue new shares in lieu of the defaulted shares.

3) The articles of association may also oblige a shareholder to pay a contractual penalty in the event of default.

4) This article is also subject to the provisions on ancillary performance shares, according to which the declaration of forfeit may also be made due to default in regard to ancillary performances, in the absence of other provisions set out in the articles of association.

#### Article 321

##### *b) Request for performance*

1) A shareholder may be subject to a contractual penalty and forfeit of rights arising from shares and the subscription only if the request for the contribution has been published at least twice in the relevant publications, the last time at least two weeks before the closing date to be set for the payments, or if it has been notified to the shareholder by registered letter by the same deadline.

2) If the shares are registered shares, the public notice shall in all cases be replaced by a special one-time notification by registered letter to the individual shareholders entered in the share register at least four weeks prior to the closing date for the payments.

3) The defaulting shareholder is liable to the company for the amount not covered by the issue of the new share, to the extent the shareholder is under a personal obligation.

#### *VI. Legal relationship of shareholders*

#### Article 322

##### *1. In general*

1) If share certificates or interim certificates (promissory notes) are issued, they shall be subject to the provisions governing securities, unless special rules are laid down in the preceding provisions governing share certificates or in the following provisions.

2) Until such securities are issued, the legal relationship between the subscriber and any successors of the subscriber and the company is

governed by the general provisions of the law of obligations, in particular the provisions on the assignment of claims and the assumption of debt.

3) The extent to which a transfer of the legal relationship can take place by means of transfer of custody receipts for deposited registered shares, blocked shares, and interim certificates must be assessed on a case-by-case basis.

4) Before the stock exchange listing and one year after the end of a stock exchange listing of a company, the provisions governing registered shares apply *mutatis mutandis* to bearer shares.<sup>675</sup>

## 2. Bearer shares

### Article 323

#### a) Issue of bearer securities

1) Bearer shares may be issued only after payment of an amount specified in the original articles of association, which must make up at least half of the nominal value.

2) In the absence of such a specification in the articles of association, bearer shares may not be issued until the full nominal value has been paid up.

3) Previously issued bearer shares are null and void, and until such payment the subscribers and shareholders remain under the provisions on shareholders in general.

4) Bearer shares are transferable to the bearer as securities.

### Article 324

#### b) Liability of the subscriber

1) Even if the subscriber has transferred the subscriber's right to another party and the latter has assumed the obligation to pay in, with or without the approval of the administration, the subscriber remains liable for the payment up to the amount provided for by law or the articles of association with all the subscriber's assets and may be sued by the company, even if the share has been transferred to a third party, as soon

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<sup>675</sup> Article 322(4) inserted by LGBL 2013 No. 67.

as the latter fails to meet the payment obligation despite due request by the administration, and the share is consequently declared forfeit.

2) If a discharge of the subscriber for further payments in excess of the amount specified in the articles of association or the law is not provided for, or if the insolvency proceedings are opened in respect of the company's assets within the period of one year from its entry in the Commercial Register, the subscriber may be required to make further payments, even if the subscriber no longer has the share.<sup>676</sup>

#### Article 325

##### *c) Liability of the bearer*

1) After the bearer share has been issued, the current bearer who is not a subscriber is not personally liable for further payments unless otherwise agreed, and instead only to the extent that, in the event that a payment due is not made, the right of the bearer arising from the share may be declared forfeit in accordance with the provisions on the consequences of default in the event of late payment.

2) This limitation of liability is not effective, however, if insolvency proceedings are opened in respect of the company's assets within one year of its entry in the Commercial Register and the bearer has not made the payment and the bearer's right arising from the share has therefore been declared forfeit.<sup>677</sup>

3) If interim certificates that can only be issued in registered form have been issued for bearer shares, they shall be subject to the provisions governing registered shares.

#### Article 326

##### *d) Recourse of the subscriber*

1) The subscriber, who is called upon by the company to make payments on a sold share, has recourse by law against the current shareholder or subsequent bearer of the share.

2) Unless otherwise agreed, however, the latter is liable also to the subscriber only with the share itself.

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<sup>676</sup> Article 324(2) amended by LGBl. 2020 No. 369.

<sup>677</sup> Article 325(2) amended by LGBl. 2020 No. 369.

Article 326a<sup>678</sup>*e) Deposit*

- 1) Bearer shares shall be deposited with the custodian (article 326b).
- 2) Paragraph 1 does not apply to:
  1. bearer shares of listed companies;
  2. bearer shares of undertakings for collective investment in transferable securities and investment funds under the UCITSG and alternative investment funds and alternative investment fund managers under the AIFMG.
- 3) Paragraph 1 also applies to talons or coupons not attached to the bearer share.

Article 326b<sup>679</sup>*f) Appointment of a custodian*

- 1) The company shall appoint a custodian. If the board of directors is not able to decide, the Court of Justice shall appoint a custodian in special non-contentious proceedings.
- 2) Subject to paragraph 3, only persons may be appointed as custodians who:
  1. are subject to the Due Diligence Act or regulation and supervision abroad equivalent to Directive (EU) 2015/849; or<sup>680</sup>
  2. if they are not subject to regulation under point 1, their registered office or domicile is in Liechtenstein and they have an account in Liechtenstein or another EEA Member State in the name of the shareholder.
- 3) In the case of legal persons under Article 180a(3), the custodian need not be subject to the Due Diligence Act or regulation and supervision abroad equivalent to Directive (EU) 2015/849 or have a registered office or domicile in Liechtenstein; in such cases, an account in Liechtenstein or another EEA Member State in the name of the shareholder shall suffice.<sup>681</sup>

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<sup>678</sup> Article 326a inserted by LGBL 2013 No. 67.

<sup>679</sup> Article 326b inserted by LGBL 2013 No. 67.

<sup>680</sup> Article 326b(2)(1) amended by LGBL 2020 No. 308.

<sup>681</sup> Article 326b(3) amended by LGBL 2020 No. 308.

4) The custodian shall be entered in the Commercial Register with a reference to the custodian's function.

Article 326c<sup>682</sup>

*g) Registration*

1) The custodian shall maintain a register in which the following is entered for each bearer share:

1. the surname and first name, the date of birth, the nationality, and the domicile or the legal name and the registered office of the shareholder;
2. the time of deposit;
3. in the cases under Article 326b(2)(2) and 326b(3), an account in Liechtenstein or another EEA Member State in the name of the shareholder.
4. any pledging of the bearer share.<sup>683</sup>

2) In relation to the company, the person entered in the register shall be considered the shareholder.

3) All payments by the company to the shareholder shall be made to the registered account in the cases under Article 326b(2)(2) and 326b(3).

4) The register may also be maintained electronically, provided it can be made readable at all times.

5) The register shall be kept at the registered office of the company. Article 1059 shall apply *mutatis mutandis*.

6) When requested in writing by the shareholder, the custodian shall immediately issue a confirmation to the shareholder on the number, nominal value, and category of the deposited bearer shares (depository receipt). The depository receipt shall serve as documentary evidence.

Article 326d<sup>684</sup>

*h) Inspection of the register*

1) The shareholder is entitled to inspect the data relating to the shareholder in the register.

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<sup>682</sup> Article 326c inserted by LGBL 2013 No. 67.

<sup>683</sup> Article 326c(1)(4) inserted by LGBL 2022 No. 227.

<sup>684</sup> Article 326d inserted by LGBL 2013 No. 67.

2) Domestic authorities and courts may inspect the register and make copies within their scope of competence.

Article 326e<sup>685</sup>

*i) Surrender*

The custodian may surrender bearer shares only:

1. to the successor custodian, upon termination of the custodian's function;
2. to the company, upon conversion of the bearer shares into registered shares according to the articles of association;
3. to the company, upon mandatory redemption, withdrawal, or amortisation of the bearer shares.

Article 326f<sup>686</sup>

*k) Assertion of shareholder rights*

Shareholder rights arising from the bearer share may be asserted only if the share is deposited with the custodian and all information about the bearer shareholder has been registered.

Article 326g<sup>687</sup>

*l) Representation*

1) If the shareholder does not exercise the voting rights at the general meeting in person, the custodian may exercise the voting rights for the bearer shares deposited with the custodian. For this purpose, the custodian shall request instructions from the bearer shareholder for casting votes prior to every general meeting.

2) If instructions cannot be obtained in time, the custodian shall exercise the voting rights in accordance with a general instruction by the bearer shareholder; if no such instruction exists, the custodian shall follow the proposals of the board of directors.

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<sup>685</sup> Article 326e inserted by LGBl. 2013 No. 67.

<sup>686</sup> Article 326f inserted by LGBl. 2013 No. 67.

<sup>687</sup> Article 326g inserted by LGBl. 2013 No. 67.

3) The custodian shall demonstrate entitlement to exercise the voting rights by way of a written declaration; this declaration must contain:

1. a reference to the custodian's function as custodian;
2. the number, nominal value, and category of the represented bearer shares;
3. an indication of whether the representation is pursuant to a special, general, or no instruction.

4) If a public document is to be issued on the resolution of the shareholders, the declaration referred to in paragraph 3 shall be attached to the document.

Article 326h<sup>688</sup>

*m) Transfer of bearer shares*

1) If a shareholder intends to transfer bearer shares, the shareholder must notify this intention to the custodian.

2) The notification under paragraph 1 must include the surname and first name, the date of birth, the nationality, and the domicile or the legal name and the registered office of the acquirer of the bearer share.

3) The transfer of bearer shares becomes effective upon entry of the acquirer in the register in accordance with Article 326c.

Article 326i<sup>689</sup>

*n) Supervision*

1) Compliance with the duties as a custodian shall be verified as part of the annual audit or review requirement and confirmed by the person conducting the audit or the review.

2) If shortcomings are discovered, the person conducting the audit or the review shall immediately transmit a report to the Office of Justice. The Office of Justice shall set a deadline and require the custodian to remedy the shortcomings. If the shortcoming is not remedied, the Office of Justice shall file a criminal complaint with the Court of Justice.

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<sup>688</sup> Article 326h inserted by LGBl. 2013 No. 67.

<sup>689</sup> Article 326i inserted by LGBl. 2013 No. 67.

3) The Office of Justice shall likewise immediately file a criminal complaint with the Court of Justice if it learns of one of the following circumstances:

1. issue of an incorrect confirmation of the deposit of bearer shares under Article 326c;
2. unlawful surrender of bearer shares (Article 326e); or
3. issue of an incorrect confirmation under Article 326i(1), or failure to make a report under Article 326i(2).

### *3. Registered shares*

#### Article 327

##### *a) Transfer*

1) Unless otherwise provided in the articles of association, registered shares shall also be freely transferable by blank endorsement and, in case of doubt, are deemed to be order securities.

2) The transfer of the endorsed share certificate to the acquirer is sufficient for the transfer of registered shares.

3) The exclusion of transferability of a share does not apply in the event of inheritance, compulsory execution, or opening of insolvency proceedings; however, the acquirer is obliged and entitled to assign the share of the company against compensation for the value stated in the last annual balance sheet.<sup>690</sup>

4) Registered shares that are not fully paid up or registered interim certificates which can be transferred only with the consent of the company may likewise be validly transferred during insolvency proceedings only with the consent of the insolvency administrator.<sup>691</sup>

#### Article 328

##### *b) Entry in the share register*

1) The company shall maintain a share register on the owners of registered shares into which the following data shall be entered:<sup>692</sup>

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<sup>690</sup> Article 327(3) amended by LGBL 2020 No. 369.

<sup>691</sup> Article 327(4) amended by LGBL 2020 No. 369.

<sup>692</sup> Article 328(1) amended by LGBL 2020 No. 520.

1. surname and first name, date of birth, nationality, and domicile or legal name and registered office of the shareholders; and
2. number and category of the shares.

2) As soon as such a share register has been established, the persons who have been entered in the share register shall be considered to be shareholders in relation to the company.

3) The entry shall be on the basis of evidence of the successful transfer of the share; on the basis of notice by the heir and/or the probate authority if the transfer was by way of inheritance; and on the basis of notice by the successor in the event of dissolution of a firm or legal person.

4) The successful entry shall be noted by the company on the share certificate.

5) Repealed<sup>693</sup>

6) Repealed<sup>694</sup>

#### Article 329

##### *c) Refusal of entry*

1) The company may refuse entry in the share register for the reasons stated in the articles of association.

2) If the articles of association contain no provision to this effect, entry in the share register may be refused only on important grounds.

3) In the case of shares that are not fully paid up, a declaration of commitment by the acquirer to make further payments shall be provided before entry, and the administration shall check the solvency of the acquirer and, if necessary, demand security; if such security is not provided, the administration shall refuse entry.

4) In the event of acquisition as a result of inheritance or by virtue of marital property rights, entry in the share register may be refused only if the public limited company or the shareholders agree to accept the shares at the current price.

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<sup>693</sup> Article 328(5) repealed by LGBL 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

<sup>694</sup> Article 328(6) repealed by LGBL 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

Article 329a<sup>695</sup>*d) Maintenance and safekeeping of the share register*

1) The share register may also be maintained electronically, provided it can be made readable at all times.

2) The share register shall be kept at the registered office of the company. Article 1059 shall apply *mutatis mutandis*.

Article 329b<sup>696</sup>*e) Inspection of the share register*

1) The shareholder is entitled to inspect the data relating to the shareholder in the share register.

2) Domestic authorities and courts may inspect the share register and make copies within their scope of competence.

## Article 330

*f) Liability of registered shareholders<sup>697</sup>*

1) The acquirer of a registered share that is not fully paid up is obliged to make a payment to the company as soon as it is entered in the share register.

2) The seller who is not a subscriber is thereby released from the payment obligation, but the subscriber remains liable despite the transfer to the new acquirer if insolvency proceedings are opened in respect of the company's assets within one year of its entry in the Commercial Register and may be sued by the company as soon as the legal successor fails to meet the payment obligation despite due notice and the legal successor's share has consequently been declared invalid by the administration.<sup>698</sup>

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<sup>695</sup> Article 329a inserted by LGBL 2013 No. 67.

<sup>696</sup> Article 329b inserted by LGBL 2013 No. 67.

<sup>697</sup> Article 330 heading amended by LGBL 2013 No. 67.

<sup>698</sup> Article 330(2) amended by LGBL 2020 No. 369.

## Article 331

*VII. Declaration that shares are not fully paid up*

1) As long as shares, whether bearer or registered shares, are not fully paid up, the amount actually paid up must be clearly indicated on each share.

2) In addition, all public announcements of the company (advertisements, circulars, reports, letterheads, etc.) in which reference is made to the share capital shall clearly state how much of it has actually been paid up.

3) The amount of the further contributions to the share capital must be registered by the administration with the Commercial Register and shall be published in accordance with the provisions of the articles of association.<sup>699</sup>

*VIII. Personal membership rights**1. Participation in the general meeting*

## Article 332

*a) In general*

1) The rights of shareholders in the affairs of the company, in particular in relation to the management of the business, the audit of the balance sheet, and the calculation and distribution of profits, shall be exercised by the general meeting of shareholders, unless an exception is provided for by law.

2) Every shareholder entitled to vote is free to represent that shareholder's shares at the general meeting or, unless the articles of association provide otherwise, to have them represented by a third party who need not be a shareholder. At the general meeting, the proxy has the same rights to speak and ask questions as the shareholder the proxy represents.<sup>700</sup>

2a) The representation rights of shareholders at the general meeting as referred to in paragraph 2 may not be restricted for public limited companies listed in the EEA.<sup>701</sup>

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<sup>699</sup> Article 331(3) amended by LGBl. 2013 No. 6.

<sup>700</sup> Article 332(2) amended by LGBl. 2010 No. 142.

<sup>701</sup> Article 332(2a) inserted by LGBl. 2010 No. 142.

3) If the shares are registered shares, the proxy must be granted a written power of attorney, unless the articles of association provide otherwise.

4) All shares owned by a shareholder must be represented by only one person, subject to the provisions on trusteeship.

5) In the case of public limited companies listed in the EEA, one person acting as proxy may represent more than one shareholder.<sup>702</sup>

6) In the case of public limited companies listed in the EEA, the power of attorney referred to in paragraph 3 may be granted in writing or by electronic means. The same applies to the revocation of the power of attorney and evidence of the power of attorney vis-à-vis the company; the company must offer at least one electronic means of transmitting the evidence.<sup>703</sup>

#### Article 332a<sup>704</sup>

##### *b) Special forms of participation and voting*

1) The articles of association of public limited companies listed in the EEA may stipulate that an audiovisual recording of the general meeting may be made, thus making the general meeting available to shareholders not present (transmission of the general meeting).

2) The articles of association of public limited companies listed in the EEA may provide that shareholders may attend the general meeting without being present at the venue and without a proxy and may exercise all or some of their rights by electronic communication. The articles of association may authorise the administration to make provisions governing the procedure.

3) If public limited companies listed in the EEA use electronic means as referred to in paragraphs 1 and 2 in order to enable their shareholders to participate in the general meeting, the use thereof may be subject only to such restrictions as are necessary and appropriate to establish the identity of the shareholders and ensure the security of the electronic communication.

4) The articles of association of public limited companies listed in the EEA may provide that shareholders may cast their votes in writing even

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<sup>702</sup> Article 332(5) inserted by LGBl. 2010 No. 142.

<sup>703</sup> Article 332(6) inserted by LGBl. 2010 No. 142.

<sup>704</sup> Article 332a inserted by LGBl. 2010 No. 142.

without attending the general meeting (postal vote). The articles of association may authorise the administration to make provisions governing the procedure. However, the articles of association may only provide for postal voting requirements that are necessary and appropriate for determining the identity of shareholders.

#### Article 333

##### *c) Unauthorised participation*<sup>705</sup>

1) The borrowing or lending of shares for the purpose of exercising voting rights at the general meeting is not permissible, nor is any other exercise of voting rights by parties other than the owner if it leads to the circumvention of a restriction on voting rights.

2) Each shareholder is entitled to raise an objection to the administration regarding the participation of a non-voting person in the general meeting, unless exceptions are provided for by law or in the articles of association.

#### 2. Voting rights at the general meeting

#### Article 334

##### *a) In general*

1) By law, voting rights begin as soon as at least 25% of the share has been paid up.<sup>706</sup>

2) The articles of association may determine that after half a year from the date of formation or the issue of new shares, only those shareholders are entitled to vote who can prove that they have held shares for at least half a year.

3) Shareholders shall exercise their voting rights at the general meeting in proportion to the number of shares they own, and all shares shall be entitled to the same voting rights in proportion to their nominal value or quota, unless otherwise provided in the articles of association.

4) Every shareholder has at least one vote, even if the shareholder owns only one share.

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<sup>705</sup> Article 333 heading amended by LGBl. 2010 No. 142.

<sup>706</sup> Article 334(1) amended by LGBl. 2000 No. 279.

5) In the case of public limited companies listed in the EEA, a person representing one or more shareholders in accordance with Article 332(5) may vote differently for the shares represented.<sup>707</sup>

#### Article 335

##### *b) Voting shares and debt instruments with voting rights*

1) The company shall be at liberty to restrict by its articles of association the number of votes of holders of several shares. The articles of association may also provide that shares entitle the holder to more than one vote (open voting shares) or that voting rights are to be exercised according to the number of shares owned by each shareholder, irrespective of the nominal value, so that each share carries one vote (concealed voting shares).<sup>708</sup>

2) Unless the articles of association provide otherwise, a dissolution or amendment of special rights under the articles of association associated with open or concealed voting shares shall be permissible only if the group of voting shareholders affected thereby agrees to such a proposal by a majority of its members.<sup>709</sup>

3) The articles of association may grant preference to preference shares or a class of such shares such that, when capital is increased or voting shares are introduced or the voting rights of such shares are increased, their voting rights increase in relation to the other votes, likewise according to a certain proportion (voting rights on a sliding scale).

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<sup>707</sup> Article 334(5) inserted by LGBl. 2010 No. 142.

<sup>708</sup> Article 335(1) amended by LGBl. 2022 No. 227.

<sup>709</sup> Article 335(2) amended by LGBl. 2022 No. 227.

4) With the approval of the Office of Justice, the creditors of bonds or similar debt instruments with conversion or option rights may also be granted equal or different voting rights, as specified in detail in the articles of association.<sup>710</sup>

### *3. Shareholders' rights of verification*

#### Article 336

##### *a) Right to publication of the annual report<sup>711</sup>*

1) At the latest twenty days before the ordinary general meeting, the business report, including the audit report, must be made available for inspection by the shareholders at the registered office of the company and must be made easily accessible. The same applies to the consolidated business report and the consolidated audit report.<sup>712</sup>

2) If bearer shares have been issued, the announcement of such issue must be made in the publications intended for such announcements.

3) The registered shareholders listed in the share register shall be notified by special notification instead of by public announcement.

4) Repealed<sup>713</sup>

#### Article 337

##### *b) Right of verification vis-à-vis administration*

1) The shareholders are entitled to draw the attention of the audit office to dubious approaches and to request the necessary information from the audit office and the administration.<sup>714</sup>

<sup>710</sup> Article 335(4) amended by LGBL 2013 No. 6.

<sup>711</sup> Article 336 heading amended by LGBL 2000 No. 279.

<sup>712</sup> Article 336(1) amended by LGBL 2000 No. 279.

<sup>713</sup> Article 336(4) repealed by LGBL 2000 No. 279.

<sup>714</sup> Article 337(1) amended by LGBL 2000 No. 279.

2) The shareholders may inspect the books and correspondence with the authorisation of the general meeting or with the permission of the administration or by court order in special non-contentious proceedings after the administration has been heard, but with due regard to business secrecy.<sup>715</sup>

3) Shareholders' rights of verification may not be cancelled or restricted either by the articles of association or by resolutions of the general meeting, but subject to the provisions on trustee certificates.

### *E. Organisation*

#### *I. General meeting*

#### Article 338

##### *1. Powers*

1) The supreme body of a public limited company is the general meeting of shareholders, which expresses the will of the company vis-à-vis shareholders and bodies.

2) Its powers include:

1. the election of the administration and the appointment of the audit office;<sup>716</sup>
2. approval of the business report and the consolidated business report as well as the declaration of the dividend;<sup>717</sup>
3. discharge of the administration;<sup>718</sup>
4. passing resolutions on adoption and amendment of the articles of association and, unless the articles of association provide otherwise, the formation of branches;
5. passing resolutions on matters reserved for the general meeting by law or the articles of association or which are submitted to it by other bodies.

3) The articles of association may, however, delegate all or part of the responsibilities of the general meeting set out by law or in the articles of association to a different body.

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<sup>715</sup> Article 337(2) amended by LGBL 2010 No. 454.

<sup>716</sup> Article 338(2)(1) amended by LGBL 2000 No. 279.

<sup>717</sup> Article 338(2)(2) amended by LGBL 2000 No. 279.

<sup>718</sup> Article 338(2)(3) amended by LGBL 2000 No. 279.

Article 339

2. *Convening*

1) An ordinary meeting is held annually within six months after the end of the business period; extraordinary meetings are convened as needed.

2) The general meeting must be convened in the manner provided by the articles of association, and the purpose of the general meeting must be announced at any time when it is convened, clearly and completely stating the items of the meeting (agenda).

3) This article is subject to exceptions set out by law or in the articles of association.

3. *Convening for public limited companies listed in the EEA*<sup>719</sup>

Article 339a<sup>720</sup>

a) *Time and form*

1) The convening of the general meeting shall be announced at the latest 30 days before the general meeting via media that can be assumed to transmit the information to the public throughout the European Economic Area.

2) If the company's shareholders are known by name, the general meeting may be convened by registered letter to the last known address of each shareholder, unless the articles of association provide otherwise. With the express consent of a shareholder, notice of the convening of the general meeting may also be given to that shareholder by electronic mail.

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<sup>719</sup> Heading preceding Article 339a inserted by LGBl. 2010 No. 142.

<sup>720</sup> Article 339a inserted by LGBl. 2010 No. 142.

3) Pursuant to a resolution of the ordinary general meeting, the convening of a general meeting other than an ordinary general meeting may be made in a form specified in paragraphs 1 and 2 at the latest 21 days before the general meeting, provided that the company opens up the possibility of electronic voting to all shareholders. The resolution requires a two-thirds majority of the votes represented at the general meeting or of the subscribed share capital represented and is valid only for the period up to the next ordinary general meeting.

4) The costs of convening and announcing the meeting in accordance with paragraphs 1 and 2 shall be borne by the company.

#### Article 339b<sup>721</sup>

##### *b) Content*

In addition to the information referred to in Article 339(2), the notice convening the meeting must contain:

1. the exact place and time of the general meeting;
2. a description of the procedures for participating in the general meeting and for exercising voting rights and, if applicable, the record date referred to in Article 339c(1) and an indication that only those persons are entitled to participate in the general meeting and exercise their voting rights who are shareholders of the company on that record date;
3. the voting procedure:
  - a) by proxy, indicating the forms to be used for granting power of attorney for voting and the way in which evidence of the appointment of an authorised person can be transmitted electronically to the company; and
  - b) by postal vote or by means of electronic communication, to the extent that the articles of association provide for the form of voting in question;
4. the rights of shareholders under Article 339d and the deadlines by which these rights may be exercised; the information in this regard may be limited to the deadlines for exercising the rights if a reference to further explanations is included on the company's website;
5. the total number of shares and voting rights at the time the general meeting is convened;

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<sup>721</sup> Article 339b inserted by LGBL 2010 No. 142.

6. the website of the company where the information referred to in Article 339e(1) is made available;
7. information on where and how the complete and unabridged text of the documents and draft resolutions referred to in Article 339e(1), (2), (4), and (5) as well as paragraph 2 is available.

Article 339c<sup>722</sup>

*c) Evidence of qualification as a shareholder*

1) In the case of bearer shares, evidence of shareholder status must be provided in writing or electronically at the end of the 12th day before the date of the general meeting (record date) in order to participate in the general meeting and exercise shareholder rights. Shareholdings must be evidenced on the record date by a custody confirmation which must be received by the company or a body appointed by the company no later than the sixth working day before the general meeting at the address specified for this purpose in the notice convening the meeting.

2) In the case of registered shares, evidence issued in the name of the person entered in the share register as a shareholder on the day of the general meeting is sufficient.

3) The right of shareholders to sell or otherwise transfer their shares in the period between the record date referred to in paragraph 1 and the date of the general meeting may not be subject to any restriction to which it is not subject at other times.

4) The entitlement to participate in the general meeting and to exercise voting rights may not be made dependent on the deposit of shares or any other restriction on disposal.

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<sup>722</sup> Article 339c inserted by LGBL 2010 No. 142.

Article 339d<sup>723</sup>*d) Special rights of shareholders*

1) Shareholders who together represent at least 5% of the share capital have the right:

1. to put items on the agenda of the ordinary general meeting, provided that each item is accompanied by a statement of reasons or a proposal for a resolution to be adopted at the general meeting;
2. to submit draft resolutions on items which are already on the agenda of the general meeting or which are to be added to it.

2) Requests pursuant to paragraph 1(1) must be received by the company at the latest 21 days before the date of the general meeting. Requests pursuant to paragraph 1(2) may still be made during the general meeting.

3) An agenda amended pursuant to paragraph 1(1) shall be announced in the same way as the original agenda. The announcement must be made before the record date specified under Article 339c.

4) Every shareholder has the right to ask questions at the general meeting about items on the agenda. The administration shall answer the questions addressed to it, provided that the proper procedure of the general meeting, the protection of confidentiality, and the protection of business interests are guaranteed.

Article 339e<sup>724</sup>*e) Publication on the company's website*

1) Public limited companies listed in the EEA must make at least the following information available to their shareholders via their website for an uninterrupted period starting at the latest 21 days before the general meeting:

1. the content of the notice convening the general meeting;
2. the documents to be made available to the general meeting;
3. the total number of shares and voting rights at the time the general meeting is convened, if applicable broken down by class of shares;
4. draft resolutions submitted by shareholders;

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<sup>723</sup> Article 339d amended by LGBL 2010 No. 142.

<sup>724</sup> Article 339e amended by LGBL 2010 No. 142.

5. an explanation if no resolution is to be passed on an item on the agenda;
6. if applicable, the forms to be used for granting a power of attorney for the general meeting and for a postal vote, if the forms are not sent to all shareholders with the notice convening the general meeting.

2) Any requests and motions of shareholders received by the company after the general meeting has been convened shall be made available in the same manner immediately after their receipt by the company.

3) If the forms referred to in paragraph 1(6) cannot be made available on the internet for technical reasons, the company must indicate on its website how the forms can be obtained in paper form. In that case, the company must send the forms free of charge to all shareholders who so request.

#### Article 340

##### *4. Passing of resolutions*<sup>725</sup>

1) A resolution of the general meeting on the dissolution of the company is valid if the share capital has been reduced by half and the articles of association so determine, as soon as the assenting majority of the shareholders who have approved the dissolution represent one quarter of the share capital.

2) This article is subject to other cases in which the law or the articles of association require a special majority or the unanimity of the votes represented at the general meeting.

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<sup>725</sup> Article 340 heading amended by LGBl. 2010 No. 142.

Article 340a<sup>726</sup>*5. Determination and publication of the voting results of public limited companies listed in the EEA*

1) For each resolution, the company must at least ascertain the following:

1. the number of shares for which valid votes have been cast;
2. the proportion of the share capital represented by the valid votes;
3. the total number of valid votes cast;
4. the number of votes cast for a resolution, the number of opposing votes, and, if applicable, the number of abstentions.

2) If, however, no shareholder requests a comprehensive presentation of the voting results pursuant to paragraph 1, it is sufficient to ascertain for each resolution that the majority required for the resolution has been reached.

3) Companies must publish the voting results determined in accordance with paragraphs 1 or 2 on their website within seven days of the general meeting.

*II. Administration*

## Article 341

*1. Appointment*

1) The members of the administration are elected by the general meeting; their initial term of office shall be at most three years and subsequent terms of office at most six years.

2) For the first three years, the members of the administration may be designated by the articles of association.

3) The articles of association may establish provisions on the election method in order to protect shareholder minorities and provide for election by the shareholders at the ballot box or by way of delegates in lieu of election by the general meeting.

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<sup>726</sup> Article 340a inserted by LGBl. 2010 No. 142.

4) If persons are elected who are required by the articles of association to deposit shares for the performance of their duties and if, under the articles of association, only shareholders can be members, they may take office only after they have become shareholders by acquiring shares.

5) This article is subject to the provisions on reserved seats in the administration.

## 2. *Deposit of shares*

### Article 342

#### *a) Deposit*

1) If so provided by the articles of association, the members of the administration must, for the duration of their service, deposit the number of shares of the company determined by the articles of association.

2) With the consent of the administration, this deposit may also be made by a third party.

3) The articles of association may provide that the deposited shares shall in any case be issued or transferred in the name of the individual members.

### Article 343

#### *b) Effect*

1) The deposited shares are inalienable for the duration of the deposit.

2) They serve the company, the shareholders, and the creditors as a pledge to secure their claims arising from the responsibility of the members of the administration.

3) They may not be withdrawn until discharge has been granted.

### 3. Board of directors

#### Article 344

##### *a) Appointment and procedure in general*

1) If the administration is entrusted to several persons or companies, they form the board of directors, whose powers may be described in more detail in the articles of association or in special regulations.

2) Public limited companies with a share capital of at least one million Swiss francs must have a board of directors of at least three members, unless they are companies that have only their registered office in Liechtenstein, with or without business premises, or they manage assets but do not conduct other business in the country.<sup>727</sup>

#### Article 345

##### *b) Procedure of meetings*

1) The board of directors shall appoint a chair and the other members of the bureau, to the extent provided by the articles of association or regulations permitted under the articles of association or deemed necessary by the board of directors.

2) Minutes of its resolutions shall be kept and shall be signed by the chair.

#### Article 346

##### *c) Substitution*

1) The articles of association may provide that absent members of the board of directors may be represented at a meeting by another member or by substitutes entered in the Commercial Register.<sup>728</sup>

2) The powers of attorney for this purpose must have been granted for a specific meeting and must be attached to the minutes.

3) No member may represent more than two other members.

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<sup>727</sup> Article 344(2) amended by LGBl. 2000 No. 279.

<sup>728</sup> Article 346(1) amended by LGBl. 2013 No. 6.

Article 347<sup>729</sup>*d) Committees of the board of directors*

The board of directors may appoint one or more committees from among its members to ensure special supervision of the course of business, prepare the business to be submitted to the board of directors, report to the board of directors on all important issues, in particular on the preparation of the business report and the consolidated business report, and monitor the implementation of the resolutions of the board of directors.

Article 347a<sup>730</sup>*d<sup>bis</sup>) Audit committee for public-interest entities*

1) Each public-interest entity is required to appoint an audit committee. The audit committee shall be either an independent committee or a committee of the administrative or supervisory body of the audited entity. The audit committee shall be composed of members of the administrative body not participating in the general management, members of the supervisory body of the audited entity, or members appointed by the members' or general meeting of the audited entity or, in the case of an entity without members or shareholders, by an equivalent governing body. At least one member of the audit committee must have competence in accounting or statutory auditing. Each member of the committee must be familiar with the industry in which the audited entity operates. The majority of the members of the audit committee must be independent of the audited entity. The chair of the audit committee shall be appointed by the committee members or the administrative or supervisory body of the audited entity and shall be independent of the audited entity.

2) By way of derogation from paragraph 1, the functions assigned to the audit committee may be performed by the administrative or supervisory body as a whole if:

- a) the public-interest entity meets the criteria of Article 1064(1) to (2); and
- b) the chair of the administrative or supervisory body, if an executive member, does not act as chair as long as that body performs the duties of the audit committee.

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<sup>729</sup> Article 347 amended by LGBl. 2019 No. 18.

<sup>730</sup> Article 347a inserted by LGBl. 2019 No. 18.

3) The following public-interest entities are not required to establish an audit committee:

- a) public-interest entities which are, directly or indirectly, subsidiaries within the meaning of Article 1097(1) which meet the requirements of paragraphs 1 and 4 as well as Article 16(5) of Regulation (EU) No 537/2014 at group level and which are required to submit the additional report to the audit committee at group level pursuant to Article 11 of Regulation (EU) No 537/2014, as well as where the proposal for the appointment of the auditor or the audit firm is submitted at group level;
- b) public-interest entities which are undertakings for collective investment in transferable securities under the Law on Certain Undertakings for Collective Investment in Transferable Securities or alternative investment funds under the Alternative Investment Fund Managers Act or investment undertakings under the Investment Undertakings Act;
- c) public-interest entities the sole business of which is to act as issuer of asset-backed securities as defined in Article 2(5) of Commission Regulation (EU) No 809/2004;
- d) banks as defined in Article 4 of the Banking Act whose shares are not admitted to trading on a regulated market of any EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU and which have, in a continuous or repeated manner, issued only debt securities admitted to trading on a regulated market, provided that the total nominal amount of all such debt securities remains below 122 000 000 Swiss francs and that they have not published a prospectus under Article 3 of Regulation (EU) 2017/1129<sup>731, 732</sup>.

4) Public-interest entities as referred to in paragraph 3(c) shall explain to the public the reasons for which they consider it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.

5) If all members of the audit committee are members of the administrative or supervisory body of the audited entity, the independence requirements set out in paragraph 1 shall not apply to the audit committee.

<sup>731</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)

<sup>732</sup> Article 347a(3)(d) amended by LGBL 2025 No. 98.

6) Without prejudice to the responsibility of the members of the administrative or supervisory body or other members appointed by the members' or general meeting of the audited entity, the audit committee shall, *inter alia*:

- a) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and sustainability reporting audit and explain how the statutory audit contributed to the integrity of financial reporting and how the sustainability reporting audit contributed to the integrity of sustainability reporting, and what the role of the audit committee was in that process;<sup>733</sup>
- b) monitor the financial reporting process and sustainability reporting process, including the electronic reporting process as referred to in Article 1096h and Article 1121(3d) and the process carried out by the undertaking to identify the information reported in accordance with the sustainability reporting standards set out in Article 1096c(1), and submit recommendations or proposals to ensure their integrity;<sup>734</sup>
- c) monitor the effectiveness of the undertaking's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting and sustainability reporting audit of the undertaking, including its electronic reporting process as referred to in Article 1096h and Article 1121(3d), without breaching its independence;<sup>735</sup>
- d) monitor the statutory audit and the sustainability reporting audit, in particular its performance, taking into account any findings and conclusions drawn by the FMA from quality assurance audits;<sup>736</sup>
- e) review and monitor the independence of the auditors or the audit firms in accordance with Articles 31 to 36, 41(2) to 14, Articles 42, 45 and 47a of the Auditors Act, and in particular the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 46 of the Auditors Act;<sup>737</sup>
- f) be responsible for the procedure for the selection of statutory auditors or audit firms and recommend they be appointed in accordance with Article 16 of Regulation (EU) No 537/2014.

<sup>733</sup> Article 347a(6)(a) amended by LGBL 2024 No. 170.

<sup>734</sup> Article 347a(6)(b) amended by LGBL 2024 No. 170.

<sup>735</sup> Article 347a(6)(c) amended by LGBL 2024 No. 170.

<sup>736</sup> Article 347a(6)(d) amended by LGBL 2024 No. 170.

<sup>737</sup> Article 347a(6)(e) amended by LGBL 2024 No. 170.

## Article 348

*e) Delegation of business management and representation to special bodies*

1) The articles of association may provide that business management and representation be delegated by the general meeting or the board of directors to one or more persons, members of the board of directors (delegates), or third parties who need not be members of the company, who shall also be subject to the rules on responsibility.

2) If they are entrusted with the entire business management, they shall form the directorate.

3) The persons (firms) entrusted with business management and representation in this way are bodies of the company.

## Article 349

*f) Responsibilities of the board of directors*

1) The board of directors is obliged:

1. to prepare the business of the general meeting and to execute its resolutions;
2. to draw up the regulations required for orderly business operations and to issue the management with the instructions necessary for this purpose;
3. to supervise the persons entrusted with business management and representation in regard to their correct execution in accordance with legislative provisions, articles of association, and regulations, and
4. to keep itself regularly informed about the course of business and business management for this purpose.

2) The board of directors is responsible for ensuring that the minutes of the general meeting and the administration as well as the necessary account books are properly kept and that the business report and the consolidated business report are prepared, audited, and, where applicable, published in accordance with the legislative provisions.<sup>738</sup>

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<sup>738</sup> Article 349(2) amended by LGBl. 2000 No. 279.

## Article 350

*III. Audit office*<sup>739</sup>

1) The supreme body shall in all cases elect an audit office.<sup>740</sup>

2) An auditor or audit firm as defined in the Auditors Act must be appointed as the audit office of medium-sized and large companies as referred to in Article 1064. This also applies to small companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State as referred to in Article 4(1)(21) of Directive 2014/65/EU. The audit of the consolidated business report is reserved to auditors and audit firms as defined in the Auditors Act.<sup>741</sup>

3) Repealed<sup>742</sup>

4) Repealed<sup>743</sup>

5) Repealed<sup>744</sup>

6) Repealed<sup>745</sup>

*F. Merger*Article 351<sup>746</sup>*I. Nature and type of merger*

1) Public limited companies may be merged by dissolution without liquidation. The merger may take place:

1. by transferring the assets of one or more companies (companies being acquired) as a whole to another company (acquiring company) in exchange for granting of shares of that company to the shareholders of the company or companies being acquired and, if applicable, an additional cash payment not exceeding 10% of the nominal amount or notional par value (in the case of no-par value shares) of the shares granted (merger by acquisition);

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<sup>739</sup> Article 350 heading amended by LGBl. 2000 No. 279.

<sup>740</sup> Article 350(1) amended by LGBl. 2000 No. 279.

<sup>741</sup> Article 350(2) amended by LGBl. 2019 No. 18.

<sup>742</sup> Article 350(3) repealed by LGBl. 2011 No. 7.

<sup>743</sup> Article 350(4) repealed by LGBl. 2011 No. 7.

<sup>744</sup> Article 350(5) repealed by LGBl. 2011 No. 7.

<sup>745</sup> Article 350(6) repealed by LGBl. 2011 No. 7.

<sup>746</sup> Article 351 amended by LGBl. 2000 No. 279.

2. by forming a new public limited company, to which the assets of each of the merging companies as a whole may be transferred in exchange for granting of shares in the new company and, if applicable, an additional cash payment not exceeding 10% of the nominal amount or notional par value (in the case of non-par value shares) of the shares granted (merger by unification).

2) The merger is also permissible if the companies being acquired or merging companies are in liquidation and the distribution of their assets to the shareholders has not yet begun.

## *II. Merger by acquisition*<sup>747</sup>

### Article 351a<sup>748</sup>

#### *1. Preparation of merger*

1) The boards of directors of the companies participating in the merger shall draw up the terms of merger.

2) The terms of merger must contain at least the following information:

1. the legal form, legal name, and registered office of the companies participating in the merger;
2. the agreement on the transfer of the assets of each company being acquired as a whole to the acquiring company in exchange for shares of the acquiring company to the shareholders of the company being acquired;
3. the exchange ratio of the shares and, if applicable, the amount of the additional cash payment;
4. the details for the transfer of the shares of the acquiring company;
5. the time from which these shares grant the right to a share in the balance sheet profit and any special aspects relating to this claim;
6. the time from which the acts of the companies being acquired are deemed to have been performed for the account of the acquiring company;
7. the rights granted by the acquiring company to individual shareholders with special rights and bearers of other securities, as well as the measures envisaged for these persons;

<sup>747</sup> Heading preceding Article 351a inserted by LGBl. 2000 No. 279.

<sup>748</sup> Article 351a inserted by LGBl. 2000 No. 279.

8. any special advantage granted to a member of an administrative, management, or control body of the companies participating in the merger or to an expert as referred to in Article 351c.
- 3) The terms of merger require public authentication.

#### Article 351b

##### 2. *Merger report*<sup>749</sup>

1) The boards of directors of each of the companies participating in the merger must submit a detailed written report explaining and justifying, in both legal and economic terms, the terms of merger and in particular the exchange ratio of the shares. Particular difficulties relating to valuation must be pointed out.

2) The boards of directors of the companies participating in the merger must inform the shareholders of their company before the resolution on the merger of any material change in the assets of the company that has occurred between the preparation of the terms of merger and the time the resolution is to be voted on by the general meeting. The boards of directors shall also inform the boards of directors of the other participating company of such changes; the latter shall in turn inform the shareholders of the company they represent before the general meeting.<sup>750</sup>

3) If all shareholders of all companies involved in the merger waive this right, the report referred to in paragraph 1 and the information pursuant to paragraph 2 may be omitted.<sup>751</sup>

#### Article 351c

##### 3. *Review of merger*<sup>752</sup>

1) The terms of merger shall be reviewed by one or more independent experts for each of the companies participating in the merger.<sup>753</sup>

2) The experts shall be appointed by the board of directors of each of the participating companies. A review by one or more experts for all of the

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<sup>749</sup> Article 351b heading inserted by LGBl. 2000 No. 279.

<sup>750</sup> Article 351b(2) inserted by LGBl. 2011 No. 537.

<sup>751</sup> Article 351b(3) inserted by LGBl. 2011 No. 537.

<sup>752</sup> Article 351c heading inserted by LGBl. 2000 No. 279.

<sup>753</sup> Article 351c(1) inserted by LGBl. 2000 No. 279.

participating companies is sufficient if these experts are appointed by the Office of Justice upon joint application by the boards of directors.<sup>754</sup>

3) Each expert has the right to obtain from the participating companies all information and documents necessary for a careful review.<sup>755</sup>

4) The experts must report in writing to the shareholders on the outcome of the review. The report on the review may also be submitted jointly. It must conclude with a statement as to whether the proposed exchange ratio of the shares is appropriate. It must indicate:

1. the methods used to determine the proposed exchange ratio;
2. the reasons why the use of these methods is appropriate;
3. the exchange ratio that would result from the use of different methods, where more than one method has been used; it must also be explained what weights have been given to the different methods in determining the proposed exchange ratio and the values underlying those weights as well as the particular difficulties encountered in the valuation.<sup>756</sup>

5) If all shareholders and bearers of other securities with voting rights of all merging companies waive this right, both the review of the joint terms of merger by independent experts and the preparation of an expert report may be omitted.<sup>757</sup>

#### Article 351d

##### *4. Preparation of the general meeting*<sup>758</sup>

1) The terms of merger must be submitted to the Commercial Register by each company at least one month before the general meeting that decides on the approval and published in accordance with Article 956(2).<sup>759</sup>

1a) The obligation under paragraph 1 does not apply if each company makes the terms of merger available to the public on its website free of charge at least one month before the general meeting that is to decide on the approval. At least one month before the general meeting, a reference to this website, which must include the date of publication of the terms of

<sup>754</sup> Article 351c(2) amended by LGBL 2013 No. 6.

<sup>755</sup> Article 351c(3) inserted by LGBL 2000 No. 279.

<sup>756</sup> Article 351c(4) inserted by LGBL 2000 No. 279.

<sup>757</sup> Article 351c(5) amended by LGBL 2010 No. 142.

<sup>758</sup> Article 351d heading inserted by LGBL 2000 No. 279.

<sup>759</sup> Article 351d(1) amended by LGBL 2022 No. 227.

merger on the internet, shall be published on the website of the Office of Justice.<sup>760</sup>

2) At least one month before the general meeting that is to decide on the terms of merger, the following must be available for inspection by the shareholders at the registered office of the company:<sup>761</sup>

1. the terms of merger;<sup>762</sup>
2. the annual accounts and the annual reports of the companies participating in the merger for the last three financial years;<sup>763</sup>
3. if the most recent annual accounts relate to a financial year that came to an end more than six months before the completion of the terms of merger, a balance sheet as at a reporting date that is not earlier than the first day of the third month preceding the conclusion or preparation (interim balance sheet);<sup>764</sup>
4. where applicable, the reports of the board of directors in accordance with Article 351b;<sup>765</sup>
5. where applicable, the reports on the review in accordance with Article 351c.<sup>766</sup>

3) The interim balance sheet must be prepared in accordance with the provisions applied to the company's most recent annual balance sheet. An inventory is not required, however. The valuation bases from the most recent annual balance sheet may be used. However, depreciation, value adjustments, provisions, and material changes in the actual values of assets not evident from the books must be taken into account up to the interim balance sheet date.<sup>767</sup>

3a) Preparation of an interim balance sheet in accordance with paragraph 2(3) may be waived if:

1. the company has published an interim financial report in accordance with Article 5 of the Disclosure Act since the last annual accounts and makes it available to the shareholders in accordance with paragraph 2; or

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<sup>760</sup> Article 351d(1a) amended by LGBl. 2013 No. 6.

<sup>761</sup> Article 351d(2) introductory phrase inserted by LGBl. 2000 No. 279.

<sup>762</sup> Article 351d(2)(1) inserted by LGBl. 2000 No. 279.

<sup>763</sup> Article 351d(2)(2) inserted by LGBl. 2000 No. 279.

<sup>764</sup> Article 351d(2)(3) amended by LGBl. 2011 No. 537.

<sup>765</sup> Article 351d(2)(4) amended by LGBl. 2011 No. 537.

<sup>766</sup> Article 351d(2)(5) amended by LGBl. 2010 No. 142.

<sup>767</sup> Article 351d(3) inserted by LGBl. 2000 No. 279.

2. all shareholders of all companies participating in the merger have so decided.<sup>768</sup>

4) Upon request, each shareholder must, without delay and free of charge, receive a copy of the documents referred to in paragraph 2 or, with the shareholder's consent, be furnished with such documents electronically, unless the documents referred to in paragraph 2 are published on the company's website in accordance with paragraph 5.<sup>769</sup>

5) A company is exempt from the obligation to publish the documents referred to in paragraph 2 at its registered office for inspection by shareholders if the documents are published on its website during an uninterrupted period beginning at least one month before the general meeting that is to decide on the terms of merger and not ending before the conclusion of the general meeting.<sup>770</sup>

#### Article 351e

##### *5. Resolutions of the general meetings*<sup>771</sup>

1) The terms of merger (and any amendments to the articles of association required to implement them) will take effect only if approved by the general meeting of every merging company.<sup>772</sup>

2) The resolution requires a majority of at least two thirds of the share capital represented. If at least half of the share capital is represented, a simple majority of votes is sufficient, provided that the articles of association do not require a higher threshold for approval.<sup>773</sup>

3) Approval by the general meeting of the acquiring company is not required if:

1. the announcement of the terms of merger by the acquiring company is made at least one month before the general meeting of the companies being acquired that is to decide on the terms of merger;
2. each shareholder of the acquiring company may inspect the documents pursuant to Article 351d(2) at the registered office of the company at that time.<sup>774</sup>

<sup>768</sup> Article 351d(3a) inserted by LGBL 2011 No. 537.

<sup>769</sup> Article 351d(4) amended by LGBL 2011 No. 537.

<sup>770</sup> Article 351d(5) inserted by LGBL 2011 No. 537.

<sup>771</sup> Article 351e heading inserted by LGBL 2000 No. 279.

<sup>772</sup> Article 351e(1) inserted by LGBL 2000 No. 279.

<sup>773</sup> Article 351e(2) inserted by LGBL 2000 No. 279.

<sup>774</sup> Article 351e(3) inserted by LGBL 2000 No. 279.

4) In cases falling under paragraph 3, one or more shareholders who together represent at least 5% of the share capital of the acquiring company may request that a general meeting be convened to vote on a resolution approving the terms of merger.<sup>775</sup>

5) Article 351d(3) to (5) shall apply for the purposes of paragraph 3(2).<sup>776</sup>

Article 351f<sup>777</sup>

6. *Capital increase*

If the acquiring company increases the share capital to implement the merger, no share subscription is required and existing subscription rights and obligations are not applicable to those new shares.

Article 351g<sup>778</sup>

7. *Registration of the merger*

1) The dissolution of the company being acquired and the takeover of its assets by the other company must be registered for entry in the Commercial Register by every administration involved in those transactions. The administration of the acquiring company is entitled to register for entry in the Commercial Register of the companies being acquired.<sup>779</sup>

2) The original or a certified copy of the terms of merger and the merger resolutions must be attached to the registration.

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<sup>775</sup> Article 351e(4) inserted by LGBL 2000 No. 279.

<sup>776</sup> Article 351e(5) inserted by LGBL 2011 No. 537.

<sup>777</sup> Article 351f inserted by LGBL 2000 No. 279.

<sup>778</sup> Article 351g inserted by LGBL 2000 No. 279.

<sup>779</sup> Article 351g(1) amended by LGBL 2013 No. 6.

3) Each company being acquired must enclose a balance sheet of that company with the registration (final balance sheet). The provisions on the annual balance sheet and the audit of the annual balance sheet shall apply *mutatis mutandis* to that balance sheet. The Office of Justice may register the merger only if the balance sheet has been drawn up for a reporting date that is no later than eight months before the registration date.<sup>780</sup>

#### Article 351h

##### 8. Entry of the merger<sup>781</sup>

1) The merger may be entered in the Commercial Register for the acquiring company only after the merger has been entered in the Commercial Register for the companies being acquired. The merger becomes effective upon entry for the acquiring company.<sup>782</sup>

2) Upon entry of the merger in the Commercial Register, the assets and liabilities are transferred to the acquiring company. However, the acquiring company may not dispose of the assets the transfer of which requires entry in public registers such as the Land Register or the like until the prescribed transfer has been entered in the public registers.<sup>783</sup>

3) Upon entry of the merger, the companies being acquired cease to exist. The shareholders of the companies being acquired become shareholders of the acquiring company; however, this does not apply to the extent that the acquiring company or a third party acting in its own name but for the account of that company owns shares in the companies being acquired or to the extent that a company being acquired owns own shares or a third party acting in its own name but for the account of that company owns shares in that company.<sup>784</sup>

4) Upon successful entry of the merger, the shares of the acquiring company designated for settlement shall be transferred to the shareholders of the dissolved companies in accordance with the terms of merger.<sup>785</sup>

5) For each of the participating companies, the merger shall be announced in accordance with Article 956(2).<sup>786</sup>

<sup>780</sup> Article 351g(3) amended by LGBL 2013 No. 6.

<sup>781</sup> Article 351h heading inserted by LGBL 2000 No. 279.

<sup>782</sup> Article 351h(1) amended by LGBL 2013 No. 6.

<sup>783</sup> Article 351h(2) amended by LGBL 2013 No. 6.

<sup>784</sup> Article 351h(3) inserted by LGBL 2000 No. 279.

<sup>785</sup> Article 351h(4) inserted by LGBL 2000 No. 279.

<sup>786</sup> Article 351h(5) amended by LGBL 2022 No. 227.

Article 351i<sup>787</sup>*9. Protection of creditors*

1) If, within six months of the announcement of the entry in the Commercial Register of the merger by the company of which they are creditors, the creditors submit a notification for this purpose, they shall be furnished with security to the extent they are unable to demand satisfaction. However, this right shall be available to creditors only if they can prove that the fulfilment of their claim is jeopardised by the merger. Creditors shall be informed of this right in the announcement of the entry in the Commercial Register.

2) The preceding paragraph does not apply to bondholders if the creditors' meeting or each bondholder has approved the merger individually.

3) Creditors shall not be entitled to the provision of security who, in the event of insolvency, are entitled to preferential satisfaction from a cover pool established for their protection in accordance with legislative provisions and supervised by the State.

Article 351k<sup>788</sup>*10. Protection of bearers of special rights*

1) The acquiring company must grant the bearers of securities to which special rights are attached, but which are not shares, rights equivalent to those of the companies being acquired.

2) Such equivalent rights need not be granted if a meeting of the bearers of the securities or each bearer individually has agreed to the amendment of these rights or if the bearers are entitled to repurchase of their securities by the acquiring company.

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<sup>787</sup> Article 351i inserted by LGBL 2000 No. 279.

<sup>788</sup> Article 351k inserted by LGBL 2000 No. 279.

## Article 351l

*11. Responsibility*<sup>789</sup>

1) The members of the administration of a company being acquired bear unlimited and joint and several liability vis-à-vis the shareholders of that company for any damage they cause through intentional or negligent conduct in the preparation and execution of the merger.<sup>790</sup>

2) The experts referred to in Article 351c bear unlimited and joint and several liability vis-à-vis the shareholders of the companies being acquired for any damage they cause through intentional or negligent conduct in the performance of their duties.<sup>791</sup>

3) Members of the administration as well as experts who have observed their due diligence obligations in the performance of their duties are released from the obligation to pay compensation.<sup>792</sup>

4) The claims under paragraphs 1 and 2 shall be subject to a period of limitation of ten years in the case of wilful damage and two years in the case of negligent damage, counting from the date on which the entry of the merger in the Commercial Register is deemed to have been announced in accordance with Article 956(2).<sup>793</sup>

## Article 351m

*12. Nullity of the merger*<sup>794</sup>

1) In the absence of public authentication of the terms of merger and in the event of nullity or contestability of the merger resolutions, the judge may declare the merger null and void on appeal by a party concerned, after hearing the administration of the acquiring company.<sup>795</sup>

2) If the shortcoming can be remedied, the judge shall grant the participating companies a reasonable period of time to do so.<sup>796</sup>

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<sup>789</sup> Article 351l heading inserted by LGBL 2000 No. 279.

<sup>790</sup> Article 351l(1) inserted by LGBL 2000 No. 279.

<sup>791</sup> Article 351l(2) inserted by LGBL 2000 No. 279.

<sup>792</sup> Article 351l(3) inserted by LGBL 2000 No. 279.

<sup>793</sup> Article 351l(4) amended by LGBL 2022 No. 227.

<sup>794</sup> Article 351m heading inserted by LGBL 2000 No. 279.

<sup>795</sup> Article 351m(1) inserted by LGBL 2000 No. 279.

<sup>796</sup> Article 351m(2) inserted by LGBL 2000 No. 279.

3) The judgment declaring the merger null and void shall be announced in accordance with Article 956(2).<sup>797</sup>

4) Legally valid obligations of the acquiring company arising after the announcement of the merger but before the announcement of the judgment of the judge as referred to in paragraph 3 shall not be affected by the nullity. The participating companies are jointly and severally liable for these obligations.<sup>798</sup>

5) The right of action expires if the action is not filed at the latest six months after the announcement of the merger. The provisions on the action for rescission shall apply *mutatis mutandis*.<sup>799</sup>

### 13. Acceptance in special cases<sup>800</sup>

#### Article 351n

##### a) Majority of the share capital held by the acquiring company<sup>801</sup>

1) If, upon transfer of all assets and liabilities, at least nine tenths of the share capital of a company being acquired are held by the acquiring company and/or by persons holding these shares in their own name but for the account of the acquiring company, approval of the merger by the general meeting of the acquiring company (Article 351e) is not required.<sup>802</sup>

2) However, one or more shareholders who together represent at least 5% of the share capital of the acquiring company have the right to demand that a general meeting be convened to vote on a resolution approving the merger.<sup>803</sup>

3) The acquiring company must take the measures provided for in Article 351d(1) and (2)(1) and (2)(2) as well as, if applicable, the measures provided for in Article 351d(2)(3) to (5) at least one month before the general meeting of the company being acquired that is to decide on the terms of merger. Article 351d(3) to (5) shall apply.<sup>804</sup>

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<sup>797</sup> Article 351m(3) amended by LGBL 2022 No. 227.

<sup>798</sup> Article 351m(4) inserted by LGBL 2000 No. 279.

<sup>799</sup> Article 351m(5) inserted by LGBL 2000 No. 279.

<sup>800</sup> Heading preceding Article 351n inserted by LGBL 2000 No. 279.

<sup>801</sup> Article 351n heading inserted by LGBL 2000 No. 279.

<sup>802</sup> Article 351n(1) inserted by LGBL 2000 No. 279.

<sup>803</sup> Article 351n(2) inserted by LGBL 2000 No. 279.

<sup>804</sup> Article 351n(3) amended by LGBL 2011 No. 537.

4) The preparation of the merger report (Article 351b) and the review of the merger (Article 351c) as well as the application of Article 351d(2) to (4) may be waived if the acquiring company is willing to purchase the shares from the minority shareholders of the company being acquired at a price corresponding to the value of the shares.<sup>805</sup>

5) If the parties are unable to agree, the value of those shares shall upon application be determined by the judge in special non-contentious proceedings.<sup>806</sup>

#### Article 351o

##### *b) All shares held by the acquiring company<sup>807</sup>*

1) ) If, upon transfer of all assets and liabilities, all shares of a company being acquired are held by the acquiring company and/or by persons holding these shares in their own name but for the account of the acquiring company, approval of the merger by the general meetings in accordance with Article 351e is not required.<sup>808</sup>

2) However, one or more shareholders who together represent at least 5% of the share capital of the acquiring company have the right to demand that a general meeting be convened to vote on a resolution approving the merger.<sup>809</sup>

3) The acquiring company must take the measures provided for in Article 351d(1) and (2)(1) to (2)(3) at least one month before registering for entry of the merger in the Commercial Register (Article 351g). Article 351d(3) to (5) shall apply.<sup>810</sup>

4) The provisions on the exchange of shares (Article 351a(2)(3) to (2)(5)), the merger report (Article 351b), the review of the merger (Article

<sup>805</sup> Article 351n(4) inserted by LGBL 2000 No. 279.

<sup>806</sup> Article 351n(5) inserted by LGBL 2000 No. 279 and amended by LGBL 2010 No. 454.

<sup>807</sup> Article 351o heading inserted by LGBL 2000 No. 279.

<sup>808</sup> Article 351o(1) inserted by LGBL 2000 No. 279.

<sup>809</sup> Article 351o(2) inserted by LGBL 2000 No. 279.

<sup>810</sup> Article 351o(3) amended by LGBL 2011 No. 537.

351c), as well as Article 351d(2)(4) and (2)(5), the second sentence of Article 351h(3), and the provisions on the responsibility of the administration and experts (Article 351l) do not apply.<sup>811</sup>

## Article 352

### *III. Merger by unification*<sup>812</sup>

1) With the exception of Article 351e(3) and (4), the provisions on merger by acquisition shall apply *mutatis mutandis* to the merger of public limited companies by the formation of a new public limited company. Each of the merging companies is regarded as a company being acquired and the new company as the acquiring company.<sup>813</sup>

2) The terms of merger and, where applicable, the instrument of formation and the articles of association of the new company require the approval of the general meeting of each of the companies being acquired.<sup>814</sup>

3) The provisions on the formation of a public limited company shall apply *mutatis mutandis* to the formation of the new company. The expert report for non-cash contributions may be waived.<sup>815</sup>

4) In addition, the following provisions apply:<sup>816</sup>

1. In a public document, the companies shall establish the articles of association of the new company, confirm the takeover of all shares and their payment by contribution of the assets of the previous companies, and appoint the necessary bodies of the new company.<sup>817</sup>
2. The articles of association and the deed of formation of the new company require the approval of the general meetings of the merging companies.<sup>818</sup>
3. On the basis of the merger resolutions, the boards of directors of the merging companies must register the new company for entry in the Commercial Register.<sup>819</sup>
4. Upon entry of the merger in the Commercial Register, the assets and

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<sup>811</sup> Article 351o(4) inserted by LGBL 2000 No. 279.

<sup>812</sup> Article 352 heading amended by LGBL 2000 No. 279.

<sup>813</sup> Article 352(1) amended by LGBL 2000 No. 279.

<sup>814</sup> Article 352(2) amended by LGBL 2000 No. 279.

<sup>815</sup> Article 352(3) amended by LGBL 2000 No. 279.

<sup>816</sup> Article 352(4) introductory phrase amended by LGBL 2000 No. 279.

<sup>817</sup> Article 352(4)(1) amended by LGBL 2000 No. 279.

<sup>818</sup> Article 352(4)(2) amended by LGBL 2000 No. 279.

<sup>819</sup> Article 352(4)(3) amended by LGBL 2013 No. 6.

liabilities are transferred to the acquiring company. However, the acquiring company may not dispose of the assets the transfer of which requires entry in public registers such as the Land Register or the like until the prescribed transfer has been entered in the public registers.<sup>820</sup>

5. Upon entry of the new company, the merging companies cease to exist. The shareholders of the merging companies become shareholders of the acquiring company; however, this does not apply to the extent that the acquiring company or a third party acting in its own name but for the account of that company owns shares in the merging companies or to the extent that a company being acquired owns own shares or a third party acting in its own name but for the account of that company owns shares in that company.<sup>821</sup>
6. Upon successful entry of the new company, the shares of the new company shall be transferred in accordance with the terms of merger in exchange for the old shares.<sup>822</sup>
7. For each of the merging companies, the board of directors of the new company shall register the dissolution and takeover by the new company for entry in the Commercial Register. The entry may not take place until the new company has been entered.<sup>823</sup>
8. For each of the participating companies, the merger must be announced in accordance with Article 956(2). The announcement may be arranged for all companies by the new company.<sup>824</sup>

#### *IV. Cross-border merger*<sup>825</sup>

##### Article 352a

##### *1. Principle*<sup>826</sup>

1) Public limited companies may merge across borders with limited liability companies as defined in Directive (EU) 2017/1132<sup>827</sup> formed in accordance with the law of another EEA Member State and having their

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<sup>820</sup> Article 352(4)(4) amended by LGBL 2000 No. 279.

<sup>821</sup> Article 352(4)(5) amended by LGBL 2000 No. 279.

<sup>822</sup> Article 352(4)(6) amended by LGBL 2000 No. 279.

<sup>823</sup> Article 352(4)(7) amended by LGBL 2013 No. 6.

<sup>824</sup> Article 352(4)(8) amended by LGBL 2022 No. 227.

<sup>825</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of company law (OJ L 169/46, 30.6.2017).

<sup>826</sup> Article 352a heading inserted by LGBL 2009 No. 268.

<sup>827</sup> Article 352a(1) amended by LGBL 2020 No. 303.

registered office, central administration, or principal place of business in the European Economic Area.<sup>828</sup>

2) Articles 352b to 352k do not apply to cross-border mergers involving an undertaking for collective investment in transferable securities (Article 3(1)(1) UCITSG), an investment undertaking (Article 3(1)(a) IUG) or an alternative investment fund (Article 4(1)(1) AIFMG).<sup>829</sup>

#### Article 352b<sup>830</sup>

##### 2. *Applicable law*

Unless otherwise specified below, Articles 351 et seq. apply to cross-border mergers even where, under the law of another jurisdiction involved, the additional cash payment may exceed 10% of the nominal value or, in the absence thereof, of the notional par value of the shares or other participation in the capital of the company resulting from the cross-border merger, contrary to Article 351(1).

#### Article 352c

##### 3. *Terms of merger*<sup>831</sup>

1) The terms of merger in accordance with Article 351a must contain the following additional information:

1. the legal form, legal name, and registered office of the merging company and the company resulting from the merger;
2. the anticipated impact of the cross-border merger on employment;
3. the articles of association of the company resulting from the cross-border merger;
4. where applicable, information on the procedure for regulating the details of employee involvement in determining their participation rights in the company resulting from the cross-border merger;
5. information on the valuation of assets and liabilities to be transferred to the company resulting from the merger;

<sup>828</sup> Article 352a(1) amended by LGBL 2020 No. 303.

<sup>829</sup> Article 352a(2) amended by LGBL 2016 No. 61.

<sup>830</sup> Article 352b inserted by LGBL 2009 No. 268.

<sup>831</sup> Article 352c heading inserted by LGBL 2009 No. 268.

6. the balance sheet date of the annual accounts of the companies participating in the merger used to determine the conditions of the cross-border merger.<sup>832</sup>

2) The announcement of the terms of merger in accordance with Article 351d(1) must contain the following additional information:

1. the legal form, legal name, and registered office of each of the merging companies;
2. indication of the register where the documents to be disclosed are deposited for each of the merging companies and the number of the entry in the register;
3. for each of the merging companies, a reference to the arrangements for exercising the rights of creditors and, where applicable, minority shareholders of the merging companies and the address from which full information on these arrangements may be obtained free of charge.

<sup>833</sup>

3) The obligation to announce the terms of merger in accordance with paragraph 2 does not apply if each company makes the terms of merger available to the public on its website free of charge at least one month before the general meeting that is to decide on the approval. At least one month before the general meeting, a reference to this website, which must include the date of publication of the terms of merger on the internet, shall be published on the website of the Office of Justice.<sup>834</sup>

#### Article 352d<sup>835</sup>

##### *4. Merger report*

1) In a report to the general meeting, the board of directors must explain and justify the legal and economic aspects of the cross-border merger, in particular the impact on shareholders, creditors, and employees.

2) The report referred to in paragraph 1 must be made available to shareholders and employee representatives or, in the absence thereof, to employees directly at the latest one month before the general meeting. Any comments by employee representatives must be attached to the report.

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<sup>832</sup> Article 352c(1) inserted by LGBL 2009 No. 268.

<sup>833</sup> Article 352c(2) inserted by LGBL 2009 No. 268.

<sup>834</sup> Article 352c(3) amended by LGBL 2013 No. 6.

<sup>835</sup> Article 352d inserted by LGBL 2009 No. 268.

Article 352e<sup>836</sup>*5. Pre-merger certificate*

After conducting the scrutiny of legality, the Office of Justice shall issue without delay to a domestic public limited company participating in a cross-border merger a pre-merger certificate attesting to the proper completion of the pre-merger acts and formalities.

Article 352f<sup>837</sup>*6. Scrutiny of legality*

1) The Office of Justice shall scrutinise the legality of the cross-border merger as regards its completion and the formation of a new public limited company resulting from the cross-border merger that is subject to national law. The Office of Justice shall in particular ensure that:<sup>838</sup>

- a) the merging companies have approved the common draft terms of merger in the same terms; and
- b) where appropriate, arrangements for employee participation have been concluded in accordance with the Law on the Participation of Employees in the event of cross-border mergers of capital companies.

2) To that end, all companies participating in the merger must submit their pre-merger certificates referred to in Article 352e, the terms of merger approved by each general meeting, and, if applicable, evidence of the conclusion of an agreement in accordance with paragraph 1(b) within six months of issue of the pre-merger certificate.

Article 352g<sup>839</sup>*7. Approval by the general meeting*

The general meeting may reserve the right to make its approval of the cross-border merger conditional on express confirmation by it of the arrangements decided on with respect to the participation of employees in the company resulting from the cross-border merger.

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<sup>836</sup> Article 352e amended by LGBL 2013 No. 6.

<sup>837</sup> Article 352f inserted by LGBL 2009 No. 268.

<sup>838</sup> Article 352f(1) introductory phrase amended by LGBL 2013 No. 6.

<sup>839</sup> Article 352g inserted by LGBL 2009 No. 268.

Article 352h<sup>840</sup>*8. Entry of the cross-border merger in the Commercial Register*

1) A cross-border merger may not be entered in the Commercial Register until its legality has been scrutinised in accordance with Article 352f.

2) A cross-border merger which has taken effect upon entry in the Commercial Register may not be declared null and void.

3) The Office of Justice shall notify, without delay, the foreign registry authorities in which the participating companies were required to file their documents of the entry of a cross-border merger in the Commercial Register.

Article 352i<sup>841</sup>*9. Exchange of shares*

No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

1. by the acquiring company itself or through a person acting in that person's own name but on its behalf; or
2. by the company being acquired itself or through a person acting in that person's own name but on its behalf.

Article 352k<sup>842</sup>*10. Majority or totality of the share capital held by the acquiring company*

1) If, upon transfer of all assets and liabilities, at least nine tenths of the share capital of a company being acquired are in the hands of the acquiring company and/or in the hands of persons holding these shares in their own name but for the account of the acquiring company, Article 351n shall apply.

2) If the public limited company being acquired is a domestic company, Article 351n(4) shall apply in the event of the intended waiver of the merger report and review of the merger.

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<sup>840</sup> Article 352h amended by LGBL 2013 No. 6.

<sup>841</sup> Article 352i inserted by LGBL 2009 No. 268.

<sup>842</sup> Article 352k inserted by LGBL 2009 No. 268.

3) If all shares are held by the acquiring company or by persons holding these shares in their own name but for the account of the acquiring company, Article 351o shall apply.

#### Article 353

##### *V. Acquisition by a partnership limited by shares*<sup>843</sup>

1) If a public limited company is dissolved by acquisition by a partnership limited by shares, the general partners of the latter shall become the borrowers of the debt of the dissolved public limited company.

2) The provisions concerning acquisition by a public limited company shall apply *mutatis mutandis*.

#### Article 354

##### *G. Transfer to the polity*

1) Subject to the provision on dissolution without liquidation in the general provisions, if the assets of a public limited company are taken over by the State or by a Liechtenstein municipality with the guarantee of the State, it may be agreed with the approval of the general meeting that liquidation shall not occur.

2) The resolution of the general meeting must be adopted in accordance with the provisions on dissolution and registered with the Commercial Register.<sup>844</sup>

3) With the entry of this resolution in the Commercial Register, the transfer of the assets of the company including debts is complete and the legal name of the company lapses.

4) If the transfer involves real estate or other rights entered in the Land Register, the transfer shall be based on the entry in the Commercial Register.<sup>845</sup>

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<sup>843</sup> Article 353 heading amended by LGBL 2009 No. 268.

<sup>844</sup> Article 354(2) amended by LGBL 2013 No. 6.

<sup>845</sup> Article 354(4) amended by LGBL 2013 No. 6.

*H. Repayment and other reduction of the share capital*<sup>846</sup>

## Article 355

*I. Repayment and reduction resolution etc.*<sup>847</sup>

1) With the exception of an order by a court decision, repayment of the share capital to the shareholders or a reduction of the share capital may take place only on the basis of a provision set out in the articles of association with a resolution of the general meeting in accordance with the requirements set out by law and in the articles of association, carrying at least two thirds of the votes represented. The resolution must be published by the Office of Justice in the official publication medium in accordance with Article 956(2).<sup>848</sup>

2) The invitation to the general meeting must at least state the purpose of the reduction and the procedure for its implementation.<sup>849</sup>

3) The general meeting may approve the capital reduction by a resolution only if it is established by a special audit report that the claims of the creditors are fully covered despite the reduction of the share capital. The audit report must be submitted by a recognised audit office or an expert (Article 191a(2)) which must be present at the general meeting that votes on the resolution.<sup>850</sup>

4) Creditors whose claims were established before the announcement of the resolution must be provided with security if they register for that purpose within two months from the announcement, unless they can demand satisfaction. The creditors shall be referred to this right in the announcement. Creditors shall have the right to demand security only if they have credibly demonstrated that the fulfilment of their claims will be jeopardised by the capital reduction.<sup>851</sup>

5) Payments to the shareholders may not be made due to the reduction of the share capital until after expiry of the deadline set for the creditors and after the registered creditors have been satisfied or secured or after a court has determined that their application does not need to be complied with. An exemption of shareholders from the obligation to make contributions shall also not take effect before the designated time and not before the creditors

<sup>846</sup> Heading preceding Article 355 amended by LGBL 2000 No. 279.

<sup>847</sup> Article 355 heading amended by LGBL 2000 No. 279.

<sup>848</sup> Article 355(1) amended by LGBL 2022 No. 227.

<sup>849</sup> Article 355(2) amended by LGBL 2000 No. 279.

<sup>850</sup> Article 355(3) amended by LGBL 2000 No. 279.

<sup>851</sup> Article 355(4) amended by LGBL 2006 No. 28.

who have registered in a timely manner have been satisfied or secured.<sup>852</sup>

5a) Creditors may also apply to the court for adequate security if they can credibly demonstrate that the satisfaction of their claims is jeopardised by the capital reduction and if they have not received adequate security from the company.<sup>853</sup>

#### Article 355a

##### *II. Simplified capital reduction in the event of losses*<sup>854</sup>

1) The notice to creditors and their satisfaction or security may be omitted if the purpose of the capital reduction is to offset losses or to allocate sums to a special reserve. The resolution must specify that the reduction is for these purposes. The resolution must be announced in accordance with Article 956(2).<sup>855</sup>

2) The amount of the reserve may not exceed 10% of the reduced share capital. It may be used only to offset losses or to increase the share capital by converting reserves.<sup>856</sup>

3) The sums gained from the simplified capital reduction in the event of losses may not be used for payments to shareholders or to exempt shareholders from the obligation to make contributions.<sup>857</sup>

4) If different classes of shares have been issued, and if the shares in question are not preference shares in relation to the liquidation proceeds or if it was not determined otherwise upon issue, the shares issued earlier shall be affected by the capital reduction before those issued later.<sup>858</sup>

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<sup>852</sup> Article 355(5) amended by LGBL 2000 No. 279.

<sup>853</sup> Article 355(5a) inserted by LGBL 2009 No. 4.

<sup>854</sup> Article 355a heading inserted by LGBL 2000 No. 279.

<sup>855</sup> Article 355a(1) amended by LGBL 2022 No. 227.

<sup>856</sup> Article 355a(2) inserted by LGBL 2000 No. 279.

<sup>857</sup> Article 355a(3) inserted by LGBL 2000 No. 279.

<sup>858</sup> Article 355a(4) inserted by LGBL 2000 No. 279.

## Article 356

*III. Capital repayment subject to recontribution*<sup>859</sup>

1) In accordance with the original articles of association or by way of an amendment to the articles of association, the general meeting may resolve by a two-thirds majority of the votes represented that, without observing the provisions on repayment to shareholders, a portion of the share capital shall be repaid to the shareholders, without however reducing the share capital to less than 25% of each share or 50% of each share if bearer shares have been issued, subject to the express reservation that the amount be contributed again at the request of a body designated in the resolution. The resolution must be announced in accordance with Article 956(2).<sup>860</sup>

2) The capital repayment may be made only with assets that can be distributed in accordance with Article 312.<sup>861</sup>

3) The shareholders concerned retain their rights vis-à-vis the company, with the exception of the right to participate in the distribution of an initial dividend for shares not affected by the capital repayment.<sup>862</sup>

## Article 357

*IV. Consolidation and reduction of the number of shares*<sup>863</sup>

1) If the legal conditions for the reduction of the share capital are met, such a reduction may also be effected by way of a share consolidation with the approval of the shareholders.<sup>864</sup>

2) If a resolution to consolidate and reduce the number of shares has been adopted by a three-quarters majority of all votes in the general meeting, the shares of the non-approving shareholders shall fall to the company and may be settled in cash according to the result of a liquidation balance sheet to be drawn up.

<sup>859</sup> Article 356 heading amended by LGBL 2000 No. 279.

<sup>860</sup> Article 356(1) amended by LGBL 2022 No. 227.

<sup>861</sup> Article 356(2) amended by LGBL 2000 No. 279.

<sup>862</sup> Article 356(3) amended by LGBL 2000 No. 279.

<sup>863</sup> Article 357 heading amended by LGBL 2000 No. 279.

<sup>864</sup> Article 357(1) amended by LGBL 2000 No. 279.

*V. Amortisation*<sup>865</sup>

## Article 358

*1. Compulsory amortisation*<sup>866</sup>

1) The compulsory amortisation of shares is permissible under the following conditions:<sup>867</sup>

1. It is required or permitted by the articles of association prior to the subscription of the shares to be redeemed.<sup>868</sup>
2. If compulsory amortisation is merely permitted by the articles of association, it must be resolved by the general meeting, unless the shareholders concerned have unanimously approved it.<sup>869</sup>
3. The company body that decides on compulsory amortisation shall determine the conditions and implementation of this measure, to the extent not already provided in the articles of association.<sup>870</sup>
4. Article 355(4) and (5) apply, except in the case of fully paid-up shares which are made available to the company free of charge or which are redeemed with the help of assets that may be distributed in accordance with Article 312; in such cases, an amount equal to the nominal amount or the notional par value (in the case of non-par value shares) of all redeemed shares shall be placed in a reserve. This reserve may not be distributed to shareholders except in the event of a reduction in the subscribed capital; it may be used only to offset losses or to increase the subscribed capital by converting reserves.<sup>871</sup>
5. The resolution on compulsory amortisation must be published in accordance with Article 956(2).<sup>872</sup>

2) Article 173 is applicable only in the case of paragraph 1(2), in which case the resolutions must be adopted in accordance with Article 355(1). Otherwise, Article 355(1) and Article 355a shall not apply.<sup>873</sup>

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<sup>865</sup> Heading preceding Article 358 amended by LGBL 2000 No. 279.

<sup>866</sup> Article 358 heading amended by LGBL 2000 No. 279.

<sup>867</sup> Article 358(1) introductory phrase amended by LGBL 2000 No. 279.

<sup>868</sup> Article 358(1)(1) amended by LGBL 2000 No. 279.

<sup>869</sup> Article 358(1)(2) amended by LGBL 2000 No. 279.

<sup>870</sup> Article 358(1)(3) amended by LGBL 2000 No. 279.

<sup>871</sup> Article 358(1)(4) amended by LGBL 2000 No. 279.

<sup>872</sup> Article 358(1)(5) amended by LGBL 2022 No. 227.

<sup>873</sup> Article 358(2) amended by LGBL 2000 No. 279.

3) The redeemed shares shall be cancelled and the share capital reduced accordingly.<sup>874</sup>

#### Article 359

##### 2. *Voluntary amortisation of shares*<sup>875</sup>

1) In the event of a capital reduction by amortisation of shares acquired by the company itself or by a person acting in that person's own name but for the account of the company, the amortisation must be approved by a resolution of the general meeting.<sup>876</sup>

2) Article 355(4) and (5) apply, except in the case of fully paid-up shares which are made available to the company free of charge or which are redeemed with the help of assets that may be distributed in accordance with Article 312; in such cases, an amount equal to the nominal amount or the notional par value (in the case of non-par value shares) of all redeemed shares shall be placed in a reserve. This reserve may not be distributed to shareholders except in the event of a reduction in the subscribed capital; it may be used only to offset losses or to increase the subscribed capital by converting reserves.<sup>877</sup>

3) Article 355a shall not apply in the cases referred to in paragraph 1. If there are several classes of shares, the provisions of Article 173 shall apply. Resolutions must be adopted in accordance with Article 355(1) and published in accordance with Article 956(2).<sup>878</sup>

#### Article 360

##### 3. *Issue of bonus shares by drawing*

1) In the event of a drawing of shares, the articles of association may provide that transferable bonus shares (substitute shares) may be issued for the shares drawn and repaid. These bonus shares do not represent a nominal value but do grant membership rights, in particular voting rights and the right to a share in the net profit and the liquidation proceeds.

<sup>874</sup> Article 358(3) amended by LGBL 2000 No. 279.

<sup>875</sup> Article 359 heading amended by LGBL 2000 No. 279.

<sup>876</sup> Article 359(1) amended by LGBL 2000 No. 279.

<sup>877</sup> Article 359(2) amended by LGBL 2000 No. 279.

<sup>878</sup> Article 359(3) amended by LGBL 2022 No. 227.

2) With the approval of the Office of Justice, bonus shares may also be issued in other cases.<sup>879</sup>

*I. Public limited companies with variable share capital*<sup>880</sup>

Article 361

*I. In general*<sup>881</sup>

1) A public limited company with variable share capital may be operated only as an investment company with variable capital as defined in the Law on Certain Undertakings for Collective Investment in Transferable Securities, the Investment Undertakings Act, or the Alternative Investment Fund Managers Act.<sup>882</sup>

2) By way of derogation from the provisions on fixed share capital, the articles of association of a public limited company with variable share capital may provide that the increase in share capital may be effected by the gradual issue of new shares to existing shareholders or third parties and the reduction in share capital by gradual repayment of the share capital in whole or in part by redemption of shares, without having to follow the procedure for increasing or decreasing the share capital provided for in the preceding articles. When no shares are issued, the subscription rights of existing shareholders do not apply.<sup>883</sup>

3) Unless otherwise provided, the other provisions on public limited companies shall apply to public limited companies with variable share capital.<sup>884</sup>

Article 362<sup>885</sup>

Repealed

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<sup>879</sup> Article 360(2) amended by LGBL 2013 No. 6.

<sup>880</sup> Heading preceding Article 361 amended by LGBL 2013 No. 51.

<sup>881</sup> Article 361 heading amended by LGBL 2000 No. 279.

<sup>882</sup> Article 361(1) amended by LGBL 2016 No. 61.

<sup>883</sup> Article 361(2) amended by LGBL 2000 No. 279.

<sup>884</sup> Article 361(3) amended by LGBL 2000 No. 279.

<sup>885</sup> Article 362 repealed by LGBL 2000 No. 279.

*II. Reduction*<sup>886</sup>Article 363<sup>887</sup>*1. Retention in the event of repayment*

Shares acquired by the company through repayment may be retained for reissue, but they may not be treated as membership rights.

## Article 364

*2. Liability*

1) If the share capital has been reduced in violation of provisions set out by law or in the articles of association, the culpable members of the governing bodies and the shareholder who has received a benefit shall have unlimited and joint and several liability for the damage caused to the company intentionally or negligently in accordance with the provisions on responsibility.<sup>888</sup>

2) If insolvency proceedings have been opened in respect of the company's assets within one year of the repayment of a company's share or if its nominal value has been reduced in lieu of repayment, the shareholder and the redeemer of the share shall be liable to the insolvency estate for the amount received or the waived remainder payment, without the right of offset or retention of company property.<sup>889</sup>

Article 365<sup>890</sup>*III. Mandatory reserve fund*

Public limited companies with variable share capital do not require a reserve fund.

<sup>886</sup> Heading preceding Article 363 amended by LGBl. 2000 No. 279.

<sup>887</sup> Article 363 amended by LGBl. 2000 No. 279.

<sup>888</sup> Article 364(1) amended by LGBl. 2000 No. 279.

<sup>889</sup> Article 364(2) amended by LGBl. 2020 No. 369.

<sup>890</sup> Article 365 amended by LGBl. 2000 No. 279.

## Article 366

*IV. Conversion*<sup>891</sup>

1) If the share capital is used up through gradual repayment and if no bonus shares have been issued, the articles of association must determine the legal form in which the company is to continue to exist, such as an establishment, foundation, and the like.<sup>892</sup>

2) The conversion without liquidation of a company with variable share capital into a public limited company with fixed share capital requires an amendment to the articles of association, the required change of legal name, and registration for entry in the Commercial Register.<sup>893</sup>

3) Conversion without liquidation of a public limited company with variable share capital into a cooperative society with shares but without liability and additional performance obligations is possible at any time on the basis of a company resolution with amendment to the articles of association and registration for entry in the Commercial Register.<sup>894</sup>

*K. Shareholder engagement in public limited companies listed in the EEA*<sup>895</sup>*I. In general*<sup>896</sup>Article 367<sup>897</sup>*1. Object and scope*

1) This Subsection establishes requirements in relation to the exercise of certain shareholder rights attached to voting shares in relation to the general meeting of public limited companies listed in the EEA (Article 262a(1)) which have their registered office in Liechtenstein. This Subsection also establishes special requirements to encourage long-term shareholder engagement; these apply in relation to:

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<sup>891</sup> Article 366 heading amended by LGBl. 2000 No. 279.

<sup>892</sup> Article 366(1) amended by LGBl. 2000 No. 279.

<sup>893</sup> Article 366(2) amended by LGBl. 2013 No. 6.

<sup>894</sup> Article 366(3) amended by LGBl. 2013 No. 6.

<sup>895</sup> Heading preceding Article 367 inserted by LGBl. 2021 No. 225.

<sup>896</sup> Heading preceding Article 367 inserted by LGBl. 2021 No. 225.

<sup>897</sup> Article 367 amended by LGBl. 2021 No. 225.

1. the identification of shareholders, transmission of information, facilitation of exercise of shareholders rights;
2. the transparency of institutional investors, asset managers, and proxy advisors;
3. the remuneration policy and the remuneration report;
4. the transparency and approval of related party transactions.

2) Articles 367b to 367f shall apply to intermediaries which provide services to shareholders or other intermediaries with respect to shares of companies which have their registered office in an EEA Member State and the shares of which are admitted to trading on a regulated market situated or operating within an EEA Member State.

3) Articles 367h to 367l shall apply to:

1. institutional investors for which Liechtenstein is the home Member State as defined in any applicable sector-specific EEA legislative act and which invest directly or through an asset manager in shares traded on a regulated market;
2. asset managers for which Liechtenstein is the home Member State as defined in any applicable sector-specific EEA legislative act and which invest in such shares on behalf of investors;
3. proxy advisors which have their registered office in Liechtenstein or, if they have neither a registered office in Liechtenstein nor in another EEA Member State, have their head office in Liechtenstein, or, if they have neither a registered office nor a head office in Liechtenstein or in another EEA Member State, have an establishment in Liechtenstein, and which provide services to shareholders with respect to shares of companies which have their registered office in an EEA Member State and the shares of which are admitted to trading on a regulated market situated or operating within an EEA Member State.

4) The provisions of this Subsection are without prejudice to the provisions laid down in any sector-specific EEA legislative act regulating specific types of company or specific types of entity. Where the provisions of this Subsection provide for more specific rules or add requirements compared to the provisions laid down by any sector-specific provisions, those provisions shall be applied in conjunction with the provisions of this Subsection.

5) This is without prejudice to the provisions on the participation of shareholders in public limited companies listed in the EEA set out in Articles 332(2a), (5), and (6), 332a, 334(5), 339a to 339e, and 340a.

Article 367a<sup>898</sup>2. *Definitions*

For the purposes of this Subsection, the following definitions shall apply:

1. "intermediary" means a person, such as in particular an investment firm as defined in point 1 of Article 4(1) of Directive 2014/65/EU<sup>899</sup>, a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013<sup>900</sup>, and a central securities depository as defined in point 1 of Article 2(1) of Regulation (EU) No 909/2014<sup>901</sup>, which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons;
2. "institutional investor" means:
  - a) an undertaking carrying out activities of life assurance within the meaning of Article 2(3) of Directive 2009/138/EC<sup>902</sup> and of reinsurance as defined in point 7 of Article 13 of that Directive provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive;
  - b) an institution for occupational retirement provision within the meaning of Article 2 of Directive (EU) 2016/2341<sup>903</sup>;
3. "asset manager" means an investment firm as defined in point 1 of Article 4(1) of Directive 2014/65/EU that provides portfolio management services to investors, an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive

<sup>898</sup> Article 367a inserted by LGBI. 2021 No. 225.

<sup>899</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>900</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>901</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

<sup>902</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 336, 17.12.2009, p. 1).

<sup>903</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

2011/61/EU<sup>904</sup> that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive or a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC<sup>905</sup>, or an investment company that is authorised in accordance with Directive 2009/65/EC provided that it has not designated a management company authorised under that Directive for its management;

4. "proxy advisor" means a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights;
5. "information regarding shareholder identity" means information allowing the identity of a shareholder to be established, including at least the following information:
  - a) name and contact details (including full address and, where available, email address) of the shareholder, and, where it is a legal person, its registration number, or, if no registration number is available, its unique identifier, such as legal entity identifier;
  - b) the number of shares held; and
  - c) insofar they are requested by the company, one or more of the following details: the categories or classes of the shares held or the date from which the shares have been held;
6. "director" means any member of the administrative, management or supervisory bodies of a company and of the general management or senior management.

<sup>904</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>905</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

*II. Identification of shareholders, transmission of information, and facilitation of exercise of shareholder rights<sup>906</sup>*

Article 367b<sup>907</sup>

*1. Identification of shareholders*

- 1) Companies shall have the right to identify their shareholders.
- 2) On the request of the company or of a third party nominated by the company, intermediaries shall communicate without delay to the company the information regarding shareholder identity.
- 3) In a chain of intermediaries, the intermediaries shall without delay forward the request referred to in paragraph 1 to each other so that the information regarding shareholder identity is transmitted directly to the company or to the third party nominated by the company by the intermediary who holds the requested information. Each intermediary in the chain shall make available the information regarding shareholder identity that the intermediary holds to the company or to the third party nominated by the company.
- 4) By disclosing information regarding shareholder identity in accordance with this provision, intermediaries do not infringe any contractual or statutory prohibitions concerning the disclosure of information.

Article 367c<sup>908</sup>

*2. Transmission of information*

- 1) Intermediaries shall transmit the following information, without delay, from the company to the shareholders or to any third parties nominated by the shareholders:
  1. the information which the company is required to provide to the shareholders, to enable the shareholders to exercise rights flowing from their shares, and which is directed to all shareholders in shares of that class; or

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<sup>906</sup> Heading preceding Article 367b inserted by LGBl. 2021 No. 225.

<sup>907</sup> Article 367b inserted by LGBl. 2021 No. 225.

<sup>908</sup> Article 367c inserted by LGBl. 2021 No. 225.

2. where the information referred to in point 1 is available to shareholders on the website of the company, a notice indicating that the information can be found there.

2) The companies shall provide intermediaries in a standardised and timely manner with the information referred to in paragraph 1(1) or the notice referred to in paragraph 1(2).

3) The information referred to in paragraph 1(1) or the notice referred to in paragraph 1(2) need not be transmitted or provided where companies send that information or that notice directly to all their shareholders or to any third parties nominated by the shareholders.

4) Intermediaries shall transmit, without delay, to the companies, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.

5) In a chain of intermediaries, each intermediary shall transmit information referred to in paragraphs 1 and 4 between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholders or to any third party nominated by the shareholders.

#### Article 367d<sup>909</sup>

##### *3. Facilitation of exercise of shareholder rights*

1) Intermediaries shall facilitate the exercise of the rights by the shareholders, including the right to participate and vote in general meetings, which shall comprise at least one of the following:

1. Intermediaries make the necessary arrangements for the shareholders or any third parties nominated by the shareholders to be able to exercise themselves the rights.
2. Intermediaries exercise the rights flowing from the shares upon the explicit authorisation and instruction of the shareholders and for the shareholders' benefit.

2) In the case of electronic voting (Article 332a(2)), an electronic confirmation of receipt of the vote shall be sent by the company to the person who cast the vote.

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<sup>909</sup> Article 367d inserted by LGBL 2021 No. 225.

3) Shareholders or any third parties nominated by the shareholders may, within three months after the general meeting, request confirmation from the company that their votes have been validly recorded and counted, unless that information is already available to them.

4) Where intermediaries receive confirmation as referred to in paragraph 2 or 3, they shall transmit it without delay to the shareholders or any third parties nominated by the shareholders. Where there is more than one intermediary in the chain of intermediaries, these intermediaries shall transmit the received confirmation between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder in question or any third party nominated by that shareholder.

#### Article 367e<sup>910</sup>

##### *4. Non-discrimination, proportionality, and transparency of costs*

1) Intermediaries shall disclose publicly any charges for any service provided in accordance with Articles 367b to 367d.

2) All charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.

#### Article 367f<sup>911</sup>

##### *5. Processing of personal data of shareholders*

1) Companies and intermediaries may process personal data of shareholders for the purposes of identification, communication, exercising shareholders' rights and cooperation with shareholders. The provisions of data protection legislation shall apply *mutatis mutandis*.

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<sup>910</sup> Article 367e inserted by LGBL 2021 No. 225.

<sup>911</sup> Article 367f inserted by LGBL 2021 No. 225.

2) If companies and intermediaries become aware that a shareholder has ceased to be a shareholder of the company, they may not store the shareholder's personal data for longer than 12 months, subject to other legal provisions.

3) Legal persons shall have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.

#### Article 367g<sup>912</sup>

##### *6. Information on implementation*

The Office of Justice shall inform the EFTA Surveillance Authority of substantial practical difficulties in enforcement of Articles 367b to 367f or non-compliance with those provisions by intermediaries.

### *III. Transparency of institutional investors, asset managers, and proxy advisors<sup>913</sup>*

#### Article 367h<sup>914</sup>

##### *1. Engagement policy*

1) Institutional investors and asset managers shall develop and publicly disclose an engagement policy. The engagement policy describes how institutional investors and asset managers:

1. integrate shareholder engagement in their investment strategy;
2. monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance;
3. conduct dialogues with investee companies;
4. exercise voting rights and other rights attached to shares;
5. cooperate with other shareholders;
6. communicate with relevant stakeholders of the investee companies; and

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<sup>912</sup> Article 367g inserted by LGBL 2021 No. 225.

<sup>913</sup> Heading preceding Article 367h inserted by LGBL 2021 No. 225.

<sup>914</sup> Article 367h inserted by LGBL 2021 No. 225.

7. manage actual and potential conflicts of interests in relation to their engagement.

2) Institutional investors and asset managers shall, on an annual basis, publicly disclose how they have implemented their engagement policy, including a general description of voting behaviour, an explanation of the most significant votes and the use of the services of proxy advisors. They shall also publicly disclose how they have cast votes in the general meetings of companies in which they hold shares, unless the vote is insignificant due to the subject matter of the vote or the size of the holding in the company.

3) If institutional investors and asset managers do not comply or do not fully comply with one or more of the requirements under paragraphs 1 and 2, they must publicly explain why they do not do so.

4) The information referred to in paragraphs 1 to 3 shall be made available free of charge on the institutional investor's or asset manager's website. Where an asset manager implements the engagement policy, including voting, on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager.

5) Conflicts of interests rules applicable to institutional investors and asset managers, including Article 14 of Directive 2011/61/EU, point (b) of Article 12(1) and point (d) of Article 14(1) of Directive 2009/65/EC and the relevant implementing rules, and Article 23 of Directive 2014/65/EU shall also apply with regard to engagement activities.

#### Article 367i<sup>915</sup>

##### *2. Investment strategy of institutional investors and arrangements with asset managers*

1) Institutional investors shall publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium- to long-term performance of their assets.

2) Where an asset manager invests on behalf of an institutional investor, whether on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor shall publicly

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<sup>915</sup> Article 367i inserted by LGBL 2021 No. 225.

disclose the following information regarding its arrangement with the asset manager:

1. how the arrangement incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities;
2. how the arrangement incentivises the asset manager to make investment decisions based on assessments about medium- to long-term financial and non-financial performance of the investee company and to engage with investee companies in order to improve their performance in the medium to long term;
3. how the method and time horizon of the evaluation of the asset manager's performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, and take absolute long-term performance into account;
4. how the institutional investor monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio turnover or turnover range;
5. the duration of the arrangement with the asset manager.

3) Where the arrangement with the asset manager does not contain one or more of elements of the information referred to in paragraph 2, the institutional investor must publicly explain why this is the case.

4) The information referred to in paragraphs 1 and 3 shall be made available, free of charge, on the institutional investor's website and shall be updated annually unless there is no material change. Institutional investors regulated by Directive 2009/138/EC may instead include this information in their report on solvency and financial condition referred to in Article 51 of that Directive.

#### Article 367k<sup>916</sup>

##### *3. Transparency of asset managers*

1) Asset managers shall disclose, on an annual basis, to the institutional investors with which they have entered into the arrangements referred to in Article 367i(2) how their investment strategy and implementation thereof complies with that arrangement and contributes to the medium-

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<sup>916</sup> Article 367k inserted by LGBL 2021 No. 225.

to long-term performance of the assets of the institutional investor. This shall include reporting on:

1. the key material medium- to long-term risks associated with the investments;
2. portfolio composition, turnover and turnover costs;
3. the use of proxy advisors for the purpose of engagement activities; and
4. their policy on securities lending and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies.

2) Disclosure as referred to in paragraph 1 shall also include information on whether and, if so, how, the asset managers make investment decisions based on evaluation of medium- to long-term performance of the investee company, including non-financial performance, and on whether and, if so, which conflicts of interests have arisen in connection with engagement activities and how they have been dealt with.

3) Insofar as the information referred to in paragraph 1 is already publicly available, the disclosure requirement shall not apply.

#### Article 367l<sup>917</sup>

##### *4. Transparency of proxy advisors*

1) Proxy advisors shall declare, on an annual basis, that they have complied and are complying with the requirements of a code of conduct or whether they have deviated and are deviating from one or more recommendations of the code of conduct and what measures have been taken instead. Insofar as proxy advisors do not comply with a code of conduct, they shall explain why not.

2) Proxy advisors shall publish the following information on an annual basis:

1. the essential features of the methodologies and models they apply;
2. the main information sources they use;
3. the procedures put in place to ensure quality of the research, advice and voting recommendations and qualifications of the staff involved;
4. whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account;

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<sup>917</sup> Article 367l inserted by LGBL 2021 No. 225.

5. the essential features of the voting policies they apply for each market;
6. whether they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof;
7. the policy regarding the prevention and management of potential conflicts of interests.

3) The information referred to in paragraphs 1 and 2 shall be made publicly available on the website of the proxy advisor for at least three years and shall be updated on an annual basis.

4) Proxy advisors shall inform their clients without delay of any actual or potential conflicts of interests and of any countermeasures in this regard.

5) This article also applies to proxy advisors that have neither their registered office nor their head office in an EEA Member State which carry out their activities through an establishment located in Liechtenstein.

#### *IV. Remuneration policy and remuneration report<sup>918</sup>*

##### *Article 367m<sup>919</sup>*

###### *1. Principles of directors' remuneration*

1) The supervisory board or, if no such board has been appointed, the board of directors, shall establish principles of directors' remuneration (remuneration policy).

2) The remuneration policy shall contribute to the company's business strategy and long-term development and explain how it does so. It shall be clear and understandable.

3) The remuneration policy shall contain:

1. a description of the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form, which can be awarded to directors and indicate their relative proportion;

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<sup>918</sup> Heading preceding Article 367m inserted by LGBI. 2021 No. 225.

<sup>919</sup> Article 367m inserted by LGBI. 2021 No. 225.

2. an explanation how the pay and employment conditions of employees of the company were taken into account when establishing the remuneration policy;
3. clear, comprehensive, and varied criteria for any award of variable remuneration;
4. financial and non-financial performance criteria, including any criteria relating to corporate social responsibility, and explanations how these criteria contribute to the objectives set out in paragraph 2, and the methods for determining fulfilment of the criteria;
5. information on any vesting periods and on the possibility for the company to reclaim variable remuneration;
6. an explanation how any share-based remuneration awarded contributes to the objectives set out in paragraph 2, and a specification of any vesting and retention periods;
7. the duration of the contracts with directors, the relevant notice periods, the main characteristics of supplementary pension or early retirement schemes, and the terms of the termination and payments linked thereto;
8. explanations on the process for determining, reviewing, and implementing the remuneration policy, including measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned.

4) In exceptional circumstances, the company may temporarily derogate from the remuneration policy, provided that the policy includes the procedural conditions under which the derogation can be applied and specifies the elements from which a derogation is possible. Exceptional circumstances shall cover only situations in which the derogation from the remuneration policy is necessary for the long-term development of the company or for ensuring its viability.

5) Each revised remuneration policy shall describe and explain all significant changes. It shall also be described how the votes and views of shareholders on the remuneration policy and remuneration reports since the most recent vote on the remuneration policy by the general meeting of shareholders have been taken into account.

Article 367n<sup>920</sup>*2. Vote on the remuneration policy and publication*

1) The remuneration policy shall be submitted to a vote by the general meeting at least every four years and at every material change. The vote shall be advisory. The decision shall not be contestable.

2) The company must pay remuneration to their directors only in accordance with a remuneration policy that has been submitted to a vote at the general meeting. Where the general meeting rejects the proposed remuneration policy, the company shall submit a revised remuneration policy to a vote at the following general meeting.

3) After the vote at the general meeting, the remuneration policy shall be made public together with the date and the results of the vote, at the latest on the second working day after the general meeting, on the website of the company and shall remain publicly available there, free of charge, at least as long as it is applicable.

Article 367o<sup>921</sup>*3. Preparation and content of a report on directors' remuneration*

1) The supervisory board or, if no such board has been appointed, the board of directors shall draw up a clear and understandable remuneration report. The remuneration report shall provide a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to current and former directors in accordance with the remuneration policy referred to in Article 367m.

2) The remuneration report shall contain the following information regarding each individual director's remuneration:

1. the total remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the remuneration policy adopted by the general meeting, including how the total remuneration contributes to the long-term performance of the company, and an explanation how the performance criteria were applied;
2. the annual change of total remuneration, of the earnings of the company, and of average remuneration on a full-time equivalent basis

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<sup>920</sup> Article 367n inserted by LGBL 2021 No. 225.

<sup>921</sup> Article 367o inserted by LGBL 2021 No. 225.

- of the other employees of the company over at least the five most recent financial years, in a manner which permits comparison;
3. any remuneration from any undertaking belonging to the same group as defined in point 11 of Article 2 of Directive 2013/34/EU<sup>922</sup>;
  4. the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;
  5. information on the use of the possibility to reclaim variable remuneration;
  6. information on any deviations from the procedure for the implementation of the remuneration policy referred to in Article 367m(2) and (3) and on any derogations applied in accordance with Article 367m(4), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.

3) The remuneration report must not include special categories of personal data of individual directors within the meaning of Article 9(1) of Regulation (EU) 2016/679<sup>923</sup> or personal data which refer to the family situation of individual members of the executive board.

4) The company shall process the personal data of directors included in the remuneration report only for the purpose of increasing transparency as regards directors' remuneration. This shall be with the view to enhancing directors' accountability and shareholder oversight over directors' remuneration.

5) Without prejudice to any longer period laid down by any sector-specific EEA legislative act, the company shall no longer make publicly available the personal data of directors included in the remuneration report after 10 years from the publication of the remuneration report.

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<sup>922</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

<sup>923</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Article 367p<sup>924</sup>*4. Right to vote on the remuneration report*<sup>925</sup>

1) The remuneration report of the most recent financial year shall be submitted to a vote by the general meeting. The vote shall be advisory. The decision shall not be contestable. The company shall explain in the following remuneration report how the result of the vote by the general meeting has been taken into account.

2) In small and medium-sized companies as defined in Article 1064(1) and (2), the remuneration report of the most recent financial year may merely be submitted for discussion in the general meeting as a separate item of the agenda. The company shall explain in the following remuneration report how the discussion in the general meeting has been taken into account.

Article 367q<sup>926</sup>*5. Publication of the remuneration report*<sup>927</sup>

1) After the general meeting, the company shall make the remuneration report publicly available on the company website, free of charge, for a period of 10 years. The remuneration report may be kept available for a longer period provided it no longer contains the personal data of directors.

2) The audit office shall check that the required information has been provided.

Article 367r<sup>928</sup>*V. Transparency and approval of related party transactions*

1) A material transaction with related parties shall require the approval of the supervisory board or, if no such board has been appointed, the general meeting and the announcement referred to in paragraph 4, unless it falls under an exception set out in paragraph 5 or 6.

<sup>924</sup> Article 367p inserted by LGBL 2021 No. 225.

<sup>925</sup> Article 367p heading amended by LGBL 2022 No. 227.

<sup>926</sup> Article 367q inserted by LGBL 2021 No. 225.

<sup>927</sup> Article 367q heading amended by LGBL 2022 No. 227.

<sup>928</sup> Article 367r inserted by LGBL 2021 No. 225.

2) Related parties are those pursuant to the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.<sup>929</sup>

3) A transaction is material if its value exceeds 5% of the company's balance sheet total. For the respective financial year, the balance sheet total from the annual financial statement submitted to the annual general meeting of the previous financial year shall be decisive. In the case of a parent company that is required to prepare consolidated financial statements, the balance sheet total shall be replaced by the sum of the corresponding assets in the consolidated financial statement. If within a financial year, several transactions are concluded with the same related party that would not be material if viewed individually, their values shall be cumulated.

4) The company shall announce a transaction referred to in paragraph 1 at the latest at the time of the conclusion of the transaction in the manner provided for announcements to shareholders. In any case, the announcement must contain the names of the related parties, the date of the transaction, and the note that more detailed information about the transaction is available on the website of the company. This information shall contain at least information on the nature of the related party relationship, the name of the related party, the date and the value of the transaction, and other information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the company and of all shareholders who are not a related party. The information must be available on the company's website until the end of the financial year beginning after the conclusion of the transaction in question.

5) A transaction within the meaning of paragraph 1 concluded in the ordinary course of business and on normal market terms shall require neither approval in accordance with paragraph 1 nor announcement in accordance with paragraph 4. The company shall establish an internal procedure to periodically assess whether these conditions are fulfilled. The related parties shall not take part in that assessment.

6) To the extent not provided otherwise in the articles of association, the following transactions within the meaning of paragraph 1 shall also require neither approval in accordance with paragraph 1 nor announcement in accordance with paragraph 4:

1. Transactions entered into between the company and:
  - a) a domestic subsidiary;

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<sup>929</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

- b) a foreign subsidiary, provided that it is wholly owned or a subsidiary in which no other related party of the company has an interest;
  - c) a foreign subsidiary in which no other related party of the company has an interest, provided that the foreign law provides for adequate protection of the interests of the company, of the subsidiary, and of their shareholders who are not a related party in such transactions;
2. transactions to be decided by the general meeting according to the provisions on merger or conversion, according to the SE Act, or according to the Takeover Act;
  3. transactions regarding remuneration of directors, awarded or due in accordance with the company's remuneration policy (Article 367m);
  4. transactions entered into by credit institutions within the meaning of point 1 of Article 4(1) of Regulation (EU) No 575/2013 on the basis of measures aiming at safeguarding their stability, adopted by the competent supervisory authority;
  5. transactions offered to all shareholders on the same terms where equal treatment of all shareholders and protection of the interests of the company is ensured.
- 7) The company must also disclose material transactions between related parties as well as its subsidiaries in accordance with paragraph 4, unless the transaction is one of the cases exempted under paragraph 5 or 6.

#### Article 367s<sup>930</sup>

##### *VI. Supervision*

1) Compliance with the provisions of this Subsection shall be verified as part of the annual statutory audit or review requirement and confirmed by the auditor or the audit office that performed the audit or review.

2) If the auditor or the audit office determines in the course of the audit or the review in accordance with paragraph 1 that there has been a violation of mandatory provisions of this Subsection, a report shall be submitted to the Office of Justice.

3) If the Office of Justice receives a report pursuant to paragraph 2, it shall request the company concerned to remedy the defect, setting a

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<sup>930</sup> Article 367s inserted by LGBl. 2021 No. 225.

reasonable deadline. If the defect is not remedied by the deadline or if it is not possible to remedy the defect, the Office of Justice shall without delay file a criminal complaint with the Court of Justice.

4) The Government shall provide further details governing supervision by ordinance.

### Section 3

#### Partnership limited by shares

##### Article 368

###### *A. Definition*

1) A partnership limited by shares is a company whose share capital is divided into shares and in which one or more partners are jointly and severally liable to the creditors of the company, without limitation, in the same way as a general partner.<sup>931</sup>

2) The relationship of the partners with unlimited liability to each other, to all shareholders and third parties is governed by the provisions governing the limited partnership, unless exceptions are provided for in the following.

3) For the partnership limited by shares, unless otherwise provided, the provisions on the public limited company apply.<sup>932</sup>

##### Article 369

###### *B. Partners with unlimited liability*

1) The partners with unlimited liability (general partners) must be listed in the articles of association with their full name or legal name, which is a material provision for the purpose of the provisions on voidability.

2) The surname and first name, the place of residence and the profession or the legal name and registered office must be entered in the Commercial Register and published.<sup>933</sup>

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<sup>931</sup> Article 368(1) amended by LGBl. 2000 No. 279.

<sup>932</sup> Article 368(3) amended by LGBl. 2000 No. 279.

<sup>933</sup> Article 369(2) amended by LGBl. 2013 No. 6.

3) Changes in this membership are made by way of amendment of the articles of association and must be registered by the administration for entry in the Commercial Register.<sup>934</sup>

4) The prohibition of competition in the general partnership shall apply to the general partners in the absence of the consent of the other partners with unlimited liability and, unless authority to grant such consent is delegated to the supervisory board by the articles of association or by a ruling of the general meeting, such consent has not been granted by the latter.

5) The partner with unlimited liability of a partnership limited by shares has the right of termination in the same way as a general partner of a general partnership.

6) If one of several of the partners with unlimited liability resigns, dies, becomes incapable of acting or if insolvency proceedings are opened in respect of that partner's assets, the partnership shall, unless otherwise provided in the partnership agreement, continue among the others and the share of the other shall be paid.<sup>935</sup>

### *C. Organisation*

#### *Article 370*

##### *I. Supreme body*

1) The supreme body of the partnership limited by shares shall be the general meeting of all partners, unless otherwise provided.

2) The resolutions of the supreme body shall require the approval of all partners with unlimited liability and the majority of shareholders, the latter being calculated in accordance with the provisions applicable to public limited companies.

3) The resolutions on the appointment of the auditors and the enforcement of the liability of the members shall not require the consent of the partners with unlimited liability if one or more of the partners with unlimited liability belong to the administration.

4) If none of the partners with unlimited liability is a member of the administration, the consent of at least half of the partners with unlimited liability is required.

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<sup>934</sup> Article 369(3) amended by LGBl. 2013 No. 6.

<sup>935</sup> Article 369(6) amended by LGBl. 2020 No. 369.

5) The provisions concerning the supreme body of the public limited company shall apply *mutatis mutandis*.

#### Article 371

##### *II. Administration*

1) Administration shall be the responsibility of the partners with unlimited liability .

2) Third parties or entities with legal names may, by company resolution, also be exclusively entrusted with the administration of the company by if the articles of association so provide.

3) A member of the administration who is a partner with unlimited liability may, in the absence of provisions to the contrary in the articles of association, be deprived of authorisation for general management and representation of the company only under the same conditions as the managing general partner of a general partnership.

4) The members of the administration who are not partners with unlimited liability may be dismissed by the general meeting and the general partners acting jointly or, on important grounds, by each of the latter individually according to the provisions applicable to the public limited company.

#### Article 372

##### *III. Supervisory board*

1) For the partnership limited by shares, a supervisory board shall be necessary in all cases, serving as the audit office in conjunction with permanent supervision of the general management, and to which further obligations can be assigned by the articles of association.<sup>936</sup>

2) The members of the supervisory board must be registered for entry in the Commercial Register, entered there, and published in the Commercial Register in the same way as the members of the administration.<sup>937</sup>

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<sup>936</sup> Article 372(1) amended by LGBI. 2000 No. 279.

<sup>937</sup> Article 372(2) amended by LGBI. 2013 No. 6.

3) The supervisory board may, on behalf of the company, call the members of the administration to account and, if necessary, take legal action against them in court.

4) To the extent of its own responsibility, as well as in case of malicious behaviour of members of the administration, the supervisory board is entitled to initiate and conduct legal proceedings against them, even against the will of the general meeting.

#### Article 373

##### *D. Dissolution*

1) The partnership limited by shares shall also be dissolved if all partners with unlimited liability leave the company for any reason.

2) The articles of association may determine that the dissolution shall also occur in the event that a single partner with unlimited liability no longer serves as such.

3) For the dissolution of the partnership limited by shares, the same rules shall apply *mutatis mutandis* as for the dissolution of the public limited company in general, with the reservation that a dissolution by resolution of the general meeting before the date determined in the articles of association may take place only with the consent of the partners with unlimited liability .

4) For the dissolution of a partnership limited by shares by takeover by a public limited company or by another partnership limited by shares, the provisions on the merger of public limited companies apply.

5) Conversion into a limited partnership may be effected at any time by public document without liquidation in accordance with the provisions for amendments to the articles of association, provided that the share certificates are destroyed and the necessary registrations for entry in the Commercial Register are made.<sup>938</sup>

6) Similarly, such a company may be converted into a partnership of limited partners or general partnership with limited liability, subject to the previous liability for the obligations incurred up to the entry in the Commercial Register of the conversion.<sup>939</sup>

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<sup>938</sup> Article 373(5) amended by LGBL 2013 No. 6.

<sup>939</sup> Article 373(6) amended by LGBL 2013 No. 6.

## Article 374

*E. Other division of limited liability capital*

1) If limited liability capital is divided into parts only in the sense that these parts determine the extent of participation of several limited partners, but are not to be treated as shares, the provisions governing the limited partnership and not those governing the partnership limited by shares shall apply, unless the requirements for a partnership of limited partners or a general partnership with limited liability are met.

2) This article is subject to the partnership limited by units and the limited partnership with equity capital shares.

## Section 4

**Company limited by units**

## Article 375

*A. Definition and delimitation*

1) The company limited by units (trade union) is a company within the meaning of this Title with its own legal name, whose assets, not necessarily determined in a sum of money, are divided, subject to the company with a sole member, into quota units of the assets and for whose liabilities only the company assets are liable.

2) The members (trades) are liable both for additional contributions to the income and management of the assets and for all liabilities to third parties entered into in the name of the company towards the company only with their units in the joint assets.

3) Associations of workers or employees under the actual name of trade union or trade association shall be subject to the rules of the legal persons concerned, such as associations, cooperative societies, and the like.

## Article 376

*B. Reference*

1) The provisions relating to registered cooperative societies shall apply *mutatis mutandis* to the company limited by units, in particular with regard to its organisation and dissolution, where no derogation is provided

for in the provisions of this Section, in the general provisions, or in the articles of association.

2) The articles of association may also establish fixed basic assets.

### *C. Formation*

#### *Article 377*

##### *I. Articles of association*

1) For the formation of a company, a company agreement with articles of association must be publicly authenticated or signed by all members, containing:

1. the name or legal name, registered office of the company, and the object of the undertaking;
2. the exact description of the assets, unless the assets are included in a special list and submitted to the Office of Justice;<sup>940</sup>
3. the number of units, if any, with an indication of whether different classes of units exist and whether unit certificates are issued;
4. if applicable, the type and size of additional contributions to be made by members in derogation from the law;
5. the organisation of the company: the composition and appointment of the supreme body, such as the assembly of members, the assembly of trades, and the like, the governing bodies for administration, and any audit office;<sup>941</sup>
6. the form in which the company's announcements to members or third parties are made.

2) The provisions other than those set out in subparagraphs 3, 4, and 6 are material for the purpose of voidability proceedings.

3) In the articles of association, the company must expressly refer to itself as a company limited by units or a trade union.

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<sup>940</sup> Article 377(1)(2) amended by LGBL 2013 No. 6.

<sup>941</sup> Article 377(1)(5) amended by LGBL 2000 No. 279.

## Article 378

*II. Entry in the Commercial Register*

1) The registration, which must be attached to the company agreement in the original or as a certified copy, the entry in the Commercial Register, and its announcement must contain, in addition to the indicated contents of the articles of association, the name and place of residence or legal name and registered office of the members of the administration and in particular of the company's representatives.<sup>942</sup>

2) Repealed<sup>943</sup>

*D. Membership*

## Article 379

*I. Unit ledger*

1) A unit ledger shall be kept by the administration for all members of the company and their units, stating the name and place of residence or legal name and registered office of the members and the number of units.

2) Anyone listed in the unit ledger as an owner or professional trustee in respect of the exercise of the membership rights and duties of a unit shall be considered a member of the company.

3) The transfer of an assignment of units in the unit ledger may be made only upon presentation of the endorsed unit certificate, or, if no such certificate has been issued, upon written assignment and, if the unit certificate has been cancelled, upon presentation of the cancellation certificate.

4) Every member shall have the right to inspect the unit ledger.

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<sup>942</sup> Article 378(1) amended by LGBl. 2013 No. 6.

<sup>943</sup> Article 378(2) repealed by LGBl. 2003 No. 63.

## Article 380

*II. Units*

1) If the company assets form one or more units as defined expressly in the articles of association, which in the latter case are usually a quota of the assets, such as one hundredth, and cannot be reclaimed, a unit certificate may be issued by the administration on the basis of the entry in the unit ledger.

2) Unit certificates shall be issued, at the member's choice, covering individual units or covering several units belonging together to the same member.

3) The unit certificates shall be negotiable securities equal to registered shares and may be issued only in registered form, not in bearer form, and any cancellations will be made in accordance with the provisions governing bearer securities.

4) If the assets are divided into several units, the units shall be indivisible, but joint ownership of a unit may exist.

5) The company may also issue free unit certificates for the assets of the company without the person for whom the unit certificate is issued having transferred assets to the company in proportion to the unit quota or unit total or being obliged to make additional contributions.

6) Unless an exception is provided for by law, the provisions governing the acquisition of own shares shall apply to the acquisition of own units *mutatis mutandis*.

## Article 381

*III. Acquisition and loss of membership*

1) Acquisition and loss of membership in companies limited by units shall be based on the acquisition or loss of a unit.

2) Any member may voluntarily renounce membership and units in favour of the company if the units are not liable for any contributions or other obligations and if the rules for the transfer of the unit are observed.

3) The company may sell the unit.

4) If the unit is unrealisable, the last paragraph of the article on surrender shall apply *mutatis mutandis*.

5) The legal acts performed by the company vis-à-vis the seller or by the latter vis-à-vis the company in relation to the company relationship prior to registration must be accepted by the acquirer, and the acquirer and seller shall be jointly and severally liable for any payments in arrears on the unit at the time of registration.

#### *IV. Rights and duties of members*

##### *1. Accounting requirements*

###### Article 382<sup>944</sup>

##### *a) Balance sheet requirements*

Repealed

###### Article 383

##### *b) Yield, profit, and loss*

1) The distribution of profits and benefits from the company's assets to the members is carried out at the discretion of the supreme body and, if the articles of association do not provide for fixed basic assets, is permissible only to the extent that they are not necessary for operations and the company's obligations to third parties are covered by other assets.

2) If the articles of association provide for fixed assets, the provisions on the reduction and repayment of share capital for public limited companies shall also apply.<sup>945</sup>

3) The members shall participate in profits and losses in proportion to their units and in accordance with the provisions of the articles of association.

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<sup>944</sup> Article 382 repealed by LGBl. 2000 No. 279.

<sup>945</sup> Article 383(2) amended by LGBl. 2000 No. 279.

## 2. *Additional contributions*

### Article 384

#### *a) In general*

1) Unless the articles of association provide otherwise, members shall have unlimited liability in the proportion of their units to those contributions to the company which are necessary to meet the obligations of the company and operations, and, if the articles of association so provide, they shall be jointly and severally liable.

2) In the absence of any other provision in the articles of association, a resolution of the supreme body is required for the call for contributions, on the basis of which the administration, to the extent that no derogations arise from this Section, shall collect the contributions in accordance with the provision on the payment of contributions to cooperative societies.

3) Legal action may not be filed against a member for payment of a certain contribution determined by a resolution of the members before the expiration of the challenge period after a resolution has been passed.

### Article 385

#### *b) Surrender*

1) A member may, unless the articles of association provide otherwise, discharge the obligation of membership to make further payments of membership contributions to the company by surrendering the member's unit certificate or, if no such certificate has been issued, by surrendering the member's unit by way of a written declaration to the association for the purpose of satisfaction through realisation, which in the absence of other provisions of the articles of association may be effected only by public auction.

2) By surrendering the unit, the predecessor of the person who surrendered the unit is also released from the obligation to pay the membership contributions in arrears.

3) The surplus proceeds remaining after deduction of the costs of realisation and the contributions owed shall accrue to the member, unless the articles of association provide otherwise.

4) If a unit is not realisable, it shall be allocated to the other members in proportion to their units and, if this is not possible, to the company; in the latter case, the rights and encumbrances of a unit may not be asserted as long as it is allocated to the company.

#### Article 386

##### *E. Qualified resolutions*

1) In the absence of provisions to the contrary in the articles of association, a special resolution of the assembly of members (general meeting or assembly of trades) is required for the disposal of land or parts thereof by sale, exchange, pledge, or other encumbrance or lease, to which at least three quarters of all units have agreed.

2) In the absence of other provisions in the articles of association, gifts and renunciation of land shall require unanimity.

#### Article 387

##### *F. Partnership limited by units*

If a company limited by units has one or more partners with unlimited liability in addition to the other members, the provisions on the partnership limited by shares shall apply to this company with the proviso that the provisions on the public limited company shall be replaced by those on the company limited by units.

#### Article 388

##### *G. Conversion and merger*

1) The conversion without liquidation of a company limited by units into a company with a sole member or establishment, public limited company, or limited liability company as the universal successor may be carried out at any time at the discretion of the members by a public document or a document signed by all members through adjustment to the relevant form of undertaking and appointment of the necessary governing bodies and must be registered for entry in the Commercial Register in accordance with the applicable provisions.<sup>946</sup>

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<sup>946</sup> Article 388(1) amended by LGBI. 2013 No. 6.

2) Conversely, one of the forms of undertaking described in the first paragraph may be converted at any time into a company limited by units in a corresponding manner.

3) In the case of a merger involving a company limited by units, the provision on dissolution without liquidation involving a limited liability company shall apply *mutatis mutandis*.

## Section 5

### Limited liability company

#### *A. Definition and formation*

#### Article 389

##### *I. Union of persons*

1) One or more persons, entities with legal names, or legal persons under private or public law may form a limited liability company for any purpose under its own legal name and capital determined in advance (equity capital).<sup>947</sup>

2) Liability shall be limited to a certain amount for each participant, without the shares being treated as shares equivalent to those of a public limited company.<sup>948</sup>

3) By ordinance, the Government may specify that the number of participants, apart from the rights to shares in accordance with social policy, may not exceed thirty and, should this number rise above thirty after the formation for any reason, the company must, within a period of one year, unless the number has in the meantime fallen back to a maximum of thirty, proceed in accordance with the provisions governing the number of members of corporate bodies or convert the company into a permissible company form.

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<sup>947</sup> Article 389(1) amended by LGBL 2000 No. 279.

<sup>948</sup> Article 389(2) amended by LGBL 2022 No. 227.

## Article 390

*II. Company agreement*

1) For its formation, a limited liability company requires articles of association with public authentication, which bear the signatures of all participants or their representatives, as well as entry in the Commercial Register.<sup>949</sup>

2) The articles of association must indicate the following as material provisions, unless exceptions arise from the individual points themselves:

1. the object of the undertaking;
2. the amount of equity capital;
3. the amount of the equity capital contribution to be paid by each participant on the equity capital;<sup>950</sup>
4. the legal name of the company;<sup>951</sup>
5. the registered office, if applicable the head office of the company;<sup>952</sup>
6. the duration to which the company should be limited if such a limitation is to be applied;<sup>953</sup>
7. provisions on the manner of exercising representation which derogate from the legislative provisions;<sup>954</sup>
8. the manner in which announcements are made to members or third parties;<sup>955</sup>
9. the balance sheet date.<sup>956</sup>

3) Paragraph 2(1) to (4) shall be deemed material for the purpose of voidability proceedings.<sup>957</sup>

4) The articles of association must be announced after entry as referred to in Article 956(2).<sup>958</sup>

5) The company may be formed in a simplified procedure without public authentication of the articles of association if it has a maximum of

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<sup>949</sup> Article 390(1) amended by LGBL 2013 No. 6.

<sup>950</sup> Article 390(2)(3) amended by LGBL 2016 No. 402.

<sup>951</sup> Article 390(2)(4) amended by LGBL 2000 No. 279.

<sup>952</sup> Article 390(2)(5) amended by LGBL 2000 No. 279.

<sup>953</sup> Article 390(2)(6) amended by LGBL 2000 No. 279.

<sup>954</sup> Article 390(2)(7) inserted by LGBL 2000 No. 279.

<sup>955</sup> Article 390(2)(8) inserted by LGBL 2000 No. 279.

<sup>956</sup> Article 390(2)(9) inserted by LGBL 2019 No. 258.

<sup>957</sup> Article 390(3) inserted by LGBL 2000 No. 279.

<sup>958</sup> Article 390(4) amended by LGBL 2022 No. 227.

three members and a general manager. The articles of association of the company shall be drawn up in accordance with the template provided by the Office of Justice. Furthermore, no provisions derogating from the law may be made. The signatures of the members on the articles of association must be certified. The founding articles of association shall at the same time serve as the list of members.<sup>959</sup>

#### Article 391

##### *III. Equity capital and equity capital contribution*

1) The equity capital may be set as high as desired, but the equity capital contribution, which may not be reclaimed, of each member must be at least 50 Swiss francs; by ordinance, the Government may limit the maximum equity capital to an amount equivalent to 5 million Swiss francs.

2) Repealed<sup>960</sup>

3) The amount of the equity capital contribution may differ for the individual members, but must be a multiple of fifty.

4) The equity capital contribution may also be based on a quota, instead of a specific sum, to which a share of the assets in the amount of at least 50 Swiss francs is attributable.

5) Each participant may have only one equity capital contribution, unless there is a legal exception, and must have paid it in full or covered it by a non-cash contribution at the time of formation.<sup>961</sup>

6) Insofar as, according to the articles of association, the interest on assets taken over is to be credited against an equity capital contribution, the performance must immediately be made in full.

##### *IV. Other performances, contributions, and compensation*

#### Article 392

##### *1. In general*

1) The members are obliged to make performances in addition to the equity capital contribution only to the extent specified in the articles of

<sup>959</sup> Article 390(5) inserted by LGBL 2016 No. 402.

<sup>960</sup> Article 391(2) repealed by LGBL 2000 No. 279.

<sup>961</sup> Article 391(5) amended by LGBL 2016 No. 402.

association or in regulations provided for in the articles of association and attached thereto.

2) If members are to make non-cash contributions to the equity capital, or if compensation is to be approved for assets to be taken over by the company, or if a member is to be granted special privileges in any other way, the articles of association shall state the object of the contribution or takeover, the offset amount or the compensation or special privilege granted, and the identity of the member to whom it relates.

3) Compensation for the formation of the company or the preparation thereof, such as a founder's commission, may not be granted to a member from the equity capital; in particular, it may not be set off against the equity capital contribution.

4) Reimbursement of the costs of the formation of the company, such as fees, printing costs, and the like, may be claimed only within the maximum amount fixed for the formation costs in the company agreement.

#### Article 393

##### *2. Recurring non-cash performances*

1) If, in addition to the equity capital contributions, one or more members undertake to make recurring non-cash performances which constitute an asset, then the scope and conditions of such performances, as well as any contractual penalties in the event of default, and finally the bases for assessing compensation to be granted by the company in return for the performances, must be precisely defined in the articles of association or in the regulations provided for in the articles of association and attached thereto, and it must be stipulated that the transfer of the company shares requires the consent of the company.<sup>962</sup>

2) In accordance with the assessment principles laid down in the articles of association or in the regulations, compensation for such recurring performances may not exceed the value of these performances, irrespective of whether the annual balance sheet shows a net profit.<sup>963</sup>

3) In compulsory execution und insolvency proceedings, the compensation is considered to be a creditor's claim, if the articles of association do not exclude it.<sup>964</sup>

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<sup>962</sup> Article 393(1) amended by LGBL 2016 No. 402.

<sup>963</sup> Article 393(2) amended by LGBL 2016 No. 402.

<sup>964</sup> Article 393(3) amended by LGBL 2020 No. 369.

## Article 394

*V. Entry in the Commercial Register*

1) The registration with the Commercial Register, which must be accompanied by an original or certified copy of the company agreement, must contain, in addition to the legally required content of the articles of association, the details of all members with their surname and first name, date of birth, nationality and place of residence or legal name and registered office, their equity capital contributions and the general manager with the general manager's surname and first name, date of birth, nationality, profession and place of residence or legal name and registered office and the manner in which the representation is exercised.<sup>965</sup>

2) The entry in the Commercial Register and publication shall include the necessary content of the articles of association, the number of participants, the amount of deposits and non-cash contributions made, surname and first name, date of birth, nationality and place of residence or legal name and registered office of the general manager and representatives, the way in which the general management and representation is exercised, and the audit office.<sup>966</sup>

3) The names of the members shall also be entered. A list of the members may instead be kept at the registered office of the company (Article 402(2)).<sup>967</sup>

4) In the case of limited liability companies which do not conduct business in a commercial manner, announcement of the entry as referred to in Article 956(1) shall suffice.<sup>968</sup>

5) Repealed<sup>969</sup>

Article 394a<sup>970</sup>*VI. Branches*

For the entry in the Commercial Register and disclosure of branches set up by limited liability companies with registered offices abroad, the

<sup>965</sup> Article 394(1) amended by LGBl. 2016 No. 402.

<sup>966</sup> Article 394(2) amended by LGBl. 2022 No. 227.

<sup>967</sup> Article 394(3) amended by LGBl. 2016 No. 402.

<sup>968</sup> Article 394(4) amended by LGBl. 2022 No. 227.

<sup>969</sup> Article 394(5) repealed by LGBl. 2016 No. 402.

<sup>970</sup> Article 394a inserted by LGBl. 2000 No. 279.

provisions governing branches of public limited companies shall apply *mutatis mutandis*.

*B. Organisation*

*I. Members' meeting*

Article 395

*1. Convening*

1) Members representing at least one tenth of the equity capital may at any time request the convening and state the agenda or, if necessary and without the need for approval from the register authority, convene the meeting for the same agenda themselves.

2) The convening of the meeting as well as the demand for a written vote shall be carried out, in the absence of a form determined by the articles of association, by registered letter for a specific time, observing a period of notice of at least one week and stating the items on the agenda.

3) This article is subject to exceptions set out by law or in the articles of association.

Article 396

*2. Powers and resolutions*

1) In the absence of other provisions in the articles of association, the member's meeting or other supreme body shall have the following powers:

1. determination of the annual balance sheet and distribution of the net profit resulting therefrom in accordance with the law and the articles of association;
2. division and recall of company shares, and collection of additional contributions;<sup>971</sup>
3. appointment and dismissal of the general managers and representatives as governing bodies of the company, and appointment of persons with registered power of attorney and persons authorised to act on behalf of the entire general management;

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<sup>971</sup> Article 396(1)(2) amended by LGBL 2022 No. 227.

4. oversight of the general management and issuing of instructions to the managing governing bodies, as well as discharge of the latter;
5. enforcement of claims for damages to which the company is entitled from the formation or from the general management or oversight of the governing bodies or against individual members;
6. the conclusion of contracts under which the company is to acquire existing facilities or land, or facilities or land to be produced, intended for business operations on a permanent basis for a consideration exceeding one fifth of the equity capital, as well as the amendment of such contracts at the expense of the company, unless the acquisition is by way of compulsory execution or insolvency proceedings;<sup>972</sup>
7. amendments to articles of association.

2) Unless the law or the articles of association provide otherwise, one vote shall be cast for every 50 Swiss francs of acquired equity capital shares; in all cases, however, each member shall by law have one vote.

3) In the case of companies with five or fewer participants, unless the articles of association provide otherwise, decisions must be taken unanimously.

4) If all shares are held in one hand, the sole member shall have the authority of the members' meeting alone. The resolutions must be made in writing.<sup>973</sup>

## *II. General management and representation*

### *Article 397*

#### *1. By the members*

1) Unless otherwise provided for in the articles of association, the general management and representation of the company (the administration) shall be carried out by all members jointly, but members who join after the company has been established are entitled to this power only if it is delegated to them.

2) Through the articles of association or by company resolution, the general management and representation of the company may be assigned to one or more members.

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<sup>972</sup> Article 396(1)(6) amended by LGBL 2020 No. 369.

<sup>973</sup> Article 396(4) amended by LGBL 2016 No. 402.

## Article 398

*2. By non-members*

1) By articles of association or by company resolution, the general management and representation may be delegated in whole or in part to one or more persons who are not members.

2) They shall be subject to the same provisions as the governing bodies in regard to their powers and responsibility.

## Article 399

*3. Withdrawal*

1) Among members, withdrawal of the general management and representation shall be governed by the provisions as set out for the general partnership, unless otherwise provided in the articles of association.

2) The general management and representation assigned to a non-member may be withdrawn by a members' resolution at any time, subject to any claims for compensation arising from the contract, such as a contract of service, other contractual arrangement, or the like, or from torts.

3) Unless the articles of association provide otherwise, registered power of attorney may be revoked by any general manager.

Article 400<sup>974</sup>*III. Audit office*

1) The supreme body shall in all cases elect an audit office.

2) An auditor or an auditing company as referred to in the Auditors Act must be appointed as the audit office of medium-sized and large companies as defined in Article 1064. The same applies to small companies as defined in Article 1064 whose negotiable securities are admitted to trading on a regulated market in an EEA Member State as defined in Article 4(1)(21) of Directive 2014/65/EU. The audit of the consolidated business report shall be reserved for auditors and auditing companies as referred to in the Auditors Act.

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<sup>974</sup> Article 400 amended by LGBl. 2022 No. 227.

Article 400a<sup>975</sup>

Repealed

*C. Legal relationship of members to the company and each other**I. Company shares*

## Article 401

*1. In general*

1) In the absence of any other provision in the articles of association, the amount of the equity capital contribution of each member shall determine the member's company share, and this company share may be sold and inherited, also among the members themselves, in accordance with the following provisions.

2) The company share shall contain the claims to the net profit, the liquidation assets, and the rights to which the members are entitled in the affairs of the company.

3) If a document is drawn up for the company share, it may not be drawn up as a negotiable security, but only as documentary evidence.<sup>976</sup>

4) Repealed<sup>977</sup>

## Article 402

*2. Share ledger*

1) A share ledger shall be maintained for the equity capital contributions of all members, showing the surname and first name, date of birth, nationality and place of residence or legal name and registered office of each member, the amount of the contributions made, as well as any transfer of a company contribution and any change thereto.<sup>978</sup>

2) At the beginning of each calendar year, a list of these entries corresponding to the share ledger must be submitted to the Office of

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<sup>975</sup> Article 400a repealed by LGBL 2022 No. 227.

<sup>976</sup> Article 401(3) amended by LGBL 2022 No. 227.

<sup>977</sup> Article 401(4) repealed by LGBL 2016 No. 402.

<sup>978</sup> Article 402(1) amended by LGBL 2016 No. 402.

Justice for retention in the register files, or notification must be given that no changes have occurred since the last submission.<sup>979</sup>

3) The general managers shall be jointly and severally liable for any damage caused by defective management of the share ledger in accordance with the provisions on responsibility.

4) The submitted list shall be open to public inspection.

### *3. Transfer of entire share*

#### Article 403

##### *a) Due to an assignment*

1) The assignment of a company share shall be effective only if it has been communicated to the members and entered into the share ledger.

2) Unless the articles of association provide otherwise, this entry may be made only if three quarters of all participants representing three quarters of the equity capital have agreed to it, unless the assignment is made to other members.

3) The articles of association may provide that the assignment may be made without the consent of the members, or that it shall be further restricted, such as by right of first refusal of the members, consent of the administration, or the like.

4) The assignment of a company share, as well as the obligation to make such an assignment, but not the creation of a limited right *in rem*, requires public authentication to be valid.

5) This article shall not apply to the assignment of company shares by the company, or the assignment or creation of a limited right *in rem* to individual claims of the members under property law, such as profit or liquidation share.

6) From the time of entry in the share ledger, the acquirer shall bear the obligations as a member, but in the absence of other provisions in the articles of association, the seller and acquirer shall be jointly and severally liable for the performances already due.

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<sup>979</sup> Article 402(2) amended by LGBI. 2013 No. 6.

Article 404<sup>980</sup>*b) Due to inheritance and similar circumstances*

1) If company shares are acquired by inheritance, division of estate, or marital property law, all rights and duties associated with them shall be transferred to the acquiring person without the consent of the members' meeting.

2) For the exercise of voting rights and the associated rights, however, the acquiring person must be recognised by the members' meeting as a member with voting rights.

3) The general meeting may refuse to recognise the person only if the company offers to take over the company shares at their actual value at the time of the application. The offer may be made on its own account or on account of other members or third parties. If the acquiring person does not reject the offer within one month after knowledge of the actual value, the offer shall be deemed accepted.

4) If the members' meeting does not reject the application for recognition within six months of receipt, recognition shall be deemed granted.

5) The articles of association may waive the requirement of recognition.

6) The articles of association may determine that equity capital shares which have been transferred to a third party by inheritance, division of estate, or marital property law in accordance with paragraph 1 may be recalled by the company or taken up by the company or one or more other members or by another person or that the third party may be excluded from the company shares. The compensation may be stipulated by contract and may in particular also be below the actual value of the equity capital share, provided that the rule is not contrary to common decency and the compensation is at least equal to that provided for in the articles of association in the event of exclusion of a member on important grounds.

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<sup>980</sup> Article 404 amended by LGBl. 2016 No. 402.

## Article 405

*c) Due to compulsory execution or insolvency proceedings*<sup>981</sup>

1) If a company share which is transferable only with the consent of the members is to be sold in compulsory execution proceedings or in insolvency proceedings, the Court of Justice shall determine the estimated value of the share and shall also notify the members and all creditors who have obtained the attachment of the share up to that time of the approval of the sale, stating the estimated value.<sup>982</sup>

2) The estimate may be omitted if the creditor, the debtor, and the members reach an agreement on the takeover price.

3) If the company share is not taken over by a buyer approved by the members within 14 days after notification of the members against payment of an amount equal to the estimated value, the sale shall be carried out in compulsory execution proceedings, or in insolvency proceedings without further consent of the members being required for the transfer of the share.<sup>983</sup>

4) Article 404(6) shall apply *mutatis mutandis*.<sup>984</sup>

## Article 406

*d) Due to a decision*

1) If the members' consent to the transfer of a share in the company is refused, the court may, after hearing the general managers, allow the member concerned to carry out the transfer in special non-contentious proceedings if there are not sufficient grounds for refusing consent and the transfer can be carried out without harming the company, the other members and the creditors.<sup>985</sup>

2) Even if the court approves the transfer, the transfer shall not be permitted if the company notifies the member concerned by registered letter within one month of the decision taking legal effect that it allows the transfer of the relevant share in the company under the same conditions to another acquirer designated by the company who agrees to take over the share.

<sup>981</sup> Article 405 heading amended by LGBl. 2020 No. 369.

<sup>982</sup> Article 405(1) amended by LGBl. 2020 No. 369.

<sup>983</sup> Article 405(3) amended by LGBl. 2020 No. 369.

<sup>984</sup> Article 405(4) inserted by LGBl. 2016 No. 402.

<sup>985</sup> Article 406(1) amended by LGBl. 2016 No. 402.

## Article 407

*4. Division*

1) The division of a company share and the sale of a part of such share, if not excluded by the articles of association and if the parts do not fall below the minimum amount of a share permitted by law, are permitted, but require the same approval and entry as the assignment of the whole share in order to be valid.

2) On important grounds, in the event of refusal by the members, the judge may allow the division or sale in special non-contentious proceedings after hearing the general managers.<sup>986</sup>

3) If new company shares are created as a result of the division or sale, they must be entered in the share ledger and registered with the Office of Justice, but not published.<sup>987</sup>

## Article 408

*5. Acquisition by another member*

1) If a member acquires another member's share or part of such a share, the member's equity capital contribution shall be increased by the nominal value of the acquired share.

2) An increase in the capital share shall not take place, however, but rather each share shall retain its legal independence, if ordinary and preferred shares come together in a single member.<sup>988</sup>

Article 409<sup>989</sup>

Repealed

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<sup>986</sup> Article 407(2) amended by LGBL 2010 No. 454.

<sup>987</sup> Article 407(3) amended by LGBL 2013 No. 6.

<sup>988</sup> Article 408(2) amended by LGBL 2022 No. 227.

<sup>989</sup> Article 409 repealed by LGBL 2016 No. 402.

*II. Contribution*

## Article 410

*1. Obligation and nature of contribution*

1) The equity capital contributions shall, subject to the provisions on non-cash contributions, be paid by the members in cash and may not be waived or deferred, except in the case of a reduction of equity capital.<sup>990</sup>

2) Reservations and restrictions on the acceptance of the original capital contribution or on payments shall be null and void.

Article 411<sup>991</sup>

Repealed

Article 412<sup>992</sup>

Repealed

Article 413<sup>993</sup>

Repealed

Article 414<sup>994</sup>

Repealed

Article 415<sup>995</sup>*III. Liability of members*

Only the company assets shall be liable for the company's obligations.

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<sup>990</sup> Article 410(1) amended by LGBl. 2022 No. 227.

<sup>991</sup> Article 411 repealed by LGBl. 2016 No. 402.

<sup>992</sup> Article 412 repealed by LGBl. 2016 No. 402.

<sup>993</sup> Article 413 repealed by LGBl. 2016 No. 402.

<sup>994</sup> Article 414 repealed by LGBl. 2016 No. 402.

<sup>995</sup> Article 415 amended by LGBl. 2016 No. 402.

## Article 416

*IV. Additional performances*

1) The articles of association may require the members or certain groups of members to make additional performances over and above the equity capital contributions, the amount of which must be specified or shall otherwise be deemed invalid, and, unless otherwise provided, must be paid in proportion to the equity capital contributions.

2) These additional performances must be called in by the general managers by registered letter, in case of doubt, on the basis of a company resolution, but must be intended only to cover balance sheet losses. They shall not constitute new equity capital contributions and shall not be subject to the provisions governing equity capital.

3) Repealed<sup>996</sup>

4) However, the articles of association may also stipulate that the collection of additional contributions may be made by the general management using the allocation procedure.

## Article 417

*V. Entitlement to share of profit*

1) The members shall not be entitled to interest or building interest, but they shall be entitled to the net profit resulting from the annual balance sheet in accordance with their shares, subject to other provisions in the articles of association and the payout of profits in the meantime.<sup>997</sup>

2) The same provisions shall apply to challenging the calculation of the net profit as for the public limited company.

3) The provisions governing the reserve fund required by law for public limited companies shall apply *mutatis mutandis*.

4) Profit-sharing certificates may be issued as negotiable securities for the entitlement to profits.

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<sup>996</sup> Article 416(3) repealed by LGBl. 2022 No. 227.

<sup>997</sup> Article 417(1) amended by LGBl. 2016 No. 402.

## Article 418

*VI. Reacquisition and amortisation*

1) The company may acquire its own equity capital shares only if it has freely usable equity available in the amount of the funds required for this purpose.<sup>998</sup>

2) Repealed<sup>999</sup>

3) Amortisation of company shares is possible, in accordance with the articles of association or with the consent of the members' meeting, provided that the amortisation is covered by the company assets available over and above the equity capital. Amortisation against the share capital is permissible only if the provisions on the reduction of equity capital are complied with.<sup>1000</sup>

4) Profit-sharing certificates may be issued in accordance with the provisions applicable to the public limited company.

Article 418a<sup>1001</sup>*VII. Agreements with the sole member*

Agreements between the sole member and the company must be in writing, except for agreements relating to current transactions concluded under normal conditions.

*D. Amendments to the company agreement*

## Article 419

*I. Amendment resolution*

1) The articles of association may be amended by resolution of the members by public document, but the amendment shall become effective only upon entry in the Commercial Register.<sup>1002</sup>

<sup>998</sup> Article 418(1) amended by LGBl. 2016 No. 402.

<sup>999</sup> Article 418(2) repealed by LGBl. 2016 No. 402.

<sup>1000</sup> Article 418(3) amended by LGBl. 2016 No. 402.

<sup>1001</sup> Article 418a inserted by LGBl. 2000 No. 279.

<sup>1002</sup> Article 419(1) amended by LGBl. 2013 No. 6.

2) The amendment requires, unless the articles of association provide otherwise, the approval of a majority of three quarters of all members, which also represents three quarters of the share capital.

3) In the absence of other provisions in the articles of association, an increase in the performances of the members or a reduction of the rights granted to individual members by the articles of association may be decided only with the agreement of all members concerned.

4) After each amendment, the current version of the articles of association must be announced in accordance with Article 956(2).<sup>1003</sup>

## *II. Increase of equity capital*

### Article 420

#### *1. In general*

1) An increase of equity capital requires the public authentication of the takeover of each equity capital contribution to be made on the increased capital by members or third parties; if third parties take over a share, their accession to the company must be declared in the public document in accordance with the articles of association, and any other performances must also be declared.

2) The increase shall be subject to the same provisions as the formation of equity capital.

3) If a member makes an equity capital contribution to the increased capital, this shall be regarded as an increase in the member's company share.<sup>1004</sup>

4) Repealed<sup>1005</sup>

### Article 421

#### *2. Right and obligation to take over contribution*

1) In the absence of a stipulation to the contrary in the articles of association or in a resolution to increase capital, the existing members shall

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<sup>1003</sup> Article 419(4) amended by LGBL 2022 No. 227.

<sup>1004</sup> Article 420(3) amended by LGBL 2016 No. 402.

<sup>1005</sup> Article 420(4) repealed by LGBL 2016 No. 402.

have a preferential right to take over the new equity capital contributions in proportion to the old contributions within one month of the resolution.

2) The articles of association may stipulate that a member shall be obliged to take over new equity capital shares in the same proportion.

3) The provisions applicable to public limited companies concerning bonds or similar debt instruments with conversion or option rights shall apply.<sup>1006</sup>

#### Article 422

##### *III. Reduction of equity capital*

1) In the case of a reduction of equity capital, the amount of the equity capital, as well as the amount of the individual equity capital contributions, may not be brought below the minimum amounts required for formation, unless the equity capital contribution has been reduced due to a loss.

2) The provisions governing the reduction of the share capital of public limited companies shall apply *mutatis mutandis* to the limited liability company.<sup>1007</sup>

3) The reduction of equity capital may take place at the same time as a capital increase, in which case the provisions governing calls for creditors shall not apply.<sup>1008</sup>

##### *E. Dissolution of the company*

#### Article 423

##### *I. In general*

1) Unless otherwise provided in the articles of association, the dissolution resolution requires a majority of at least three quarters of all members holding at least three quarters of the equity capital.

2) An individual member may also demand dissolution on important grounds, and the company for its part may demand the exclusion of a member on important grounds by court decision.

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<sup>1006</sup> Article 421(3) amended by LGBl. 2000 No. 279.

<sup>1007</sup> Article 422(2) amended by LGBl. 2000 No. 279.

<sup>1008</sup> Article 422(3) amended by LGBl. 2000 No. 279.

3) If the members are obliged to render performances other than capital contributions, the judge may, where important grounds exist, instead of dissolving the company, pronounce a resignation or exclude a member from the company on those grounds.

4) The obligation to make an equity capital contribution may not be waived even for members who have left the company or been excluded, and there shall be no repayment of contributions already made.

5) If the articles of association grant a member the right to leave the company under certain conditions, the resignation shall not be effective until the provisions governing the reduction of equity capital, reduced by the amount of the equity capital contribution of the resigning member, have been observed.

6) In the case of the second paragraph of the bankruptcy of the company and the third paragraph, the notice of the initiated dissolution proceedings may be made in the Commercial Register on request.<sup>1009</sup>

#### Article 424

##### *II. Dissolution without liquidation*

1) The liquidation must not be carried out if the assets of a limited liability company as a whole, including the debts, are transferred to a public limited company in exchange for shares of the public limited company or to another limited liability company in exchange for company shares (merger) and both parties waive the implementation of the liquidation.

2) Such a resolution shall require unanimity, unless otherwise provided in the articles of association.

3) The provisions on the takeover of a public limited company by another shall apply *mutatis mutandis* to limited liability companies.

4) The provision governing the unification of several public limited companies shall apply *mutatis mutandis* to the unification of several limited liability companies for the purpose of forming a new limited liability company.

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<sup>1009</sup> Article 423(6) amended by LGBl. 2013 No. 6.

## Article 425

*III. Conversion*

1) The conversion of a public limited company into a limited liability company as the universal successor may be carried out without liquidation under the following conditions:

1. The equity capital of the limited liability company may not be less than the share capital of the public limited company.<sup>1010</sup>
2. The shareholders shall be given the opportunity to participate in the new company by way of an announcement up to the nominal amount or the quota of their shares or a part thereof.
3. This participation must represent at least three quarters of the share capital of the existing company.<sup>1011</sup>

2) Any shareholder who does not participate in the new company may request payment from the new company of the portion of the assets according to the liquidation balance sheet of the public limited company to which that shareholder is entitled by law and under the articles of association.

3) The assets and liabilities of the dissolved company shall automatically become the assets and liabilities of the new company upon entry in the Commercial Register of the new company.

4) Immediately after the entry of the new company in the Commercial Register, the creditors of the dissolved company, unless the Office of Justice grants an exception, shall be requested to register their claims by an announcement in accordance with the provisions of the articles of association, and creditors who register claims but do not agree to the conversion shall be satisfied or secured. The right to demand security shall be available only to creditors who have demonstrated that the fulfilment of their claims is jeopardised by the conversion.<sup>1012</sup>

5) The conversion of a limited liability company into a cooperative society without liability of the members or into a cooperative society with limited liability or limited additional performance obligations or into a public limited company or company limited by units or into a general partnership with limited liability or a partnership of limited partners is permitted at any time by means of a public document, applying the provisions in the preceding paragraphs *mutatis mutandis*.

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<sup>1010</sup> Article 425(1)(1) amended by LGBL 2000 No. 279.

<sup>1011</sup> Article 425(1)(3) amended by LGBL 2000 No. 279.

<sup>1012</sup> Article 425(4) amended by LGBL 2013 No. 6.

6) This article is subject to the mandatory provisions applicable to the individual legal persons.<sup>1013</sup>

#### Article 426<sup>1014</sup>

Repealed

#### Article 427<sup>1015</sup>

##### *F. Reference*

To the extent not otherwise provided above or in the articles of association or under the general provisions, the provisions governing general partnerships shall apply on a supplemental basis to the limited liability company.

#### Section 6

### **Cooperative society**

#### Article 428

##### *A. In general*

1) The cooperative society is a corporate body organised as the joining together of a non-closed number of persons or commercial companies, whose main purpose is to promote or safeguard certain economic interests of its members by way of mutual self-help.<sup>1016</sup>

2) For small cooperative societies, such as alp cooperative societies and the like, these provisions are subject to the special rules at the end of this Section (unregistered cooperative societies).

3) The scope of business of cooperative societies may extend to members and non-members alike, unless otherwise provided by law or the articles of association.

4) Advance determination of the share capital is not permissible.<sup>1017</sup>

<sup>1013</sup> Article 425(6) inserted by LGBI. 2000 No. 279.

<sup>1014</sup> Article 426 repealed by LGBI. 2016 No. 402.

<sup>1015</sup> Article 427 amended by LGBI. 2022 No. 227.

<sup>1016</sup> Article 428(1) amended by LGBI. 2007 No. 38.

<sup>1017</sup> Article 428(4) inserted by LGBI. 2007 No. 38.

*B. Formation*

## Article 429

*I. In general*

The formation of the cooperative society requires:

1. written articles of association;
2. appointment of the governing bodies and, if the articles of association are not signed by all the founders of the cooperative society, acceptance of the articles of association by the constituent general meeting;
3. entry in the Commercial Register (registered cooperative societies).<sup>1018</sup>

*II. Content of articles of association* <sup>1019</sup>Article 430<sup>1020</sup>*1. Legally required content*

1) The articles of association must contain provisions on:

1. the name (legal name) and the registered office of the cooperative society;
2. the purpose of the cooperative society;
3. any obligation of the members of the cooperative society to render monetary or other performances, as well as their nature and amount;
4. the governing bodies for administration and oversight and the manner in which representation is exercised;
5. the form in which the cooperative society's announcements are made.

2) The provisions of paragraph 1 shall be deemed material for the purpose of voidability proceedings.

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<sup>1018</sup> Article 429(3) amended by LGBL 2013 No. 6.

<sup>1019</sup> Heading preceding Article 430 inserted by LGBL 2007 No. 38.

<sup>1020</sup> Article 430 amended by LGBL 2007 No. 38.

Article 430a<sup>1021</sup>*2. Provisions to be included as needed*

To be binding, the following must be included in the articles of association:

1. provisions on the creation of cooperative capital through cooperative shares (share certificates);
2. provisions on contributions to the cooperative capital not made by means of a payment (non-cash contributions), their object and the eligible amount, and the identity of the contributing member;
3. provisions on assets taken over in the formation, the compensation to be paid for those assets, and the identity of the owner of the assets to be taken over;
4. provisions on joining the cooperative society and on loss of membership that derogate from the legislative provisions;
5. provisions on personal liability and additional performance obligations of members;
6. provisions on the organisation, representation, amendment of the articles of association, and passing of resolutions by the general meeting that derogate from the legislative provisions;
7. restrictions and extensions to the exercise of voting rights;
8. provisions on the calculation and use of net income and liquidation surplus.

## Article 431

*III. Constituent general meeting*

1) If the articles of association are not signed by all founders (initiators) and the necessary governing bodies are demonstrably appointed, those governing bodies shall convene a constituent general meeting at which the purposes of the cooperative society, the means to achieve them, the rights and duties of members of the cooperative society, any written report on non-cash contributions, asset acquisitions or benefits for founders or members, and the relations with cooperative associations shall be openly presented.

2) The general meeting shall deliberate on the articles of association, decide on their adoption, and appoint the necessary governing bodies.

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<sup>1021</sup> Article 430a inserted by LGBl. 2007 No. 38.

*IV. Entry in the Commercial Register*<sup>1022</sup>Article 432<sup>1023</sup>*1. Registration*

1) The registration for entry of the cooperative society must designate the members of the administration and the persons involved in the exercise of representation, stating their place of residence and nationality.

2) The registration must be submitted to the Office of Justice in certified form by at least two members of the administration.<sup>1024</sup>

3) The articles of association, the report on any non-cash contributions and assets to be taken over and, if the company is a cooperative society with unlimited or limited personal liability or with additional performance obligations of the members of the cooperative society, a list of the members must be attached to the registration.

Article 433<sup>1025</sup>*2. Entry and publication*

1) In addition to the date and the provisions of the articles of association required by law, the names, places of residence and nationalities of the persons involved in the administration and representation of the company, together with their signing authorities, shall be entered in the Commercial Register.<sup>1026</sup>

2) Information on the legal name, registered office, purpose, liability relationships and manner of announcements as well as all entered information on the cooperative society's administration must be published.

3) The list of members to be submitted by cooperative societies with personal liability or additional performance obligations to the Office of Justice shall be open to public inspection, but shall not be published.<sup>1027</sup>

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<sup>1022</sup> Heading preceding Article 432 amended by LGBL 2013 No. 6.

<sup>1023</sup> Article 432 amended by LGBL 2007 No. 38.

<sup>1024</sup> Article 432(2) amended by LGBL 2013 No. 6.

<sup>1025</sup> Article 433 amended by LGBL 2007 No. 38.

<sup>1026</sup> Article 433(1) amended by LGBL 2013 No. 6.

<sup>1027</sup> Article 433(3) amended by LGBL 2013 No. 6.

## Article 434

*V. Non-cash contributions and other performances by members*

1) Where members of a cooperative society are required to make non-cash contributions or to grant compensation for the assets to be taken over by the cooperative society, the articles of association shall specify the object of the contribution or takeover, the eligible amount or compensation, and the identity of the contributing member or owner of the assets to be taken over.

2) The articles of association submitted to the Commercial Register shall be accompanied by a written report of the non-cash contributions and the assets to be taken over and any special benefits for the founders or members when a constituent general meeting has been held or when the cooperative shares are to consist in negotiable securities.<sup>1028</sup>

3) The articles of association may introduce an obligation for members to provide recurring non-cash performances; in the absence of provisions to the contrary in the articles of association, the relevant provision for limited liability companies shall apply on a supplemental basis.

## Article 435

*VI. Protection of vested rights*

The vested rights of the members of a cooperative society shall be the same as those in the case of a public limited company, unless the articles of association provide otherwise.

*C. Membership**I. Acquisition*

## Article 436

*1. In general*

1) Unless otherwise provided by law or the articles of association, or unless freely negotiable securities concerning membership are issued,

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<sup>1028</sup> Article 434(2) amended by LGBL 2013 No. 6.

membership of a cooperative society requires an unconditional written declaration by the person joining.

2) The declaration of membership must, unless written on the articles of association themselves, contain the following remark, with reference to the articles of association, unless the law allows exceptions, and otherwise shall be invalid:

1. in the case of cooperative societies with unlimited liability, that the individual members shall be jointly and severally liable for the obligations of the cooperative society to the cooperative society itself and directly to its creditors in accordance with this Act, with their entire assets;
2. in the case of cooperative societies with unlimited additional performance obligations, that the individual members are obliged with all their assets to make additional payments to the cooperative society as required by law to satisfy their creditors.

#### Article 437

##### *2. Before and after entry*

1) Accession to a cooperative society which is being formed and has not yet been entered in the Commercial Register shall be binding if the person joining has signed the articles of association of the cooperative society or any other written declaration referring to the articles of association, even if the person joining is not listed in the application for entry in the Commercial Register.<sup>1029</sup>

2) Admission to an already registered cooperative society is effected by a resolution of the general meeting, unless the articles of association allocate the acceptance of new members to the administration or a general meeting of delegates or specify the conditions under which the mere written declaration of accession of the new member or the acquisition of a share certificate for admission is sufficient.

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<sup>1029</sup> Article 437(1) amended by LGBI. 2013 No. 6.

## Article 438

*3. Admission of new members*

1) Unless the articles of association provide otherwise, new members may be admitted to an existing cooperative society at any time.

2) If membership is to be limited, the articles of association must specify the conditions required for admission, such as membership of a profession or association or a specific place of residence or a maximum cooperative capital; in addition, the cooperative society may refuse admission at its own discretion.

3) The Government may, where urgently justified, order for individual cooperative societies or types of cooperative societies that the articles of association may not restrict the admission of new members.

4) This article is subject to the provisions of public law which require certain persons to join certain cooperative societies.

*II. Loss**1. Resignation*

## Article 439

*a) Free resignation*

1) As long as the dissolution of the cooperative society has not been decided and no share certificates of membership in the form of securities have been issued, each member shall be free to resign.

2) A prohibition of resignation in the articles of association or excessively high requirements on resignation set out in the articles of association or by contract shall be invalid.

3) Nonetheless, appropriate conditions of a pecuniary nature may be attached to the resignation (redemption sum), in particular if, according to the circumstances of the cooperative society, the resignation should cause considerable damage or even jeopardise the continued existence of the cooperative society.

4) The claim for payment of a redemption sum shall expire after three years from the date of resignation.

## Article 440

*b) For cooperative societies with permanent investments and contracts*

1) Cooperative societies which acquire or establish longer-term assets (real property, buildings, machinery, inventories, and the like) or enter into longer-term supply or purchase contracts may stipulate in the articles of association that the resigning person must pay a redemption sum in proportion to the disadvantage suffered by the cooperative society as a result of the resignation due to insufficient use of such facilities or performance of contracts.

2) The last paragraph of the preceding article shall apply *mutatis mutandis*.

## Article 441

*c) Waiver of resignation*

1) A waiver of resignation may be provided for by law through the articles of association or by contract for a maximum of ten years.

2) However, resignation is also permitted by law during this period on important grounds.

3) A limitation on the waiver is permissible in the case of cooperative societies within the meaning of the preceding article or subject to the obligation to pay a reasonable redemption sum.

## Article 442

*d) Period of notice*

1) If the articles of association do not specify the period of notice and the time of resignation, the resignation may take place only in writing at the end of the financial period and with at least three months' notice.

2) The articles of association may extend the period of notice, which in case of doubt is the same for all members of the cooperative society, to a maximum of three years.

3) Repealed<sup>1030</sup>

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<sup>1030</sup> Article 442(3) repealed by LGBL 2020 No. 369.

4) The articles of association may give the competent governing bodies the power to dismiss a member on important grounds or at their discretion, at the request of a creditor, without notice.

5) Under the same conditions, the cooperative society may terminate the membership of a member, unless the articles of association provide otherwise.

#### Article 443

##### 2. *Exclusion of members*

1) The articles of association may determine the grounds on which a member may be excluded from the cooperative society, but in all cases expulsion on important grounds is permissible.

2) If the articles of association do not contain any such provisions, the expulsion may be effected only by resolution of the general meeting on important grounds which are subject to judicial review in the event of an action by the excluded persons against the cooperative society.

3) If the important grounds lie in the continued behaviour of the person to be excluded that is contrary to the articles of association or otherwise malicious, that person shall be liable for the damage caused to the purpose and business operations of the cooperative society.

4) The member of a cooperative society may not, from the time of notification of exclusion, serve as a member of the administration or of any other governing body and shall be excluded from the exercise of voting rights in the supreme body.

5) The provisions of the articles of association concerning the payment of a redemption sum or compensation to persons resigning from cooperative societies with longer-term investments or supply or purchase contracts shall apply *mutatis mutandis* to the excluded person.

Article 444<sup>1031</sup>*3. Termination by a creditor or insolvency administrator*

1) The creditor of a member of a cooperative society who, after having unsuccessfully attempted a compulsory execution relating to the assets of the member within the last six months, has obtained the attachment of the right to compensation attributable to that member in accordance with the articles of association or this Act may, or the insolvency administrator of the member in respect of whose assets insolvency proceedings have been opened may, for the purpose of satisfaction, exercise the member's right of termination in the member's stead, subject, however, to the provisions on the redemption sum or compensation in accordance with the last paragraph of the preceding article.

2) Termination by a creditor must be accompanied by a certified copy of the debt instrument and of the documents relating to the unsuccessful compulsory execution, while the insolvency administrator may terminate without formal requirements.

3) If freely transferable share certificates have been issued by a cooperative society, the creditor or the insolvency administrator shall have a right of termination only if the articles of association authorise it, otherwise compulsory execution of the share certificate may be effected.

## Article 445

*4. Death or lapse of member*

1) Where not otherwise provided in the articles of association, membership shall expire upon the death of the member of a cooperative society and, if the member is an entity with a legal name or a legal person, upon its dissolution, unless acquisition and loss of membership are connected with the rights to the share certificates.

2) The articles of association may, however, provide that the legal or appointed heirs or one of several heirs shall be recognised as members in place of the deceased member upon mere notification of the succession.

3) The articles of association may also provide that the heirs must assume all the rights and duties of the deceased member of the cooperative society; heirs who wish to withdraw from the obligations imposed on them by the articles of association must be treated in the same way as those who leave the cooperative society.

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<sup>1031</sup> Article 444 amended by LGBl. 2020 No. 369.

4) If several heirs join the cooperative society, the community of heirs must designate one representative.

5) The designation of a successor among several heirs shall be made either by disposition *mortis causa* or by the division agreement of the heirs and, if this is omitted for any reason, shall be designated by the judge in special non-contentious proceedings at the request of one of the heirs or the cooperative society; however, declarations of the cooperative society may be made with legal effect to one of the heirs until a common representative has been appointed and notified to the cooperative society.<sup>1032</sup>

6) The above provisions shall apply *mutatis mutandis* to entities with legal names and legal persons as members of the cooperative society, provided that on their dissolution their assets and liabilities are transferred to another; in other cases, the articles of association shall lay down the necessary provisions and, in the absence thereof, the judge shall, on application by the parties and after hearing the administration, order the necessary measures in special non-contentious proceedings.<sup>1033</sup>

### 5. *Transfer of membership*

#### Article 446

##### *a) In general*

1) The transfer of a cooperative share shall make the acquirer a member without further formal requirements in the transferor's stead only if the articles of association so provide and unless the law requires a written declaration of membership in a cooperative society with unlimited liability or additional performance obligations.

2) If this is not the case, the acquirer shall become a member only by means of an admission resolution in accordance with the law and the articles of association, and the personal membership rights shall remain with the transferor until the final decision has been made.

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<sup>1032</sup> Article 445(5) amended by LGBL 2010 No. 454.

<sup>1033</sup> Article 445(6) amended by LGBL 2010 No. 454.

## Article 447

*b) In the case of share certificates*

1) Membership of a cooperative society, in which only the cooperative assets are liable or only limited liability or additional performance obligations exist, may be linked to a document.

2) Such share certificates shall be subject to the provisions on registered shares and, where share certificates are issued in connection with limited liability or additional performance obligations or an obligation to provide other non-cash benefits, the provisions on ancillary performance shares.<sup>1034</sup>

3) Repealed<sup>1035</sup>

4) Repealed<sup>1036</sup>

5) The cooperative society shall keep a list of the owners of the share certificates and enter any changes therein.<sup>1037</sup>

*6. Discontinuation of membership*

## Article 448

*a) In the case of employment*

If membership of a cooperative society is connected with civil service or employment or with any other contractual relationship, then, unless the articles of association provide otherwise, resignation from the cooperative society shall take effect with the cessation of civil service or employment or the contractual relationship.

## Article 449

*b) Other preconditions*

1) The articles of association may require ownership of a plot of land or a commercial operation as a precondition for membership of the cooperative society.

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<sup>1034</sup> Article 447(2) amended by LGBL 2013 No. 67.

<sup>1035</sup> Article 447(3) repealed by LGBL 2013 No. 67.

<sup>1036</sup> Article 447(4) repealed by LGBL 2013 No. 67.

<sup>1037</sup> Article 447(5) amended by LGBL 2013 No. 67.

2) In such cases, the articles of association may exclude the right of termination for the period during which the member remains the owner of the land or maintains the economic operation.

3) The articles of association may also require the member to transfer membership to the acquirer or transferee in the event of sale of the land or transfer of the economic operation.

4) The articles of association may also expressly stipulate that membership is assigned to the acquirer or transferee without the need for any further agreement, but in order to be effective in relation to third parties, this provision must be noted in the Land Register sheets of all the plots of land concerned or, in the case of entities with legal names as members, in the Commercial Register entry of the legal name in question, subject to the right of action relating to already existing encumbrances in accordance with the Property Act.<sup>1038</sup>

5) In lieu of this, the obligation to provide cooperative performances may also be entered in the Land Register as a land charge.

6) Persons who wish to release themselves from the membership obligations assumed in this way are to be treated in the same way as those who leave the association.

#### Article 450

##### *7. Non-members associated with the cooperative society*

1) Persons who have a permanent link with the commercial activity of the cooperative society through regular deliveries or through collaboration or contributions may be brought into a relationship by the articles of association or by a resolution of the cooperative society which to a certain extent puts them on an equal footing with members in terms of their participation.

2) Unless otherwise provided in the articles of association or in the resolution of the cooperative society, they shall have the right and the obligation to use cooperative facilities under the same conditions as those applicable to members and, in accordance with this use, they must also receive their share of the surplus in the cooperative undertaking in the same way as the members themselves.

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<sup>1038</sup> Article 449(4) amended by LGBL 2013 No. 6.

3) Such persons may, with their consent, be held liable in the articles of association for the obligations of the cooperative society in the same way as members.

### *III. Rights and duties of members*

#### Article 451

##### *1. In general*

1) All members of the cooperative society shall have the same rights and duties within the limits of the law and the articles of association.

2) They shall have the right to use the cooperative facilities in accordance with the provisions of the articles of association and to cover their needs with the cooperative society or to deliver their agricultural and work products and the like to the cooperative society in accordance with the cooperative principles.

3) The rights that the members of the cooperative society are entitled to in matters concerning the cooperative society, in particular with regard to the conduct of cooperative business and the promotion of cooperative works, are exercised by participating in the meeting of the supreme body.

4) Like the shareholders, the members of the cooperative society shall have a right to exercise oversight of the administration.

5) Members are obliged to safeguard the interests of the cooperative society in good faith, to use the cooperative facilities, and to avail themselves of the cooperative society for their purchases and uses to the extent that this may reasonably be expected of them.

#### Article 452

##### *2. Entitlement to profit*

1) The net profit from the operation of the cooperative society shall be included in the cooperative assets, unless the articles of association provide otherwise.

2) Where the articles of association provide for the distribution of net profit, it shall be distributed, unless the articles of association provide otherwise, per capita among the members existing at the end of the financial period.

3) In the case of cooperative shares, unless otherwise provided in the articles of association, net profits shall be distributed in proportion to the number of shares and may include interest thereon.

#### Article 453

##### *3. Reserve fund and other investments*

1) The articles of association may require that reserves be separated from the net profit (surplus) or that funds be set up to establish and support charitable institutions for members, workers, and employees or for professional purposes.

2) The general meeting is entitled to provide for reserve assets before the distribution of the profit among the members, even if not provided for by law or the articles of association, if securing the undertaking so requires.

3) To the extent that the net income from the cooperative society's operations is used other than to accumulate the cooperative assets, or, where cooperative shares exist, before payment of a dividend to the cooperative shares, in all cases one twentieth of the net profit must be allocated to a general reserve fund each year until such fund reaches one tenth of the remaining cooperative assets.

##### *4. Entitlement to compensation*

#### Article 454

##### *a) Under the articles of association*

1) The articles of association shall determine whether and which claims to the cooperative assets are due to the members leaving the cooperative society or the heirs of a deceased person or the legal successors of dissolved undertakings or legal persons.

2) If share certificates are provided as evidence, the person leaving the cooperative society is entitled to repayment in proportion to the assets available at the time of departure, but not exceeding the amount of the payments made; however, if registered or bearer share certificates with the character of negotiable securities are issued in accordance with the articles of association, this right to repayment before dissolution upon transfer of the share certificate to another person shall apply only if the articles of association so provide.

3) The repayment may in all cases be set off against any redemption sum paid and, to the extent this is not the case and the payment would result in considerable damage to the cooperative society or even jeopardise its continued existence, it may be postponed for up to one year.

Article 455

*b) Under law*

1) If nothing is specified in the articles of association regarding the claims of a member leaving the cooperative society or the heirs of a deceased member or the universal successors of dissolved undertakings or legal persons as members to the cooperative assets, no compensation may be claimed.

2) However, the member leaving the cooperative society may be required to pay a redemption sum in the case of cooperative societies with permanent investments or long-term contracts.

3) In the event that the cooperative society is dissolved within one year of the departure or death of a member or the dissolution of an entity with a legal name or a legal person as a member and the assets are distributed, the member leaving the cooperative society or the heir or universal successor shall be entitled by law to the same legal entitlement or entitlement under the articles of association as the members of the cooperative society existing at the time of dissolution.

Article 456

*c) Period of limitation*

1) The claim of the person leaving the cooperative society or the heir or legal successor of dissolved entities with legal names or legal persons shall be subject to a period of limitation of three years, calculated from the day on which the claimant may demand payout.

2) However, the claim to compensation may be set off against claims of the company even if the claim has lapsed.

*5. Contribution and performance obligations*

## Article 457

*a) In general*

1) The articles of association shall set out the obligation to pay contributions and to render performances.

2) Anyone who becomes a member of a cooperative society shall take over at least one cooperative share upon joining, where such cooperative shares exist.

3) If the articles of association do not provide otherwise, the acquisition of several shares is permissible.

4) The articles of association or the governing body provided for in the articles of association shall determine the time and amount of any instalments or other partial performances.

## Article 458

*b) Payment*

1) If the members are obliged to pay in cooperative shares or to make other contributions, they shall be requested to do so within a reasonable period of time in the manner provided for in the articles of association.<sup>1039</sup>

2) If payment is not made on the first demand, and if a member does not comply with a second demand for payment within one month, with a corresponding warning by special notification, the member may be declared to have lost the rights as a member of the cooperative society, without being released from the obligation to make payments, in particular also to pay default interest, in the absence of other provisions in the articles of association.

3) If share certificates have been issued in the form of negotiable securities, the obligation to make payments shall be governed, in the absence of any other provisions in the articles of association, by the provisions governing bearer or registered shares.

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<sup>1039</sup> Article 458(1) amended by LGBL 2007 No. 38.

*6. Liability of cooperative society and of members*

Article 459

*a) In general*

1) The cooperative assets shall be liable for the cooperative society's liabilities. The cooperative assets shall be exclusively liable unless the articles of association provide otherwise.<sup>1040</sup>

2) Each member of the cooperative society is obliged only to make those performances which are provided for in the articles of association in the form of the assumption of a cooperative share or the payment of membership contributions, and these performances may not be waived or deferred with effect in insolvency or compulsory execution proceedings of the cooperative society, nor may the member set off or retain the performances for any other reason.<sup>1041</sup>

3) The articles of association may provide for different types or scopes of liability or additional performance obligations for individual members or specific groups of members, or may exclude them altogether for individual members or groups (mixed cooperative societies).

4) In the case of mixed cooperative societies, the following provisions shall apply to the individual groups in this regard.

5) Repealed<sup>1042</sup>

Article 460

*b) Liability of the cooperative society without liability of the members*

Unless the articles of association provide otherwise, the cooperative society shall be exclusively liable for its liabilities through its assets, and there shall be no personal liability or additional performance obligations of the members.

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<sup>1040</sup> Article 459(1) amended by LGBl. 2007 No. 38.

<sup>1041</sup> Article 459(2) amended by LGBl. 2020 No. 369.

<sup>1042</sup> Article 459(5) repealed by LGBl. 2020 No. 369.

## Article 461

*c) Unlimited liability of the members*

1) The articles of association may provide that the members of the cooperative society shall have unlimited personal liability backing up the cooperative assets (cooperative society with joint and several liability).

2) In this case, the members shall be jointly and severally liable for all obligations of the cooperative society with all their assets, if the articles of association do not exclude joint and several liability, and to the extent that the creditors have suffered losses in compulsory execution or in the insolvency proceedings of the cooperative society.<sup>1043</sup>

3) As long as insolvency proceedings have not been opened, the claim may be asserted by creditors who have incurred losses in the compulsory execution, but after the opening of insolvency proceedings only by the insolvency administrators in the allocation procedure.<sup>1044</sup>

4) The right of recourse among the paying members of the cooperative society shall be subject to the provisions governing joint and several liability in general and may also be exercised in the allocation procedure before the judge in special non-contentious proceedings or by the receiver.<sup>1045</sup>

5) Members of a cooperative society who are sued by cooperative creditors for their liability may no longer challenge the obligations recognised by the cooperative society.

## Article 462

*d) Limited liability of the members<sup>1046</sup>*

1) The articles of association may provide that the members of the cooperative society shall be personally liable for the obligations to third parties, backing up the cooperative assets, but only up to a certain amount of capital, calculated in relation to the individual member or share.

2) In that case, the member's liability shall also extend to all of the cooperative society's uncovered obligations in the event of the cooperative society's enforcement or insolvency proceedings, but only in the sense that, over and above the payment of the member's cooperative shares and

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<sup>1043</sup> Article 461(2) amended by LGBL 2020 No. 369.

<sup>1044</sup> Article 461(3) amended by LGBL 2020 No. 369.

<sup>1045</sup> Article 461(4) amended by LGBL 2010 No. 454.

<sup>1046</sup> Article 462 heading amended by LGBL 2007 No. 38.

membership contributions and\* other member performances, the member may be called upon to make payments only up to at most the additional capital amount provided for in the articles of association.<sup>1047</sup>

3) The last three paragraphs of the preceding article shall apply *mutatis mutandis*.

#### Article 463

##### *e) Additional performance obligations (coverage liability)*

1) The articles of association may require the members to make additional payments over and above the cooperative shares and membership contributions and other member performances, either without limitation or up to a capital amount provided for in the articles of association (cooperative society with additional performance obligations).

2) Unless otherwise arising from the articles of association or the guarantee obligations, the latter shall be subject to the provisions governing additional performance obligations; the articles of association may also require additional insurance in lieu of additional performance obligations.

3) These additional performance obligations may be called in at any time by the administration to cover balance sheet losses and also immediately after opening of insolvency proceedings in respect of the cooperative society's assets by the insolvency administrator.<sup>1048</sup>

4) The assessment shall be carried out by distributing the need for additional performance obligations among the members in accordance with the provisions of the articles of association or, in the absence of such, in proportion to their cooperative shares or, where no such shares exist, per capita, in the allocation procedure.

5) The obligation to make additional payments to cover balance sheet losses may be introduced in addition to the liability of members of the cooperative society.

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\* "and" inferred from the German original.

<sup>1047</sup> Article 462(2) amended by LGBl. 2020 No. 369.

<sup>1048</sup> Article 463(3) amended by LGBl. 2020 No. 369.

*f) Amendment of the provisions governing liability and additional performance obligations*

Article 464

*aa) In general*

1) Amendments to the liability or additional performance obligations of members may be made only by means of a revision of the articles of association and, if they limit the liability or additional performance obligations, they shall have effect only with regard to the debts incurred after publication.

2) Furthermore, a new establishment or increase of liability or additional performance obligations may be made only with the consent of three quarters of all members.

3) Such a resolution must be registered immediately by the administration with the Office of Justice as amendments to the articles of association and published by the latter.<sup>1049</sup>

4) A new establishment or increase of liability or additional performance obligations shall take effect in favour of all creditors of the cooperative society with the entry of the resolution.<sup>1050</sup>

5) Members who have not agreed to the new establishment or increase of liability or additional performance obligations and who resign within three months of the date of entry of the resolution shall not be subject to the new provisions; however, they shall be subject to the conditions for resignation under law and in accordance with the articles of association existing prior to the amendment of the provisions governing liability or additional performance obligations.

Article 465

*bb) In the case of several shares*

1) If a member may have more than one share according to the provisions of the articles of association and has in fact acquired more than one share, then in the case of unlimited liability or additional performance obligations, this shall have no effect in relation to third parties, but it shall have an effect in relation to other members in the sense that the right of recourse shall be based on the number of units.

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<sup>1049</sup> Article 464(3) amended by LGBl. 2013 No. 6.

<sup>1050</sup> Article 464(4) amended by LGBl. 2007 No. 38.

2) The liability or additional performance obligations of a member with several shares in cooperative societies with limited liability or additional performance obligations shall be increased to a multiple of the liability or additional performance obligations corresponding to the number of shares.

#### Article 466

##### *g) Liability of new members*

1) Anyone who joins a cooperative society for whose obligations the members are personally liable, or for which additional performance obligations exist, shall be liable to the same extent as the other members for the debts incurred before joining.

2) Any agreement to the contrary shall be ineffective in relation to third parties unless the third party has entered into a special agreement with the newly joining member.

3) In the case of mixed cooperative societies, any declaration of accession to membership must indicate the group of members being joined.

#### Article 467

##### *b) Liability after the departure of a member or after dissolution of the cooperative society*

1) If a member with limited or unlimited personal liability leaves the cooperative society due to death or otherwise and does not transfer membership to another party, liability for the obligations incurred prior to the departure of the member shall continue if insolvency proceedings have been opened in respect of the cooperative society's assets or compulsory execution relating to its assets is unsuccessfully attempted within one year or a longer period set out in the articles of association from the date of registration of the departure of the member in the list of members of the cooperative society.<sup>1051</sup>

2) Under the same condition, the additional performance obligations after the departure of the member shall persist for one year or for a longer period set out in the articles of association from the date of registration of

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<sup>1051</sup> Article 467(1) amended by LGBI. 2020 No. 369.

the departure of the member in the list of members of the cooperative society.

3) In the event of dissolution of a cooperative society, the liability or additional performance obligations of members shall persist without change if insolvency proceedings are opened in respect of the cooperative society's assets within one year or a longer period set out in the articles of association from the date of entry of the dissolution of the cooperative society in the Commercial Register.<sup>1052</sup>

4) In lieu of the foregoing provisions, the articles of association may provide that members who have left the cooperative society may be liable for the obligations of the cooperative society, whether incurred before or after the date at which they left the cooperative society, for a period of one and a half years after that date.

5) If the articles of association of cooperative societies with liability or additional performance obligations provide for an entitlement to compensation of the member leaving the cooperative society, that member may be called upon *pro rata* to cover the balance sheet losses incurred before that member's departure for a period of one year from the date of registration of the departure of the member in the list of members of the cooperative society.

6) In the case of cooperative societies for which there is no obligation to register the departure of a member in the list of members, the date on which a member leaves the cooperative society is deemed to be the time of occurrence of the facts or circumstances giving rise to the departure.

*i) Registration in the list of members of the cooperative society*

Article 468

*aa) In general*

1) If the members have unlimited or limited personal liability for the debts of the cooperative society or have additional performance obligations in any form, the administration must submit a list of all members of the cooperative society, stating their name and place of residence or legal name and registered office, to the Office of Justice together with the registration, and must notify any subsequent departure or entry within three months at the latest, and otherwise the

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<sup>1052</sup> Article 467(3) amended by LGBI. 2020 No. 369.

administration shall be responsible for the obligations of the departing member, even if such obligations are only conditionally established.<sup>1053</sup>

2) Moreover, any resigned or excluded member, as well as the heirs of a member who has left the cooperative society due to death and the attaching creditors or the insolvency administrator, shall be entitled to have the resignation, expulsion, or death entered in the list of members without involvement of the administration, although the Office of Justice must inform the administration of such a declaration immediately.<sup>1054</sup>

3) The resigned or excluded entity with a legal name or legal person as a member of the cooperative society or, in case of dissolution, its universal successors, shall be likewise so entitled.

4) This registration of the departure becomes incontestable against the cooperative society and its creditors after one month from the notification of the Office of Justice to the administration of the cooperative society, unless the administration challenges it beforehand by legal action.<sup>1055</sup>

#### Article 469

##### *bb) Exemptions*

1) There is no registration requirement for cooperative societies in which each member may only own one share and in which a member's liability or additional performance obligations do not exceed 100 Swiss francs, either individually or collectively.

2) By ordinance, the Government may also provide exemptions from the obligation to register members in the list of members of the cooperative society in special circumstances, such as cooperative societies operating mutual insurance.

#### Article 470

##### *k) Period of limitation for liability*

1) If the claims arising from the personal liability (liability or additional performance obligations) of individual members have not expired beforehand in accordance with the legislative provisions, they shall be subject to a period of limitation of one year, calculated from the day on

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<sup>1053</sup> Article 468(1) amended by LGBl. 2013 No. 6.

<sup>1054</sup> Article 468(2) amended by LGBl. 2020 No. 369.

<sup>1055</sup> Article 468(4) amended by LGBl. 2013 No. 6.

which the insolvency proceedings in respect of the cooperative society's assets were suspended or on which the compulsory execution was unsuccessfully carried out.<sup>1056</sup>

2) The period of limitation shall not be interrupted by any action against individual members in relation to the others, but it shall be interrupted by action against the cooperative society.

#### *D. Organisation*

##### *I. General meeting*

#### Article 471

##### *1. Powers*

1) The general meeting of the cooperative societies or its substitute shall take the appropriate decisions for the best possible achievement of the cooperative purpose, and it shall supervise the cooperative facilities and the entire general management.

2) In the absence of a provision set out in the articles of association, the supreme body alone shall be responsible for:

- a) election of the administration and, where needed, the audit office;
- b) approval of the business report and the consolidated business report, where needed, resolution on the appropriation of the net profit and the discharge of the administration and audit office;
- c) amendments to the articles of association;
- d) establishment of the guiding principles for the general management and employment conditions of auxiliary staff and approval of the general operating regulations;
- e) resolution on dissolution.<sup>1057</sup>

3) Unless the articles of association determine otherwise, the general meeting shall be the highest instance for dealing with complaints against the administration, such as in particular regarding the admission or exclusion of members.

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<sup>1056</sup> Article 470(1) amended by LGBl. 2020 No. 369.

<sup>1057</sup> Article 471(2) amended by LGBl. 2000 No. 279.

## 2. *Convening*<sup>1058</sup>

### Article 472<sup>1059</sup>

#### *a) Right and duty*

1) The general meeting shall be convened by the administration or other governing body authorised to do so under the articles of association, if necessary by the audit office. The liquidators and representatives of the bondholders also have the right to convene the general meeting.

2) The general meeting must be convened if at least one tenth of the members or, in the case of cooperative societies with less than thirty members, at least three members request the convening.

3) If the administration does not comply with this request within a reasonable period of time, the judge shall, at the request of the applicants, order the convening.

### Article 472a<sup>1060</sup>

#### *b) Form*

1) The general meeting must be convened at least ten days before the date of the meeting in the form provided for in the articles of association.

2) In the case of cooperative societies with more than thirty members, the convening is in any case legally effective as soon as it is publicly announced.

### Article 472b<sup>1061</sup>

#### *c) Agenda items*

1) At the convening, the agenda items and, in the case of amendments to the articles of association, the material content of the proposed amendments must be announced.

2) No resolutions may be taken on matters which have not been announced in this way, except for a motion for the convening of a further general meeting.

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<sup>1058</sup> Heading preceding Article 472 inserted by LGBL 2007 No. 38.

<sup>1059</sup> Article 472 amended by LGBL 2007 No. 38.

<sup>1060</sup> Article 472a inserted by LGBL 2007 No. 38.

<sup>1061</sup> Article 472b inserted by LGBL 2007 No. 38.

3) No prior announcement is required for the submission of motions and for deliberations without the adoption of a resolution.

Article 472c<sup>1062</sup>

*d) Universal general meeting*

If and as long as all members are present in a meeting, they may, if no objection is raised, adopt legally valid resolutions even without observing the provisions for convening meetings.

Article 473

*3. Right to vote<sup>1063</sup>*

1) The right to vote shall be exercised by the member of the cooperative society in person, unless the law or the articles of association provide otherwise.

2) If unable to exercise their right to vote in person, members may authorise another member to represent them, but an authorised person may represent only one other member at any one time, unless the articles of association provide otherwise.

3) Persons who have participated in any way in the general management shall not have the right to vote on resolutions concerning the discharge of the administration. This prohibition shall not apply to the members of the audit office.<sup>1064</sup>

Article 473a<sup>1065</sup>

*4. Passing of resolutions*

1) The general meeting shall pass its resolutions and carry out its elections by an absolute majority of the votes cast, unless the law or the articles of association provide otherwise.

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<sup>1062</sup> Article 472c inserted by LGBL 2007 No. 38.

<sup>1063</sup> Article 473 heading amended by LGBL 2007 No. 38.

<sup>1064</sup> Article 473(3) inserted by LGBL 2007 No. 38.

<sup>1065</sup> Article 473a inserted by LGBL 2007 No. 38.

2) Dissolution of the cooperative society and amendment of the articles of association shall require a majority of at least two thirds of the votes cast.

3) Resolutions on the introduction or increase of personal liability or additional performance obligations of members shall require the consent of three quarters of all members.

4) Resolutions in accordance with paragraph 3 shall not be binding on members who have not agreed to them, if they declare their resignation within three months of the publication of the resolution. Such resignation shall take effect on the date of entry into force of the resolution and may not be made dependent on the payment of a redemption sum.

## *II. Administration*

### Article 474

#### *1. In general*

1) If the administration (executive board) consists of more than one person, at least a majority must be members of the cooperative society.

2) The articles of association may also, while respecting the right of supervision of the administration, delegate the general management to one or more administrators or managers appointed by the administration or by the supreme body who need not be members of the cooperative society.

3) The organisation of the powers of the administration and of the administrators or general managers (general management) shall be governed by the provisions applicable to public limited companies, unless exceptions are provided for.

### Article 475

#### *2. Duties of the administration*

In the absence of other provisions set out in the articles of association, the administration shall in particular be responsible for:

1. business operations, the election of other governing bodies provided for in the articles of association, to the extent another governing body is not expressly responsible, such as the workers' commission, administrator or general manager, and of other personnel, and the dismissal of persons elected by it;

2. implementation and, if necessary, enactment of implementing provisions for the regulations drawn up by the supreme body, the determination of business operations and their expansion within the limits set by the articles of association and regulations;
3. the handling of complaints and accounting;
4. the obligation to prepare the business of the supreme body and to submit to it the annual financial statement and an annual report which is as detailed as possible under the circumstances and which allows the supreme body to gain an insight into the status of the cooperative operation and to make an independent assessment of it.

#### Article 476

##### *3. Balance sheet*

1) Repealed<sup>1066</sup>

2) Individual cooperative societies or types of cooperative societies which are not obliged to publish the balance sheet according to the general provisions may be made subject to the obligation to publish the balance sheet by the Government.

#### *III. Audit office*<sup>1067</sup>

#### Article 477

##### *1. In general*

1) Unless exceptions are permitted, every cooperative society must appoint an audit office which, in addition to the tasks provided for under the general provisions, is responsible for auditing whether the list of members of the cooperative society is properly maintained in the case of cooperative societies with liability or additional performance obligations.<sup>1068</sup>

2) Cooperative societies with at least five hundred members must have a professional audit carried out in the same way as cooperative societies whose share capital, including the uncovered funds of third parties, amounts to at least one million Swiss francs.<sup>1069</sup>

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<sup>1066</sup> Article 476(1) repealed by LGBL. 2000 No. 279.

<sup>1067</sup> Heading preceding Article 477 amended by LGBL. 2000 No. 279.

<sup>1068</sup> Article 477(1) amended by LGBL. 2000 No. 279.

<sup>1069</sup> Article 477(2) amended by LGBL. 2000 No. 279.

3) The judge may, on application by a member of a cooperative society, order compliance with this provision in special non-contentious proceedings.<sup>1070</sup>

#### Article 478

##### *2. Umbrella organisations of cooperative societies*

1) If umbrella organisations of cooperative societies exist, the provisions established for umbrella organisations shall apply, and their governing bodies shall moreover be authorised to ensure that the articles of association of the individual cooperative societies comply with the legislative provisions and that the resolutions of the cooperative societies and the administrative bodies comply with the legislative provisions and the provisions set out in the articles of association.

2) They may request all information and carry out all investigations relating to the general management of the individual cooperative societies which are in the interest of the association.

3) They may also impose an obligation on the individual members of the affiliated cooperative societies to comply with the standards or price agreements concluded by the organisation with other organisations.

##### *E. Appropriation of the assets of a liquidated cooperative society*

#### Article 479

##### *I. In general*

1) In the case of cooperative societies which provide in the articles of association that the amounts paid on shares shall be forfeited in the event that a member leaves the cooperative society, the net assets resulting from the liquidation shall, unless the articles of association provide otherwise, be retained for cooperative purposes.

2) Similarly, such a surplus must always be preserved for cooperative purposes, unless the articles of association provide for a specific other purpose.

3) The articles of association may also determine that the assets of the cooperative society shall continue to exist as an independent foundation after its dissolution.

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<sup>1070</sup> Article 477(3) amended by LGBI. 2010 No. 454.

## Article 480

*II. Lower and higher requirements for amendments to the articles of association*

1) An amendment to the articles of association which determines the preservation of the remaining cooperative assets for cooperative purposes in the event of liquidation may be made at any time by a simple majority of the votes in the case of cooperative societies which do not conduct business in a commercial manner.

2) Any amendment to the articles of association that seeks to remove the provision on liquidation proceeds for cooperative purposes shall require approval by three quarters of the members.

## Article 481

*III. Management of special-purpose assets*

1) If the assets must be preserved for cooperative purposes, the articles of association or the supreme body shall determine whether they are to be entrusted to the State or to a domestic municipality or cooperative organisation with the necessary designation of purpose or whether they are to continue as an independent foundation.

2) In the same way, they shall determine whether the transfer is subject to interest or whether the interest may be used for public-benefit or cooperative purposes.

3) The manager of the special-purpose assets shall when in doubt be subject to the regulations on the implied trust.

## Article 482

*F. Conversion and merger*

1) For the conversion of a cooperative society without personal liability of the members or only with limited additional performance obligations into a public limited company, company limited by units, or limited liability company, the regulations for the conversion of a public limited company into a limited liability company shall apply *mutatis mutandis*.

2) In the event of the dissolution of the cooperative society without liquidation through its takeover with assets and liabilities by another

cooperative society, the following provisions shall apply in addition to the provisions governing a merger resolution:

1. The assets of the dissolved cooperative society shall be managed separately until such time as their creditors are satisfied or secured; with regard to the preferential right of the creditors of the dissolved cooperative society to be satisfied from its assets, the provision set out in subparagraph 7 for the takeover of a public limited company by another shall apply.
2. The previous legal venue of the dissolved cooperative society shall remain in place for the duration of the separate asset management, whereas the separate asset management itself must be carried out by the acquiring cooperative society.
3. The members of the administration of the acquiring cooperative society shall be personally and jointly and severally liable to the creditors for the execution of the separate administration.
4. The dissolution of the cooperative society must be registered for entry in the Commercial Register by both administrations.<sup>1071</sup>
5. The public call to creditors of the dissolved cooperative society may be postponed, if it is not to be waived altogether with their consent, but the unification of the assets of the two cooperative societies shall be permissible only at the time when the assets of a dissolved cooperative society may be disposed of.
6. Upon entry of the dissolution of the cooperative society in the Commercial Register, its members are deemed to be members of the acquiring cooperative society with the rights and obligations arising from such membership.<sup>1072</sup>
7. For the duration of the separate asset management, the members of the dissolved cooperative society may be held liable for the obligations only of that cooperative society on the basis of its liability principles.
8. During the same period, to the extent that the liability of members of the dissolved cooperative society or their obligation to make additional contributions is reduced by unification, this may not be asserted against the creditors of the dissolved cooperative society.
9. If unification results in the introduction or increase of liability or additional performance obligations of the members of the dissolved cooperative society, the provisions relating thereto shall not apply to those members who have not approved the merger resolution and

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<sup>1071</sup> Article 482(2)(4) amended by LGBl. 2013 No. 6.

<sup>1072</sup> Article 482(2)(6) amended by LGBl. 2013 No. 6.

declare resignation within three months of the entry of the resolution in accordance with the provisions of law and the articles of association.

3) The provision on the unification of several public limited companies and the preceding paragraph shall apply *mutatis mutandis* to the unification of several cooperative societies by a cooperative society to be newly formed, to the extent no derogations arise from the nature of the cooperative societies, without prejudice to the liabilities existing up to the time of unification in relation to third parties.

### *G. Small cooperative societies*

#### Article 483

##### *I. In general*

1) Small cooperative societies, such as small livestock breeding cooperative societies for calves, goats, sheep, pigs, poultry, beekeeping, and similar cooperative societies, as well as small cooperative societies which have a scope of business that is limited in terms of geography or subject matter, such as livestock breeding, hunting, and fishing cooperative societies, or which pursue a common purpose connected with land, such as commons or alp, meadow, forest, grazing, wine-growing, fruit-growing, alpine dairy, well, irrigation and drainage cooperative societies and the like, even if they refer to themselves as cooperative societies, shall acquire the right of personality as soon as they are formed in accordance with special legislative provisions applicable to them, as in the case of alp cooperative societies or, in the absence of such provisions, in accordance with the following provisions and, on a supplemental basis, the provisions established for associations, without having to be entered in the Commercial Register.<sup>1073</sup>

1a) Small cooperative societies may also be formed for the purpose of the joint preparation and development of an innovation or the holding of participations to exploit that innovation.<sup>1074</sup>

2) If a group of persons has formed with the intention of being a small cooperative society, without having voluntarily registered for entry in the Commercial Register, and it subsequently turns out that it is a cooperative society subject to entry under this Section, it shall be deemed to have

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<sup>1073</sup> Article 483(1) amended by LGBL 2013 No. 6.

<sup>1074</sup> Article 483(1a) inserted by LGBL 2017 No. 24.

nevertheless acquired the right of personality prior to entry, to which, however, it shall be required.<sup>1075</sup>

3) The groups referred to in the first paragraph may be formed expressly as associations or as another legal person such as cooperative societies subject to entry in the Commercial Register; however, the provision on the limitation of the dissolution of alp cooperative societies and the fragmentation of the cooperative alp shall continue to apply in this case.

#### Article 484

##### *II. Formation*

1) For the formation of such a cooperative society, articles of association must be drafted in writing and approved by all members individually, by signature or at a constituent meeting, and must contain provisions in particular on:

1. the name, registered office, and object of the undertaking or purpose of the cooperative society;
2. acquisition and loss of membership and the nature and size of any cash or other performances, such as labour, and the like;
3. the organisation of the cooperative society, the governing bodies for the administration, and the manner in which representation is exercised and, if necessary, for the audit office;<sup>1076</sup>
4. the form in which the cooperative society's announcements are made.<sup>1077</sup>

2) Repealed<sup>1078</sup>

3) Repealed<sup>1079</sup>

4) The provisions set out in points 1 to 3 of paragraph 1 shall be considered material under the provisions on voidability.

<sup>1075</sup> Article 483(2) amended by LGBl. 2013 No. 6.

<sup>1076</sup> Article 484(1)(3) amended by LGBl. 2000 No. 279.

<sup>1077</sup> Article 484(1)(4) amended by LGBl. 2007 No. 38.

<sup>1078</sup> Article 484(2) repealed by LGBl. 2007 No. 38.

<sup>1079</sup> Article 484(3) repealed by LGBl. 2007 No. 38.

### *III. Membership*

#### Article 485

##### *1. In general*

1) The articles of association may restrict acquisition and loss of membership, which may be sold and inherited, linked to the ownership of land, and the like.

2) If membership is linked to the ownership of land, the provisions established for registered cooperative societies shall apply *mutatis mutandis*.

3) To the extent membership is hereditary, descendants whose parents are not married to each other may by law not be excluded as such from acquisition.<sup>1080</sup>

4) The provisions on resignation in the case of registered cooperative societies with permanent investments and contracts and the provisions on the combination of membership with other requirements in the case of registered cooperative societies under this Section may be applied in accordance with the provisions of the articles of association.

5) The articles of association may lay down detailed provisions on the rights and duties of members, in particular on limited liability or additional performance obligations as in the case of registered cooperative societies.

6) The provision on termination by a creditor in the case of registered cooperative societies shall apply *mutatis mutandis*.

#### Article 486

##### *2. Principle of wintering*

1) Where the articles of association of an alp or grazing cooperative do not provide otherwise, only those livestock may be driven to the alp or put out to graze that have been wintered with the fodder (flowers) grown in the municipality where the cooperative society has its registered office and the member is a resident (principle of wintering).

2) Members whose livestock has not been wintered in accordance with the above principle shall be entitled by law to reasonable compensation as

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<sup>1080</sup> Article 485(3) amended by LGBl. 2014 No. 201.

grazing money for the right to the alp or grazing which cannot be exercised, apart from other uses or the substitute to be provided for this purpose; however, they must bear the usual costs equal to those of the members of the cooperative society who have a right to the alp or grazing.

3) Such members shall have the right by law, if a sufficient number of animals wintered in accordance with the first paragraph cannot be driven to the alp, and if they give timely notice before the beginning of the alp or grazing period, to drive their livestock to the alp in the same way as other members.

### *3. Share rights*

#### Article 487

##### *a) In general*

1) If members own partial rights in the cooperative society, such as cow allotments, grazing rights, alpine dairy rights, and the like, they shall acquire and lose their membership with the acquisition or assignment of partial rights, unless otherwise provided for in the articles of association.

2) Unless otherwise provided, any obligation to provide cash, labour, and the like in the case of cooperative societies with partial rights shall be based on the number and size of the partial rights to which the individual member is entitled.

3) A share ledger shall be kept for cooperative shares such as cow allotments, alpine dairy rights, and the like, and share certificates may be issued as evidence.

4) In the case of cooperative (corporate) alps, an alp ledger must be kept in accordance with the provisions of the Property Act.

5) By ordinance, the provisions on the alp ledger may be declared applicable to other cooperative societies with transferable partial rights.

#### Article 488

##### *b) Interpretation*

1) It shall be rebuttably presumed that one cow allotment shall be understood to mean as much right to common use as is necessary to summer a cow in the usual way.

2) The entitlement and obligation arising from partial rights shall otherwise be determined by the articles of association and, in the absence of such a provision, by practice or local custom.

3) Share rights may also be associated with other uses, such as purchase of timber, straw, and the like.

#### Article 489

##### *c) Restrictions on disposal*

1) In the articles of association of cooperative societies with partial rights, the following may be set out with effect against anyone:

1. that the use of the shares may be leased or otherwise transferred for use only with restrictions, such as to citizens of the municipality in which the alp, alpine dairy, or the like is located;
2. that the sale of shares is permissible only to citizens of the municipality in which the cooperative alp, cooperative alpine dairy, or the like is located, or that there is a right of first refusal for the benefit of members or citizens of the municipality at the same price as the third party pays, or at a reasonable equivalent estimate.

2) If the partial rights relate to land, these restrictions may be noted in the Land Register at the request of the executive board.

#### *IV. Organisation*

#### Article 490

##### *1. Members' meeting*

1) In the absence of other arrangements in the articles of association, the members' meeting shall be the supreme body of the cooperative society.

2) In order for the members' meeting to have a quorum, it shall be necessary that, to the extent possible, all members of the cooperative society have been invited to the meeting.

3) In the members' meeting, each member and, in the case of cooperative societies with partial rights, each full partial right shall have one vote and fractions of a partial right, which shall not be less than one quarter, shall have a voting right corresponding to their fraction.

4) A resolution on the sale of the cooperative property or the dissolution of the cooperative society shall require a two-thirds majority of all votes to be valid.

5) Any member may appeal a resolution of the members' meeting for violation of vested rights to the Court of Justice within one month of becoming aware of the resolution, but at the latest within three months; the provisions governing legal action to challenge resolutions of the supreme body under the general provisions shall apply *mutatis mutandis*.

#### Article 491

##### 2. Executive board and audit office<sup>1081</sup>

1) The articles of association of cooperative alps may introduce administrative compulsion to accept a position as a member of the executive board or another governing body, in accordance with the provisions established for the municipal council.

2) An audit office shall exist only if so provided by the articles of association.<sup>1082</sup>

#### Article 492

##### V. Dissolution

1) In the event of dissolution of the cooperative society, the assets shall be distributed to the last members in proportion to their participation, unless the articles of association provide otherwise.

2) In the case of cooperative societies with partial rights, the assets shall be distributed according to their partial rights.

3) Alp cooperatives may not, unless justified on serious grounds, be dissolved, and cooperative alps located in Liechtenstein may not be sold, fragmented, or encumbered if the encumbrance exceeds 10 000 Swiss francs.

4) To be valid, exceptions shall require approval by the Government after consultation with the National Alp Commission, against which any member may lodge a complaint with the Administrative Court.<sup>1083</sup>

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<sup>1081</sup> Article 491 heading amended by LGBl. 2000 No. 279.

<sup>1082</sup> Article 491(2) amended by LGBl. 2000 No. 279.

<sup>1083</sup> Article 492(4) amended by LGBl. 2004 No. 33.

*VI. Cooperative use societies by law*

## Article 493

*1. In general*

1) If one or more alps owned by a municipality are used on a permanent basis for a certain period of time, such as during clearing and the like, against payment of alp rent, grass rent, and the like, the users driving their livestock to the alp shall by law form a cooperative use society, which shall be governed by existing practice, in addition to the laws and any special articles of association governing the alps.

2) These cooperative societies shall, in the absence of other provisions or practice, be represented with legal effect by the bodies, such as the alp master, alp reeve, and the like, appointed by the municipal council or by another competent body, both with respect to and outside the public authorities.

3) Alongside the cooperative society, and in the absence of any other provision or practice, each member shall be liable for contractual obligations in accordance with the livestock that member drives to the alp.

4) The provision on the compulsion to accept a position on a governing body may be introduced with respect to the executive board in accordance with the applicable provision.

## Article 494

*2. Driving livestock to the alp*

1) The right and the duty to drive livestock to the alp shall be governed by articles of association or by municipal resolution and, in the absence of such arrangements, by practice or local custom.

2) The alps may be cultivated only in accordance with the law and the rules of good alp management.

3) Disputes about driving livestock to the alp shall be decided by the Government by way of an administrative procedure, unless the law or the articles of association of the alp provide otherwise.

## Article 495

*VII. Reservation*

1) The provisions above shall be supplemental and subject to the special legislative provisions, such as governing undertakings for soil improvement and water cooperative societies.

2) The provisions on small cooperative societies shall apply *mutatis mutandis* on a supplemental basis to cooperative societies under public law.

## Section 7

**Mutual insurance associations and auxiliary funds**

## Article 496

*A. Definition, right of personality, and reference*

1) An association that wishes to pursue the insurance of its members and any other persons on a mutual basis shall acquire the right of personality through permission granted by the Government as the insurance supervisory authority to engage in business operations and through its entry in the Commercial Register (registered mutual insurance association).<sup>1084</sup>

2) This shall be subject to the special provisions at the end of this Section on small insurance associations and small auxiliary funds not subject to the obligation to be entered in the Commercial Register.

3) The general provisions on legal persons and the provisions on registered cooperative societies shall apply *mutatis mutandis* to mutual insurance associations, to the extent that no derogations arise from the following provisions.<sup>1085</sup>

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<sup>1084</sup> Article 496(1) amended by LGBI. 2013 No. 6.

<sup>1085</sup> Article 496(3) amended by LGBI. 2015 No. 235.

*B. Formation*

## Article 497

*I. Articles of association*

1) For the formation of a mutual insurance association, articles of association must be publicly authenticated and, in addition to the content otherwise prescribed, must contain in particular provisions on:

1. the legal name and the registered office, if applicable the head office;
2. the classes of insurance and the geographic areas of activity to which operations are to extend;
3. the beginning and termination of membership;
4. the administration, audit office, and the supreme body (such as general meeting of members, general meeting of delegates, and the like);<sup>1086</sup>
5. the establishment of a formation fund and a reserve fund (general safety reserve);
6. the coverage of expenses and the conditions under which the call for and collection of any additional performances or allocations are to be made;
7. Repealed;<sup>1087</sup>
8. the form of announcements and which bulletins are used for that purpose.

2) With the exception of point 8 or, to the extent no other exceptions arise in detail, these points shall be considered material under the provisions on voidability.

3) A fixed or variable share capital shall not be necessary, but shall be permissible.<sup>1088</sup>

4) The articles of association may also lay down the general policy conditions.

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<sup>1086</sup> Article 497(1)(4) amended by LGBl. 2000 No. 279.

<sup>1087</sup> Article 497(1)(7) repealed by LGBl. 2015 No. 235.

<sup>1088</sup> Article 497(3) amended by LGBl. 2000 No. 279.

*II. Entry in the Commercial Register*<sup>1089</sup>

## Article 498

*1. Registration*

1) The association must be registered for entry in the Commercial Register by all members of the administration.<sup>1090</sup>

2) The registration must be accompanied by:

1. the document of permission to conduct business;
2. the articles of association;
3. information on name and place of residence or legal name and registered office of the administration and the audit office;<sup>1091</sup>
4. the documents on appointment of the formation fund, together with a statement by the administration on the extent to which the formation fund is covered by cash or otherwise and is in its possession.

## Article 499

*2. Entry*

1) The following must be entered in the Commercial Register:<sup>1092</sup>

1. the legal name and the registered office of the association;
2. the classes of insurance to which operations are to extend;
3. the amount of the formation fund;
4. the date on which the permission to operate is issued, and
5. name and place of residence or legal name and registered office of the members of the administration and audit office.<sup>1093</sup>

2) If the articles of association contain special provisions on the duration of the association and on the power of the members of the administration or the liquidators to represent the association, these provisions shall also be entered.

<sup>1089</sup> Heading preceding Article 498 amended by LGBl. 2013 No. 6.

<sup>1090</sup> Article 498(1) amended by LGBl. 2013 No. 6.

<sup>1091</sup> Article 498(2)(3) amended by LGBl. 2000 No. 279.

<sup>1092</sup> Article 499(1) introductory phrase amended by LGBl. 2013 No. 6.

<sup>1093</sup> Article 499(1)(5) amended by LGBl. 2000 No. 279.

## Article 500

*3. Publication*

In addition to the contents of the entry in the Commercial Register, publication in the Official Journal must contain:<sup>1094</sup>

1. an indication of whether expenses are to be covered by contributions in advance or under the allocation procedure and, in the former case, whether additional performances are excluded or reserved, whether the contribution obligation is limited or not, and whether a reduction in insurance claims or an increase in insurance premiums is reserved;
2. the provisions concerning the form of announcements and the bulletins to be used for that purpose;
3. the nature of the appointment and composition of the administration and audit office.<sup>1095</sup>

## Article 501

*III. Bulletins*

For announcements to be made through public bulletins, if the business of the association extends beyond the territory of Liechtenstein, the foreign bulletins specified in the articles of association shall be designated.

## Article 502

*IV. Amendments to the articles of association*

1) The articles of association may be amended only by a resolution of the supreme body.

2) Amendments that affect only the wording may be delegated to another body by a resolution of the supreme body.

3) By resolution of the supreme body, other bodies may be authorised to adjust its resolution amending the articles of association to any requirements that the supervisory authority may impose for approval.

4) A resolution of the supreme body shall require a majority of three quarters of the votes cast if the resolution is to abolish a class of insurance

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<sup>1094</sup> Article 500 introductory phrase amended by LGBl. 2015 No. 275.

<sup>1095</sup> Article 500(3) amended by LGBl. 2000 No. 279.

or introduce a new class; the articles of association may impose other requirements.

#### Article 503

##### *V. Amendments to the general policy conditions*

1) The provisions on amendments to the articles of association shall also apply *mutatis mutandis* to amendments to the general policy conditions approved by the supervisory authority in relation to members, but not to the technical bases of business.

2) The administration may be authorised by the articles of association or by resolution of the supreme body to make urgent amendments to the general policy conditions on a provisional basis with the approval of the supervisory authority.

3) These amendments shall be submitted to the supreme body at its next meeting and shall lapse if no assent is given.

4) An amendment to the articles of association or the general policy conditions shall not affect an existing insurance relationship in accordance with the provisions of the insurance contract.

5) This article is subject to amendments for which the articles of association expressly provide with effect for existing insurance contracts with members.

##### *C. Membership*

#### Article 504

##### *I. In general*

1) Unless the law or the articles of association provide otherwise, acquisition and loss of membership shall be linked to the conclusion or termination of an insurance contract.

2) In addition to the actual members of the association who have entered into an insurance contract, the association may also have other members, such as honorary members, passive members, or members or persons or entities with legal names which grant contributions or additional performances outside of a membership or insurance relationship or otherwise help to promote the association on the basis of any kind of donation and in return are granted certain membership rights,

such as the right to participate in the administration, oversight, and the like (non-genuine members).

3) Transfer of membership by sale, assignment, inheritance, and the like is permissible in the absence of other provisions set out in the articles of association.

4) It shall not be permitted to take over insurance for a fixed premium without simultaneously acquiring membership.<sup>1096</sup>

#### Article 505

##### *II. Contributions*

1) Members' contributions (advance premiums and additional performances or allocations) must be calculated according to the same principles if the conditions are the same.

2) Supporting members belonging to the association may pay equal or unequal, single or continuous contributions for one or more purposes of the association without acquiring entitlement to insurance.

##### *III. Formation fund*

#### Article 506

##### *1. Provisions in the articles of association*

1) The articles of association shall provide for the creation of a formation fund to cover the costs of the formation of the association, and as a guarantee and operational fund, the amount of each of which shall be entered on the liabilities side of the balance sheet.

2) The articles of association shall contain the conditions under which the fund is made available to the association and shall determine in particular the manner in which a redemption of the formation fund is to be effected and whether and to what extent the persons who have made the formation fund available shall be granted a right to participate in the administration of the association, even if they are not members of the association.

3) The supervisory authority may allow the establishment of a formation fund to be dispensed with where, by the nature of the business

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<sup>1096</sup> Article 504(4) amended by LGBI. 2015 No. 235.

to be transacted or by special arrangements of an undertaking, other forms of security, such as reinsurance, aid, or support from third parties, a waiting period for claims, or the possibility of reducing the latter and the like are provided.

#### Article 507

##### *2. Status of the formation fund*

1) The formation fund shall be paid up in cash, unless the articles of association permit the issue of obligation notes or own bills of exchange or other assets in lieu of cash payment.

2) Those who have made the formation fund available shall not be granted the right of termination and shall not be entitled to a right of rescission.

3) The articles of association may assure them of a participation in the surplus resulting from the annual balance sheet, in addition to interest on annual revenue.

4) The interest rate itself may not exceed the customary interest rate in Liechtenstein, and the total remuneration may not exceed a further 2% of the amount paid up in cash.

5) Redemption of the formation fund may be made only from annual revenue and only to the extent that the formation of a designated reserve fund has progressed; redemption shall not begin before the formation expenses (the initial costs and the set-up costs incurred in the first financial years) have been covered.

#### Article 508

##### *3. Shares*

1) The formation fund may be divided into shares, for which share certificates may be issued, which, in the absence of other provisions in the articles of association, shall be regarded as evidence.

2) The articles of association shall lay down more detailed provisions in this respect and may authorise the issue of negotiable securities.

## Article 509

*IV. Reserve fund (general safety reserve)*

1) The articles of association shall provide for the establishment of a reserve to cover exceptional losses arising from the operation of the business (reserve fund), and in particular shall determine the amounts to be set aside for this purpose each year until achievement of the specified minimum amount, which may not be set below the amount of the formation fund.

2) For the reasons for which the establishment of a formation fund may be waived, the insurance supervisory authority may also permit waiver of the formation of a reserve fund.

*V. Distribution of surplus*

## Article 510

*1. In general*

1) Any surplus resulting from the balance sheet, to the extent that the articles of association do not require it to be transferred to the reserve fund or other reserves or to be used to distribute directors' fees or to be carried forward to the next financial year, shall be distributed among the members referred to in the articles of association.

2) The articles of association shall determine the scale of distribution and whether the distribution shall be made only to members existing at the end of the financial year or also to members who have left the association.

## Article 511

*2. Restriction*

1) The articles of association of the mutual insurance associations must stipulate that the formation fund paid up in cash may receive interest and repayment only from the surpluses and that an amount equal to the amount of the surpluses used for the general safety reserve must be used for repayment.

2) Surpluses or profit shares may not be distributed to the members until the initial and set-up costs have been paid off and the formation fund has been repaid.<sup>1097</sup>

3) Repealed<sup>1098</sup>

#### *VI. Liability of the association and of the members*

##### Article 512

###### *1. In general*

1) For the debts of the association, only the association's assets shall be liable to the creditors of the association, and there shall be no liability of members to creditors.

2) The articles of association shall determine whether the expenses are to be covered:

1. by means of single or recurring contributions in advance, with the reservation or exclusion of additional performances, and with or without the reservation of a reduction of the insurance claim or an increase of the insurance premium;
2. through contributions allocated according to the need that has arisen.

3) The articles of association may set out a limited or unlimited obligation to make additional performances or allocations in favour of the association.

4) A restriction that additional performances or allocations may be collected only for the purpose of covering members' insurance claims shall not be permitted.

###### *2. In the case of combination of life insurance with non-life insurance classes*

##### Article 513<sup>1099</sup>

Repealed

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<sup>1097</sup> Article 511(2) amended by LGBL 2015 No. 235.

<sup>1098</sup> Article 511(3) repealed by LGBL 2015 No. 235.

<sup>1099</sup> Article 513 repealed by LGBL 2015 No. 235.

## Article 514

*3. Liability of former members*

1) Members who left the association during the financial year also have to contribute to the additional performances and allocations.

2) The contribution obligation of these members, as well as of members who joined during the financial year, is based on the proportion of the duration of membership during the financial year or on other circumstances specifically provided for in the articles of association.

3) If the amount of the additional performance or allocation to be made by the individual member is based on the amount of the contribution assessed in advance or the sum insured, the calculation shall be based on the higher amount if an increase or reduction in the contribution or sum insured has occurred during the financial year.

4) The provisions of this article shall apply only in the absence of a provision to the contrary in the articles of association.

5) If necessary, the articles of association shall determine the extent to which a member is released from the obligation to make additional performances by means of an additional insurance.

## Article 515

*4. Call for additional performances and allocations*

The articles of association shall determine the conditions under which the call for additional performances or allocations is to be made, in particular the extent to which the otherwise available covering funds (formation fund, reserves) are to be used and the manner in which the additional performances or allocations are called for and collected.

*D. Organisation*

## Article 516

*I. Supreme body*

1) The appointment and composition of a supreme body, such as a general meeting, committee of delegates, its composition, powers, and the like shall be specified in more detail by the articles of association.

2) The articles of association may also entrust the administration with the powers of the supreme body, but in this case the audit office may be dismissed at the request of the administration only by the judge in special non-contentious proceedings and on important grounds.<sup>1100</sup>

3) The articles of association shall lay down more detailed provisions.

## Article 517

*II. Administration and audit office<sup>1101</sup>*

1) The acting members of the administration are in particular obliged to pay damages to the association if, contrary to the law, interest is paid on the redemption fund or redemption of the formation fund or a distribution of the assets of the association takes place, or if payments are made after the insolvency of the association has occurred or its overindebtedness has arisen.

2) Remuneration for the members of the audit office based on the annual surplus may be paid only from the amount remaining after all write-downs and reserves have been made and after deduction of the share of the surplus that is still permissible in business terms and stipulated for those persons who have made the formation fund available in return for an assurance of participation in the surplus.<sup>1102</sup>

3) The members of the audit office are also liable to pay damages to the association in particular if, with their knowledge and without their intervention, actions which incur liability to pay damages have been carried out by members of the administration.<sup>1103</sup>

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<sup>1100</sup> Article 516(2) amended by LGBL 2000 No. 279 and LGBL 2010 No. 454.

<sup>1101</sup> Heading preceding Article 517 amended by LGBL 2000 No. 279.

<sup>1102</sup> Article 517(2) amended by LGBL 2000 No. 279.

<sup>1103</sup> Article 517(3) amended by LGBL 2000 No. 279.

*E. Dissolution**I. By way of resolution or ex officio**1. Approval of the resolution*

## Article 518

*a) In general*

1) The resolution of the supreme body on the dissolution of the mutual insurance association shall require a majority of three quarters of all votes cast and the approval of the insurance supervisory authority, which must also notify the register authority.

2) If the association pursues the provision of disability, old-age, widow's, or orphan's benefits, resolutions must be passed to meet or secure the commitments entered into with regard to the insured persons.<sup>1104</sup>

3) Any other dissolution, in particular as a result of legal action for illegality or immorality, voidability and the like, shall also require the approval of the supervisory authority.

## Article 519

*b) Existing insurance contracts*

1) The insurance contracts existing between the members and the associations shall expire on the date specified in the resolution, but not before four weeks have elapsed, with the effect that the insurance claims arising up to that date may be asserted, but otherwise only the premiums paid in advance for future insurance periods, reduced by the costs incurred for that purpose, may be reclaimed.

2) Repealed<sup>1105</sup>

3) Repealed<sup>1106</sup>

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1104 Article 518(2) amended by LGBL 2015 No. 235.

1105 Article 519(2) repealed by LGBL 2015 No. 235.

1106 Article 519(3) repealed by LGBL 2015 No. 235.

## Article 520

2. *Dissolution ex officio*

1) The insurance supervisory authority may, applying the preceding article *mutatis mutandis*, order dissolution upon notification of a party involved or *ex officio* if the governing bodies violate legislative or official provisions or provisions set out in the articles of association and fail to comply with the orders of the supervisory authority, in particular:

1. if more than one quarter of the members are in arrears with the payment of contributions and, despite a demand from the supervisory authority of the association, neither collects the contributions due nor takes action against the defaulters in accordance with the articles of association;
2. if the supreme body has given its consent to any use of the assets of the association contrary to this Act or the articles of association, or if it has adopted another resolution contrary to this Act or the articles of association, and if, in such cases, the supreme body has not complied with the supervisory authority's request to withdraw the resolution by the imposed deadline;
3. if a requested change to the insurance plan is not complied with by a reasonable deadline.

2) Instead of dissolution, the supervisory authority may also order other appropriate measures, such as *ex officio* changes to the insurance plan and the like.

3) Where the Office of Justice or the judge is called upon to dissolve the association *ex officio*, that authority must notify the supervisory authority of the reason for dissolution and, if necessary, the supervisory authority shall decree the dissolution.<sup>1107</sup>

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<sup>1107</sup> Article 520(3) amended by LGBI. 2013 No. 6.

## *II. Liquidation*

### Article 521

#### *1. In general*

1) If the insurance supervisory authority decrees dissolution, the court shall, unless insolvency proceedings are to be opened, appoint the liquidators in special non-contentious proceedings at the request of the supervisory authority, announce their names or legal names, and monitor their activities.<sup>1108</sup>

2) During the liquidation, in particular the call for and collection of additional performances and allocations may be carried out to the extent required by the liquidation; the allocation procedure shall be applicable with the proviso that the insolvency administrator shall be replaced by the liquidators.<sup>1109</sup>

3) New insurance policies may no longer be taken out, and existing policies may not be increased or extended, but must instead be cancelled or otherwise terminated at the next opportunity.

### Article 522

#### *2. Redemption of the formation fund*

1) A redemption of the formation fund may take place only after the claims of all other creditors, in particular the claims of the members under the insurance relationship, have been satisfied or secured.

2) Additional performances or allocations may not be collected for the purpose of redemption.

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<sup>1108</sup> Article 521(1) amended by LGBl. 2020 No. 369.

<sup>1109</sup> Article 521(2) amended by LGBl. 2020 No. 369.

## Article 523

*3. Distribution of surplus*

1) The assets of the association remaining after the reconciliation of debt shall, unless the articles of association have designated another allottee, be distributed to the members existing at the time of dissolution and, in the absence of any provision to the contrary in the articles of association, according to the same scale used to distribute the surplus during the existence of the association.

2) The articles of association may prescribe that the allottees be determined by resolution of the supreme body.

*III. Insolvency proceedings<sup>1110</sup>*

## Article 524

*1. In general*

1) If a mutual insurance association with an obligation to make additional performances or allocations does not receive the additional performances or allocations called for within six months of their due date, the administration must examine whether, if the additional performances or allocations not received in cash are not taken into account, overindebtedness results.

2) In the event of such overindebtedness, this must be notified to the supervisory authority within one month of expiry of the specified period so that it may take measures.

3) The same duty of notification shall apply to the liquidators.

## Article 525

*2. Liability of members*

1) To the extent that the members are subject to a contribution obligation by law or articles of association, they shall be liable to the association as its debtor in the event of insolvency proceedings.<sup>1111</sup>

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<sup>1110</sup> Title preceding Article 524 amended by LGBl. 2020 No. 369.

<sup>1111</sup> Article 525(1) amended by LGBl. 2020 No. 369.

2) Members having left the association shall still be considered members with regard to liability for the debts of the association if they left within the last year prior to the opening of insolvency proceedings.<sup>1112</sup>

#### Article 526

##### *3. Claims to redemption of the formation fund*

1) Claims to redemption of the formation fund shall be subordinate to all other insolvency claims.<sup>1113</sup>

2) Insolvency claims arising from the insurance relationship, to the extent that they are attributable to members belonging to the association at the time of the opening of the insolvency proceedings or who left the association within the last year prior to the opening of the insolvency proceedings, shall be subordinate to the insolvency claims of the other insolvency creditors.<sup>1114</sup>

3) Additional performances or allocations may not be collected for the purpose of redemption of the formation fund.

#### Article 527

##### *4. Collection by the insolvency administrator<sup>1115</sup>*

1) The determination of and call for additional performances required in the event of insolvency proceedings shall be carried out by the insolvency administrator.<sup>1116</sup>

2) After drawing up the balance sheet, the receiver shall determine how much the members must contribute to cover the shortfall indicated in the balance sheet on the basis of their contribution obligation and to collect the contributions before the final distribution in accordance with the provisions governing the allocation procedure.

<sup>1112</sup> Article 525(2) amended by LGBL 2020 No. 369.

<sup>1113</sup> Article 526(1) amended by LGBL 2020 No. 369.

<sup>1114</sup> Article 526(2) amended by LGBL 2020 No. 369.

<sup>1115</sup> Article 527 heading amended by LGBL 2020 No. 369.

<sup>1116</sup> Article 527(1) amended by LGBL 2020 No. 369.

*F. Small insurance associations*

## Article 528

*I. In general*

1) Associations which, according to their purpose, have a limited scope of business in terms of subject matter, geography, or group of persons, such as health insurance schemes, work pension schemes, local or regional death associations, or livestock insurance associations with a similar scope of business and the like shall be subject to the following provisions and, in addition, to those concerning associations, unless the legal form of another legal person, such as cooperative society and the like, is expressly chosen.

2) Repealed<sup>1117</sup>

3) Whether an association is a small insurance association or other legal person not subject to insurance supervision shall be determined by the insurance supervisory authority, to which the articles of association must be submitted for this purpose in order to avoid the administrative penalties permitted in administrative proceedings; until the decision by the supervisory authority, the association shall in any event have the right of personality.

4) The supervisory authority may also decide over time whether a smaller insurance association has developed into an association requiring a licence.

## Article 529

*II. Statement of accounts*

1) Small insurance associations must draw up an annual statement of accounts for each class of insurance, consisting of an operating statement (profit and loss statement) and a statement of assets, as well as compilations on the movement of the insurance portfolio and the support and insurance claims incurred.

2) The operating account or the individual fund accounts shall show in particular:

1. on the income side:
  - the level of pure assets at the end of the previous year;
  - income from contributions, allocations, and the like, indicating any payments in advance or additional payments;

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<sup>1117</sup> Article 528(2) repealed by LGBL 2015 No. 235.

- administrative income, such as document fees and the like;  
income from investments, capital gains, and other income;
2. on the expense side:  
support or claims granted in accordance with the articles of association;  
administrative costs;  
taxes and fees;  
capital losses and other expenses;  
pure assets at the end of the financial year.
- 3) The statement of assets must show all assets and liabilities, the difference between which represents the net assets of the association or the fund in question.

#### Article 530

##### *III. Investment of assets*

The assets of such associations may be invested only in domestic securities, in domestic real property up to half of the official assessment, or in the savings and loan bank of the State, failing which the governing bodies shall be liable for losses arising from any other investment.

##### *G. Auxiliary funds*

#### Article 531

##### *I. In general*

1) The provisions on small insurance associations shall apply to auxiliary funds, such as health insurance, nursing, widow's and orphan's, work and support, fire insurance and similar schemes, unless otherwise specified below or unless the provisions governing registered insurance associations are applicable.

2) The term "auxiliary fund" and, if it is subject to entry in the Commercial Register, the term "registered auxiliary fund" may also be used in lieu of the term "mutual insurance association".<sup>1118</sup>

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<sup>1118</sup> Article 531(2) amended by LGBI. 2013 No. 6.

## Article 532

*II. Special provisions*

1) In addition to the insurance of members or their family members, the auxiliary fund may also provide assistance for travel, job placement, reading rooms, libraries, and the like, and these secondary purposes shall be met by specially procured contributions which must be collected and administered separately from the others.

2) Members who support the auxiliary fund may participate in the administration, oversight, and general meeting in accordance with more detailed provisions set out in the articles of association.

3) A formation fund shall not be required if the insurance supervisory authority does not require one for auxiliary funds subject to a licence.

4) Unless the articles of association provide otherwise or the assets are not necessary to cover security claims, the assets of a dissolved auxiliary fund shall accrue to the State, which shall use them for charitable purposes in accordance with the rules of implied trust.

Article 533<sup>1119</sup>*H. Exclusion of compulsory execution*

Claims arising from small insurance associations or from auxiliary funds, such as death, health insurance, health care, or factory insurance schemes, as well as from widow's and orphan's schemes and similar insurance associations or from other legal persons who operate a class of insurance in lieu of small auxiliary funds or small insurance associations, may not be withdrawn from the entitled persons by their creditors either by way of compulsory execution or insolvency proceedings, or by way of safeguarding measures, to the extent the entitled person is not required by law to provide maintenance.

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<sup>1119</sup> Article 533 amended by LGBI. 2020 No. 369.

Title 5  
**Establishments and foundations**

Section 1  
**Establishments**

Article 534

*A. Definition and delimitation*

1) An establishment within the meaning of this title and pursuant to the following regulations is a legally autonomous and organised, permanent undertaking dedicated to economic or other objects and entered in the Commercial Register serving as the Establishment Register, which has holdings of material and possibly personal resources and does not have the character of an institution under public law or any other form of legal person.<sup>1120</sup>

2) Establishments under public law which serve a defined permanent purpose and are in the hands of the public administration shall be subject to public law, to the extent no exceptions exist and, where they are independent, to the following regulations on a supplemental basis.

3) Ecclesiastical establishments shall be subject to public law and, on a supplemental basis, ecclesiastical law.

4) Establishments without legal personality (non-independent establishments) and other non-independent transfers of assets for a specific purpose are not governed by the following provisions, but rather by the provisions governing the implied trust, subject to the provisions governing foundations.

5) Repealed<sup>1121</sup>

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<sup>1120</sup> Article 534(1) amended by LGBl. 2013 No. 6.

<sup>1121</sup> Article 534(5) repealed by LGBl. 1980 No. 39.

*B. Formation*

## Article 535

*I. Founders*

1) An establishment may be formed and operated by a natural person, a firm, a polity, or municipal associations or by other legal person not entered in the Commercial Register.<sup>1122</sup>

2) Municipalities and municipal associations require Government approval for the formation.

3) More than one founder is not required.

## Article 536

*II. Articles of association*

1) Written articles of association are necessary for the formation, signed by one or several founders.

2) Moreover, the articles of association of an establishment must contain provisions concerning the following:

1. the name or legal name and the domicile and designation as an "Establishment";
2. the purpose of the establishment, where applicable the object of the undertaking;
3. the estimated value of the establishment fund, in the event that it is not cash (establishment capital), and the manner of the procurement and composition thereof;
4. the powers of the supreme body;<sup>1123</sup>
5. the governing bodies for the administration and, where applicable, for the audit and the manner in which representation is exercised;
6. the principles governing the drawing up of the balance sheet and the appropriation of the surplus;
7. the form in which the establishment's announcements are made.

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<sup>1122</sup> Article 535(1) amended by LGBl. 2013 No. 6.

<sup>1123</sup> Article 536(2)(4) amended by LGBl. 1980 No. 39.

3) These provisions shall be deemed essential in accordance with the requirements governing voidability, with the exceptions of points 6 and 7.<sup>1124</sup>

4) If the establishment fund consists of other assets than cash, the endowed assets may be enumerated in more detail in a special schedule to be provided to the Commercial Register for safekeeping, instead of in the articles of association.<sup>1125</sup>

5) An establishment may also be formed with a variable establishment fund, like a public limited company (Articles 363 to 366); this must be registered with the Commercial Register for the purpose of entry and publication.<sup>1126</sup>

### *III. Entry in the Establishment Register*

#### *Article 537*

##### *1. Registration*

1) If the law does not provide for exceptions, all establishments are required to be registered with the Commercial Register.<sup>1127</sup>

2) An original copy of the articles of association and a public document of the endowment of assets must be enclosed with the registration, containing:<sup>1128</sup>

1. the instrument of formation (the resolution or declaration of formation, formation deed), if not already included in the articles of association;
2. a declaration that at least half of the establishment fund has been paid up or is covered by non-cash contributions and stating how the remainder is to be raised or secured;
3. a directory of the members of the administration, stating the name and place of residence or the legal name and domicile of the members.

<sup>1124</sup> Article 536(3) amended by LGBL 1980 No. 39.

<sup>1125</sup> Article 536(4) amended by LGBL 2013 No. 6.

<sup>1126</sup> Article 536(5) amended by LGBL 2013 No. 6.

<sup>1127</sup> Article 537(1) amended by LGBL 2013 No. 6.

<sup>1128</sup> Article 537(2) first sentence amended by LGBL 1980 No. 39.

## Article 538

*2. Entry and publication*

1) The following shall be entered in the Commercial Register and published as an extract:<sup>1129</sup>

1. the instrument of formation, if not already included in the articles of association;
2. the date of the articles of association;
3. the name or legal name and the domicile of the establishment;
4. the object of the undertaking or the purpose and, where applicable, the duration of the establishment;
5. the amount of the fund endowed to the establishment and the paid-up amount of other contributed assets with their estimated values;
6. where applicable, any participation rights established for third parties in particular, in addition to the entitled persons;
7. the last name, first name, and place of residence or the legal name and domicile of the members of the administration, the form in which the administration gives notice of its expressions of intent, and the manner in which representation is exercised;
8. the form in which the establishment's announcements are made.

1a) In the case of establishments that do not conduct business in a commercial manner, announcement of the entry as provided for in Article 956(1) shall suffice.<sup>1130</sup>

2) The establishment comes into existence and acquires legal personality only upon entry in the Commercial Register. If action is taken on behalf of the establishment before it has acquired legal personality or without it having legal personality, the parties acting on its behalf, in particular founders or persons already designated as governing bodies, shall be liable pursuant to the general provisions on legal persons.<sup>1131</sup>

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<sup>1129</sup> Article 538(1) introductory phrase amended by LGBL 2013 No. 6.

<sup>1130</sup> Article 538(1a) amended by LGBL 2022 No. 227.

<sup>1131</sup> Article 538(2) amended by LGBL 2013 No. 6.

## Article 539

*IV. Establishment fund, liability*

1) The establishment fund (endowment) may be endowed either completely or up to a partial amount to be determined in the articles of association in funds contributed by the founders who, however, shall have no claim to interest at a given level.

2) The fund contributions must be paid in or contributed within the period of time determined in the articles of association.

3) Where the founders bring items of property into the establishment which are to be credited to the fund contributions, the articles of association or the schedule shall establish individually, in detail, accurately and completely the item contributed, its expert valuation, and any beneficial interests which may be tied thereto.

4) Should the establishment fund be paid up in full or covered by assets at a later date when the establishment is in operation, this shall be registered for entry in the Commercial Register.<sup>1132</sup>

Article 540<sup>1133</sup>*V. Establishment shares*

1) Establishment shares of the establishment assets for the founders or third parties shall exist only pursuant to the provisions of the articles of association, even if fund contributions have been made and entitled beneficiaries have been designated to draw profit from the establishment.

2) Shares and unit certificates of an establishment shall also be null and void as long as the admissibility of shares or unit certificates is not provided for in the articles of association, and the issuer and third-party participants shall be liable pursuant to the general provisions.

3) In case of doubt, the shares provided for the founders in the articles of association shall be in proportion to the amount of their fund contributions, if any, and if funds have not been contributed, the founders shall receive equal shares.

4) Establishment shares shall be treated as negotiable securities only when the articles of association make express provision for such treatment.

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<sup>1132</sup> Article 539(4) amended by LGBl. 2013 No. 6.

<sup>1133</sup> Article 540 amended by LGBl. 1980 No. 39.

5) Establishment unit certificates as negotiable securities shall be subject to the provisions concerning registered shares unless more restrictive provisions governing their transferability are drawn up in the articles of association.

6) The administration shall keep a share register, subject to application of the provisions governing the share register of limited liability companies *mutatis mutandis*.

Article 541<sup>1134</sup>

*C. Founder's rights*

The founder's rights to which one or several persons are entitled may be assigned or otherwise transferred or inherited but may not be pledged or otherwise encumbered.

Article 542

*D. Challenge*

If it was formed in favour of third party beneficiaries without valuable consideration, a challenge to an establishment by a founder's heirs or the creditors shall follow the same procedure as a challenge to a gift.

*E. Organisation*<sup>1135</sup>

Article 543<sup>1136</sup>

*I. Supreme body*

1) The bearer or bearers of founder's rights shall form the supreme body of the establishment. The articles of association may also confer the powers of the supreme body upon the administration.

2) Unless otherwise provided by the law or the articles of association, the supreme body shall be entitled to those powers which are provided by the general provisions for the supreme body.

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<sup>1134</sup> Article 541 amended by LGBL 1980 No. 39.

<sup>1135</sup> Heading preceding Article 543 amended by LGBL 1980 No. 39.

<sup>1136</sup> Article 543 amended by LGBL 1980 No. 39.

3) Where several persons have founder's rights, resolutions shall require the assent of all bearers of founder's rights in order to be valid, unless the articles of association provide otherwise.

4) A bearer of founder's rights shall be free to represent the founder's rights to which that bearer is entitled or to instruct a third party, who is not required to be a bearer of founder's rights, by means of a written power of attorney to represent that bearer's rights.

#### Article 544

##### *II. Establishment administration and audit office*<sup>1137</sup>

1) The members of the administration may or may not be entitled beneficiaries.

2) Unless otherwise provided by law or the articles of association, the judge may, upon application of participants and in special non-contentious proceedings, appoint the administration, in case of doubt for a period of three years, and remove it or individual members at any time, without prejudice to claims for compensation.<sup>1138</sup>

3) In the absence of any provision to the contrary, the administration is under an obligation to the establishment also to observe all those restrictions which, upon application of the participants, are ordered by the judge in special non-contentious proceedings, relating to the scope of their powers, the conduct of establishment business, and the representation of the establishment. However, a restriction on the power of representation towards *bone fide* third parties shall have legal effect only to the extent permitted by law.<sup>1139</sup>

4) Where an audit office is required under the general provisions or provided for by the articles of association, the judge may, in special non-contentious proceedings, in the absence of any provision to the contrary in the law or the articles of association, appoint or remove the audit office in the same way as the members of the administration.<sup>1140</sup>

<sup>1137</sup> Heading preceding Article 544 amended by LGBL 2000 No. 279.

<sup>1138</sup> Article 544(2) amended by LGBL 2010 No. 454.

<sup>1139</sup> Article 544(3) amended by LGBL 2010 No. 454.

<sup>1140</sup> Article 544(4) amended by LGBL 1980 No. 39, LGBL 2000 No. 279 and LGBL 2010 No. 454.

*F. Legal relationship of the founders and beneficiaries to the establishment, each other, and third parties*

Article 545

*I. In general*

1) The articles of association shall determine in more detail:

1. who benefits from the establishment and any net profit (beneficiaries);
2. the manner in which these beneficiaries are determined specifically;
3. whether and in what way the beneficiaries are entitled to participate in the organisation (supreme body, administration, audit).<sup>1141</sup>

1bis) As long as no third parties have been appointed as beneficiaries (including entitled beneficiaries), it shall be assumed that the bearer of the founder's rights is the beneficiary.<sup>1142</sup>

2) Only an amount corresponding to the surplus of net assets in excess of the establishment fund paid in pursuant to the articles of association or otherwise covered may be withdrawn from the establishment assets as available net profit, after allowance has been made for any reserves to be paid into the reserve fund provided for in the articles of association.

3) Upon demand of the administration, unknown beneficiaries may be summoned by way of a public notice procedure, on the condition that individual performances which have not been drawn upon shall be forfeited to the State fund three years after the summons unless the articles of associate determine otherwise.<sup>1143</sup>

Article 546

*II. Non-withdrawability*

1) In the case of family establishments, the founder may determine in the articles of association that the establishment benefit of the specifically designated third parties to which they are entitled without valuable consideration may not be withdrawn by their creditors by way of compulsory execution or insolvency proceedings initiated against them; this shall be noted in the Commercial Register at the time of entry.<sup>1144</sup>

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<sup>1141</sup> Article 545(1)(3) amended by LGBl. 1980 No. 39.

<sup>1142</sup> Article 545(1bis) inserted by LGBl. 1980 No. 39.

<sup>1143</sup> Article 545(3) amended by LGBl. 1998 No. 27.

<sup>1144</sup> Article 546(1) amended by LGBl. 2020 No. 369.

2) Apart from the aforementioned provision in the articles of association, the income received without valuable consideration by a third-party beneficiary from an establishment formed by another may be withdrawn from that third party by creditors by way of compulsory execution or insolvency proceedings only to the extent that that income is not required for the defrayal of the essential maintenance of the beneficiary, the beneficiary's spouse, the beneficiary's registered domestic partner, and the beneficiary's children not provided for.<sup>1145</sup>

Article 547<sup>1146</sup>

*III. Determination of assets and profit*

Repealed

Article 548

*IV. Liability of the establishment, limited liability, or additional performance obligations*

1) In all cases, only the establishment's assets shall be liable for the establishment's debts.

2) Each founder shall be required only to render the performances specified by that founder as the endowed assets, including limited liability or additional performance obligations as in the case of registered cooperative societies, and the founder shall not be released from these performances nor may deferral be granted, even in the event of insolvency proceedings of the establishment.<sup>1147</sup>

3) Instead of or in the absence of members, third parties may also assume the limited liability for the establishment's liabilities or a limited additional performance obligation.

Article 549

*G. Amendments to the articles of association*

1) The founder may at any time amend the articles of association and, in particular, the purpose, subject to the rights of creditors, such as by

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<sup>1145</sup> Article 546(2) amended by LGBl. 2020 No. 369.

<sup>1146</sup> Article 547 repealed by LGBl. 2000 No. 279.

<sup>1147</sup> Article 548(2) amended by LGBl. 2020 No. 369.

increasing or reducing the establishment fund, changing the organisation, and the like.

2) Instead of or in addition to the founder, the articles of association may empower other persons, legal persons, firms, or authorities to amend the articles of association and include detailed provisions in this regard.

3) Where the founder's rights cannot be exercised and the articles of association do not provide otherwise, they may be amended by the judge in special non-contentious proceedings upon application by the administration of the establishment or one of the beneficiaries, taking into consideration the purpose of the establishment.<sup>1148</sup>

#### Article 550

##### *H. Dissolution, merger, and conversion*

1) To what extent the dissolution of a legal person, a company, or a firm which is the founder or owner of an establishment results in the dissolution of the establishment shall be adjudicated by the judge in the individual case, taking all the circumstances into consideration.

2) Unless otherwise indicated by the law governing establishments or the articles of association, the relevant provisions concerning registered cooperative societies shall apply *mutatis mutandis* to the acquisition of one establishment by another and the merger of several establishments.

3) The provisions governing the conversion of a public limited company in the case of limited liability companies shall apply *mutatis mutandis* to the conversion of a public limited company or a limited liability company into an establishment.

#### Article 551

##### *J. Reference*

1) If no mandatory provisions are established in this section and no rule or no sufficient rule is otherwise contained herein, the provisions governing trust enterprises with legal personality shall be applied on a supplemental basis, in addition to the general provisions on legal persons.<sup>1149</sup>

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<sup>1148</sup> Article 549(3) amended by LGBL 1980 No. 39 and LGBL 2010 No. 454.

<sup>1149</sup> Article 551(1) amended by LGBL 1980 No. 39.

2) For establishments without members which serve exclusively public-benefit purposes, the provisions governing the supervision, conversion, and dissolution of a foundation shall be applied on a supplemental basis, and for family establishments without members the provisions governing family foundations, unless otherwise provided in this section or by the articles of association.

## Section 2

### Foundations<sup>1150</sup>

#### Article 552<sup>1151</sup>

The following rules apply to foundations:

##### *A. In general*

##### *I. Definition and purpose*

##### § 1

##### *1. Description and delimitation*

1) A foundation as referred to in this section consists in legally and economically independent special-purpose assets which are formed as a legal person through the unilateral declaration of intent of the founder. The founder allocates the specifically designated foundation assets, stipulates the purpose of the foundation, which must be entirely non-self-serving and specifically designated, and also stipulates the beneficiaries.

2) A foundation may conduct business in a commercial manner only if it directly serves the achievement of its public-benefit purpose or if permitted on the basis of special laws. To the extent required by proper investment and management of the foundation assets, the setting-up of a commercial operation is permissible also for private-benefit foundations.

3) If a case is not covered by the first sentence of paragraph 2, the foundation may also not be a shareholder with unlimited liability of a community under the law of persons operating a business in a commercial manner.

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<sup>1150</sup> Title preceding Article 552 amended by LGBl. 2008 No. 220.

<sup>1151</sup> Article 552 including the newly inserted §§ 1 to 41 amended by LGBl. 2008 No. 220.

## § 2

*2. Foundation purposes*

1) Possible foundation purposes are public-benefit purposes or private-benefit purposes.

2) A public-benefit foundation as referred to in this section is a foundation whose activity according to the declaration of foundation is entirely or predominantly intended to serve public-benefit purposes in accordance with Article 107(4a), unless it is a family foundation.

3) A private-benefit foundation as referred to in this section is a foundation which according to the declaration of foundation is entirely or predominantly intended to serve private or self-benefiting purposes. Predominance shall be assessed according to the relationship between services provided to serve private-benefit purposes and those serving public-benefit purposes. If it is not certain that at any given time the foundation is entirely or predominantly intended to serve private-benefit purposes, it shall be treated as a public-benefit foundation.

4) The following foundations in particular come into question as private-benefit foundations:

1. pure family foundations; these are foundations whose assets serve solely to meet the costs of upbringing or education, the endowment or support of members of one or more families, or similar family interests;
2. mixed family foundations; these are foundations which predominantly pursue the purpose of a pure family foundation, but which on a supplemental basis also serve public-benefit or other private-benefit purposes.

*II. Foundation participants*

## § 3

*1. Definition*

The following shall be deemed participants in the foundation:

1. the founder;
2. the entitled beneficiaries;
3. the prospective beneficiaries;
4. the discretionary beneficiaries;

5. the ultimate beneficiaries;
6. the governing bodies of the foundation pursuant to §§ 11, 24, 27, and 28 as well as the members of those governing bodies.

#### § 4

##### 2. *Founders*

1) One or more natural or legal persons may serve as founders. A foundation formed by way of last will and testament may have only one founder.

2) If a foundation has more than one founder, the rights to which the founder is entitled or which are reserved to the founder may be exercised by all founders only jointly, unless the declaration of foundation provides otherwise. If one of the founders is no longer available, then, in case of doubt, the rights mentioned above shall expire.

3) If the foundation is formed by an indirect representative, the principal shall be deemed to be the founder. If the latter likewise acts as indirect representative for a third party, the latter's principal shall be deemed to be the founder. In any event, the indirect representative is obliged to notify the foundation council of the identity of the founder.

#### § 5

##### 3. *Beneficiaries*

1) The beneficiary is deemed to be the natural or legal person which, with or without consideration, in fact, unconditionally or subject to certain prerequisites or conditions, for a limited or unlimited period, with or without restrictions, with or without the possibility of revocation, at any time during the legal existence of the foundation or on its termination, derives or may derive an economic benefit from the foundation (beneficial interest).

2) Beneficiaries as referred to in paragraph 1 are:

1. the entitled beneficiaries (§ 6(1));
2. the prospective beneficiaries (§ 6(2));
3. the discretionary beneficiaries (§ 7); and
4. the ultimate beneficiaries (§ 8).

## § 6

*4. Beneficiaries with a legal entitlement*

1) An entitled beneficiary is a beneficiary who, on the basis of the foundation deed, the supplementary foundation deed, or the regulations, has a legal entitlement to a specified or specifiable benefit, also in terms of the amount, from the foundation assets or foundation income.

2) A prospective beneficiary is a beneficiary who, after the occurrence of a condition precedent or at a specified time, in particular after a prior-ranking beneficiary is no longer available, on the basis of the foundation deed, the supplementary foundation deed, or a regulation, has a legal entitlement to become an entitled beneficiary.

## § 7

*5. Discretionary beneficiaries (beneficiaries without a legal entitlement)*

1) A discretionary beneficiary is a beneficiary who belongs to the group of beneficiaries specified by the founder and whose possible beneficial interest is placed within the discretion of the foundation council or another body appointed for this purpose. A person who is only prospective with regard to such a future beneficial interest shall not be deemed a discretionary beneficiary.

2) A legal entitlement by the discretionary beneficiary to a specific benefit from the foundation assets or foundation income shall in any event not arise until there is a valid resolution by the foundation council or other governing body competent for that purpose (§ 28) on an actual disbursement to the relevant discretionary beneficiaries, and such entitlement shall expire on receipt of such disbursement.

## § 8

*6. Ultimate beneficiaries*

1) An ultimate beneficiary is the beneficiary who, in accordance with the foundation deed or supplementary foundation deed, is intended to receive the remaining assets following the liquidation of the foundation.

2) If no ultimate beneficiary is designated or if no ultimate beneficiary is available, the remaining assets following the liquidation of the foundation shall pass to the State.

3) If there is no specification of the appropriation of assets in the event of revocation pursuant to § 30(1), the founder shall be deemed the ultimate beneficiary, irrespective of whether the founder previously had the status of a beneficiary.

### *III. Rights of the beneficiaries to information and disclosure*

#### § 9

##### *1. In general*

1) Insofar as the beneficiary's rights are concerned, the beneficiary is entitled to inspect the foundation deed, the supplementary foundation deed, and any regulations.

2) Moreover, insofar as the beneficiary's rights are concerned, the beneficiary is entitled to the disclosure of information, reporting, and accounting. For this purpose, the beneficiary has the right to inspect the account books and business papers and to produce copies, and also to examine and investigate all facts and circumstances, in particular the accounting, personally or through a representative. However, this right may not be exercised with dishonest intent, in an abusive manner, or in a manner in conflict with the interests of the foundation or other beneficiaries. On an exceptional basis, the right may also be denied on important grounds to protect the beneficiary.

3) The ultimate beneficiary shall not be entitled to these rights until after the dissolution of the foundation.

4) The rights of the beneficiary shall be asserted in special non-contentious proceedings.<sup>1152</sup>

5) This article is subject to the exceptions set out in §§ 10 to 12.

#### § 10

##### *2. Founder's right of revocation*

1) If, in the declaration of foundation, the founder has reserved the right to revoke the foundation (§ 30) and if the founder is the ultimate beneficiary, the beneficiary shall not be entitled to the rights referred to in § 9.

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<sup>1152</sup> Article 552 § 9(4) amended by LGBl. 2010 No. 454.

2) If the foundation has been formed by more than one beneficiary, these rights may be exercised by each individual founder who has reserved the right of revocation.

### § 11

#### 3. *Setting up a controlling body*

1) If, in the declaration of foundation, the founder has set up a controlling body for the foundation, the beneficiary may demand disclosure of information only concerning the purpose and organisation of the foundation, and concerning the beneficiary's own rights vis-à-vis the foundation, and may verify the accuracy of this information by inspecting the foundation deed, the supplementary foundation deed, and the regulations.

2) The following may be set up as a controlling body:

1. an audit office, to which § 27 shall apply *mutatis mutandis*;
2. one or more natural persons specified by name by the founder, who have sufficient specialist knowledge in the sphere of law and business economics to be able to perform their duties; or
3. the founder.

3) The controlling body must be independent of the foundation. § 27(2) shall apply *mutatis mutandis*.

4) The controlling body is required to audit once a year whether the foundation assets are being managed and appropriated in accordance with their purposes. The controlling body shall submit a report to the foundation council on the outcome of this audit. If there is no reason for qualifications, it shall be sufficient to provide confirmation that the foundation assets have been managed and appropriated in accordance with the purpose of the foundation and in conformity with the provisions of the law and the foundation documents. If this is not the case, or if in the performance of its duties the controlling body ascertains circumstances which jeopardise the foundation or its assets, it shall report to the beneficiaries, to the extent they are known to the controlling body, as well as to the court. The court shall if necessary take action in accordance with § 35.

5) If a controlling body has been set up, the beneficiary may demand from the foundation and the controlling body that the reports referred to in paragraph 4 be transmitted.

6) If the beneficiary asserts rights under § 9, it shall be the foundation's responsibility to prove that a controlling body exists which satisfies the requirements of paragraphs 2 and 3.

## § 12

### *4. Supervised foundations*

The beneficiary shall not be entitled to the rights pursuant to § 9 if the foundation is supervised by the Foundation Supervisory Authority (§ 29).

## § 13

### *IV. Foundation assets*

1) The minimum capital of the foundation shall be 30 000 Swiss francs. The minimum capital may also be contributed in euros or US dollars and shall then amount to 30 000 euros or 30 000 US dollars.

2) If there is an additional transfer of assets to the foundation by the founder after its legally valid formation, this shall be treated as a subsequent endowment.

3) If there is a transfer of assets to the foundation by a third party, this shall be treated as a donation. The donor shall not thereby acquire the status of a founder.

4) If the foundation does not become effective until the death of the founder or after the termination of a legal person, with regard to the contributions of the founder it shall be deemed to have come into existence before the founder's death or before the termination of the legal person.

### *B. Formation and coming into existence*

#### *I. In general*

## § 14

### *1. Foundation inter vivos*

1) The foundation is formed through a declaration of foundation. The declaration of foundation must be in writing, and the signatures of the founders must be certified.

2) In the case of direct representation or indirect representation pursuant to § 4(3), the signature of the representative shall be certified on the foundation deed.

3) In the case of direct representation, the representative shall require a special power of attorney from the founder for this transaction.

4) Public-benefit foundations and private-benefit foundations conducting business in a commercial manner on the basis of a special law shall be entered in the Commercial Register and shall thereby acquire the right of legal personality.<sup>1153</sup>

5) Other private-benefit foundations may be entered in the Commercial Register. There is no legal obligation to do so, however.<sup>1154</sup>

## § 15

### 2. *Foundation mortis causa*

1) The foundation may also be formed by way of last will and testament or contract of inheritance in accordance with the applicable formal rules.

2) The entry of a foundation or the deposit of a notification of formation of a foundation formed by way of last will and testament may not be undertaken until after the death of the founder or, in the case of a contract of inheritance, unless otherwise stipulated therein, after the death of one of the founders.

3) § 14(4) and (5) shall apply *mutatis mutandis*.

## II. *Foundation documents*

## § 16

### 1. *Foundation deed (articles of association)*

1) The foundation deed shall in any event include:

1. the intent of the founder to form the foundation;
2. the name or legal name and registered office of the foundation;

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<sup>1153</sup> Article 552 § 14(4) amended by LGBl. 2013 No. 6.

<sup>1154</sup> Article 552 § 14(5) amended by LGBl. 2013 No. 6.

3. the dedication of specific assets, which must amount to at least the minimum capital required by law;
4. the purpose of the foundation, including the designation of specific beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the group of beneficiaries, unless the foundation is a public-benefit foundation or the beneficiaries are deducible from the purpose of the foundation, or unless express reference is made instead to a supplementary foundation deed for this purpose;
5. the date of formation of the foundation;
6. the duration of the foundation if limited in time;
7. regulations on the appointment, dismissal, term of office, and nature of business management (adoption of resolutions) and power of representation (signing authority) of the foundation council;
8. a provision on appropriation of assets in the event of the dissolution of the foundation, applying subparagraph 4 *mutatis mutandis*;
9. the surname, first name, and domicile or the legal name and registered office of the founder or, in the case of indirect representation (§ 4(3)), the surname, first name, and domicile or the legal name and registered office of the representative. It shall be mentioned expressly in this regard that an indirect representative is becoming active.

2) Insofar as the following contents are stipulated, they shall likewise be included in the foundation deed:

1. a statement that a supplementary foundation deed has been drawn up or may be drawn up;
2. a statement that regulations have been issued or may be issued;
3. a statement that other governing bodies have been formed or may be formed; further details regarding the composition, appointment, dismissal, term of office, and responsibilities may be provided in the supplementary foundation deed or in regulations;
4. the reservation of the right of revocation of the foundation or amendment of the foundation documents by the founder;
5. the reservation of the right to amend the foundation deed or the supplementary foundation deed by the foundation council or by another governing body pursuant to §§ 31 to 34;
6. the exclusion of execution pursuant to § 36(1);
7. the reservation of the right of conversion (§ 41);
8. the provision that the foundation is subject to supervision, even though it is a private-benefit foundation (second sentence of § 29(1)).

3) The provisions set out in paragraph 1(1), (3), and (4) shall be deemed material for purposes of voidability proceedings.

### § 17

#### *2. Supplementary foundation deed (by-laws)*

The founder may draw up a supplementary foundation deed if the founder has reserved the right to do so (§ 16(2)(1)). The supplementary foundation deed may include those components of the declaration of foundation which do not have to be recorded in the foundation deed.

### § 18

#### *3. Regulations*

For the further elaboration of the foundation deed or the supplementary foundation deed, the founder, the foundation council, or another governing body of the foundation may provide internal arrangements in the form of regulations (§ 16(2)(2)) if the right to do so has been reserved in the foundation deed. Regulations issued by the founder shall take precedence over those of the foundation council or another governing body of the foundation.

### § 19

#### *III. Entry in the Commercial Register<sup>1155</sup>*

1) If the foundation is subject to the duty to be entered in the Commercial Register, each member of the foundation council shall be required, irrespective of their power of representation, to register the foundation for entry in the Commercial Register. The application shall be submitted in writing together with the original or certified copy of the foundation deed. The foundation council shall confirm that the minimum capital required by law is at the free disposal of the foundation. The representative shall likewise have the power to register the foundation for entry.<sup>1156</sup>

2) If the entry is made even though there is no duty to do so (§ 14(5)), the foundation council must additionally confirm that the specific

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<sup>1155</sup> Article 552 § 19 heading amended by LGBl. 2013 No. 6.

<sup>1156</sup> Article 552 § 19(1) amended by LGBl. 2013 No. 6.

beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or the group of beneficiaries, have been designated by the founder, unless this results from the notified purpose of the foundation.

3) The entry shall contain the following information:

1. the name or legal name of the foundation;
2. the domicile of the foundation;
3. the purpose of the foundation;
4. the date of formation of the foundation;
5. the duration of the foundation if limited in time;
6. organisation and representation, stating the surname, first name, date of birth, nationality, and domicile or firm address or the legal name and registered office of the members of the foundation council as well as the signatory powers;
7. the surname, first name, date of birth, nationality, and domicile or firm address or the legal name and registered office of the audit office;
8. the surname, first name, nationality, and domicile or firm address or the legal name and registered office of the representative;
9. the fact that the foundation is subject to supervision in accordance with the first sentence of § 29(1).<sup>1157</sup>

4) The entry may also, if necessary, be made on the basis of the foundation deed by order of the judge in special non-contentious proceedings:<sup>1158</sup>

- a) on the application of the foundation participants;
- b) on notification by the Office of Justice or the probate authority; or<sup>1159</sup>
- c) *ex officio*.

5) If there is a change to the purpose of a foundation not entered in the Commercial Register such that a duty to be entered arises, the members of the foundation council are required to register the foundation for entry in the Commercial Register within 30 days in accordance with paragraphs 1 and 3. Paragraph 4 shall apply *mutatis mutandis*.<sup>1160</sup>

6) The entry shall be announced in accordance with Article 956(1).<sup>1161</sup>

<sup>1157</sup> Article 552 § 19(3)(9) inserted by LGBl. 2011 No. 537.

<sup>1158</sup> Article 552 § 19(4) amended by LGBl. 2010 No. 454.

<sup>1159</sup> Article 552 § 19(4)(b) amended by LGBl. 2013 No. 6.

<sup>1160</sup> Article 552 § 19(5) amended by LGBl. 2013 No. 6.

<sup>1161</sup> Article 552 § 19(6) amended by LGBl. 2022 No. 227.

*IV. Notification of formation*

## § 20

*1. Deposit of notification of formation*

1) If the foundation is not subject to a duty to be entered, then for the purpose of monitoring the duty to be entered and of preventing foundations with an unlawful or immoral purpose as well as of preventing the circumvention of supervision that might be required, every member of the foundation council is required to deposit, within 30 days following formation, notification of formation at the Office of Justice. The representative shall likewise have the power to make the deposit. The accuracy of the information referred to in paragraph 2 shall be certified in writing by a lawyer, professional trustee, or holder of an entitlement under Article 180a authorised in Liechtenstein.<sup>1162</sup>

2) The notification of formation shall contain the following information:

1. the name of the foundation;
2. the domicile of the foundation;
3. the purpose of the foundation;
4. the date of formation of the foundation;
5. the duration of the foundation if limited in time;
6. the surname, first name, date of birth, nationality, and domicile or firm address or the legal name and registered office of the members of the foundation council as well as the signatory powers;
7. the surname, first name, date of birth, nationality, and domicile or firm office or the legal name and registered office of the legal representative;
8. confirmation that the specific beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or the group of beneficiaries have been designated by the founder, unless this results from the notified purpose of the foundation;
9. confirmation that the foundation is not entirely or predominantly intended to serve public-interest purposes;
10. an indication whether the foundation is subject to supervision, pursuant to a provision in the foundation deed; and

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<sup>1162</sup> Article 552 § 20(1) amended by LGBL 2013 No. 6.

11. confirmation that the minimum capital required by law is at the free disposal of the foundation.

3) If there is any change to a fact contained in the notification of formation or if any ground for dissolution under § 39(1) arises, the members of the foundation council are required to deposit a notification of amendment at the Office of Justice within 30 days. The representative shall likewise have the power to make the deposit. The accuracy of the information contained in the notification of amendment shall be certified in writing by a lawyer, professional trustee, or holder of an entitlement under Article 180a authorised in Liechtenstein.<sup>1163</sup>

4) On the application of the foundation, the Office of Justice shall, following each legally executed notification, issue an official confirmation of the deposit of the notification of formation. It shall not issue an official confirmation if:<sup>1164</sup>

1. the notified purpose is unlawful or immoral; or
2. a duty to enter the foundation arises from the notification.

## § 21

### *2. Authority to examine and measures*

1) As the Foundation Supervisory Authority, the Office of Justice is entitled to verify the accuracy of the deposited notifications of formation and amendment. For this purpose it may demand information from the foundation and, through the controlling body or, if no such body has been set up, through an authorised third party, inspect the foundation documents, to the extent necessary for the purpose of verification.<sup>1165</sup>

2) Copies and transcripts may be prepared only if the verification indicates that the notification of formation or amendment is not accurate.

3) If the verification shows that the foundation is pursuing an unlawful or immoral purpose, it shall be dissolved in accordance with the general provisions governing legal persons, subject to the provisions on the amendment of a purpose that has subsequently become impermissible (§§ 31 and 33). If it becomes apparent that the foundation is subject to a duty to be entered in the Commercial Register, the entry shall be made by the Office of Justice, applying § 19(4). If the verification shows that the foundation is subject to supervision pursuant to § 29, the Foundation

<sup>1163</sup> Article 552 § 20(3) amended by LGBl. 2013 No. 6.

<sup>1164</sup> Article 552 § 20(4) introductory phrase amended by LGBl. 2013 No. 6.

<sup>1165</sup> Article 552 § 21(1) amended by LGBl. 2013 No. 6.

Supervisory Authority shall where necessary take the appropriate measures.<sup>1166</sup>

4) If the courts, the Office of the Public Prosecutor, or an administrative authority learns that the notification of formation or amendment has not been submitted or that the submitted notification of formation or amendment is inaccurate in content, a report shall be drawn up and forwarded to the Foundation Supervisory Authority.

5) By ordinance, the Government may set out detailed provisions on the exercise of the power to examine as well as on the determination and collection of fees by the Foundation Supervisory Authority.

### *C. Revocation of declaration of foundation*

#### *§ 22*

##### *I. By the founder*

Revocation of the declaration of foundation shall be permissible only:

1. if the foundation has not yet been entered in the Commercial Register, provided that entry is required for its formation;<sup>1167</sup>
2. if an entry of the foundation is not required and it is intended to become legally effective during the lifetime of the founder, until the founder's signature is certified in the foundation deed;
3. in the case of foundations formed by last will and testament or contract of inheritance, under the applicable rules of inheritance law.

#### *§ 23<sup>1168</sup>*

##### *II. Exclusion of heirs*

1) In the case of foundations formed by last will and testament or contract of inheritance, the heirs shall acquire no right to revoke the declaration of foundation after the death of the testator and founder, even if the foundation is not yet entered in the Commercial Register.

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<sup>1166</sup> Article 552 § 21(3) amended by LGBL 2013 No. 6.

<sup>1167</sup> Article 552 § 22(1) amended by LGBL 2013 No. 6.

<sup>1168</sup> Article 552 § 23 amended by LGBL 2013 No. 6.

2) The heirs likewise shall have no right of revocation if the founder, in the case of a foundation *inter vivos*, drew up the foundation deed but died prior to the entry in the Commercial Register.

#### *D. Organisation*

##### *I. Foundation council*

#### § 24

##### *1. In general*

1) The foundation council shall manage the business of the foundation and represent it. It is responsible for the fulfilment of the purpose of the foundation, in compliance with the provisions in the foundation documents.

2) The foundation council shall be composed of at least two members. Legal persons may be members of the foundation council.

3) Unless otherwise provided in the foundation deed, the appointment of the foundation council shall be effective for a term of office of three years; reappointment shall be permissible, and the members may perform their activity with or without remuneration.

4) The provisions drawn up for the members of the foundation council shall also apply to any deputies.

5) The members of the foundation council shall sign in such manner that they append their signature to the name of the foundation.

6) If members of the foundation council serve without remuneration, liability for minor negligence may be excluded in the declaration of foundation, unless the creditors of the foundation are injured thereby.

##### *2. Special obligations*

#### § 25

##### *a) Asset management*

1) Taking account of the founder's intent, the foundation council shall manage the foundation assets in accordance with the purpose of the foundation and the principles of good management.

2) The founder may lay down specific and binding management criteria in the foundation deed, the supplementary foundation deed, or a regulation.

#### § 26

##### *b) Accounting*

Foundations conducting business in a commercial manner shall be subject to the general rules on accounting. In the case of all other foundations, the foundation council shall, in respect of the management and appropriation of the foundation assets and taking into account the principles of orderly bookkeeping, maintain records appropriate to the financial circumstances of the foundation and keep supporting documents that allow the course of business and the development of the foundation assets to be traced. Moreover, the foundation council shall maintain a schedule of assets showing the asset position and the asset investments. Article 1059 shall apply *mutatis mutandis*.

#### § 27

##### *II. Audit office*

1) For each foundation supervised by the Foundation Supervisory Authority pursuant to § 29, the court shall in special non-contentious proceedings appoint an audit office in accordance with Article 191a(1). The Foundation Supervisory Authority shall have the standing of a party in these proceedings.<sup>1169</sup>

2) The audit office must be independent of the foundation. The audit office is required to notify the court and the Foundation Supervisory Authority of reasons which rule out its independence. The Foundation Supervisory Authority may demand from the audit office the certifications and evidence necessary to assess its independence. The following persons in particular shall be excluded as an audit office:

1. members of another governing body of the foundation;
2. persons with an employment relationship with the foundation;
3. persons who are close relatives of members of governing bodies of the foundation; or
4. beneficiaries of the foundation.

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<sup>1169</sup> Article 552 § 27(1) amended by LGBL 2010 No. 454.

3) The founder may submit two proposals for the audit office, stating a preference. If the founder has not made use of this right, the foundation council may refer such a proposal to the court. Subject to paragraph 2, the court shall as a rule appoint the preferentially proposed audit office.

4) As a governing body of the foundation, the audit office is required to audit once a year whether the foundation assets are being managed and appropriated in accordance with their purposes. The audit office shall submit a report to the foundation council and the Foundation Supervisory Authority on the outcome of this audit. If there is no reason for qualifications, it shall be sufficient to provide confirmation that the foundation assets have been managed and appropriated in accordance with the purpose of the foundation and in conformity with the provisions of the law and the foundation documents. If while performing its duties the audit office ascertains circumstances which jeopardise the foundation or its assets, it shall include this in the report. The Foundation Supervisory Authority may demand from the audit office disclosure of all facts of which it has become aware during the course of the audit.

5) In the case of public-benefit foundations, the Foundation Supervisory Authority may on application dispense with the appointment of an audit office if the foundation manages only minor-value assets or if this appears appropriate for other reasons. By ordinance, the Government shall lay down the prerequisites for exemption from the obligation to appoint an audit office.

## § 28

### *III. Other bodies*

1) The founder may designate other bodies, in particular to determine a beneficiary from the group of beneficiaries, to determine the time, level, and condition of a disbursement, to manage the assets, to advise and assist the foundation council, to monitor the administration of the foundation in order to safeguard the purpose of the foundation, to reserve consent or issue instructions, as well as to safeguard the interests of the foundation participants. These bodies shall have no power of representation.

2) § 24(6) shall apply *mutatis mutandis*.

## § 29

*E. Supervision*

1) Public-benefit foundations shall be subject to the supervision of the Foundation Supervisory Authority. The same shall apply to private-benefit foundations which are subject to supervision pursuant to a provision in the foundation deed.

2) The Office of Justice shall serve as Foundation Supervisory Authority.<sup>1170</sup>

3) The Foundation Supervisory Authority shall ensure *ex officio* that the foundation assets are managed and appropriated in accordance with their purposes. It shall for this purpose be entitled to demand information from the foundation and, through the audit office, inspect the books and documents of the foundation. If the appointment of an audit office has been dispensed with pursuant to § 27(5), the Foundation Supervisory Authority shall as a rule itself exercise the right of inspection. Moreover, it may obtain information from other administrative authorities and the courts, and it may in special non-contentious proceedings apply to the judge for the necessary measures, such as control and dismissal of the governing bodies of the foundation, performance of special audits, or cancellation of resolutions of governing bodies of the foundation.<sup>1171</sup>

4) Furthermore, in order to contest asset management and appropriation by the governing bodies of the foundation that conflict with the purpose of the foundation, each foundation participant may in special non-contentious proceedings apply to the judge for an order for the required measures under paragraph 3. If there is a strong suspicion that a body of the foundation has committed an offence, the judge may also intervene *ex officio*, in particular on the basis of a communication from the Office of the Public Prosecutor. The Foundation Supervisory Authority shall have the status of a party in such proceedings.<sup>1172</sup>

5) Unknown beneficiaries shall be ascertained by way of public notice procedure on the application of the Foundation Supervisory Authority.

6) By ordinance, the Government may set out more detailed provisions on the activity of the Foundation Supervisory Authority as well as on its determination and collection of fees.

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<sup>1170</sup> Article 552 § 29(2) amended by LGBL 2013 No. 6.

<sup>1171</sup> Article 552 § 29(3) amended by LGBL 2010 No. 454.

<sup>1172</sup> Article 552 § 29(4) amended by LGBL 2010 No. 454.

*F. Amendments*

## § 30

*I. Rights of the founder to revoke or amend the foundation documents*

1) The founder may in the foundation deed reserve the right to revoke the foundation or to amend the declaration of foundation. These rights may not be assigned or bequeathed. If one of these rights is to be exercised by a direct representative, that direct representative shall require a special power of attorney covering this transaction.

2) If the founder is a legal person, it may not reserve the rights referred to in paragraph 1.

3) If the rights referred to in paragraph 1 are exercised by an indirect representative (§ 4(3)), the legal effects shall arise directly with respect to the founder.

*II. Rights of the bodies of the foundation*

## § 31

*1. Amendment of the purpose*

1) An amendment of the purpose of the foundation by the foundation council or another governing body shall be permitted only if the purpose has become unachievable, impermissible, or irrational, or if circumstances have changed to the extent that the purpose has acquired an entirely different significance or effect, so that the foundation is alienated from the intent of the founder.

2) The amendment must correspond to the presumed intent of the founder, and the power of amendment must be expressly reserved in the foundation deed to the foundation council or other governing body of the foundation.

## § 32

*2. Amendment of other contents*

An amendment of other contents of the foundation deed or the supplementary foundation deed, such as in particular the organisation of the foundation, by the foundation council or another governing body shall be permitted if and to the extent that the power of amendment is expressly

reserved in the foundation deed to the foundation council or other governing body of the foundation. The foundation council shall, safeguarding the purpose of the foundation, exercise the right of amendment if there is a materially justified reason to do so.

### *III. Rights of the judge*

#### *1. Supervised foundations*

##### § 33

###### *a) Amendment of the purpose*

1) If a foundation is supervised by the Foundation Supervisory Authority, the latter may in special non-contentious proceedings apply to the judge for amendment of the purpose of the foundation if:

1. the purpose has become unachievable, impermissible, or irrational, or if circumstances have changed to the extent that the purpose has acquired an entirely different significance or effect, so that the foundation is alienated from the intent of the founder; and
2. the foundation deed has not entrusted the foundation council or other governing body of the foundation with amendment of the purpose.<sup>1173</sup>

2) The amendment must honour the presumed intent of the founder.

3) The foundation participants shall likewise have the right to apply; in this case, the Foundation Supervisory Authority shall have the standing of a party.

##### § 34

###### *b) Amendment of other contents*

1) If a foundation is supervised by the Foundation Supervisory Authority, the latter may in special non-contentious proceedings apply to the judge for the amendment of other contents of the foundation deed or supplementary foundation deed, such as in particular the organisation of the foundation, if:

1. doing so is likely to safeguard the purpose of the foundation, in particular to secure the continuing existence of the foundation and the foundation assets; and

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<sup>1173</sup> Article 552 § 33(1) amended by LGBL 2010 No. 454.

2. the foundation deed has not entrusted the foundation council or other governing body with amendment of other contents.<sup>1174</sup>

2) The foundation participants shall likewise have the right to apply; in this case, the Foundation Supervisory Authority shall have the standing of a party.

### § 35

#### 2. *Other foundations*

1) In the case of foundations not supervised by the Foundation Supervisory Authority, the judge may, on the application of a foundation participant and, in urgent cases and where applicable, on the basis of a communication from the Foundation Supervisory Authority (§ 21(3)) or from the Office of the Public Prosecutor, also exercise the powers referred to in §§ 33 and 34 *ex officio* in special non-contentious proceedings and take the necessary measures as referred to in § 29(3). A case is deemed to be urgent in particular if there is an urgent suspicion that a body of the foundation has committed an offence.<sup>1175</sup>

2) On application, unknown beneficiaries may be ascertained by the judge by way of a public notice procedure.

### § 36

#### G. *Provisions under the law of enforcement*

1) In the case of family foundations, the founder may provide that the creditors of beneficiaries may not deprive these beneficiaries of their status as an entitled or prospective beneficiary, where such status has been obtained without consideration, or individual claims arising from such a status, by way of proceedings to secure rights, compulsory execution, or insolvency proceedings. In the case of mixed family foundations, such a directive may be issued only insofar as the status concerned serves the purposes of the family foundation.<sup>1176</sup>

2) If a creditor of the foundation is unable to obtain satisfaction from the foundation assets, and the founder has not yet fully endowed the assets, the foundation council is required to provide the creditor with the

<sup>1174</sup> Article 552 § 34(1) amended by LGBl. 2010 No. 454.

<sup>1175</sup> Article 552 § 35(1) amended by LGBl. 2010 No. 454.

<sup>1176</sup> Article 552 § 36(1) amended by LGBl. 2020 No. 369.

information the creditor requires to take legal action. In the event of insolvency proceedings of the foundation, this shall apply *mutatis mutandis* with regard to the insolvency administrator.<sup>1177</sup>

### § 37

#### *H. Liability*

1) Only the foundation assets shall be liable for the debts of the foundation vis-à-vis the creditors. There shall be no additional performance obligation.

2) The foundation council may make payments to beneficiaries to fulfil the purpose of the foundation only if claims by creditors of the foundation are not thereby curtailed.

### § 38

#### *I. Challenge*

1) Contributions of assets to the foundation may be challenged by the heirs or the creditors in the same manner as a gift.

2) The founder and the founder's heirs may challenge the foundation on account of defects of intent in the same manner as the provisions on defects in the conclusion of a contract, even after the foundation has been entered in the Commercial Register.

#### *K. Dissolution and termination*

### § 39

#### *I. Grounds for dissolution*

1) The foundation shall be dissolved if:

1. bankruptcy proceedings have been opened in respect of the foundation assets;
2. the resolution whereby the opening of insolvency proceedings has been rejected due to the probable insufficiency of the assets to cover the costs of the insolvency proceedings has achieved legal force;<sup>1178</sup>

<sup>1177</sup> Article 552 § 36(2) amended by LGBl. 2020 No. 369.

<sup>1178</sup> Article 552 § 39(1)(2) amended by LGBl. 2020 No. 369.

3. the court has ordered dissolution;
4. the foundation council has adopted a legally valid resolution on dissolution.

2) The foundation council shall adopt a resolution on dissolution as soon as:

1. it has received a permissible revocation by the founder;
2. the purpose of the foundation has been achieved or is no longer achievable;
3. the duration envisaged in the foundation deed has expired;
4. other grounds for dissolution are stated in the foundation deed.

3) The resolution on dissolution in accordance with paragraph 2 must be adopted unanimously, unless otherwise provided in the foundation deed. In the case of foundations supervised by the Foundation Supervisory Authority, the foundation council shall notify the supervisory authority of the resolution on dissolution.

4) If no resolution in accordance with paragraph 2 is adopted despite the existence of a ground for dissolution, the judge shall, in the case of foundations not supervised by the Foundation Supervisory Authority and on application of foundation participants, dissolve the foundation in special non-contentious proceedings; in the case of other foundations, application for dissolution may likewise be made by the Foundation Supervisory Authority.<sup>1179</sup>

5) If a resolution on dissolution is adopted under paragraph 2 even though there is no ground for dissolution, the judge shall, in the case of foundations not supervised by the Foundation Supervisory Authority and on application of foundation participants, quash the foundation council's resolution on dissolution in special non-contentious proceedings; in the case of other foundations, the Foundation Supervisory Authority shall likewise have the right of application.<sup>1180</sup>

6) If the foundation conducts business in a commercial manner without meeting the prerequisites set out in § 1(2), the judge shall, on application of a foundation participant or *ex officio*, issue a decision dissolving the foundation if the foundation has not complied with a legally binding order to cease and desist within a reasonable time limit.

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<sup>1179</sup> Article 552 § 39(4) amended by LGBl. 2010 No. 454.

<sup>1180</sup> Article 552 § 39(5) amended by LGBl. 2010 No. 454.

## § 40

*II. Liquidation and termination*

1) The general provisions on legal persons shall apply to the liquidation and termination of the foundation.

2) The provisions on the public notice to creditors shall not apply to foundations not entered in the Commercial Register.<sup>1181</sup>

3) In the case of foundations entered in the Commercial Register, the Office of Justice shall issue a confirmation of removal from the Commercial Register in the form of a register extract, and in the case of foundations not entered in the Commercial Register, an official confirmation.<sup>1182</sup>

4) If the foundation is supervised by the Foundation Supervisory Authority, the foundation council shall notify the Foundation Supervisory Authority of the termination of the foundation. If the foundation is entered in the Commercial Register, a register extract shall also be presented. The legal representative shall likewise have the power to notify.<sup>1183</sup>

5) Subsequently emerging assets shall be apportioned in accordance with the principles concerning subsequent liquidation (Article 139). In the case of foundations supervised by the Foundation Supervisory Authority, the foundation council shall inform the Foundation Supervisory Authority without delay about subsequently emerging assets. The legal representative shall likewise have the power to notify.

## § 41

*L. Conversion*

Subject to mandatory preservation of the essence of the foundation in general and the intent of the founder in particular, a private-benefit foundation may be converted, without resolution or liquidation, into an establishment organised under foundation law, or a trust enterprise with legal personality organised under foundation law, by way of a deed drawn up in due form, if such conversion:

1. is reserved in the foundation deed, subject to specification of the prerequisites; and

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<sup>1181</sup> Article 552 § 40(2) amended by LGBL 2013 No. 6.

<sup>1182</sup> Article 552 § 40(3) amended by LGBL 2013 No. 6.

<sup>1183</sup> Article 552 § 40(4) amended by LGBL 2013 No. 6.

2. is conducive to realising the purpose of the foundation.

Articles 553 to 570<sup>1184</sup>

Repealed

Title 6

## Special forms and types of undertaking

Section 1

### Public service undertakings

#### *A. Public service corporate bodies*

Article 571

##### *I. Description*

1) Corporate bodies within the meaning of this Part may be granted public service status by the Government at its request if, with or without capital participation, the State, the municipalities, municipal associations, or public service establishments, or their workers and employees, participate in the administration, monitoring (oversight), or profit.

2) The public service status may be noted in the Commercial Register upon notification by the Government or at the request of the administration.<sup>1185</sup>

Article 572

##### *II. Administration and audit office*<sup>1186</sup>

1) The corporate bodies involved (such as the State, municipalities) or representatives elected by the workers and employees must participate in the administration (executive board) of the public service corporate body or in its audit office, as ordered by the Government.<sup>1187</sup>

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<sup>1184</sup> Article 553 bis 570 repealed by LGBL 2008 No. 220.

<sup>1185</sup> Article 571(2) amended by LGBL 2013 No. 6.

<sup>1186</sup> Article 572 heading amended by LGBL 2000 No. 279.

<sup>1187</sup> Article 572(1) amended by LGBL 2000 No. 279.

2) Unless the articles of association provide otherwise, representatives elected by employees and workers shall not have signing authority.

3) The liability of representatives of the polity in the administration shall be governed by the provision on participation of legal persons under public law in the administration or audit office under the general provisions on legal persons.<sup>1188</sup>

4) An audit office must be provided for in the articles of association.<sup>1189</sup>

5) The provision on the audit trustee for public service establishments shall apply *mutatis mutandis*.

#### Article 573

##### *III. Participation rights of the polity*

1) The Government may, with the approval of Parliament, require that, in the formation of corporate bodies, where the public interest so requires, the polity (State, municipality) be granted a participation in the capital or fund of the corporate body, up to half thereof, on terms equivalent to those otherwise most favoured.<sup>1190</sup>

2) In the case of capital increases, this right may also be claimed in full until the participation of the polity has reached half of the total corporate capital.

3) However, the Government may waive this right when a legal person is formed or at a later time, with the Administrative Court deciding on disputes.

#### Article 574

##### *IV. Appropriation of profit*

1) If the net profit or surplus exceeds the interest rate on corporate capital customary in Liechtenstein, the excess amount shall be distributed between the corporate body and the participating polity.

2) The share of the polity shall rise increasingly with the level of the net profit or surplus.

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<sup>1188</sup> Article 572(3) amended by LGBL. 2000 No. 279.

<sup>1189</sup> Article 572(4) amended by LGBL. 2000 No. 279.

<sup>1190</sup> Article 573(1) amended by LGBL. 2010 No. 352.

3) The articles of association shall set out more detailed provisions in this regard.

4) When distributing the net profit, a share determined in more detail by the articles of association must be used for the benefit of employees and workers, as ordered by the polity.

#### Article 575

##### *V. Issue of debentures*

In order to raise the debt capital of public service corporate bodies, the Government may authorise the issue of debentures (bonds) in accordance with the provisions governing public service establishments.

#### Article 576

##### *VI. Reference*

Depending on their form, public service corporate bodies shall be governed *mutatis mutandis* by the relevant provisions applicable to public liability companies, partnerships limited by shares, companies limited by units, limited liability companies, cooperative societies, mutual insurance associations or auxiliary funds, or legal persons in accordance with the following Sections.

##### *B. Public service establishment*

#### Article 577

##### *I. Description*

1) Public service establishments may be formed to perform economic responsibilities in the service of the people.

2) With the consent of Parliament, they may be declared establishments under public law, which are, however, subject to the following provisions in the absence of any other rules.

3) Apart from the public service establishments covered by this Section, other establishments covered by the preceding Title may be recognised as having public service status in accordance with the preceding Section.

*II. Formation*

## Article 578

*1. Founder*

1) Public service establishments are established by the State, municipalities, or a plurality of polities for the purpose of transferring ownership or administration of existing private or public undertakings by way of agreement to public service establishments or for the purpose of forming new undertakings in that form.

2) If special economic considerations so require, the Government may also involve other legal persons or entities with legal names, with their consent, in the formation of public service establishments.

3) If a public service establishment is not to be formed by the State, the resolution of formation, as well as the articles of association and any amendments thereto, shall be subject to the approval of the Government, to the extent the establishment is not formed under special legislation.

*2. Endowment capital*

## Article 579

*a) In general*

The endowment fund (establishment or dedication fund) may be provided either in full or up to a partial amount to be determined in the articles of association by fund contributions from the founders and the remainder, with the consent of the Government and mediated by the savings and loan bank of the State (Landesbank) or another undertaking authorised for this purpose by the Government, by means of redeemable partial debentures (bonds).

## Article 580

*b) Partial debentures*

1) For the claims arising from the partial debentures, a lien on real property or other assets of the public service institution shall be created.

2) The founding polities must assume liability for the interest and redemption of the partial debentures after obtaining Government approval.

3) On the basis of such partial debentures, the savings and loan bank of the State (Landesbank) or, with the consent of the Government, another undertaking may issue bank debentures for the partial debentures in its possession, which are to be entered in a special cover register, applying *mutatis mutandis* the provisions applicable to mortgage bonds.

4) Partial debentures of the public service establishment which are issued under the liability of a polity or for which a lien is registered in a public book with the value limit prescribed for mortgage bonds may be used to invest trust money.

5) If public service establishments take out loans from the savings and loan bank of the State in lieu of the redeemable partial debentures, the founding polities shall, if bank debentures are to be issued for these loans, assume liability for the interest and redemption of these loans after obtaining Government approval.

6) The Government may, by ordinance, provide details governing the issue, security, and trustees of such bonds.

### *III. Organisation*

#### *1. Establishment meeting*

##### Article 581

#### *a) Composition and duration*

1) The establishment meeting as the supreme body shall consist of representatives of the founding polity and the administration.

2) The articles of association may determine that, in addition to or in lieu of representatives of the administration, other public or private corporate bodies or establishments or undertakings, the savings and loan bank of the State, organisations composed of a substantial part of the purchasers of the establishment's products, other private interests, or representatives of the establishment's employees and workers must be represented in the establishment meeting.

3) When selecting the representatives referred to in paragraph 1, consideration shall be given as far as possible to their expertise in commercial, financial, technical, legal, and similar matters.

4) Each term of the establishment meeting shall cover three financial years and shall expire, if not previously dismissed, with the adoption of the resolution on the third annual operating balance sheet.

5) If representatives are sent to the establishment meeting on the basis of elections, their mandate shall expire at the end of their mandating party's term, and they shall be replaced by mandatees on the basis of new elections.

Article 582

*b) Powers*

1) The following shall be subject to resolution by the establishment meeting:

1. audit and approval of the resolution on the financial statements, distribution of the net profit, and discharge of the administration (general management);
2. appointment of the administration and the decision as to whether registered power of attorney or authorised agency may be granted for the entire business operation;
3. enforcement of the claims for compensation that the establishment has against the administration resulting from general management;
4. conclusion of long-term credit agreements, through which an amount of credit is drawn down by the establishment in excess of a threshold set out in the articles of association;
5. conclusion of contracts by which the establishment is to acquire existing or to be created facilities or land intended for its business operations on a permanent basis for a remuneration exceeding a portion of the establishment fund as set out in the articles of association, as well as the amendment of such contracts to the detriment of the establishment, provided that it does not concern the acquisition of land by way of compulsory auction. This resolution may be adopted only by a majority of three quarters of the votes cast;
6. dismissal of members of the administration;
7. requests for amendments to the articles of association of the establishment.

2) The articles of association may also reserve other matters for resolution by the establishment meeting.

3) The activities reserved by law or by the articles of association of the establishment meeting shall be carried out by resolutions of the establishment meeting.

## 2. Administration and audit office<sup>1191</sup>

### Article 583

#### *a) Appointment*

1) The members of the administration shall be appointed by the establishment meeting, unless the articles of association provide otherwise.

2) The audit office shall consist of a number of authorised persons of the founding polity as determined by the articles of association, not exceeding five.<sup>1192</sup>

3) The appointment of the first audit office shall be valid until the resolution on the first annual operating balance sheet is adopted; thereafter, each term shall be for a maximum of three financial years and shall expire with the adoption of the resolution on the third annual operating balance sheet.<sup>1193</sup>

4) The members of the establishment meeting may also not be appointed as members of the audit office.<sup>1194</sup>

### Article 584<sup>1195</sup>

#### *b) Obligations of the audit office*

1) In addition to the duties set out for audit offices under the general provisions governing companies with legal personality, the audit office shall, unless there is a deviation set out below, be responsible for:

1. approval to take out long-term loans in excess of a threshold to be set out in the articles of association;
2. approval of the purchase and sale of land beyond an extent to be set out in the articles of association;
3. approval of the proposals of the administration to the establishment meeting on the distribution of profits;
4. dismissal of members of the administration, even against the will of the establishment meeting, in cases of abuse of confidence, self-serving general management, violation of essential provisions of the articles of

<sup>1191</sup> Heading preceding Article 583 amended by LGBL 2000 No. 279.

<sup>1192</sup> Article 583(2) amended by LGBL 2000 No. 279.

<sup>1193</sup> Article 583(3) amended by LGBL 2000 No. 279.

<sup>1194</sup> Article 583(4) amended by LGBL 2000 No. 279.

<sup>1195</sup> Article 584 amended by LGBL 2000 No. 279.

association, or exceeding of the scope of responsibilities granted to the administration, thereby endangering the interests of the establishment, as well as the convening of the establishment meeting to appoint a new administration immediately;

5. dissolution of the establishment meeting in the event of persistent gross violation of the obligations incumbent upon it under the law and the articles of association;
6. convening of the establishment meeting when it appears necessary in the interest of the establishment.

2) The audit office and its individual members shall have the right to be informed of the progress of the business of the establishment; it may at any time, collectively or through individual members, inspect the account books and business papers of the establishment, as well as the level of the establishment's treasury and the holdings of securities, debt instruments, and goods.

3) The audit office may govern the exercise of its obligations by means of rules of procedure.

#### Article 585

##### *c) Audit trustee*

1) The Government may, at the expense of the establishment, appoint an expert audit trustee to audit the establishment's account books, business documents, cash transactions, and balance sheet at any time.

2) If any deficiencies are identified during the audit, these deficiencies must be reported to the audit office for the purpose of clarification and rectification of the shortcomings.<sup>1196</sup>

#### *IV. Accounting*

#### Article 586

##### *1. General management and accounting*

1) General management, and in particular the accounting and financial management of the public service establishment, must be carried out in accordance with commercial principles; its accounting must be separate from the other accounting of the founding corporate bodies and must be

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<sup>1196</sup> Article 585(2) amended by LGBI. 2000 No. 279.

organised in such a way that the status of its assets can be established with certainty at any time.

2) The assets of the public service establishment must be managed separately from the assets of the founding corporate bodies.

3) The extent to which the results of its operations are to be reflected in the budget proposals and account statements of the founding polities shall be determined by the provisions governing the financial management of those polities.

#### Article 587

##### *2. Appropriation of proceeds*

1) The proceeds of the establishment shall as a rule be used as follows:

1. First, the operating expenses including the requirement of interest payments on the partial debentures and for the required amortisation shall be covered.
2. Second, provisions for the technical and economic structuring of the undertaking and for any operating losses must be made in a minimum amount set out in the articles of association.
3. Finally, the shares of the proceeds attributable to the fund contributions shall be paid up to the amount of the customary interest rate in Liechtenstein on the fund deposits.

2) If the articles of association do not provide further instructions, the remainder of the proceeds shall be used for public-benefit and charitable purposes in accordance with the resolution of the establishment meeting and, in the absence thereof, in accordance with the resolution of the administration.

#### Article 588

##### *V. Dissolution*

1) The public service establishment shall also be dissolved at the request of the establishment meeting, the audit office, or one of the founding corporate bodies or establishments, unless the dissolution<sup>1197</sup> is due to a liquidation balance sheet, and finally by Government decree.<sup>1198</sup>

<sup>1197</sup> This should read "Auflösung" instead of "Auslösung" in the German original.

<sup>1198</sup> Article 588(1) amended by LGBL. 2000 No. 279.

2) The founders may draw up special liquidation rules.

Article 589

*VI. Reference*

The provisions governing establishments in general shall apply on a supplemental basis *mutatis mutandis* to public service establishments.

Section 2

**Mortgage institutions and concessionary insurance undertakings**

Articles 590 to 613<sup>1199</sup>

Repealed

Section 3

**Other legal persons**

Articles 614 to 648<sup>1200</sup>

Repealed

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<sup>1199</sup> Article 590 to 613 repealed by LGBL 1996 No. 68 and LGBL 2000 No. 279.

<sup>1200</sup> Article 614 to 648 repealed by LGBL 1980 No. 39.

Part 3  
**Companies without legal personality  
(Communities under the law of persons)**

Title 7  
**Joint provisions**

Article 649

*A. Definition, forms, etc.*

1) A company is the contractual joining together of two or more natural or legal persons or entities with legal names for a joint economic or other purpose with joint efforts or means.

2) The performances of the members may also consist in an omission.

3) Unless the law provides otherwise, no special form is required to form a company.

4) Companies without legal personality shall, with the exception of the general and limited partnership including the general partnership with limited liability and the partnership of limited partners, have neither legal capacity nor the capacity to be party to legal proceedings, and only the members as such may act as a party to a case or as a plaintiff or defendant.

5) To the extent that the provisions of this Act do not provide for a derogation, the company shall be governed by the applicable contract.

*B. Relationship among members*

Article 650

*I. Contributions*

1) Each member shall make the same contribution, whether in money, property, receivables, labour, or other assets, unless the company agreement or the purpose of the company excludes that member.

2) A member shall not have to make more than the agreed contribution, however, if a change of circumstances entails that the purpose cannot be achieved without an increase in the contribution, the member may resign or be excluded.

3) Contributions may be demanded both by the individual members and, in the case of companies with legal names, by the company itself for its own benefit.

4) With regard to the bearing of risk and the warranty obligation, where the individual member entrusts others with use and exploitation, the principles of the rental contract shall apply and, if ownership is to be transferred, the principles of the sales contract.

#### Article 651

##### *II. Profit participation*

1) Each member is obliged to share with the other members a profit which by its nature is due to the company.

2) If a share in the profit or a share in the loss has been agreed upon, this agreement shall in case of doubt apply to both.

3) An agreement that a member shall have a share in the profit, but not in the loss, shall be permissible only if that member has to contribute labour to the common purpose.

#### Article 652

##### *III. Company resolutions*

1) To the extent the company agreement does not provide otherwise, company resolutions shall be adopted with the consent of all members.

2) If a majority of votes is sufficient according to the contract, the majority shall be calculated according to the number of persons, unless the company agreement provides otherwise.

##### *IV. General management*

#### Article 653

##### *1. In general*

1) General management shall be available to all members with unlimited liability, unless the general management has been extended or limited in a valid form by contract or resolution or third parties have been entrusted exclusively with the general management.

2) If general management is available either to all or to several members, each of those members may act without the involvement of the others, but any other member authorised for general management shall have the right to prevent the act before it is completed by raising a justified objection.

3) In the absence of any other provision in the company agreement, general management assigned to individual members or third parties shall not entitle them to perform legal acts and render performances in fact that affect the foundations of the company, such as, in particular, amendments to the articles of association, dissolution of the company, transfer and withdrawal of the right to general management, and admission or exclusion of members.

4) The appointment of a general agent and the performance of legal acts that go beyond the normal operation of the joint business shall require the consent of all members, unless otherwise provided for in the company agreement and unless there is imminent danger.

5) Unless otherwise provided by law or company agreement, general management shall also include representation; the rules on the implied trust shall apply on a supplemental basis to the legal relationship between the general managers and the company.

#### Article 654

##### *2. Entities with legal names and legal persons*

1) General management may also be entrusted to entities with legal names or legal persons individually or collectively with other members.

2) In this case, the general management of the company shall be carried out by the persons who carry out such general management for the member in question.

3) Those persons shall no longer be entitled to general management of the company as soon as the entity with a legal name or the legal person they represent is no longer authorised to carry out general management, or as soon as those persons themselves are no longer authorised to carry out general management of the entity with a legal name or the legal person to which they belong.

### *3. Responsibility*

#### Article 655

##### *a) Claims arising from work for the company*

1) For expenses or obligations incurred or entered into by a member in the affairs of the company, as well as for losses suffered directly by the member as a result of the member's general management or the risks inextricably linked to such general management, the member may claim compensation *pro rata* from the other members.

2) What is not available from one member, all others must bear in accordance with their shares.

3) The member may charge interest on advances at the rate customary in Liechtenstein from the date of the advance.

4) However, in the absence of any other agreement, the member shall not be entitled to special remuneration for personal efforts.

##### *b) Standard of care*

#### Article 656

##### *aa) In general*

1) Each member is obliged to exercise in the affairs of the company the diligence and care which the member is accustomed to exercise in the member's own affairs, but shall not be exempt from liability for gross negligence.

2) The member shall be liable to the other members for damage caused by the member's fault, without being able to set off the advantages the member has provided to the company in other cases.

3) A managing member who receives remuneration for work shall be liable according to the provisions governing contractual work.

4) Both the managing and non-managing members may not, for their own particular benefit, enter into or conduct any business that would frustrate or impair the purpose of the company.

## Article 657

*bb) Default interest and compensation*

1) Unless otherwise provided in the contract, a member who fails to make contributions on time or deliver to the company any company money or other assets on time or who takes unauthorised possession of assets shall be liable by law to pay default interest or equivalent compensation from the date on which the contribution or delivery should have been made or the receipt of such money or assets took place.

2) The general provisions on default in acceptance of contributions from a member shall be governed by the general provisions on default in acceptance under the law of obligations.

3) This shall not exclude the obligation to compensate for any greater damage or other legal consequences of the act.

## Article 658

*4. Withdrawal, limitation, and resignation of general management*

1) The power of general management granted in the company agreement to one member may not be withdrawn or limited by the other members other than on important grounds.

2) On important grounds, that power may be withdrawn by any of the other members, even if the company agreement states otherwise.

3) Important grounds shall be deemed to exist in particular if the general manager is guilty of a gross breach of duty or lacks the capacity for good general management.

4) Likewise, a managing member or third party may on important grounds resign from general management immediately, even if that managing member or third party has waived the right to resignation.

## Article 659

*5. Managing and non-managing members*

1) To the extent not otherwise provided in this Part or in the company agreement, the relationship of the managing members to the other members or of a third party as general manager to the members shall be governed by the provisions applicable to the implied trust.

2) If a third party or a member who is not authorised for general management handles company matters, or if a third party or member authorised for general management exceeds their powers, the provisions governing general management without contract shall apply.

3) The members excluded from general management shall have the right to inform themselves personally of the course of the company's affairs, to inspect the company's account books and business documents, and to create an overview of the status of the joint assets.

4) Any agreement to the contrary shall be null and void.

5) Permission to inspect may be enforced in court by special non-contentious proceedings.<sup>1201</sup>

#### Article 660

##### *V. Company assets*

1) Property items, receivables, rights *in rem* and other rights, such as contributions made or outstanding by members by name, which have been transferred to the company in the correct form or acquired for the company, shall constitute part of the joint assets of the members (company assets), unless otherwise specified, and shall be made available to them undivided and as a whole.

2) The company assets shall also include what is acquired on the basis of a right belonging to it, such as the fruits or yield or as a replacement for the destruction, damage, or withdrawal of an object belonging to the company assets.

#### Article 661

##### *VI. Admission of new members and sub-participation*

1) Unless otherwise agreed, third parties may be accepted as members only with the consent of all members, and the company relationship may be transferred under the same conditions.

2) If a member is a professional trustee or unilaterally gives a third party an interest in the member's share or assigns the member's share to that third party, the beneficiary or that third party shall not thereby

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<sup>1201</sup> Article 659(5) amended by LGBl. 2010 No. 454.

become a member of the other shares and in particular shall not thereby obtain the right to inspect the company's affairs.

3) The company agreement may determine that the company shares are transferable.

4) To the extent that the claims arising from the company relationship are not transferable, the creation of limited rights *in rem* to those claims and their attachment shall also be excluded.

5) This provision is without prejudice to transfer of the claims to which a member is entitled arising from general management, to the extent that their satisfaction can be demanded before settlement, such as in particular the reimbursement of advances, compensation for expenses and damages, as well as claims to a profit share or to that which the member is entitled to in the settlement.

### *C. Relationship of members to third parties*

#### Article 662

##### *I. Representation*

1) If a member concludes business with a third party for the account of the company but in the member's own name, the member alone shall be entitled and obliged to the third party.

2) If a member concludes business with a third party explicitly or implicitly in the name of the company or all members, the other members shall be entitled and obliged to the third party only to the extent entailed by the provisions on substitution.

3) An authorisation of the individual member to represent the company or all members in relation to third parties shall be presumed as soon as general management is entrusted to the member.

4) A member with power of representation may conclude transactions with that member on behalf of the company or all members, but shall be liable for damages if the member does not exercise the due care of a prudent businessperson.

## *II. Liability*

### Article 663

#### *1. Of the company assets*

1) The company creditors shall be entitled to satisfaction out of the company assets with precedence over the special creditors of the individual members.

2) The creditors of a member may, unless otherwise provided in the company agreement, claim satisfaction only from the liquidation share of their debtor.

3) Unless otherwise provided by law, compulsory execution against the assets of a company without a legal name shall require an enforcement order against all members or general managers.

### Article 664

#### *2. Of the members*

1) To the extent a limitation of liability is not permitted by law and entered in the Commercial Register or the individual creditor has not consented to the limitation of liability, the members of a company shall be jointly and severally liable to third parties for the company's obligations, without limitation and with all their assets.<sup>1202</sup>

2) If the members, together or by proxy, have entered into obligations towards a third party, they shall be jointly and severally liable to that third party, subject to other agreements or provisions.

3) Each member may, at the member's own expense, act as an intervening party in legal action between the other members and third parties.

### Article 665

#### *III. Offset and right of retention*

1) A debtor may not set off a claim of the company with a claim against an individual member.

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<sup>1202</sup> Article 664(1) amended by LGBl. 2013 No. 6.

2) Likewise, a member may not set off a claim by a creditor of that member with a claim the company may have against that creditor.

3) However, where a creditor of the company is also a special debtor of a member, an offset shall be permitted in favour of both the creditor and the member as soon as the creditor may take action against the member.

4) For claims which cannot be set off, the creditor may also not assert a right of retention on objects of the member or the company.

#### *D. Dissolution and exclusion*

##### Article 666

##### *I. In general*

- 1) The company shall be dissolved:
1. if the purpose for which it was concluded is achieved or if the achievement thereof has become impossible;
  2. if a member with unlimited liability dies or, in the case of an entity with a legal name or a legal person, dissolves, and in that case it was not agreed beforehand that the company shall continue to exist with the heirs or other legal successors, unless the company only consisted of two partners;
  3. if the liquidation share of a partner with unlimited liability is subject to compulsory sale or if such a member goes bankrupt or if a custodian has been appointed whose responsibilities include the management of the legal relationships of the company, unless the custodian court orders otherwise in the latter case and if the other members do not exercise their right of exclusion by paying the liquidation share by continuing the company among themselves;<sup>1203</sup>
  4. by company resolution;
  5. by expiry of the period for which the company has been concluded, the occurrence or non-occurrence of a condition, or the like;
  6. by termination on the part of a member, if such termination is reserved in the company agreement or if the company has been concluded for an indefinite duration or for the lifetime of a member; the termination must be made to all other members or, if an undertaking is pursued, to that undertaking;

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<sup>1203</sup> Article 666(1)(3) amended by LGBI. 2010 No. 124.

7. by a court judgment in the event of dissolution on important grounds, such as wilful or grossly negligent failure to fulfil company obligations, impossibility of fulfilling such obligations, bitter enmity between the members, serious insults or malicious slander, lack of lasting profitability of company operations, abuse of the company for private purposes, and the like.

2) On important grounds, a member may resign before the end of the contractual term of the company or, if the company has been concluded for an indefinite duration, without prior notice and with immediate effect, or, where justified by the circumstances, demand dissolution from the judge.

3) The other members may, on important grounds, also exclude another member by a unanimous resolution by paying that member's liquidation share.

4) The action for dissolution must be directed against all other members, even if the company has a legal name.

5) In the event of dissolution on important grounds, the person who has given others cause for dissolution through culpable conduct shall be liable for all damages.

#### Article 667

##### *II. Company of indefinite duration*

1) If the company has been concluded for an indefinite duration or for the lifetime of a member, each member may terminate the contract with six months' notice.

2) However, the termination must be made in good faith and not at an inopportune moment and, where annual accounts are provided for, may be made only effective the end of a financial year.

3) If a company is tacitly continued after the expiry of the period for which it was entered into, it shall be deemed to be renewed for an indefinite period.

#### Article 668

##### *III. Effect of dissolution on general management*

1) If the company is dissolved other than by termination, a member's power of general management, to the extent that it already existed before,

shall nevertheless be deemed to continue in that member's favour until the member is aware of the dissolution or should be aware of it had the member exercised due care.

2) If the company is dissolved by the death of a member, the heir of the deceased member must notify the other members of the death without delay and shall continue in good faith the business to be transacted by the testator until other arrangements have been made.

3) This provision shall apply *mutatis mutandis* to the legal successors when an entity with a legal name or a legal person is dissolved as a member.

4) The other managing members shall continue business in the same manner for the time being.

#### *IV. Termination by a creditor or the insolvency administrator<sup>1204</sup>*

##### Article 669

###### *1. In general*

1) The share of a member in the individual objects belonging to the company assets may not be attached, but the share in the liquidation proceeds and in the profit may be attached.

2) If a creditor of a shareholder has obtained the enforcement of a member's share in the company assets, the creditor may terminate the company, whether it has been concluded for a definite or indefinite period, on three months' notice.

3) Likewise, the insolvency administrator may terminate for a member in respect of whose assets insolvency proceedings have been opened.<sup>1205</sup>

4) As long as the company exists, the creditor or insolvency administrator may not assert the rights of the member arising from the company relationship, with the exception of the share in profits.<sup>1206</sup>

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<sup>1204</sup> Title preceding Article 669 amended by LGBL 2020 No. 369.

<sup>1205</sup> Article 669(3) amended by LGBL 2020 No. 369.

<sup>1206</sup> Article 669(4) amended by LGBL 2020 No. 369.

## Article 670

*2. Effect*

1) The effect of such judicial or extrajudicial termination may, however, be averted at any time, as long as the dissolution is not completed, by the company or by the other members, by satisfying the terminating insolvency administrator or creditor or by excluding the member and paying out the liquidation share to the former and continuing the company among themselves.<sup>1207</sup>

2) In enforcement proceedings, the court may authorise the creditor to undertake all steps to enforce the attached rights of the member in the member's name, in particular to enforce the attached right, as well as individual claims arising from that right in litigation and enforcement proceedings against third parties.

3) In the event of insolvency proceedings of a member, the insolvency administrator is authorised by law to take such measures.<sup>1208</sup>

*V. Liquidation*

## Article 671

*1. In general*

1) After the dissolution of the company, settlement concerning the company assets shall take place among the members.

2) For the completion of pending business, for the necessary entering into of new business, as well as for the maintenance and administration of the company assets, the company shall be deemed to continue.

3) The following provisions shall apply to the settlement, unless the contract provides otherwise or circumstances indicate otherwise.

4) To the extent not otherwise provided by law or the company agreement, a company without legal personality with a legal name may, with the written consent of all members, convert itself into another company with a legal name or a legal person without liquidation, in all cases subject to the rights of third parties arising prior to the conversion.

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<sup>1207</sup> Article 670(1) amended by LGBl. 2022 No. 227.

<sup>1208</sup> Article 670(3) amended by LGBl. 2020 No. 369.

## Article 672

*2. Treatment of contributions*

1) In the event of settlement, which the members have to carry out among themselves after the dissolution, the property items which a member has contributed for the purpose of ownership shall not revert to the member.

2) However, the member shall be entitled to the value for which they were taken over.

3) In the absence of such a valuation, the member's claim shall be based on the value of the property items at the time of their contribution.

4) In the case of an object which has been lost or which has deteriorated by accident and which a member has entrusted to the company for use only, the member may demand compensation on return in accordance with the principles of governing rental or lease agreements.

## Article 673

*3. Reconciliation of debt, division of surplus and deficit<sup>1209</sup>*

1) From the company assets, the joint debts shall first of all be adjusted by including those divided among the members in relation to the creditors, or for which the other members are liable as debtors to a member.

2) If a debt is not yet due or is disputed, the amount necessary for repayment must be deposited or retained.

3) If a surplus remains after deduction of the joint debts, after reimbursement of expenses and uses to individual members and after reimbursement of the asset contributions, it shall be distributed among the members as profit.

4) If, after the debts have been paid off and the expenses and uses have been reimbursed, the joint assets are not sufficient to reimburse the asset contributions made, the members shall bear the shortfall as a loss.

5) In the absence of other provisions, the division shall be carried out in accordance with the provisions on joint ownership and, in addition, in accordance with those on the simple community of rights, unless the law provides for exceptions.

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<sup>1209</sup> In the original edition, this heading was erroneously assigned to Article 674.

## Article 674

*4. Performance of settlement<sup>1210</sup>*

1) Settlement following dissolution of the company must be carried out jointly by all shareholders, including those who were excluded from the general management.

2) If, however, the company agreement referred only to certain individual transactions which a member had to carry out in the member's own name and for the member's own account, then even after dissolution of the company the member must continue to handle these transactions alone, provide information to the other members, and render accounts.

## Article 675

*VI. Liability and period of limitation*

1) The dissolution of the company shall not change obligations towards third parties.

2) Any claims of members among themselves arising from the completed liquidation or from resignation shall be subject to a period of limitation of five years from the end of the liquidation or from the date of resignation or, in the case of members entered in the Commercial Register, from the date of removal therefrom or, if a claim becomes due at a later date, from the date when it becomes due, unless there are undivided company assets from which the member seeks satisfaction; in the latter case, the period of limitation may not be asserted against it.<sup>1211</sup>

3) This article is subject to shorter periods of limitation.

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<sup>1210</sup> In the original edition, this heading was erroneously assigned to Article 673.

<sup>1211</sup> Article 675(2) amended by LGBI. 2013 No. 6.

*E. International choice of law*<sup>1212</sup>Article 676<sup>1213</sup>*I. Domestic companies*

1) Domestic companies shall be deemed those which are organised under domestic law, i.e. which comply with domestic publicity or registration requirements or, if no such requirements exist, which are organised under domestic law or, if no recognisable choice of law has been made, which have their administration or exercise a substantial part of their business operations in Liechtenstein or of which at least half of the members have their place of residence in Liechtenstein. Liechtenstein law shall apply to such companies.

2) This article is subject to provisions on diplomatic protection and the security deposit for procedural costs.

*II. Foreign companies*<sup>1214</sup>Article 677<sup>1215</sup>*1. Legal capacity, capacity to act, and capacity to be a party to legal proceedings of foreign companies*

1) The legal capacity, capacity to act, and capacity to be a party to legal proceedings of foreign companies shall be assessed in accordance with the law of the country under whose provisions they are organised if they comply with the publicity or registration requirements of that law. In the absence of such publicity or registration requirements and in the absence of a recognisable choice of law, the legal capacity, capacity to act, and capacity to be a party of a foreign company shall be governed by the law of the country under which it is organised.

2) Foreign companies may not, however, acquire rights in Liechtenstein to an extent greater than is possible for domestic companies, and they shall be liable for torts to at least the same extent as domestic companies.

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1212 Heading preceding Article 676 amended by LGBL 1997 No. 19.

1213 Article 676 amended by LGBL 1997 No. 19.

1214 Heading preceding Article 677 amended by LGBL 1997 No. 19.

1215 Article 677 amended by LGBL 1997 No. 19.

Article 678<sup>1216</sup>2. *Relocation from abroad to Liechtenstein*

1) A foreign company may subordinate itself to Liechtenstein law without having to establish a new company or transfer its business activities, if it has adapted to Liechtenstein law.

2) When such a company is entered in the Commercial Register, it must be indicated which domestic company form the company entered in the Commercial Register corresponds to.<sup>1217</sup>

## Article 679

F. *Scope of application and reference*

1) The provisions of this Title shall apply to the following company forms, to the extent that no derogation is provided for in the special provisions.

2) In the case of companies, an organisation may be created in the company agreement on the basis of the general provisions on legal persons.

3) Unless otherwise provided by law, the general provisions set out for legal persons shall apply *mutatis mutandis* to companies with legal names, whether or not they are governed by the specific provisions below, to the extent that they concern:<sup>1218</sup>

1. the protection of personality rights;
2. legal capacity, capacity to act, and capacity to be held liable for torts;
3. the legal venue;
4. the entry of branches in the Commercial Register;
5. cessation on grounds of unlawfulness or immorality of the purpose or danger to the State and the appropriation of assets, subsequent liquidation and the enforcement of claims against a dissolved legal person;
6. the power of attorney and signature of the governing bodies and their representatives;
7. the official audit;

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<sup>1216</sup> Article 678 amended by LGBL 1997 No. 19.

<sup>1217</sup> Article 678(2) amended by LGBL 2013 No. 6.

<sup>1218</sup> Article 679(3) amended by LGBL 2014 No. 362.

8. the social policy right to profit; and
9. the provisions on the special forms and types of business (with the exception of the provisions on protected cell companies and on legal persons with a sole member) and on international choice of law.

## Title 8

### Unregistered partnership

#### Article 680

##### *A. Definition*

A company shall be deemed an unregistered partnership under this Title, unless it meets the requirements of another community governed by law.

##### *B. Relationship among partners*

#### Article 681

##### *I. Contributions and ownership*

- 1) Unless otherwise agreed, the partners shall pay equal contributions in the manner and to the extent that the agreed purpose requires.
- 2) Unless otherwise agreed, a partner is not obliged to increase the agreed contributions or to supplement the contribution reduced by loss.
- 3) If fungible or consumable property items are to be contributed, it shall be assumed in case of doubt that they become subject to the joint ownership of the members.
- 4) The same shall apply to other property items if they are to be contributed according to an estimate which is not intended merely for the distribution of profits.

## Article 682

*II. Statement of accounts and distribution of profits*

- 1) A partner may demand the statement of accounts and the distribution of the profit or loss only after dissolution of the company, unless otherwise agreed.
- 2) If the company is of a longer duration, the statement of accounts and distribution of profits must, in case of doubt, be carried out at the end of each financial year.
- 3) The partnership agreement may provide for reserve funds and the like.

## Article 683

*III. Share in profit and loss*

- 1) Each partner shall have, unless otherwise agreed, regardless of the type and size of the partner's contribution, equal share in profit and loss.
- 2) An agreement that individual partners do not receive a share of the profits, but other compensation such as salary, wages, and the like, shall be permissible.
- 3) The profit may not be reduced by arbitrary undervaluation of individual items without the consent of all partners.

*C. Special types*

## Article 684

*I. Participations, corporate groups, and the like*

Forms of organisation (such as participations, communities of interest or corporate groups, associations for advancement or use, and similar groups) shall be subject to the provisions on unregistered partnerships only insofar as they do not have another company form governed by this Act or are not legal persons or the contract in question does not contain derogating or other provisions with regard to the management of the group, withdrawal, participation figures, profit distribution keys, and the like.

## *II. Cartels*

### Article 685

#### *1. Description and admission of partners*

1) Groups of entrepreneurs for the purpose of regulating production or sales by restricting or eliminating competition may, if they present themselves as an unregistered partnership, admit new partners under the same conditions as the existing partners by a majority decision to which two thirds of all partners must agree.

2) Admission under less stringent conditions shall require the consent of all partners.

### Article 686

#### *2. Departure of partners*

1) The resignation of individual partners before the contractual term shall, unless the partnership agreement provides otherwise, be permissible only on important grounds, such as, for example, if the purpose cannot be achieved.

2) If a partner dies or insolvency proceedings are opened in respect of the partner's assets, this does not result in the dissolution of the company.<sup>1219</sup>

3) If a partner leaves the partnership prematurely in any way, other than in the event of dissolution, the remaining partners shall also be entitled to resign after giving three months' notice, unless otherwise provided for in the partnership agreement.

### Article 687

#### *3. Organisation similar to a corporate body*

Where such a group has created an organisation similar to a corporate body, the internal relationship among the partners shall be governed by the provisions applicable to cooperative societies, with the exception of the rules on the joining and resignation of members.

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<sup>1219</sup> Article 686(2) amended by LGBL 2020 No. 369.

## Article 688

*III. Profit participation agreements (profit-sharing transactions)*

Contracts under which one person promises certain performances to another in return for a share of the profits made by another, such as sharecropping agreements, service contracts, contracts for work, publishing contracts, and similar contracts with profit participation, shall be subject to the provisions of the contracts in question or the provisions of contracts in general and, to the extent that there are no derogations in the respect, the provisions on unregistered partnerships shall apply on a supplemental basis to the subsidiary agreement for the company, unless the company is a silent partnership.

## Title 9

**General partnership  
(Open partnership)***A. Definition and formation*

## Article 689

*I. Definition and form*

1) When two or more individuals or legal persons under private or public law or entities with legal names operate an undertaking under a common legal name for a commercial or non-commercial purpose, in the sense that each partner has unlimited personal and joint liability, a general partnership is formed as soon as it is registered as such in the Commercial Register.<sup>1220</sup>

2) The partnership agreement, in which the company is to be described as a general partnership or open partnership or, if it conducts a business in a commercial manner, as an open commercial company, as well as other agreements relating to the partnership agreement and the preliminary contract must be in writing in order to be valid.

3) Before entry in the Commercial Register, the actions of members and their representatives must be assessed in accordance with the provisions governing unregistered partnerships.<sup>1221</sup>

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<sup>1220</sup> Article 689(1) amended by LGBL 2013 No. 6.

<sup>1221</sup> Article 689(3) amended by LGBL 2013 No. 6.

4) If individual members refuse to have the entry made in the Commercial Register without important grounds, despite being requested to do so, this shall constitute grounds for the other members to withdraw.<sup>1222</sup>

5) If assets have been transferred to someone for the purpose of forming a general partnership, that person shall, when in doubt, be subject to the provisions governing the implied trust.

6) These provisions are subject to the provisions on the general partnership with limited liability.

## *II. Register entry*

### Article 690

#### *1. Place, content, and significance*

1) The entry of a general partnership in the Commercial Register shall take place where it has its registered office.<sup>1223</sup>

2) The entry and publication must contain:

1. the surname, first name, status, and place of residence or legal name and registered office of each partner, together with the name of any legal representative or the person acting as governing body,
2. the legal name, the registered office, and the object of the undertaking or purpose of the partnership,
3. information on representation of the partnership.

2a) In the case of general partnerships which do not conduct any business in a commercial manner, announcement of the entry in accordance with Article 956(1) shall suffice.<sup>1224</sup>

3) The registration and entry of the partnership in the correct form and made with the knowledge of the members shall give rise to joint and several liability, without limitation, irrespective of the validity of the partnership agreement.

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<sup>1222</sup> Article 689(4) amended by LGBl. 2013 No. 6.

<sup>1223</sup> Article 690(1) amended by LGBl. 2013 No. 6.

<sup>1224</sup> Article 690(2a) amended by LGBl. 2022 No. 227.

## Article 691

*2. Formal preconditions*

1) Registrations of the facts subject to entry in the Commercial Register or any changes thereto must be submitted to the register authority by all partners in person or through representatives, in signed or certified form.

2) The contents thereof must be entered in the Commercial Register in their entirety.<sup>1225</sup>

*B. Relationship among partners*

## Article 692

*I. Freedom of contract and reference*

1) The legal relationship of the partners with each other shall be based firstly on the partnership agreement.

2) If no arrangement has been made, the provisions governing the unregistered partnership and the joint provisions shall apply, but with the derogations resulting from the following provisions.

## Article 693

*II. Accounting requirements*

1) Repealed<sup>1226</sup>

2) Repealed<sup>1227</sup>

3) Repealed<sup>1228</sup>

4) To the extent the profit is sufficient, each member may be credited with interest according to the amount of that member's capital share, regardless of the reduction of the capital share due to the loss from the balance sheet year, in accordance with the contract, and in the absence of a contractual arrangement at 4%.<sup>1229</sup>

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<sup>1225</sup> Article 691(2) amended by LGBl. 2013 No. 6.

<sup>1226</sup> Article 693(1) repealed by LGBl. 2000 No. 279.

<sup>1227</sup> Article 693(2) repealed by LGBl. 2000 No. 279.

<sup>1228</sup> Article 693(3) repealed by LGBl. 2000 No. 279.

<sup>1229</sup> Article 693(4) amended by LGBl. 2000 No. 279.

5) A contractually fixed fee for the labour of a partner shall be treated as a company debt when determining profit and loss.

#### Article 694

##### *III. Distribution of net profit, receipt of profit and fees*

1) If the statement of accounts of the partnership results in a net profit, it shall be distributed among the partners *per capita*, unless otherwise agreed.

2) Each partner shall have the right to withdraw from the partnership's treasury the fee for the most recent business period and, to the extent possible without reducing the paid-up capital (capital share), the interest and profit shares accruing to that partner.

3) The partner may receive the fee already during the business period in accordance with the due date specified in the contract.

4) Any profits, interest, and fees not received shall be added to the partner's paid-up capital after the end of the business period, unless one of the partners objects.

#### Article 695

##### *IV. Loss cover*

1) If a partner's paid-up capital has been reduced by losses, the partner shall retain the right to receive interest, to the extent possible without further reduction of the paid-up capital, but shall have no claim to a payout of the paid-up capital until the contractual contribution has been replenished.

2) Moreover, no partner shall be obliged to supplement any contribution reduced by losses, or to increase it above the amount specified in the contract.

3) Additional performance obligations may be provided for by contract in the same way as for cooperative societies.

## Article 696

*V. Prohibition of competition*

1) A partner may not, without the consent of the other partners, do business in the partnership's lines of business for the partner's own account or for the account of a third party, nor participate in any other similar undertaking as a partner or member with unlimited liability.

2) If a partner acts contrary to these provisions, the other partners may, without prejudice to the right to dissolve the company in appropriate cases, decide that the claims of the partnership shall be pursued in accordance with the prohibition of competition under the general provisions on legal persons.

3) In addition, the other partners shall be entitled to discontinuation of future competitive actions.

4) Consent to participate in another company shall be deemed to have been given if the other partners are aware at the time of entering into the company that the partner is participating in another company or undertaking, and the abandonment of such participation has not been stipulated.

*C. Relationship of partnership and partners to third parties*

## Article 697

*I. Capacity to hold assets and to institute legal proceedings*

1) The general partnership may, under its legal name, acquire rights and incur obligations, acquire ownership and other rights *in rem* of movables and land, appear before all judicial and administrative authorities and in all proceedings relating thereto as party, intervener, participant, joined party, and in a similar capacity, and obtain entries in public registers such as the Land Register, Commercial Register, Patent Register, and the like.<sup>1230</sup>

2) In disputes involving the partnership, each partner may, at the partner's own expense, act as an intervening party in the dispute, but not as a witness.

3) Oaths, affirmations, and the like on behalf of the partnership shall be made by the managing or representing partners or third parties in the same way as a party.

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<sup>1230</sup> Article 697(1) amended by LGBI. 2013 No. 6.

4) To the extent that a decision issued against the partnership is also binding on a partner, the partner shall be entitled to raise the objection of *res judicata* to later proceedings or a later decision.

## *II. Relationships of representation*

### Article 698

#### *1. Power of representation*

1) Each partner authorised to represent the partnership shall be authorised to perform in the name of the partnership all types of legal acts and transactions which may be required for the purpose of the partnership, but not to amend the partnership agreement, sell the business as a whole, or the like.

2) Unless the Commercial Register contains provisions to the contrary concerning the power of representation of the individual partners, *bona fide* third parties shall be entitled to assume that each individual partner is authorised to represent the partnership.<sup>1231</sup>

3) If the knowledge of facts is involved, as in the case of good or bad faith, the knowledge of a single partner shall be sufficient.

4) Where an entity with a legal name or a legal person represents the general partnership as a partner, representation shall be exercised by those persons who are entitled to represent the legal person or entity with a legal name concerned.

5) If a declaration of intent, such as a summons or other service of documents and the like is to be made to the partnership, it shall be sufficient to make it to one of the partners or persons with registered power of attorney authorised to participate in the representation.

### Article 699

#### *2. Exclusion and limitation*

1) Through the partnership agreement and the entry in the Commercial Register, all partners may be excluded from representation and third parties may be entrusted with such representation in accordance

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<sup>1231</sup> Article 698(2) amended by LGBI. 2013 No. 6.

with provisions governing general management in the limited liability company.<sup>1232</sup>

2) A limitation of the scope of the power of representation shall have no legal effect on *bona fide* third parties if such limitation has not been entered in the Commercial Register; legal persons or entities with legal names in which the general partnership is a member shall also be considered third parties.

3) The following limitations may be entered in the Commercial Register: that a partner may represent only the primary place of business or a branch; that only several partners together (joint representation) may sign jointly under the legal name, or a partner together with a person with registered power of attorney, who in such case is, however, authorised by law to engage in the sale and encumbrance of land; or that all partners are excluded from representation and that third parties are entrusted with general management and representation in accordance with the provisions governing the administration of a company with legal personality.<sup>1233</sup>

4) Anyone whose power of representation is limited to the primary place of business or branch must, in order for this limitation to be effective, express this limitation to *bona fide* third parties when signing documents, such as by adding "for the primary place of business" or "for the branch", stating the registered office.

#### Article 700

##### 3. *Withdrawal of power of representation*

1) If danger is imminent, the judge may, on application by a partner, provisionally declare the withdrawal of power of representation in summary proceedings, setting a deadline for bringing an action, failure to comply with which shall result in the lapse of the provisional withdrawal of general management, as soon as important grounds for doing so are demonstrated.

2) The judge may make the ruling conditional on the provision of a security to which the provisions governing security deposits for the costs of litigation shall apply *mutatis mutandis*.

3) Conversely, the judge may appoint a legal advisor on a provisional basis in the same way as for legal persons.

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<sup>1232</sup> Article 699(1) amended by LGBl. 2013 No. 6.

<sup>1233</sup> Article 699(3) amended by LGBl. 2013 No. 6.

- 4) This article is subject to claims for damages.

#### Article 701

##### *4. Grant and revocation of registered power of attorney*

1) The appointment of a person with registered power of attorney shall require the consent of all partners authorised to represent the partnership.

2) If danger is imminent, or if there are other important grounds, the judge may also appoint a person with registered power of attorney on the application of a single partner.

3) The revocation of the registered power of attorney, on the other hand, may be done by any partner with effect against third parties.

4) Any managing partner may grant authorised agency or revoke it, as well as hire or dismiss service providers.

#### Article 702

##### *5. Transactions and torts*

1) The partnership shall be entitled and obliged by the legal transactions which a partner authorised to represent it concludes in its name.

2) It shall be irrelevant whether the transaction has been expressly concluded in the name of the partnership or whether this intention is apparent from the circumstances.

3) The partnership shall be liable for unlawful acts committed by the partners in the exercise of their business representation.

4) For damages resulting from torts, the representative acting on a personal basis and the partnership shall be jointly and severally liable, subject to the right of recourse against the partner or third party which caused the damage.

*III. Legal status of the creditors to the partnership*

## Article 703

*1. Insolvency proceedings of the partnership<sup>1234</sup>*

1) The creditors of the general partnership shall be entitled to be satisfied out of the assets of the undertaking before the special creditors of the partners and, for the purpose of enforcing this preferential right, may also apply for insolvency proceedings in respect of the assets of the partnership under the Insolvency Act.<sup>1235</sup>

2) The special creditors of the individual partners shall be excluded from participation in the insolvency proceedings of the partnership, with the exception of interest which, in the absence of any other contractual arrangement, should have accrued to the partner.<sup>1236</sup>

3) The general partners may not participate as creditors in the insolvency proceedings of the partnership for their capital contributions, but may, like other creditors, claim those receivables to which they are entitled under any other title against the partnership, such as interest and the like.<sup>1237</sup>

## Article 704

*2. Liability of partners*

1) The partners shall be jointly and severally liable for all obligations of the partnership and with all their assets; any arrangement to the contrary among the partners shall have no legal effect in relation to third parties.

2) The individual partner may, however, be held personally liable for debts of the partnership that have become due, even if the partner has left the partnership, only once the partnership is dissolved as a result of bankruptcy proceedings or for any other reason, or if compulsory execution is unsuccessfully attempted, or if insolvency proceedings have been opened in respect of the partner's assets.<sup>1238</sup>

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<sup>1234</sup> Article 703 heading amended by LGBl. 2020 No. 369.

<sup>1235</sup> Article 703(1) amended by LGBl. 2022 No. 227.

<sup>1236</sup> Article 703(2) amended by LGBl. 2020 No. 369.

<sup>1237</sup> Article 703(3) amended by LGBl. 2020 No. 369.

<sup>1238</sup> Article 704(2) amended by LGBl. 2020 No. 369.

3) In this case, the partner may also assert the objections to which the partnership is entitled, subject to the case where a partner provides security such as a guarantee or pledge.

4) The partners as such shall not have liability for bill debts of the partnership and equivalent obligations.

*3. Relationship among insolvency proceedings and compulsory executions<sup>1239</sup>*

Article 705

*a) In general*

1) The opening of the insolvency proceedings of the partnership does not automatically result in the bankruptcy of the individual partners.<sup>1240</sup>

2) Similarly, the insolvency proceedings of a partner do not entail insolvency proceedings of the partnership.<sup>1241</sup>

3) In the case of an enforceable debt instrument against the partnership, compulsory execution against a partner shall take place only if the conditions of personal liability as set out in the second paragraph of the preceding article are met.

4) Repealed<sup>1242</sup>

Article 706

*b) Compulsory execution in particular*

1) By means of an enforceable debt instrument obtained against the partnership, compulsory execution against the assets of a partner may be demanded, subject to challenge in compulsory execution proceedings where the conditions of personal enforceability are met, if it is proven to the Court of Justice in the application for execution by presentation of an extract from the Commercial Register that the person against whom execution is demanded during the existence of the partnership is currently still a partner.<sup>1243</sup>

<sup>1239</sup> Title preceding Article 705 amended by LGBL 2020 No. 369.

<sup>1240</sup> Article 705(1) amended by LGBL 2020 No. 369.

<sup>1241</sup> Article 705(2) amended by LGBL 2020 No. 369.

<sup>1242</sup> Article 705(4) repealed by LGBL 2020 No. 369.

<sup>1243</sup> Article 706(1) amended by LGBL 2013 No. 6.

2) If execution on the basis of such an instrument is applied for only after the dissolution and distribution of the assets of the partnership against a partner who has already left or been excluded from the partnership, the decision on the application for execution must be preceded by a hearing of the obligor.

3) If the obligor denies current or previous membership in the partnership against which execution was obtained, or if the obligor raises objections to which the obligor or the partnership is otherwise entitled against the creditor, the claim must be asserted by means of legal action, subject to the provision on enforceability of the liability of partners.

#### Article 707

##### *c) Position of the creditors of the partnership*

1) After dissolution of the partnership, the partnership's creditors may assert against each partner all their claims against the partnership to which they are entitled until they are fully covered; the provision set out in the preceding article shall apply *mutatis mutandis*.

2) Even if the partnership is not dissolved, they may also file all their claims in the insolvency proceedings of a partner.<sup>1244</sup>

3) If, however, insolvency proceedings are opened at the same time in respect of the assets of a partnership and of one or more participants therein, the creditors of the partnership shall, in the insolvency proceedings of each partner, be entitled only to the share of the claim remaining, for whatever reason, in the insolvency proceedings of the partnership, as soon as the dividend of the partnership insolvency proceedings has been determined.<sup>1245</sup>

4) If the insolvency proceedings of the partner are carried out first, the amount attributable to the creditors of the partnership must be deposited until the insolvency proceedings of the partner are carried out.<sup>1246</sup>

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<sup>1244</sup> Article 707(2) amended by LGBL 2020 No. 369.

<sup>1245</sup> Article 707(3) amended by LGBL 2020 No. 369.

<sup>1246</sup> Article 707(4) amended by LGBL 2020 No. 369.

## Article 708

*IV. Liability of new partners*

1) Anyone who joins an existing general partnership as a general partner shall be jointly and severally liable for the obligations entered into before joining, whether or not the legal name changes.

2) Any arrangement to the contrary shall have no legal effect in relation to third parties.

## Article 709

*V. Legal status of special creditors of a partner*

1) The special creditors of a partner shall not be entitled to make use of the property items, receivables, or rights belonging to the partnership assets for their satisfaction or security.

2) In the event of compulsory execution proceedings or insolvency proceedings, they may claim only that which is due to their debtor in terms of profit, interest and fees, and liquidation share from the company relationship.<sup>1247</sup>

*D. Dissolution*

## Article 710

*I. Dissolution through bankruptcy*

1) The general partnership shall also be dissolved upon opening of bankruptcy proceedings in respect of its assets.<sup>1248</sup>

2) Even after dissolution of the general partnership, insolvency proceedings in respect of its assets shall be permissible as long as the distribution is not completed.<sup>1249</sup>

3) As soon as the insolvency proceedings have been opened in respect of the partnership's assets, compulsory execution may no longer be brought against the partnership, but it may be brought against its partners.<sup>1250</sup>

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<sup>1247</sup> Article 709(2) amended by LGBL 2020 No. 369.

<sup>1248</sup> Article 710(1) amended by LGBL 2020 No. 369.

<sup>1249</sup> Article 710(2) amended by LGBL 2020 No. 369.

<sup>1250</sup> Article 710(3) amended by LGBL 2020 No. 369.

4) If the partnership has been dissolved by the opening of bankruptcy proceedings in respect of its assets, but the bankruptcy proceedings have been suspended following the conclusion of a recovery plan or with the consent of the creditors, the partners may decide to continue the partnership as long as the liquidation has not been completed.<sup>1251</sup>

5) The continuation must be registered by all partners for entry in the Commercial Register.<sup>1252</sup>

#### Article 711

##### *II. Termination by special creditors*

1) If insolvency proceedings have been opened in respect of a partner's assets, the insolvency administrator may, after giving at least six months' notice, demand the dissolution of the partnership, whether the partnership has been entered into for a definite or indefinite duration.<sup>1253</sup>

2) A special creditor of a partner may, without regard to whether the partnership has been entered into for a definite or indefinite duration, terminate six months before the end of the financial year with effect for that date, after a compulsory execution against the movable property of the partner has been attempted without success within the last six months and if the special creditor has obtained, on the basis of a title enforceable to satisfaction, execution of the claim to that which the partner is entitled in the settlement.

3) This shall be subject to the effects of a termination by the special creditor or the insolvency administrator in accordance with the joint provisions.<sup>1254</sup>

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<sup>1251</sup> Article 710(4) amended by LGBL 2020 No. 369.

<sup>1252</sup> Article 710(5) amended by LGBL 2013 No. 6.

<sup>1253</sup> Article 711(1) amended by LGBL 2020 No. 369.

<sup>1254</sup> Article 711(3) amended by LGBL 2020 No. 369.

*III. Departure of partners*

## Article 712

*1. On the basis of agreements*

1) The partners may agree in advance that the partnership shall not be dissolved if the reason for dissolution does not affect all partners but only one or some of them.

2) In this case, the partners concerned shall leave the partnership, while the partnership shall be continued among the others and shall continue to exist with all its rights and obligations.

## Article 713

*2. Exclusion*

1) If the reasons for which the dissolution of the partnership may be demanded are mainly related to the identity of certain partners, their exclusion may be recognised, provided that all other partners so request (expulsion).

2) If a partner goes bankrupt or is terminated by a special creditor, the other partners may decide to exclude that partner and pay that partner the partner's share of the partnership assets.

3) If there are only two partners, the one who did not give cause for dissolution may, under the same conditions, be granted severance, and the business, with assets and liabilities, may be taken over by the other without liquidation.

4) The judge may order the same if dissolution is demanded for another reason mainly related to the identity (legal name) of certain partners.

5) Upon the departure of the other partner, the remaining partners shall automatically be considered to be entitled to the assets of the partnership, without a transfer of ownership or the like appearing necessary.

## Article 714

*3. Determination of severance*

1) The severance for a partner who has left or been excluded, which represents the value of that partner's share of the partnership assets, shall be determined by agreement.

2) If the parties are unable to agree on the amount, the judge shall have discretion to decide on the amount according to the financial situation at the time of the departure.

3) In no case shall the partner who has left or been excluded have the right to a proportional share of the individual assets.

4) For the severance, the partner shall be the creditor in the insolvency proceedings of the partnership with regard to the company liabilities incurred after that partner's departure.<sup>1255</sup>

#### *4. Continuation with heirs or legal successors*

##### Article 715

###### *a) In general*

1) If the partnership agreement stipulates that in the event of the death of a partner the partnership is to be continued with that partner's heirs, each heir may make their remaining in the partnership dependent on being granted the status of a limited partner, leaving the previous share of profit unchanged, and the part of the testator's contribution falling to the heir being recognised as the heir's limited partnership contribution.

2) If the other partners do not accept a request to this effect from the heir, the heir shall be entitled to leave the partnership without notice.

3) The heir may assert the rights referred to above only within a period of limitation of three months after the date on which the heir became aware of the accrual of the inheritance.

4) If the right to disclaim the inheritance has not lapsed after three months, the period of limitation shall not end before the expiry of the period for disclaiming the inheritance.

5) A note in the Commercial Register may be used to indicate the heir's right to choose.<sup>1256</sup>

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<sup>1255</sup> Article 714(4) amended by LGBl. 2020 No. 369.

<sup>1256</sup> Article 715(5) amended by LGBl. 2013 No. 6.

## Article 716

*b) Liability of the heir and mandatory law*

1) If the heir leaves the partnership within the aforementioned period or if the partnership is dissolved within the period or if the heir is granted the status of a limited partner and is registered as such in the Commercial Register in accordance with the provisions governing limited partnerships, the heir shall be liable for the debts of the partnership incurred up to that time only in accordance with the provisions governing the heirs' liability for the obligations of the estate.<sup>1257</sup>

2) The partnership agreement may not exclude the application of the provisions of the preceding paragraph and the preceding article.

3) However, if the heir makes remaining in the partnership dependent on being granted the status of a limited partner, the heir's share of the profit may be determined differently from that of the testator.

## Article 717

*c) Universal succession for undertakings or legal persons*

1) The provisions on continuation with the heirs shall apply *mutatis mutandis* to the universal successor of a dissolved undertaking or legal person if that undertaking or legal person has been a partner.

2) If the partnership agreement contains a provision on continuation with the heirs, it shall be assumed that this provision also applies to these universal successors.

## Article 718

*IV. Entry in the Commercial Register*

1) The dissolution of the partnership, the departure or expulsion of a partner, as well as the continuation of the business by a single partner or with the heirs must be entered in the Commercial Register.<sup>1258</sup>

2) The general managers must notify this to the Office of Justice as soon as possible.<sup>1259</sup>

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<sup>1257</sup> Article 716(1) amended by LGBL 2013 No. 6.

<sup>1258</sup> Article 718(1) amended by LGBL 2013 No. 6.

<sup>1259</sup> Article 718(2) amended by LGBL 2013 No. 6.

3) Entry in the Commercial Register must be made even if the partnership is terminated by the expiry of the period for which it was entered into.

*E. Liquidation and period of limitation on claims*

*I. Liquidation*

Article 719

*1. In general*

1) After the dissolution of the company, its liquidation shall be carried out in accordance with the following provisions, unless another form of settlement has been agreed by the partners or insolvency proceedings have been opened in respect of the assets of the partnership.<sup>1260</sup>

2) If the partnership is dissolved by termination of a special creditor or following the opening of insolvency proceedings in respect of the assets of a partner, without the partner having been excluded, liquidation may be refrained from only with the consent of its creditor or the insolvency administrator.<sup>1261</sup>

3) If assets remain after the insolvency proceedings have concluded, they must also be liquidated, unless continuation of the partnership has been decided.<sup>1262</sup>

4) Notwithstanding the dissolution of the partnership, the other provisions of this Title, in particular those relating to legal venue and the standing of the liquidators, shall apply to the legal relationship among the partners and of the partnership with third parties until the end of the liquidation, to the extent that no derogations arise from the following provisions on liquidation and the nature thereof.

5) However, liquidation may be refrained from if there are no assets of the partnership and the contributions have already been paid in full by the partners.

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<sup>1260</sup> Article 719(1) amended by LGBl. 2020 No. 369.

<sup>1261</sup> Article 719(2) amended by LGBl. 2020 No. 369.

<sup>1262</sup> Article 719(3) amended by LGBl. 2020 No. 369.

## *2. Appointment and dismissal of liquidators*

### Article 720

#### *a) In general*

1) The partners authorised for general management and representation shall continue their activities as liquidators even in the event of liquidation, unless otherwise provided for by resolution of the partners or in the partnership agreement, or unless an obstacle has arisen with respect to their person.

2) They shall continue to represent the partnership in relation to the insolvency administrator and in particular shall provide the latter with the necessary information.<sup>1263</sup>

3) On the application of partners, the collecting special creditor, or the insolvency administrator of a partner in respect of whose assets insolvency proceedings have been opened, the court shall, on important grounds, and after hearing the parties, unless they can otherwise agree, appoint the liquidators, who need not be partners, or recall the appointed liquidators and replace them by others in special non-contentious proceedings.<sup>1264</sup>

4) Court-appointed liquidators may be dismissed only by the court.

### Article 721

#### *b) Entry in the Commercial Register*

1) The surname, first name, and place of residence or legal name and registered office of the liquidators, as well as any change in the identities of the liquidators or in their power of representation, shall be registered for entry in the Commercial Register jointly by all partners, even if the previous representation of the partnership is not changed.<sup>1265</sup>

2) In the event of the death of a partner, if it is assumed that the registration corresponds to the facts, entry in the Commercial Register may be made without the heirs participating in the registration, to the extent that there are special obstacles to such participation.

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<sup>1263</sup> Article 720(2) amended by LGBL 2020 No. 369.

<sup>1264</sup> Article 720(3) amended by LGBL 2020 No. 369.

<sup>1265</sup> Article 721(1) amended by LGBL 2013 No. 6.

3) The same shall apply if, on dissolution of an undertaking or legal person which is a partner, the universal successor<sup>1266</sup> or the liquidators or the insolvency administrator are prevented from registration.<sup>1267</sup>

4) Entry in the Commercial Register of court-appointed liquidators, as well as entry of the dismissal of liquidators by the court, shall be *ex officio*.

5) The liquidators shall sign the legal name of the partnership in liquidation together with their signature for retention at the Office of Justice or submit it in certified form.<sup>1268</sup>

#### Article 722

##### *3. Representation of heirs and universal successors*

1) The heirs of a partner must appoint a joint representative for the purpose of liquidation and, if for any reason this does not occur despite a demand by the partnership to do so, the joint representative may be appointed and registered by the Office of Justice in administrative proceedings on application of the partnership or of one of the heirs.<sup>1269</sup>

2) The same provision shall apply *mutatis mutandis* to several universal successors of legal persons or companies with legal names.

##### *4. Scope of business activity and signing authority*

#### Article 723

##### *a) In general*

1) The liquidators must terminate the current business, fulfil the obligations of the dissolved partnership, collect the receivables, and realise the assets of the partnership, to the extent required by the liquidation.

2) The sale of the business in whole or of land may not be done without the consent of all partners other than by public auction, unless, upon

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<sup>1266</sup> This should read "Gesamtrechtsnachfolger" instead of "Gesamtnachfolger" in the German original.

<sup>1267</sup> Article 721(3) amended by LGBl. 2020 No. 369.

<sup>1268</sup> Article 721(5) amended by LGBl. 2013 No. 6.

<sup>1269</sup> Article 722(1) amended by LGBl. 2013 No. 6.

request of a partner, the Office of Justice authorises the sale in another way in administrative proceedings.<sup>1270</sup>

3) If the partnership has claims against a partner (such as claims for damages), both the liquidators and the individual partners may bring legal action for performance on the liquidation assets.

4) The liquidators must draw up a balance sheet at the beginning and at the end of the liquidation and, if the liquidation lasts for a longer period, annually for the purpose of determining the assets.

#### Article 724

##### *b) Relations with third parties*

1) The liquidators shall represent the partnership in the actions involved in the liquidation, may litigate on its behalf, enter into settlements and arbitration agreements, shall take oaths, affirmations, or the like on its behalf and, to the extent required by the liquidation, may also enter into new business, but may not appoint representatives with more extensive powers than they have themselves.

2) A transaction concluded by the liquidators shall be binding on third parties unless it is proved to the third party that the third party was not acting in good faith with regard to the liquidators' power of representation.

3) The liquidators must sign in such a way that they add their name or legal name to the former legal name of the partnership, which must be designated as the partnership in liquidation.

#### Article 725

##### *c) Several liquidators*

1) If there are several liquidators, they may only act jointly in the liquidation, unless it is determined by partners or the Office of Justice in administrative proceedings that they may act individually, but such determination must then be entered in the Commercial Register.<sup>1271</sup>

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<sup>1270</sup> Article 723(2) amended by LGBl. 2013 No. 6.

<sup>1271</sup> Article 725(1) amended by LGBl. 2013 No. 6.

2) The provision of the preceding paragraph shall not preclude the liquidators from authorising certain of them to carry out certain transactions or certain types of transaction.

3) If a declaration of intent is to be made to the partnership, such as summonses or other service of documents, it shall suffice to make it to one of the liquidators authorised to participate in the liquidation.

#### Article 726

##### *5. Use of assets*

1) The funds not needed during the liquidation shall be provisionally distributed among the partners.

2) To cover liabilities which are not yet due or which are in dispute, the necessary funds shall be retained, but during the liquidation the receipt of profit by a partner shall be excluded.

#### Article 727

##### *6. Distribution*

1) The assets remaining after the repayment of debts or the securing of obligations that have not yet fallen due or are in dispute shall first be used to repay the capital to the partners according to the liquidation balance sheet and then to pay interest for the liquidation period.

2) However, any surplus exceeding that amount must first be used to pay interest on the capital contributions and then distributed as profit in accordance with the provisions of the partnership agreement and, in the absence thereof, equally among all partners.

3) If a surplus remains after the above uses, it must be distributed among the partners in accordance with the provisions governing profit participation.

4) Disputes among the partners about the settlement shall be subject to decision by the court, and distribution may be suspended until the dispute has been resolved.

## Article 728

*7. Removal and safekeeping of books and documents*

1) Upon completion of the liquidation, the lapse of the legal name must be registered by the liquidators with the Commercial Register.<sup>1272</sup>

2) The account books and business documents of the liquidated company shall be kept for ten years at the expense of the liquidation assets upon completion of the liquidation in a place to be designated by the partners or by the register authority in administrative proceedings, in accordance with Article 1059.<sup>1273</sup>

3) The partners and their heirs or other universal successors shall retain the right to inspect the account books and business documents, which may if necessary be enforced in administrative proceedings at the Office of Justice.<sup>1274</sup>

4) In bankruptcy proceedings and in recovery proceedings without self-administration, the insolvency administrator must ensure the safekeeping of account books and business documents at the expense of the estate.<sup>1275</sup>

*II. Period of limitation for legal action against partners*

## Article 729

*1. Object and period of limitation*

1) Legal actions against a partner arising from claims against the partnership shall be subject to a period of limitation of five years from the date of entry of the dissolution of the partnership in the Commercial Register or the notice of the opening of insolvency proceedings in respect of the partnership or the partner's exit from the partnership, unless a shorter period of limitation applies due to the nature of the claim.<sup>1276</sup>

2) If the claim becomes due only after the entry in the Commercial Register, the period of limitation shall begin on the date the claim becomes due.

<sup>1272</sup> Article 728(1) amended by LGBl. 2013 No. 6.

<sup>1273</sup> Article 728(2) amended by LGBl. 2007 No. 38.

<sup>1274</sup> Article 728(3) amended by LGBl. 2013 No. 6.

<sup>1275</sup> Article 728(4) amended by LGBl. 2020 No. 369.

<sup>1276</sup> Article 729(1) amended by LGBl. 2020 No. 369.

3) This period of limitation shall not apply to claims among the partners.

#### Article 730

##### *2. Exclusion, tolling, and effect*

1) If undivided partnership assets still exist, the five-year period of limitation may not be asserted against the creditor seeking satisfaction only from those assets.

2) If the business is transferred with its assets and liabilities to a partner as undivided partnership assets, the partner may not assert the five-year period of limitation against the creditors.

3) The period of limitation for the benefit of a partner who has left the partnership shall not be tolled by legal actions taken against the continuing partnership or another partner.

4) Before the expiry of the period of limitation, a partner who has left the partnership shall be released from liability for the partnership's debts only if the creditors have expressly released the partner or if such release can be inferred from the circumstances.

#### Article 731

##### *III. Dissolution without liquidation*

If, prior to dissolution of the partnership, the business is taken over with its assets and liabilities by one or more partners, the provisions governing the departure of members shall be applied with regard to enforcement and the period of limitation for the liability of the other partners.

#### Article 732

##### *F. Conversion*

1) If a limited partner joins an existing general partnership or a previous general partner becomes a limited partner, the partnership shall be entered in the Commercial Register as a limited partnership.

2) It shall not be necessary to take over the assets and liabilities of newly arising limited partnerships.

3) The previous general partner who becomes a limited partner may, from the date of entry of the limited partnership, be held liable for the existing debts of the general partnership as if the general partner had left the partnership.

## Title 10

### Limited partnership

#### *A. Definition and formation*

##### Article 733

###### *I. Commercial and non-commercial partnership*

1) A limited partnership shall be formed when two or more persons, entities with legal names, legal persons under private or public law, such as polities, join together as partners under a common legal name to operate a commercial business, manufacturing business, or other business conducted in a commercial manner or for other purposes by means of a written contract in such a way that at least one member as a general partner has unlimited liability, but one or more members as limited partners are liable only up to a certain maximum amount, referred to as the limited liability amount, and have themselves entered in the Commercial Register as a limited partnership.<sup>1277</sup>

2) By ordinance, the Government may, where justified by special circumstances, prescribe a minimum for the limited liability amount and the consequences of breaching this provision.

3) To the extent not otherwise provided in this Title, the limited partnership shall be subject to the provisions on the general partnership, such as those relating to capacity to hold assets and to institute legal proceedings, the status of partners, and the like.

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<sup>1277</sup> Article 733(1) amended by LGBL 2013 No. 6.

*II. Entry in the Commercial Register*<sup>1278</sup>

## Article 734

*1. Place, content, and announcement*

1) The entry of a limited partnership in the Commercial Register must take place where it has its registered office.<sup>1279</sup>

2) The entry must contain:

1. the surname, first name, status, and place of residence or legal name and registered office of each partner with unlimited liability,
2. the name, status, and place of residence or legal name and registered office of each limited partner and that partner's limited liability amount,
3. the legal name, registered office, object of the undertaking or purpose of the partnership,
4. information on limitation of representation.

3) If a limited partnership contribution is not made in cash, this must be expressly stated in the Commercial Register and included in the entry, together with a specific measurement.<sup>1280</sup>

4) Only the number of limited partners shall be stated when announcing the entry in the Commercial Register; the name, status, and place of residence or legal name and registered office of the limited partners, as well as their limited liability amount, shall not be published unless specifically requested.

5) These provisions shall apply in the event of a limited partner joining an existing registered company without legal personality and in the event of a limited partner leaving a limited partnership.

## Article 735

*2. Formal requirements*

1) Registrations of the facts subject to entry in the Commercial Register or any changes thereto must be submitted to the register

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<sup>1278</sup> Heading preceding Article 734 amended by LGBl. 2013 No. 6.

<sup>1279</sup> Article 734(1) amended by LGBl. 2013 No. 6.

<sup>1280</sup> Article 734(3) amended by LGBl. 2013 No. 6.

authority by all partners in person, including limited partners, in signed or certified form.

2) The contents thereof must be entered in the Commercial Register in their entirety.<sup>1281</sup>

3) The partners with unlimited liability who are to be entitled to represent the partnership must sign the legal name together with their own name in person before the register authority or submit the signature in certified form.

#### Article 736

##### *III. Several partners with unlimited liability*

If there are several partners with unlimited liability in a limited partnership, they shall be subject to the provisions governing general partnerships.

##### *B. Relationship among partners*

#### Article 737

##### *I. Freedom of contract*

1) The legal relationship of the partners with each other shall be based firstly on the partnership agreement.

2) If no arrangement has been made, the provisions governing general partnerships shall apply, but with the derogations resulting from the following provisions, and the limited partners shall be treated the same as the partners with unlimited liability, except that their liability shall be limited to the limited liability amount.

3) For the limited partners, the prohibition of competition shall apply only if provided for in the partnership agreement.

4) A limited partner may have only one limited partnership contribution at the same company, which may increase or decrease.

5) If the limited partner also serves as trustee for the limited partnership, that limited partner may issue trust certificates as negotiable securities in favour of third parties.

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<sup>1281</sup> Article 735(2) amended by LGBI. 2013 No. 6.

## Article 738

*II. General management*

1) General management shall be the joint responsibility of the partners with unlimited liability, to the extent that the partnership agreement does not assign it to individual partners with unlimited liability or the limited partners or to third parties.

2) Limited partners as such shall be neither entitled nor obliged to manage the business of the partnership.

3) They shall also not be authorised to object to the performance of an act of the general management, unless the act exceeds ordinary business operations.

4) They shall be entitled to demand a copy of the balance sheet and the profit and loss account and to examine the correctness thereof by inspecting the account books and business documents or to have such correctness examined by an uninvolved expert.

5) These rights may be enforced before a judge in special non-contentious proceedings after the general managers have been heard.<sup>1282</sup>

## Article 739

*III. Share in profit and loss*

1) A limited partner shall participate in the loss only up to the amount of that limited partner's paid-up contribution or contribution in arrears.

2) The interest and profit accruing to a limited partner shall be attributed to that limited partner's capital share as long as that capital share does not reach the stipulated contribution amount, after which it shall constitute a creditor's claim.

3) If, however, the limited partnership contribution is lost in whole or in part through the fault of the general partner, the general partner shall be liable to the limited partner for compensation.

4) In all other respects, in the absence of special arrangements, the amount of the limited partner's participation in profit and loss shall be decided at the discretion of the court.

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<sup>1282</sup> Article 738(5) amended by LGBI. 2010 No. 454.

*C. Relationship of the company and of the partners to third parties*

Article 740

*I. Representation*

- 1) The limited partnership shall be represented by the partner or partners with unlimited liability, unless otherwise agreed.
- 2) The power of representation shall be based on the provisions governing general partnerships.

*II. Liability relationships*

Article 741

*1. Cases of unlimited liability*

- 1) A limited partner who enters into transactions for the partnership without being appointed for that purpose according to the entry in the Commercial Register or without expressly declaring that that limited partner acts only as a limited partner, person with registered power of attorney, or authorised person, shall be liable to third parties from these transactions to third parties in good faith in the same way as a general partner.<sup>1283</sup>
- 2) Each limited partner shall be liable for the obligations of the partnership to third parties entered into prior to entry in the Commercial Register in the same way as an unregistered partner, unless the limited partner proves that the third parties were aware of the limited partner's limited participation in the partnership.
- 3) A limited partner whose name appears in the legal name of the partnership shall be liable to the creditors of the partnership in the same way as a general partner, unless the limited partner's name is identical to that of the general partner or the Office of Justice has granted an exception for the formation of the legal name.<sup>1284</sup>

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<sup>1283</sup> Article 741(1) amended by LGBL 2013 No. 6.

<sup>1284</sup> Article 741(3) amended by LGBL 2013 No. 6.

*2. Liability arising from the limited partnership*

Article 742

*a) Scope of liability*

1) A limited partner shall be liable to third parties with the limited liability amount entered in the Commercial Register.<sup>1285</sup>

2) Where a limited partner has personally, by circular or in any other way, announced an amount higher than the limited partnership contribution to third parties, or if the partnership has with the knowledge of that limited partner made such an announcement, then the limited partner shall be liable with that amount.

3) The measurement of non-cash contributions entered in the Commercial Register shall be subject to the creditors' objection that the measurement does not correspond to the actual value of the contribution when it was contributed.

Article 743

*b) Enforcement of liability*

1) For the duration of the limited partnership, its creditors shall have no direct right of action against the limited partner.

2) If the partnership is dissolved other than by bankruptcy, the creditors shall have a direct right of action against the limited partner only to the extent that the limited liability amount has either not yet been lodged or has been withdrawn.

3) If the partnership is dissolved, its creditors may demand only that the limited liability amount, to the extent it has not yet been lodged or has been withdrawn, be surrendered to the estate or liquidated.

Article 744

*c) Reduction of liability*

1) If the limited partner reduces the limited liability amount entered in the Commercial Register or announced in any other way by agreement with the other partners or by withdrawals from the partnership assets, this

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<sup>1285</sup> Article 742(1) amended by LGBI. 2013 No. 6.

change shall become effective in relation to third parties only when it has been entered in the Commercial Register and published.<sup>1286</sup>

2) The unreduced limited liability amount shall remain liable for obligations entered into before such announcement.

#### Article 745

##### *d) Reduction due to loss*

1) If a limited partner has acted as managing director of the partnership, any reduction in the limited liability amount must be entered in the Commercial Register within six months of the end of the financial year, but need not be published.<sup>1287</sup>

2) If no such entry is made, the managing limited partner shall be liable for the further obligations of the partnership that the managing limited partner has entered into after the expiry of the six months, up to the unreduced limited liability amount, even if the managing limited partner has fully paid up such limited liability, unless the managing limited partner demonstrates lack of awareness of the loss or lack of receipt of the balance sheet.

3) The limited partner shall be entitled to register the reduced limited liability amount with the Commercial Register on the limited partner's own initiative.<sup>1288</sup>

4) In this case, the general management shall be responsible for sending a copy of the balance sheet and profit and loss account to such a limited partner on its own initiative, otherwise the general management shall be liable to the *bona fide* third party and the limited partner for damages up to the reduced limited liability amount, without prejudice to any further liability as partner.

#### Article 746

##### *3. Liability of the partner with unlimited liability*

The partner with unlimited liability may be held personally liable for a debt of the partnership only if the partnership has been dissolved or a compulsory execution has been unsuccessfully attempted against it.

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<sup>1286</sup> Article 744(1) amended by LGBL 2013 No. 6.

<sup>1287</sup> Article 745(1) amended by LGBL 2013 No. 6.

<sup>1288</sup> Article 745(3) amended by LGBL 2013 No. 6.

## Article 747

*III. Assessment of interest and profit*

1) Interest may be paid to the limited partner only on the basis of a proper balance sheet and only to the extent that doing so does not reduce the limited liability amount, even if interest has been expressly stipulated by contract.

2) The limited partner may not receive any interest or profit until the contribution reduced by losses has been replenished.

3) The limited partner shall be liable beyond the limited partnership contribution for the liabilities of the partnership to the extent that the limited partner has received payments from it contrary to these provisions, but shall not be obliged to repay interest and profit received on the basis of a proper balance sheet and in good faith.

## Article 748

*IV. Joining an existing partnership*

1) Anyone who joins an existing limited partnership as a limited partner shall be liable up to the limited liability amount even for the obligations entered into before joining, whether or not the legal name changes.

2) Agreements contrary to this provision shall have no legal effect in relation to third parties.

## Article 749

*V. Entitlement of special creditors*

1) The special creditors of both a partner with unlimited liability and a limited partner shall be excluded from direct access to the assets of the partnership in accordance with the provisions established for the general partnership.

2) The object of compulsory execution against the limited partner or in the insolvency proceedings of the limited partner may, for the special creditor of that limited partner, be only that which the limited partner would be entitled to in terms of interest, profit, and liquidation share.<sup>1289</sup>

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<sup>1289</sup> Article 749(2) amended by LGBI. 2020 No. 369.

3) If the limited partner entered in the Commercial Register is merely a trustee, the legal status of the special creditors of the limited partner in trust in relation to the limited partner and the settlor or any beneficiary shall be governed by the provisions governing the trust (limited partnership in trust), unless the trust instrument provides otherwise.<sup>1290</sup>

4) A creditor of the partnership who is also a special debtor of the limited partner may demand an offset against the limited partner only if the conditions for holding the limited partner liable are met.

#### *VI. Insolvency proceedings of the partnership und of the partners<sup>1291</sup>*

##### Article 750

###### *1. Insolvency proceedings of the partnership<sup>1292</sup>*

1) In the insolvency proceedings of a limited partnership, the partnership assets shall be used to satisfy the creditors of the partnership, excluding the special creditors of the individual partners.<sup>1293</sup>

2) The limited partnership contribution paid up in full or in part may not be registered as a claim, even if it is a limited partnership contribution in trust, but the amounts paid up in excess of the limited partnership contribution may be registered as a claim.

3) Likewise, the amount not yet paid up may not be set off with claims of the limited partner against the partnership.

##### Article 751

###### *2. Insolvency proceedings of a partner with unlimited liability<sup>1294</sup>*

1) After dissolution of the partnership, the creditors of the partnership may assert all their claims against each partner with unlimited liability until they are fully covered.

2) However, if insolvency proceedings are opened at the same time in respect of the partnership and a partner with unlimited liability, the creditors of the partnership may claim in the insolvency proceedings of

<sup>1290</sup> Article 749(3) amended by LGBl. 2013 No. 6.

<sup>1291</sup> Title preceding Article 750 amended by LGBl. 2020 No. 369.

<sup>1292</sup> Article 750 heading amended by LGBl. 2020 No. 369.

<sup>1293</sup> Article 750(1) amended by LGBl. 2020 No. 369.

<sup>1294</sup> Article 751 heading amended by LGBl. 2020 No. 369.

the partner only what remained unpaid in the insolvency proceedings of the partnership.<sup>1295</sup>

3) Repealed<sup>1296</sup>

#### Article 752

##### *3. Insolvency proceedings of a limited partner<sup>1297</sup>*

1) In the insolvency proceedings of a limited partner, neither the individual creditors of the partnership nor the partnership or its insolvency estate shall have a preferential right over the special creditors.<sup>1298</sup>

2) However, if the partnership has been dissolved without bankruptcy, the creditors of the partnership may assert the unpaid balance of their claims, but in total no more than the amount of the limited liability in competition with the special creditors.

3) However, this shall be subject to the special circumstances applicable if the limited partner is only a trustee.

4) Repealed<sup>1299</sup>

#### Article 753

##### *D. Dissolution*

1) The death or bankruptcy of a limited partner, the appointment of a custodian for the limited partner, or the attachment of the limited partner's liquidation share shall not result in the dissolution of the company.<sup>1300</sup>

2) However, in this case, as well as in the other cases in which the limited partner is entitled to resign, the limited partner may demand payout of the liquidation share.

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<sup>1295</sup> Article 751(2) amended by LGBI. 2020 No. 369.

<sup>1296</sup> Article 751(3) repealed by LGBI. 2020 No. 369.

<sup>1297</sup> Article 752 heading amended by LGBI. 2020 No. 369.

<sup>1298</sup> Article 752(1) amended by LGBI. 2020 No. 369.

<sup>1299</sup> Article 752(4) repealed by LGBI. 2020 No. 369.

<sup>1300</sup> Article 753(1) amended by LGBI. 2010 No. 124.

Article 754<sup>1301</sup>*E. Participation as an unregistered partner*

1) If a person participates in the undertaking of another by making a contribution and participates in the profit or loss of the undertaking or in both, assuming unlimited liability for the debts of the undertaking, without the participation being entered in the Commercial Register and without the participation being reflected in the legal name, an unregistered partnership shall exist between that person and the owners of the undertaking, without prejudice to any obligation of entry in the Commercial Register.

2) Such a participation may be entered in the Commercial Register as a limited or general partnership, but if the name of such a participant is included in the legal name, then the legal name must either be entered or changed, subject in the latter case to the provisions on the liability of the limited partner when the limited partner's name (legal name) is included in the legal name.

## Article 755

*F. Partnership of limited partners and general partnership with limited liability*

1) Where a partnership is formed by a written agreement under a joint legal name in such a way that all partners are treated as limited partners, each having limited liability for the obligations of the partnership, the provisions of this Title shall apply to this partnership (partnership of limited partners), but subject to the following derogations:

1. The registration in the Commercial Register and its entry, together with the partnership agreement, must state:
  - the surname, first name, status, and place of residence or legal name and registered office of each limited partner, together with that limited partner's limited liability amount and the actual contribution made by each partner, as well as the total of all limited liability amounts;
  - the legal name, in which the name of a limited partner may also appear without increasing liability, the registered office, the object of the undertaking or purpose of the partnership;

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<sup>1301</sup> Article 754 amended by LGBl. 2013 No. 6.

the surname, first name, and place of residence or legal name and registered office of the partners or third parties responsible for general management and representation.

Publication must be limited to the legal name, the object of the undertaking, the total limited liability amount, and information on the name and place of residence or legal name and registered office of the persons responsible for general management and representation.

These provisions shall also apply *mutatis mutandis* where the facts or circumstances subject to the obligation to be entered undergo a change.<sup>1302</sup>

2. The non-managing partners shall have the same position in relation to the managing partners as a general partner and, unless otherwise agreed, there shall be the same prohibition of competition as for general partners, but only for the managing partners; the managing and representative partners or third parties shall, in relation to the partners and third parties, have the position of general managers in the limited liability company.
3. If a minimum equity capital by ordinance is provided for in the case of a limited liability company, the minimum amount of the contribution of assets made by the partners in the formation of the partnership must be equal to that minimum equity capital; if the pure partnership assets subsequently fall below that amount, any partner or creditors may demand dissolution under the same conditions as in the case of the legal person with a sole member.
4. In the partnership agreement, the partners may commit themselves, in addition to the limited liability amount, to a limited additional performance or to recurring non-cash performances in the same way as in the case of a registered cooperative society.
5. The amount of the paid-up limited liability amounts shall be included on the liabilities side; in the absence of any other agreement, the partners shall participate in the profits and losses in proportion to their limited liability and, if there is no limited liability amount, such as when work is performed, the share shall be determined at the judge's discretion.
6. This company shall also be dissolved by the opening of bankruptcy proceedings, and it must also be liquidated in accordance with the general provisions governing legal persons, unless the Office of Justice grants an exception.<sup>1303</sup>

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<sup>1302</sup> Article 755(1)(1) amended by LGBl. 2013 No. 6.

<sup>1303</sup> Article 755(1)(6) amended by LGBl. 2020 No. 369.

2) If, however, a partnership is formed by a written agreement under a joint legal name by entry in the Commercial Register in such a way that all partners are jointly and severally liable in the same way as general partners, but only up to a certain amount specified in the partnership agreement, the provisions on the general partnership and points 1 to 4 of the preceding paragraph shall apply *mutatis mutandis* to such a partnership (general partnership with limited liability).<sup>1304</sup>

## Title 11

### Consortium

#### *A. Definition, etc.*

#### Article 756

##### *I. In general*

1) Where two or more individuals or legal persons under private or public law or entities with legal names contractually join together for the preparation of a commercial enterprise or for the execution of the acquisition, purchase, or realisation of any assets for joint account (such as consortia proper, syndicates, corporate groups, founding companies, research companies) without creating a joint legal name or legal person, they shall be deemed to form a consortium.

2) A consortium shall not be deemed to constitute a separate legal subject and may not sue or be sued independently or be a party to any other proceedings.

3) The members of the consortium shall, in case of doubt, be deemed co-owners of the property items belonging to them jointly.

4) In case of doubt as to whether a consortium exists, the existence of an unregistered partnership shall be assumed in the absence of other evidence.

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<sup>1304</sup> Article 755(2) amended by LGBL 2013 No. 6.

## Article 757

*II. Formation of several companies*

1) Consortia may also be formed in such a way that one or more persons, legal persons, or entities with legal names, acting as managers of the business, enter into contracts of the same kind with other persons, among whom there need be no relationship, for the execution of the business for joint account, with the intention that all members should share in the success of the business in accordance with their participation and the terms of the contract.

2) In this case there shall be as many consortia as there are individual contracts.

## Article 758

*B. Reference to unregistered partnership*

1) The consortium shall be subject to the provisions governing unregistered partnerships, unless otherwise set out below.

2) In particular, formation is not bound to any particular form.

3) Entry in the Commercial Register shall be excluded.<sup>1305</sup>

## Article 759

*C. Contributions*

1) The contributions of the members shall depend on the contract and may consist of capital participation or labour.

2) They may also contain only the obligation to take over on their own account, in accordance with the contractual participation, that part of the business undertaken for joint account which could not be completed when the consortium was dissolved or when one of several business transactions taken over by it was wound up.

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<sup>1305</sup> Article 758(3) amended by LGBl. 2013 No. 6.

## Article 760

*D. Profit, loss, and liability*

1) Profit and loss of a consortium shall be distributed among the members according to the terms of the contract.

2) Unless otherwise specified, any business contributions shall be initially subject to interest at 5%, and any surplus shall be treated as profit.

3) In the case of business for the performance of which all participants are required to pay contributions in cash or other fungible assets or to assume certain obligations specified as to their amount as contributions, such distribution shall not be made per capita but rather according to the amount of the contribution or obligation, unless the contract provides otherwise.

4) Where the members enter into obligations in relation to a third party, whether jointly or by proxy, each member shall be liable to that third party in proportion to that member's share in the consortium, subject to arrangements to the contrary.

*E. Consortium resolutions and general management*

## Article 761

*I. Consortium resolutions*

If the contract provides for a resolution to be passed by a majority of votes, in the absence of any other contractual arrangement, the majority shall be calculated according to the rule applicable to the distribution of profits.

*II. General management and representation*

## Article 762

*1. In general*

1) By the company agreement or by unanimous resolution of the members, general management and representation may be entrusted to one or more members individually or collectively, to the exclusion of the others, or to one or more third parties who are not members, individually or collectively.

2) Likewise, such as in the case of administrative companies, it may be determined that the managing member shall conclude the business of the partnership in that member's own name but for the account of the consortium (silent consortium); in this case, the provisions on indirect representation and, on a supplemental basis, those on the implied trust shall apply in relation to third parties.

3) Participation in the losses of the silent consortium may be limited at will (limited silent consortium).

#### Article 763

##### *2. Responsibility*

1) The members owe each other the care of a prudent businessperson in general management and representation.

2) The managing members shall also be liable under these provisions if they do not receive any special remuneration for their activities beyond the share of the business income to which they are entitled in accordance with their participation.

#### Article 764

##### *3. Status of non-managing members*

1) The members not entrusted with general management shall not be authorised to request information on the course of the consortium's business and invoicing or to inspect the account books and business documents of the consortium before the date contractually agreed for the resolution of the consortium or before expiry of a period which is deemed reasonable for the resolution.

2) On important grounds, the judge may, in special non-contentious proceedings, authorise the non-managing members to make the above request.<sup>1306</sup>

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<sup>1306</sup> Article 764(2) amended by LGBI. 2010 No. 454.

## Article 765

*F. Sub-participation*

1) If, after the formation of the consortium, a joint sub-participation is assigned to a third party by all the members, the third party shall not become a member, unless otherwise agreed, and shall not be entitled to participate in the general management or in the approval of the same, but shall share in the profit or loss as determined by the consortium.

2) Where a single participant in a consortium grants sub-participation to a third party, that third party shall not become a member of the other participants, but rather the relationship between the two shall constitute a consortium in its own right, the assignor being regarded as the managing member and, as such, owing the sub-participant<sup>1307</sup> only the same care as the managing member owes the principal company in respect of the managing member's own participation.

## Article 766

*G. Dissolution*

1) The consortium shall not be dissolved by the death of a member or the lapse of an entity with a legal name or a legal person involved, or by unilateral termination before the business is completed, except on important grounds, unless the dissolution results from the contract or the nature of the business.

2) However, if the deceased partner or the lapsed entity with a legal name or legal person was the sole general manager, such as the consortium leader, the consortium shall, in case of doubt, be dissolved.

## Article 767

*H. Liquidation*

1) Pending transactions upon liquidation shall be wound up by the managing partner(s), such as the consortium leader, unless the nature of the transaction or the contract provides otherwise.

2) To the extent they are not to be used to cover costs incurred, goods or negotiable securities intended for sale but not sold, as well as goods or negotiable securities acquired for a consortium of buyers, shall be

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<sup>1307</sup> This should read "Unterbeteiligten" instead of "Unbeteiligten" in the German original.

allocated to the individual members in accordance with their participation, unless otherwise agreed in the settlement.

Title 12  
**Silent partnership**

Article 768

*A. Definition and delimitation*

1) Where one or more individuals or legal persons under private or public law or entities with legal names participate in an undertaking entered in the Commercial Register which is operated by another person (general partner) under that person's legal name, by way of a capital contribution or by providing services or the use of certain assets on a permanent basis as set out in the contract, without assuming liability for the debts arising from this undertaking, without entry of the participant(s) in the Commercial Register, and without the participation being reflected in the legal name, they shall form a silent partnership with the holder of the legal name.<sup>1308</sup>

2) Such a silent participation in an undertaking not entered in the Commercial Register shall be subject to the provisions on profit participation agreements applicable to unregistered partnerships, unless it is a consortium.<sup>1309</sup>

3) If an amount is assigned to another party with the declaration that the claim shall be liable to a certain third party in the same way as a limited partnership contribution, that legal relationship shall be treated as a loan with profit and loss participation, and the liquidation quota in the compulsory execution or in insolvency proceedings against the recipient shall be deemed to have been assigned in advance to the third party up to the uncovered amount of that third party's claim.<sup>1310</sup>

4) In the absence of any provision to the contrary, the assets contributed by the silent partner shall be included in the assets of the owner of the undertaking.

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<sup>1308</sup> Article 768(1) amended by LGBl. 2013 No. 6.

<sup>1309</sup> Article 768(2) amended by LGBl. 2013 No. 6.

<sup>1310</sup> Article 768(3) repealed by LGBl. 2020 No. 369.

## Article 769

*B. General management, representation, and liability of the silent partner*

1) The owner of the undertaking shall be solely responsible for general management and representation and shall be obliged to exercise the same care as in the owner's own affairs.

2) Solely the owner shall be entitled and obliged from the transactions concluded in the business.

3) As such, the silent partner shall be neither entitled nor obliged to provide general management.

4) The name of a silent partner may not be included in the legal name of the owner of the undertaking, but if the name of the silent partner has been used in the legal name with the knowledge of that silent partner, the silent partner shall have unlimited joint and several liability to the business creditors.

5) If, with the consent of the silent partner, the joining of a silent partner has been announced in public bulletins, letters, circulars, or the like, that silent partner shall be jointly and severally liable to the creditors together with the owner of the undertaking up to the amount of the announced capital contribution, and if the silent partnership has been entered in the Commercial Register by mistake, the silent partner shall be liable to *bona fide* parties in the same way as a limited partner for the registered limited liability amount.<sup>1311</sup>

*C. Relationship among the partners*

## Article 770

*I. In general*

1) The owner of the undertaking may use the contribution only for the purposes agreed in the partnership agreement or otherwise arising from the circumstances and may not abandon or reduce the business without the consent of the silent partner.

2) In case of doubt, the owner of the undertaking must use the contribution as profitably as possible.

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<sup>1311</sup> Article 769(5) amended by LGBI. 2013 No. 6.

3) In the event of culpable violation of these obligations, the owner of the undertaking shall be liable to pay damages to the silent partner, and dissolution of the company may be demanded.

4) The provision on the prohibition of competition shall apply only to the owner of the undertaking, unless otherwise agreed.

5) The partnership agreement may determine that the participation of the silent partner shall be freely transferable without the consent of the owner or that participation shall be securitised in a form equivalent to registered shares.

## *II. Share in profit and loss*

### *Article 771*

#### *1. In general*

1) If the silent partner's share in profits and losses is not determined, a reasonable share in both shall be deemed to be stipulated.

2) The partnership agreement may determine that the silent partner shall not participate in the losses; the participation of the silent partner in the profits may not be excluded.

### *Article 772*

#### *2. Calculation and payout*

1) At the end of each financial year, the profit and loss shall be calculated and the profit attributable to the silent partner shall be paid out accordingly.

2) The silent partner shall participate in the loss only up to the amount of that silent partner's paid-up contribution or contribution in arrears. The silent partner shall not be obliged to repay the profit received due to later losses, but as long as the silent partner's contribution is reduced by losses, the annual profit shall be used to cover the loss.

3) The profit which is not collected by the silent partner shall not increase that silent partner's contribution, unless otherwise agreed.

4) Profit-sharing certificates may be issued to securitise the profit participation right of the silent partner.

## Article 773

*III. Communication of balance sheet and verification*

1) The silent partner shall be entitled to demand a copy of the annual balance sheet and to verify its accuracy by inspecting the account books and business documents.

2) Upon application of the silent partner, the court may, on important grounds, order at any time the communication of a balance sheet or other clarifications, as well as the presentation of the account and business documents for inspection and copying in special non-contentious proceedings.<sup>1312</sup>

3) If the silent partner does not participate in the undertaking as a whole, but only in individual branches, the rights of the silent partner shall cover only the extent to which the silent partner is involved.

*D. Dissolution*

## Article 774

*I. In general*

1) A creditor of a silent partner may terminate the partnership in the same way as a special creditor of a general partnership, unless the silent partner is invested only with trust property.

2) If a silent partner dies or a custodian is appointed for the silent partner, or if an entity with a legal name or legal person, if they are silent partners, lapses, the partnership shall not be dissolved, but rather the relationship shall continue with the universal successors.<sup>1313</sup>

3) The partnership may, however, be terminated by either party with six months' notice for a period of one year.

## Article 775

*II. Settlement*

1) After the dissolution of the partnership, the owner of the partnership must pay out the silent partner's share to the silent partner.

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<sup>1312</sup> Article 773(2) amended by LGBl. 2010 No. 454.

<sup>1313</sup> Article 774(2) amended by LGBl. 2010 No. 124.

2) Transactions pending at the time of dissolution shall be settled by the owner of the undertaking.

3) The silent partner shall participate in the profits and losses resulting from these transactions.

4) At the end of each financial year, the silent partner may demand an account of transactions terminated in the meantime, payout of the amount due to the silent partner, and information on the status of pending transactions.

#### Article 776

##### *III. Bankruptcy*

1) If bankruptcy proceedings are opened in respect of the assets of the owner of the undertaking, the silent partner may assert the paid-up capital contribution as an insolvency claim to the extent that it exceeds the amount of the silent partner's share of the losses.<sup>1314</sup>

2) If the contribution is in arrears, the silent partner must pay the contribution in arrears to the insolvency estate up to the amount required to cover the silent partner's share of the loss.<sup>1315</sup>

#### Article 777

##### *E. Challenge*

1) If, on the basis of an agreement concluded between the owner of the undertaking and the silent partner in the last year before the opening of insolvency proceedings, the contribution has been fully or partially returned to the silent partner or the silent partner's share of the losses incurred has been fully or partially waived without consideration, this agreement may be challenged by the insolvency administrator, whether or not it was concluded in the context of dissolution of the company.<sup>1316</sup>

2) In particular, any offset, surrender in lieu of payment, and the conversion into a loan or into a claim otherwise privileged in insolvency proceedings shall be deemed equivalent to return of the contribution.<sup>1317</sup>

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<sup>1314</sup> Article 776(1) amended by LGBL 2020 No. 369.

<sup>1315</sup> Article 776(2) amended by LGBL 2020 No. 369.

<sup>1316</sup> Article 777(1) amended by LGBL 2020 No. 369.

<sup>1317</sup> Article 777(2) amended by LGBL 2020 No. 369.

3) Challenge shall be excluded if the silent partner proves that the insolvency proceedings arose from circumstances that occurred only after the agreement.<sup>1318</sup>

4) Furthermore, this article is subject to the provisions of the law governing acts voidable at the instance of creditors, whose provisions on the enforcement of the rescission and its effect shall also be applied to the right of challenge set out here.

#### Article 778

##### *F. International choice of law*

The legal relationship between the general partner and the silent partner shall be governed by the law of the territory in which the undertaking has its registered office or place of residence.

#### Title 13

### **Community of property**

#### *A. Establishment*

##### Article 779

###### *I. Power*

Assets may be linked to a family by family members either allowing all or part of an inheritance to continue as joint property, or by combining the assets into a community of property.

##### Article 780

###### *II. Form*

1) The contract on the establishment of a community of property requires public authentication and the signature of all members of the community or their representatives to be valid.

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<sup>1318</sup> Article 777(3) amended by LGBL 2020 No. 369.

2) The contract document must expressly designate the community of property as such, otherwise such a community shall not be subject to the provisions set out below, but rather to the otherwise relevant provisions, such as those governing joint ownership, other communities, unregistered partnerships, and the like.

Article 781

*B. Duration*

1) The community of property may be entered into for a definite or indefinite duration.

2) If it is entered into for an indefinite duration, each member of the community may terminate with six months' notice.

3) In the case of agricultural operation of jointly held property, termination shall be permissible only as of a spring or autumn date corresponding to the local custom.

*C. Effect*

Article 782

*I. Type of community of property*<sup>1319</sup>

1) The community of property shall link the members of the community to a joint economic activity.

2) In the absence of any arrangement to the contrary, they shall have the same rights and obligations in the community of property.

3) For the duration of the community of property, they may not claim a division nor dispose of their community shares.

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<sup>1319</sup> This should read "Gemeinderschaft" instead of "Gemeinschaft" in the German original.

## *II. Direction and representation*

### Article 783

#### *1. In general*

1) The affairs of the community of property shall be arranged by all members together.

2) Each of them may, without the participation of the others, carry out ordinary administrative acts.

### Article 784

#### *2. Powers of the head of the community*

1) The members of the community may designate one of the members as head of the community of property.

2) The head shall represent the community of property within the scope of its affairs and shall direct its economic activity.

3) However, the exclusion of others from representation is effective in relation to *bona fide* third parties only if the representative is entered in the Commercial Register with surname, first name, and place of residence.<sup>1320</sup>

### Article 785

#### *III. Community property and personal property*

1) The assets of the community of property shall be jointly owned by all members of the community.

2) The members of the community shall be jointly and severally liable for debts.

3) Whatever property an individual member of the community possesses in addition to the community property or acquires on a personal basis through inheritance or otherwise without consideration during the existence of the community of property shall, unless otherwise agreed, be that individual member's personal property.

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<sup>1320</sup> Article 784(3) amended by LGBL 2013 No. 6.

*D. Dissolution*

## Article 786

*I. Grounds*

- 1) The community of property shall be dissolved:
1. by arrangement or termination,
  2. at the end of the period for which a community of property has been established, unless it is tacitly continued,
  3. if the share of a member in the community property has been attached and realised,
  4. if a member of the community has gone bankrupt,
  5. at the request of a member of the community on important grounds.
- 2) The ground for termination or the legal dispute may, in the case of a community of property entered in the Commercial Register, be noted in the Commercial Register at the request of one of the participants until final removal from the Commercial Register.<sup>1321</sup>

## Article 787

*II. Termination, insolvency, marriage*

- 1) If a member terminates the community of property, or if one of the members of the community has gone bankrupt, or if the share of a member in the community of property has been attached and realised, then the others may continue the community of property among themselves by compensating the departing member or that member's creditors.
- 2) If a member of the community marries, that member may claim severance without notice.

## Article 788

*III. Death of a member*

- 1) If a member of the community dies, the heirs who are not in the community of property may claim only severance.

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<sup>1321</sup> Article 786(2) amended by LGBI. 2013 No. 6.

2) If the member leaves descendants entitled to inherit, those descendants may, with the consent of the other members of the community, join the community of property in place of the testator.

#### Article 789

##### *IV. Rule governing division*

1) The division of the community property or the severance for a departing member shall take place according to the financial situation as it exists at the time of the occurrence of the ground for dissolution.

2) The execution thereof must not be requested at an inopportune time.

##### *E. Community of income*

#### Article 790

##### *I. Content*

1) The members of the community may entrust the management and representation of the community property to only one of them, with the proviso that that member pay each member of the community an annual share of the net profit.

2) Unless otherwise agreed, that share shall be determined equitably on the basis of the average yield of the community property for a reasonable, extended period, taking into account the performance of the person entrusted with management and representation.

3) For the debts arising from the community of property towards third parties, unless otherwise agreed, with the exception of the member to whom management and representation is entrusted, the other members of the community shall be liable only with the community property.

#### Article 791

##### *II. Special grounds for dissolution*

1) If the community property is not managed properly by the person entrusted with management and representation, or if that person does not fulfil the obligations to the members, the community of property may be dissolved.

2) At the request of a member, the judge on important grounds may in special non-contentious proceedings rule that that member may enter into the economic activity of the person entrusted with management and representation, taking into account the provisions on the division under inheritance law.<sup>1322</sup>

3) The community of income shall otherwise be subject *mutatis mutandis* to the rules governing the community of property with joint economic activity.

#### Article 792

##### *F. Entry in the Commercial Register*<sup>1323</sup>

1) At the request of all members of the community, the community of property shall be entered in the Commercial Register under a common name.<sup>1324</sup>

2) The registration for entry in the Commercial Register, which must be signed by all members of the community or by the head in certified form or declared on record for the Office of Justice, must contain:<sup>1325</sup>

1. the designation and registered office of the community of property, and the name and place of residence of each member of the community,
2. the indication whether a community of property or income has been established and the amount of the value of the community assets together with a list of the individual assets as an appendix,
3. the duration of the community of property,
4. any exclusions from representation, stating the surname, first name, profession, and place of residence of the head of the community of property.

3) The entry and the publication in the Official Journal shall contain the items enumerated in the preceding paragraph, with the exception of the list of assets.<sup>1326</sup>

4) If a community of property or even merely the exclusion from representation is entered in the Commercial Register, all changes made to

<sup>1322</sup> Article 791(2) amended by LGBl. 2010 No. 454.

<sup>1323</sup> Article 792 heading amended by LGBl. 2013 No. 6.

<sup>1324</sup> Article 792(1) amended by LGBl. 2013 No. 6.

<sup>1325</sup> Article 792(2) introductory phrase amended by LGBl. 2013 No. 6.

<sup>1326</sup> Article 792(3) amended by LGBl. 2015 No. 275.

the facts entered in the Commercial Register, such as dissolution of the community of property, change in representation, and the like, must also be registered and published by the members or the head of the community.<sup>1327</sup>

5) If, at the discretion of the register authority, another form of announcement, in particular publication on the authority's website, appears sufficient, publication in the Official Journal may be omitted.<sup>1328</sup>

#### Article 793

##### *G. International choice of law*

1) In the absence of a contractual agreement to the contrary, Liechtenstein law shall apply to the community of property.

2) If the greater part of the assets is located in Liechtenstein or the majority of the members of the community reside in Liechtenstein, domestic law shall in all cases be applicable to the assets located in Liechtenstein.

### Part 4

## **Special asset endowments and simple communities of rights**

#### Title 14

### **Homesteads and entailed estates**

#### Article 794

##### *A. Purpose of homestead*

1) The homestead shall pursue the purpose of preserving possession of a real property against economic dangers to the owner (homesteader) alone or in connection with other persons, the group of which must be defined in more detail, or to the owner's family or to third parties alone to

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<sup>1327</sup> Article 792(4) amended by LGBl. 2013 No. 6.

<sup>1328</sup> Article 792(5) amended by LGBl. 2015 No. 275.

be designated specifically by the owner, where such real property serves an agricultural or other commercial purpose (commercial homestead) or where it constitutes a dwelling or a right to build a dwelling (residential homestead), and to protect the owner from loss of the property or dwelling.

2) Unless an exception is allowed by law or the Government, only natural persons may be homesteaders.

*B. Formation*

Article 795

*I. Conditions and object*

1) An agricultural or other commercial property or dwelling, including ancillary property, or a building right may be declared a homestead under the following conditions:

2) The property or dwelling or building right (homestead property) may not be larger than necessary to provide for the ordinary maintenance of one or more specified persons or, in the case of family homesteads, of a family, irrespective of the mortgage on the property or encumbrances on other assets of the owner, or to serve them as a dwelling or for the construction of a dwelling, possibly together with garden land.

3) The owner or the owner's family or third parties must themselves manage the property, carry on the business, or occupy the dwelling, unless the Court of Justice grants an exception on important grounds.

4) The provisions governing homesteads as dwellings shall apply *mutatis mutandis* to homesteads as building rights.

## II. Proceedings

### Article 796

#### 1. *Special non-contentious proceedings*<sup>1329</sup>. *Application for approval*

1) The formation, modification, or dissolution of a homestead shall be carried out, unless otherwise specified below, with the involvement of the Court of Justice in special non-contentious proceedings.<sup>1330</sup>

2) Anyone wishing to establish a homestead must submit an application to the Court of Justice, which must include a declaration of the reason for the formation of a homestead, the property or dwelling according to the Land Register, any encumbrances *in rem* on it, any ancillary property, and the beneficiaries by surname, first name, and place of residence and their entitlement in detail.

3) Anyone intending to build a homestead for self and family must expressly designate it as a family homestead in the application.

4) If the Court of Justice, after a preliminary examination of the application by the applicant and a possible hearing of the applicant, finds that the requirements for establishment of a homestead are not met, it shall reject the application by means of a decision.

#### 2. *Announcement*

### Article 797

#### a) *Publication of the application*

1) If, after preliminary examination of the application by the Court of Justice, the conditions for the formation of a homestead are met, all creditors of the applicant and other persons who may consider their rights infringed by the formation of the homestead shall be invited, by public notice procedure announced in the Official Journal, to file their objections, in writing or on the record, within 14 days of publication, stating precisely the right allegedly threatened by the formation of the homestead or the exact amount of their claim and the reasons for their objection.<sup>1331</sup>

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<sup>1329</sup> This should read "Ausserstreitverfahren" instead of "Rechtsfürsorgeverfahren" in the German original.

<sup>1330</sup> Article 796(1) amended by LGBl. 2010 No. 454.

<sup>1331</sup> Article 797(1) amended by LGBl. 2015 No. 275.

2) In the case of family homesteads, if the members of the family to be granted the status of beneficiaries have not already been identified in the application, the Court of Justice must also identify the blood relatives of the homesteader in ascending and descending line up to the second degree and the homesteader's siblings who wish to be admitted to the homestead and invite them to submit their requests within 14 days of the announcement.

3) The registration period may be reasonably extended by the court up to two months.

4) The notice must give a precise description of the property or dwelling, contain an unambiguous designation of the applicant, and point out that any list of ancillary property may be inspected at the Court of Justice.

#### Article 798

##### *b) Special notices to interested parties*

1) Special copies of this notice shall be served by the court on the mortgagees entered in the Land Register on the land envisaged for the homestead and on other persons with rights *in rem*, the known lien creditors, to whom titles of lien on the property have been pledged, as well as in the case of family homesteads, if necessary, on the aforementioned blood relatives and siblings.

2) These provisions shall be subject to the right to challenge the formation of a homestead in accordance with the law governing gifts, inheritance law, or the law governing acts voidable at the instance of creditors.

#### *3. Processing of objections*

#### Article 799

##### *a) Comments of the applicant*

After expiry of the notice period, the court shall inform the applicant of the objections received and shall invite the applicant to submit comments in writing or on the record.

## Article 800

*b) Determination of rights in dispute*

1) If the applicant claims that a creditor's claim or other right does not exist or does not exist to the extent alleged, the Court of Justice shall, if no legal dispute is pending, set a time limit of 14 days within which the applicant may apply to the judge to have the alleged right disqualified.

2) If the applicant brings an action in time, the proceedings for the formation of a homestead shall be suspended until the dispute has been settled; if the applicant fails to bring an action, the right applied for shall be deemed recognised for the homestead proceedings.

3) If a creditor whose right is not contested has not responded in the affirmative to the special notice, the formation of the homestead may take place only if the debtor satisfies or otherwise secures the non-approving creditor by performance without being bound by any period of notice and shall provide evidence thereof to the court.

## Article 801

*c) Subsequent objections*

1) If the proceedings have been suspended as a result of a legal dispute, the Court of Justice must now examine whether in the meantime no encumbrances *in rem* have been entered in the Land Register and must subsequently give any potential entitled parties the opportunity to assert objections by way of special notice.

2) The preceding article shall apply *mutatis mutandis* to the processing of subsequent objections.

## Article 802

*d) Inclusion of relatives*

1) The Court of Justice may, in the case of family homesteads, where the applicant has not designated the family members to be granted the status of beneficiaries, impose an obligation on the owner to accept into the homestead the applicant's blood relatives in the ascending and descending line up to the second degree and the applicant's siblings, as well as the applicant's spouse or registered partner living with the applicant, provided

that they are in urgent need of inclusion and do not appear unworthy of it.<sup>1332</sup>

2) Where such persons have applied for inclusion, the court shall consider whether they are in need of and worthy of such inclusion.

#### Article 803

##### *4. Decision*

1) After completion of the proceedings, the Court of Justice shall decide whether to grant approval to form a homestead.

2) In the decision approving the application, the persons involved, the plots of land intended for the homestead and ancillary property sharing their fate, the encumbrances on the plots of land, and in the case of family homesteads, the members of the family the homestead is to serve must be precisely identified and the conditions under which the approval is granted must be stated.

#### Article 804

##### *5. Subsequent modification of family homesteads*

1) In the case of family homesteads, the inclusion of blood relatives and siblings in the homestead may also be ordered subsequently, on special request and after hearing the owner of the homestead, if the applicant did not restrict inclusion to certain family members during the formation, and if the need arises only later.

2) Inclusion of persons to whom the homesteader has a duty of support under family law may be ordered by the judge in special non-contentious proceedings, provided they are in urgent need of inclusion and are not unworthy of it, even if the homesteader has determined otherwise.<sup>1333</sup>

#### Article 805

##### *6. Entry in the Land Register and Homestead Register*

1) The formation of a homestead shall become legally valid by entry as a reservation in the Land Register.

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<sup>1332</sup> Article 802(1) amended by LGBI. 2011 No. 370.

<sup>1333</sup> Article 804(2) amended by LGBI. 2010 No. 454.

2) The entry in the Land Register shall be published in the Official Journal at the expense of the applicant, unless the judge decides that entry may be omitted altogether.<sup>1334</sup>

3) In addition, a register (Homestead Register) shall be kept by the court on the instructions of the Government, which is open to public inspection.

### *C. Revocation of approval*

#### *I. Preconditions*

#### Article 806

##### *1. On the application of a creditor*

The Court of Justice shall, on the application of a creditor of the owner of the homestead, revoke the decision of approval after having heard the parties beforehand:

1. if a mortgagee proves non-receipt of a special notice and was also otherwise not aware of the intended formation of a homestead, and the debtor, depending on the due date of the claim, does not provide the mortgagee with other appropriate security or does not satisfy the mortgagee; if the claim is disputed, the provision on the determination of disputed rights shall apply;
2. if it is established that the owner rents or leases the homestead without court approval or without such approval no longer lives in or manages it.

#### Article 807

##### *2. On the application of a third party*

On the application of other interested parties, the approval shall be revoked after prior consultation of the owner:

1. if the owner of the family homestead does not or no longer fulfils the legal obligation imposed on the owner by the judge to include persons entitled to family support, or only fulfils it in such a way that makes staying in the homestead intolerable for them;
2. if a third party, whose objection has not been considered by the Court of Justice in the special non-contentious proceedings, submits a court

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<sup>1334</sup> Article 805(2) amended by LGBI. 2015 No. 275.

judgment establishing that the third party's right has been infringed by the formation of the homestead and that the third party has not been satisfied or secured from the remaining assets of the owner of the homestead, depending on the due date of the claim.<sup>1335</sup>

#### Article 808

##### *II. Announcement of revocation and removal*

Any subsequent revocation of approval shall be published in the same way as the approval itself, and the reservation in the Land Register shall be deleted *ex officio*.

##### *D. Effect of formation of a homestead*

#### Article 809

##### *I. Ancillary property*

1) The ancillary property of the property or dwelling enumerated in the list shall belong to the homestead, with the exception of those items of ancillary property which are not owned by the homesteader.

2) An item of ancillary property shall become free of its link to the homestead as soon as it ceases to be ancillary property of the dwelling or property.

#### Article 810

##### *II. Division, disposal, and enlargement*

1) The division of the homestead and the disposal of individual plots of land or parts of plots of land shall require judicial approval, which may not be refused:

1. in the case of division, when the parts become independent homesteads,
2. in the case of disposal, if disposal is compatible with the rules of proper economic activity and does not significantly endanger or impair the economic viability of the homestead.

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<sup>1335</sup> Article 807(2) amended by LGBI. 2010 No. 454.

2) With the approval of the judge, another plot of land not encumbered with usufruct, building rights, land charges, or mortgages may be combined with or allocated to the homestead after proper completion of the notice procedure (enlargement).

3) In the case of homesteads established for the benefit of third parties, those third parties must be heard in order to safeguard their rights before division, disposal, or enlargement.

#### Article 811

##### *III. Encumbrances*

1) A new mortgage, usufruct, right of abode, or land charge may not be placed by means of a legal transaction on a property or dwelling that has become a homestead, subject to the encumbrances arising by operation of the law.

2) The existing mortgages and any new mortgages that may arise shall be transformed into annuity mortgages, if they are not otherwise settled.

3) On application by the owner or the creditor, the annual instalments may be determined by the Court of Justice at its discretion and, if the owner is in arrears with more than two instalments, may order dissolution of the homesteads.

#### Article 812

##### *IV. Sale, etc.*

1) The homestead may not be sold by the owner and may not be rented or leased by the owner or by a third party without court approval.

2) Sale as a whole shall, however, be permitted with the consent of the Court of Justice to the spouse or registered partner, to a person who is related to the owner of the homestead in a straight line or up to the third degree in the collateral line or is related by marriage up to the second degree or to persons who have been expressly designated at the formation or subsequently by means of an official document and the approval of the court.<sup>1336</sup>

3) The acquirer must declare to the Court of Justice at the same time in all cases upon transfer who is to benefit from the homestead.

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<sup>1336</sup> Article 812(2) amended by LGBI. 2011 No. 370.

*V. Compulsory execution*

## Article 813

*1. In general*

1) The homestead and its ancillary property may not be taken away from the homesteader by compulsory execution, insolvency proceedings, or similar measures that could lead to its alienation, subject to receivership.<sup>1337</sup>

2) If the dwelling or property is free from encumbrances by mortgages, usufruct, and land charges at the time of the formation of the homestead, the owner may request that the court's approving decision include the provision that receivership shall also be excluded (inalienability clause).

3) Liens arising by operation of the law or otherwise on the basis of public law may be asserted by means of receivership even in the case of a homestead with an inalienability clause.

4) Under the same conditions as for the receivership of a sole proprietorship with limited liability,<sup>1338</sup> a compulsory rental or lease may be made in lieu of receivership, with the provisions governing the intervention of creditors and termination applying *mutatis mutandis*.

5) In all cases, these provisions shall be subject to the action for rescission under the law governing acts voidable at the instance of creditors and compulsory execution in relation to the remaining assets of the homesteader.

*2. Receivership*

## Article 814

*a) Precondition*

1) If, in the case of a homestead not encumbered with the inalienability clause, the owner becomes insolvent and the creditors have suffered losses in the compulsory execution of the owner's other assets or in insolvency proceedings, receivership shall be permissible, and the dwelling or property shall be assigned a receiver by the Court of Justice who, while

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<sup>1337</sup> Article 813(1) amended by LGBl. 2020 No. 369.

<sup>1338</sup> The provisions on sole proprietorships with limited liability (Articles 834 – 896a) were repealed by the Law of 15 April 1980, LGBl. 1980 No. 39.

maintaining the homestead, must safeguard the interests of the creditors as instructed by the Court of Justice.<sup>1339</sup>

2) Furthermore, receivership may be ordered only if the Court of Justice, on the basis of an investigation of the personal and economic circumstances of the debtor, the family and, if applicable, the third-party beneficiaries, comes to the conclusion that the proceeds of the homestead, while maintaining its purpose (provision of support or housing), produces a surplus available to the creditor.

3) The appointment of a receiver must be made public with reference to the first paragraph of the following article and may be noted in the Land Register.

#### Article 815

##### *b) Position of the receiver*

1) At the time of the appointment of the receiver, the administration of the homestead shall be transferred to the receiver, and the owner or beneficiary shall be entitled to dispositions which influence the proceeds only with the consent of the receiver.

2) However, the owner, the owner's family, or the beneficiaries shall have a right of possession of the homestead and a right to its proceeds, within the scope of the decision approving the homestead, to the extent necessary to maintain the purpose of the homestead.

3) With respect to the dispositions of the receiver, the receiver's accounting, and the distribution of the proceeds, each party has the right to raise of an objection before the court and to appeal the court's decisions in accordance with the provisions governing compulsory execution proceedings, to the extent no other legal remedies are provided against judicial decisions.

#### Article 816

##### *c) Intervention and satisfaction of creditors*

1) For the intervention of creditors in a receivership that is already pending, the provision on the intervention of creditors in the case of a

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<sup>1339</sup> Article 814(1) amended by LGBI. 2020 No. 369.

compulsory sale of a sole proprietorship with limited liability<sup>1340</sup> shall apply *mutatis mutandis*.

2) Satisfaction of the creditors of the homestead shall be effected in the order of the date of the unsuccessful compulsory executions and otherwise in accordance with the order of priority under insolvency law.<sup>1341</sup>

#### Article 817

##### *d) Termination*

1) The receivership shall be terminated by law upon the death of the owner of the homestead.

2) It shall also be cancelled by the Court of Justice at any time upon application by the homeowner if the legally valid and approved accounts of the receiver have not produced a reasonable surplus available to the creditors within a period of one year.

3) In the event of a subsequent change in circumstances, the receivership may be ordered again at a later time on the application of a creditor, but not more than once within two years.

#### *VI. Dissolution*

#### Article 818

##### *1. During lifetime*

1) The owner may have the homestead dissolved during the owner's lifetime by petition to the Court of Justice for removal of the entry, unless otherwise specified at formation, as in the case of homesteads for the benefit of third parties.

2) The Court of Justice shall then call upon those who may wish to object to the dissolution, by public notice in the Official Journal or in any other manner it deems appropriate, in particular through service of an invitation, to submit their reasons in writing or on the record within one month.<sup>1342</sup>

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<sup>1340</sup> The provisions on sole proprietorships with limited liability (Articles 834 – 896a) were repealed by the Law of 15 April 1980, LGBl. 1980 No. 39.

<sup>1341</sup> Article 816(2) amended by LGBl. 2020 No. 369.

<sup>1342</sup> Article 818(2) amended by LGBl. 2015 No. 275.

3) If the homestead is under receivership, the receiver shall be requested to comment.

4) The Court of Justice shall approve and execute the dissolution if it does not violate important interests of the family or the rights of third parties, and if dissolution is not at an inopportune time; if the homestead is under receivership, dissolution shall in any case be carried out only at the end of a one-year receivership period.

5) This provision shall be subject to the dissolution of the homestead as a result of the demise of the property or dwelling and the like, unless a replacement takes its place.

#### Article 819

##### 2. *Upon death*

1) If the owner dies, the homestead may continue to exist only on condition that a binding arrangement has been established for its takeover by a disposition *mortis causa* or by a public document *inter vivos*, or that the court orders its continuation in accordance with the following paragraphs.

2) In the absence of such arrangement, or if the inheritance or legacy is refused or successfully contested, and in the absence of a wife or children to whom the Court of Justice may, individually or jointly, grant the transfer at its discretion, or if the designated third parties refuse to accept it, the entry in the Land Register shall be deleted *ex officio*.

3) In the absence of any other provision, transfer in accordance with the preceding paragraphs shall be based on the capitalised value determined, if necessary, at the request of the parties in special non-contentious proceedings.<sup>1343</sup>

4) In the event of the division of the estate or liquidation of the estate by the insolvency court, a homestead not transferred shall become part of the general estate to be divided.<sup>1344</sup>

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<sup>1343</sup> Article 819(3) amended by LGBL 2010 No. 454.

<sup>1344</sup> Article 819(4) amended by LGBL 2020 No. 369.

*E. Homestead grants*

## Article 820

*I. Preconditions*

1) The municipalities may, with the consent of the Government, grant land, including building rights on their properties, to homesteaders for ownership as residential or commercial homesteads, or, with their consent and designation as grantors, may grant land from others as a homestead.

2) The Government may authorise other legal persons under public law, public-benefit undertakings, the Princely Domain Administration, entities with legal names, or any other third parties to grant homesteads.

3) At the time of formation, the land may not be encumbered *in rem* with mortgages, land charges, usufructs, or otherwise with a right of first refusal or reversion, a right of tenancy or lease, if, in the estimation of the judge, the encumbrance would contradict the purpose.

## Article 821

*II. Entry in the Land Register*

1) The homesteader shall be entered as the owner in the Land Register, and in addition to the name of the grantor, the status as a homestead shall be reserved by entering a restriction on disposal and the homestead shall be expressly designated as a "homestead grant"; if the latter designation is missing, the homestead shall be subject to the rules otherwise established for homesteads.

2) The rights of the grantor of such a homestead may be transferred to another only if the latter is entitled to grant a homestead.

3) The contract for the assignment of a homestead must specify the amount of the fee to the grantor for the land without any buildings or other improvements that have been erected in the meantime, and this amount must be stated in the reservation in the Land Register.

## Article 822

*III. Dissolution, disposal, and enlargement*

1) The division of the homestead and disposal of individual plots of land or parts of plots of land shall require the consent of the grantor in addition to the approval of the judge.

2) If, after the consent of the grantor, another plot of land is combined with or allocated to the homestead as an integral part, the status as a homestead shall extend to the whole of the enlarged plot of land, and an amount shall be indicated in the entry in the Land Register as consideration in accordance with the third paragraph of the preceding article.

#### *IV. Right of first refusal and reversion*

##### *Article 823*

###### *1. Right of first refusal*

1) The grantor of such a homestead shall have a legal right of first refusal, unlimited in time, which may be asserted both in the case of voluntary sale and sale by way of compulsory execution or insolvency proceedings.<sup>1345</sup>

2) If the homesteader sells the homestead to a person to whom the homesteader may also sell an ordinary homestead, the exercise of the right of first refusal shall likewise be excluded.

3) The entry into the Land Register on the sale may be made only after the Office of Justice has received proof of non-exercise of the right of first refusal after setting a period of one month.<sup>1346</sup>

##### *Article 824*

###### *2. Right of reversion*

1) The grantor may demand that the homestead be transferred back to the grantor if the homesteader does not live or manage it on a permanent basis without the grantor's consent, or if the homesteader commits gross mismanagement.

2) The issuer may be granted a reversion by contract for further cases with the approval of the judge.

3) The right of reversion shall also extend to the ancillary property of the homestead existing at the time of assertion.

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<sup>1345</sup> Article 823(1) amended by LGBl. 2020 No. 369.

<sup>1346</sup> Article 823(3) amended by LGBl. 2013 No. 6.

## Article 825

3. *Exercise*

1) The right of first refusal and reversion shall have effect in relation to third parties.

2) The exercise of the right of first refusal or reversion shall not affect the rights which are entered with the consent of the grantor or within the debt limit on the homestead.

3) When exercising the right of first refusal or reversion, the grantor shall pay as the purchase price at most the amount which results from the determination of the amount for the homestead property upon formation or enlargement of the homestead, if necessary taking into account a reduction in value and adding the value still available for any buildings and improvements, but without taking into account services which have been taken over and to which the third-party purchaser has otherwise committed.

4) If the grantor exercises the right of first refusal or reversion, the grantor may designate a third party to whom the homesteader must transfer the homestead.

5) The court may, on important grounds and after hearing the parties, order in special non-contentious proceedings that the grantor must repurchase the homestead in accordance with the two preceding paragraphs.<sup>1347</sup>

## Article 826

V. *Encumbrance*

1) Any contractual encumbrance of the homestead with rights *in rem* shall require the consent of the grantor.

2) Mortgages may be entered only in non-cancellable redemption debts, unless the Government grants an exception.

3) The homesteader may, if the grantor refuses to give consent to the entry of an easement or land charge, demand in special non-contentious proceedings that the judge, after hearing the parties involved, give consent in lieu of the grantor, if doing so is compatible with the rules of proper

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<sup>1347</sup> Article 825(5) amended by LGBI. 2010 No. 454.

economic activity and does not substantially endanger or impair the economic viability of the homestead.<sup>1348</sup>

4) After the parties have been heard and with the approval of the court, the homesteader may demand approval for the entry of a mortgage in special non-contentious proceedings up to two thirds of the market value, if taking out the mortgage is compatible with the rules of proper economic activity and is done:

1. to repay the purchase, production, or installation costs,
2. for uses to improve the homestead,
3. for the settlement of co-heirs.<sup>1349</sup>

5) In other cases, the encumbrance with mortgages shall be subject to a debt limit of half the estimate for mortgage notes, but the Government may allow a more extensive encumbrance by ordinance.

#### Article 827

##### VI. Reference

1) To the extent not otherwise provided in the provisions governing homestead grants, the provisions on homesteads concerning special non-contentious proceedings, the application for approval, entry in the Land Register, revocation, ancillary property, division, disposal, and enlargement shall apply *mutatis mutandis* to legal persons under public law, the Domain Administration, and public-benefit undertakings as grantors, with the derogation that:

1. the person to whom the homestead is to be granted (the homesteader) shall be deemed the applicant before the Court of Justice,
2. reversion to the grantor shall replace the revocation of approval,
3. the dissolution of the homestead on important grounds may be approved by the judge, but otherwise may take place only with the consent of the grantor, and the grantor must pay a purchase price to the homesteader or the homesteader's heirs in accordance with the regulations on exercise of the right of reversion.<sup>1350</sup>

2) Grantors other than those referred to in the first paragraph shall also be subject to the provisions on the proceedings for the formation of a homestead.

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<sup>1348</sup> Article 826(3) amended by LGBl. 2010 No. 454.

<sup>1349</sup> Article 826(4) amended by LGBl. 2010 No. 454.

<sup>1350</sup> Article 827(1) amended by LGBl. 2010 No. 454.

3) In particular, such a homestead may also be established with the inalienability clause, without prejudice to the declaration of reversion and the claim to reversion of the grantor and the limited rights *in rem* existing at the time of formation, in which case a further mortgage encumbrance shall be excluded.

#### Article 828

##### *F. International choice of law*

A homestead covering property or a dwelling situated in Liechtenstein shall be subject exclusively to Liechtenstein law, regardless of whether the homesteader is a Liechtensteiner or a foreigner.

##### *G. Entailed estates*

#### Article 829

##### *I. Establishment*

1) Assets may be linked on a permanent basis and inalienably, but subject to the rights of third parties, with a family or other specified group of persons by establishing an entailed estate by means of a public document or a disposition *mortis causa* and by arranging its further details, in particular legal succession, in the document or in articles of association.

2) However, plots of land in Liechtenstein may be a component of an entailed estate only to the extent that such land appears necessary for the maintenance of not more than five persons.

3) The establishment of an entailed estate, to the extent that it consists of immovable property, shall require the approval of the Government and the consent of Parliament; this shall also apply to any substantial change, but not to its dissolution.

4) In the case of land and rights under the Land Register, the entailed estate must be reserved in the Land Register as a restriction on disposal; in the case of other rights entered in public registers, it must be noted in the relevant entry.

5) These provisions are subject to the provisions of the law governing acts voidable at the instance of creditors, the law governing gifts, and inheritance law.

6) An entailed estate may also be formed in accordance with the provisions governing the trust enterprise (entailed trust enterprise).<sup>1351</sup>

## *II. Status of participants*

### Article 830

#### *1. In general*

1) To the extent not otherwise provided by law, the deed of formation, or the articles of association or to the extent permitted by the purpose, the provisions on the implied trust, in particular also with regard to the investment of assets, shall apply *mutatis mutandis* to the entailed estate with the proviso that the entailer shall assume the position of settlor, the holder of the entailed estate at a given time the position of trustee, and the prospective the position of beneficiaries.

2) However, the provisions governing transactions in one's own favour shall apply only to the extent that the rights of the holder of the entailed estate allow.

3) According to the deed of entailment, the holder at a given time shall have possession, management, and use, but shall also bear all burdens, while the other members of the family or persons shall have an inalienable prospective right *in rem*, which may manifest itself in the power of oversight, and, according to the deed of entailment, in the participation in legal transactions, as well as in special uses, such as compensation, maintenance, pensions, and the like.

4) The holder of the entailed estate shall not be liable for any depreciation in value that occurs through no fault of the holder.

5) If the succession is not set out in the deed of entailment, ordinary succession under law shall apply.

6) At the request of participants, unknown prospective beneficiaries of entailed estates may be called up by the judge by way of a public notice procedure to assert their claims.

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<sup>1351</sup> Article 829(6) inserted by LGBL 1980 No. 39.

## Article 831

2. *Sale and encumbrance*

1) Unless the deed of entailment determines otherwise, the holder of the entailed estate at a given time shall be authorised to dispose of the assets of the entailed estate that do not concern the proceeds accruing to the holder only to the extent permitted by the court on important grounds in special non-contentious proceedings after hearing the next prospective beneficiaries.<sup>1352</sup>

2) Rights *in rem* may be established by the holder of the entailed estate only in such a way that they expire with the rights of the holder and do not contradict the rights of *bona fide* third parties in existence when the entailed estate is formed or when the former rights are established, and do not contradict the orders of the entailer.

3) Subject to the protection of good faith, a lien on objects of the entailed estate created by the holder of the entailed estate shall extend only to the proceeds due to the holder, and the creditors may pursue compulsory execution only to that extent.

4) On important grounds arising from the entailed estate itself, in particular for maintenance or improvement, the judge in special non-contentious proceedings may approve the creation of liens, despite instructions of the deed of entailment to the contrary, on the application of the holder of the entailed estate and after hearing the prospective beneficiaries, where such liens must exist in the case of properties with redeemable mortgages, on the property of the entailed estate itself, with the proviso that the holder of the entailed estate establishing the debt and the successors to the entailed estate are liable only for the property in addition to its proceeds.<sup>1353</sup>

## Article 832

III. *Dissolution*

1) If a family or the group of entitled persons participating in a family entailed estate dies out, the assets devolve to the State as the universal successor upon the death of the last of them, unless otherwise provided in the deed, and if it has served purposes which correspond to the public duties of the polity, it shall be used in a manner as close to its purpose as possible in accordance with the provisions on implied trust, and otherwise

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<sup>1352</sup> Article 831(1) amended by LGBL 2010 No. 454.

<sup>1353</sup> Article 831(4) amended by LGBL 2010 No. 454.

the State shall establish a public-benefit foundation or donate the assets to such a foundation.

2) The State shall be liable for the debts of the entailed estate in the same way as in the devolution of the assets of a legal person.

3) An entailed estate shall be dissolved by the demise of the property of the entailed estate, unless a replacement takes its place, by resolution of the family members or other entitled persons, unless the deed of formation determines otherwise, and also by opening of insolvency proceedings.<sup>1354</sup>

#### Article 833

##### *IV. International choice of law*

1) Domestic law exclusively shall apply to entailed estates in Liechtenstein.

2) Foreign entailed estates may acquire land in the same way as domestic entailed estates, and the provision on the extinction of the beneficiary shall apply to them with respect to the assets situated in Liechtenstein.

3) They shall appoint a representative if necessary.

4) The provisions on trusts under foreign law shall apply to entailed estates under foreign law, with the proviso that Liechtenstein law shall apply exclusively with respect to the acquisition of real estate in Liechtenstein.

#### Title 15

### **Sole proprietorship with limited liability**

Article 834 bis 896a<sup>1355</sup>

Repealed

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<sup>1354</sup> Article 832(3) amended by LGBl. 2020 No. 369.

<sup>1355</sup> Article 834 to 896a repealed by LGBl. 1980 No. 39.

Title 16  
Trusts

Section 1

Trusts in general<sup>1356</sup>

*A. Description*<sup>1357</sup>

Article 897<sup>1358</sup>

*I. Trust relationship*

A trustee for the purposes of this Act is a natural person, firm, or legal person to whom another (the settlor) transfers movable or immovable property or a right (as trust property) of whatever kind with the obligation to administer or use such property in the trustee's own name as an independent legal owner for the benefit of one or several third persons (beneficiaries) with effect towards all other persons.

Article 898<sup>1359</sup>

*II. Implied trust*

1) Wherever by operation of law or official order or in any other way, a person, without being specifically appointed as trustee, receives property or rights of any kind in the trustee's own name, but for the benefit of the owner hitherto or a third party, the relationship existing between such person and the third party shall, in the absence of any provision to the contrary, be treated as a trust.

2) To the extent that the law does not make special provision for such legal relationships or nothing otherwise results from the special circumstances, the provisions relating to the trust relationship governing, in particular, the status of the trust property in the case of compulsory execution and in insolvency proceedings shall apply *mutatis mutandis* to

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<sup>1356</sup> Title preceding Article 897 inserted by LGBL 1928 No. 6.

<sup>1357</sup> Heading preceding Article 897 amended by LGBL 1980 No. 39.

<sup>1358</sup> Article 897 amended by LGBL 1980 No. 39.

<sup>1359</sup> Article 898 amended by LGBL 1980 No. 39.

the legal relationships between the holder of assets or rights and the third party.<sup>1360</sup>

*B. Coming into existence and termination of the trust*<sup>1361</sup>

*I. Formation*<sup>1362</sup>

Article 899<sup>1363</sup>

*1. Deed of trust*

1) A trust is created by a written agreement between the settlor and the trustee. It is not necessary to state the legal ground.

2) A written declaration of acceptance by the trustee is required for the creation of a trust where a trustee is appointed by unilateral declaration of the settlor.

3) A trust must in all cases be expressly designated as such, with a designation which is readily distinguishable by the trustee.

4) This article is subject to the provisions governing the formalities of transfer of items of property and other assets.

*2. Entry in public registers*

Article 900<sup>1364</sup>

*a) In general*

1) Subject to the following provisions, every trust created for a period of more than twelve months shall within twelve months from its establishment be registered for entry in the Commercial Register.<sup>1365</sup>

2) The registration for entry in the Commercial Register must include the following:<sup>1366</sup>

a) designation of the trust;

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<sup>1360</sup> Article 898(2) amended by LGBL 2020 No. 369.

<sup>1361</sup> Heading preceding Article 899 amended by LGBL 1980 No. 39.

<sup>1362</sup> Heading preceding Article 899 amended by LGBL 1980 No. 39.

<sup>1363</sup> Article 899 amended by LGBL 1980 No. 39.

<sup>1364</sup> Article 900 amended by LGBL 1980 No. 39.

<sup>1365</sup> Article 900(1) amended by LGBL 2022 No. 227.

<sup>1366</sup> Article 900(2) introductory phrase amended by LGBL 2013 No. 6.

- b) date of formation of the trust;
  - c) duration of the trust;
  - d) last name, first name, and place or residence or legal name and domicile of the trustee.
- 3) Any change to an entered fact must also be registered for entry.

Article 901<sup>1367</sup>

*b) Exceptions*

Where the object of a trust consists in assets entered in other public registers such as the Land Register, the Patent Register, or the like, and if the trust is entered in those public registers, the additional entry of the trust in the Commercial Register may be refrained from, subject to approval by the Office of Justice.

Article 902<sup>1368</sup>

*c) Deposit*

There is no obligation to enter a trust in the Commercial Register where an original or certified copy of the deed of formation is deposited with the Office of Justice within twelve months pursuant to the rules on the deposit of public documents. In that case, an original or certified copy of each document amending the deed of formation must also be deposited with the Office of Justice.

Article 903

*3. Notification of appointment*

1) Where a trustee has not been appointed by an agreement *inter vivos*, but rather by a trust letter or last will and testament, the trustee must be informed of the appointment by the Office of Justice or the probate authority upon notice by interested parties or *ex officio* if the settlor has not informed the trustee of the trustee's appointment and the appointment has not been accepted by the latter.<sup>1369</sup>

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<sup>1367</sup> Article 901 amended by LGBL 2013 No. 6.

<sup>1368</sup> Article 902 amended by LGBL 2013 No. 6.

<sup>1369</sup> Article 903(1) amended by LGBL 2013 No. 6.

2) The designated trustee must notify the Office of Justice or the probate authority of acceptance of the trust within the time limit of 14 days from the date of receipt of notification, which period may be extended as appropriate, otherwise it shall be presumed that the designated trustee has refused the appointment.<sup>1370</sup>

3) A refusal must also be presumed if, contrary to the deed of trust, the acceptance is qualified, limited, subject to a condition, or otherwise restricted.

4) The provisions governing entry in the Commercial Register shall apply *mutatis mutandis*.<sup>1371</sup>

#### *4. Judicial and public trustee and representative*

##### Article 904

###### *a) Judicial and public trustee*

1) Apart from the cases provided by law, the Court of Justice must appoint a judicial trustee in special non-contentious proceedings if a trust has been arranged in a manner similar to a donation, for example, by a unilateral deed of formation *inter vivos* or a disposition *mortis causa*, but a trustee has not been designated by name or in any other recognisable manner or if the designated trustee refuses to accept office or if a trustee appointed in any other way is no longer available for any reason and the deed of trust does not determine the manner in which another trustee should be appointed or how the trust property is to be otherwise dealt with.<sup>1372</sup>

2) The Office of Justice or the probate authority or other judicial and administrative authorities must inform the Court of Justice of such reasons for appointment.<sup>1373</sup>

3) After consultation with the interested parties where feasible, the Court of Justice shall appoint a judicial trustee, taking into consideration in the first place any wishes of the settlor and, in the absence of such wishes, the interests of the trust property.

4) As a rule, the Liechtensteinische Landesbank should be appointed as judicial trustee and, if the Landesbank refuses to accept the appointment

<sup>1370</sup> Article 903(2) amended by LGBL 2013 No. 6.

<sup>1371</sup> Article 903(4) amended by LGBL 2013 No. 6.

<sup>1372</sup> Article 904(1) amended by LGBL 2010 No. 454.

<sup>1373</sup> Article 904(2) amended by LGBL 2013 No. 6.

and important grounds do not justify an exception, only Liechtenstein citizens should be appointed, to whom the personal prerequisites relating to an appointment as representatives of legal persons shall apply.

5) The Liechtensteinische Landesbank shall be considered as public trustee and in this capacity shall fulfil those duties imposed upon it by the law, the authority, or a deed of trust.

Article 905<sup>1374</sup>

*b) Representative*

Where, in the case of a trust, no persons resident in Liechtenstein or no legal persons domiciled in Liechtenstein have been appointed as trustees, a representative must be appointed in accordance with Article 239.

*II. Termination*

Article 906

*1. In general*

1) The trust shall terminate pursuant to the provisions of the deed of trust and, in addition, if the trust property is exhausted and not replaced.

2) A trust may be dissolved by the Court of Justice in special non-contentious proceedings, under the conditions applicable to the dissolution of a foundation by the Court of Justice.<sup>1375</sup>

3) In the case of termination of a trust, where the deed of trust does not provide otherwise, the trustee or the trustee's legal successor must render account and provide information concerning the trust property in the same manner as during the existence of the trust.

4) Unless indicated otherwise by the deed of trust or the provisions above, the trust property must be transferred to the settlor or the settlor's legal successor and, in the absence of such persons, to the beneficiary entitled to a claim and, in the absence of such a beneficiary, to a foundation whose purpose is as similar as possible to that of the trust.

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<sup>1374</sup> Article 905 inserted by LGBl. 2016 No. 402.

<sup>1375</sup> Article 906(2) amended by LGBl. 2010 No. 454.

5) The trustee or the trustee's legal successors are required to effect the dispositions and administrative actions necessary for the transfer.

6) Should the termination of the trust endanger the interests of the trust property, then the trustee, the trustee's heir, representative, or other universal successor (in the case of firms or legal persons) shall be required to continue the administration of the trust until the settlor, the settlor's heir or representative or, upon application, the Court of Justice has made the necessary arrangements.

#### Article 907

##### *2. Grounds for termination relating to the settlor*

1) Rescission of the trust agreement by the settlor or revocation of a trust is admissible only if the agreement or the trust letter expressly reserves such right of rescission or if revocation is permitted pursuant to the provisions governing foundations created by way of last will and testament or contract of inheritance.

2) In all other cases, the terms of the trust shall be irrevocable, with reservation of the settlor's or a third party's right of challenge pursuant to the provisions governing contractual defects, the provisions governing the law of inheritance, or the law governing acts voidable at the instance of creditors, and, where applicable, the law governing gifts.

3) In the case of trusts created by way of last will and testament or articles of association of a legal person, rescission or revocation is also subject to the special arrangements governing the legal relationship.

4) Unless otherwise indicated by the deed of trust or the circumstances, the death of the settlor or, in the case of companies, firms, legal persons and the like, their termination, as well as incapacity to act and insolvency proceedings do not bring about termination of the trust.<sup>1376</sup>

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<sup>1376</sup> Article 907(4) amended by LGBl. 2020 No. 369.

### 3. Termination relating to the trustee

#### Article 908

##### *a) Resignation of the trustee*

1) In the absence of any provision to the contrary in the deed of trust, a trustee who has once accepted office shall be required to administer the trust for a period of at least one administrative year, insofar as the trustee remains capable of acting during that period.

2) Unless otherwise provided by the deed of trust, the trustee shall be entitled to give notice of resignation for the end of a calendar year, with a period of notice of three months, if important grounds do not justify a shorter period of notice.

3) In the absence of any directive to the contrary in the deed of trust or if a settlor, co-trustee, or beneficiary entitled to a claim is no longer deemed included, notice of resignation shall be given to the Office of Justice.<sup>1377</sup>

4) The trustee designated as successor in the deed of trust shall be notified of this by the Office of Justice, but where a successor trustee has not been designated or is unable or unwilling to accept the office, the Office of Justice shall notify the Court of Justice which, as in all other cases where trust property is left without a trustee, shall appoint a trustee.<sup>1378</sup>

#### Article 909

##### *b) Death or termination, incapacity to act, and insolvency proceedings of the trustee<sup>1379</sup>*

1) Unless the deed of trust provides for the substitution of the initially appointed trustee in the event of death, incapacity to act, or other grounds for termination (Articles 23 et seq. TrHG), each heir of a trustee and, in the event of incapacity to act, the trustee's representative is required to notify the Court of Justice.<sup>1380</sup>

2) Where the trustee is a partnership, a firm, or a legal person, the partners, the representatives or successors of the firm, or the governing

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<sup>1377</sup> Article 908(3) amended by LGBl. 2013 No. 6.

<sup>1378</sup> Article 908(4) amended by LGBl. 2013 No. 6.

<sup>1379</sup> Article 909 heading amended by LGBl. 2020 No. 369.

<sup>1380</sup> Article 909(1) amended by LGBl. 2013 No. 422.

bodies of the legal persons, or the insolvency administrator must notify the Court of Justice of the termination.<sup>1381</sup>

3) In addition, every beneficiary is entitled to give such notification to the Court of Justice for the purpose of appointing another trustee.

4) The procedure for appointment is the same as the procedure for rescission.

5) In the absence of any provision to the contrary in the deed of trust, the trustee does not withdraw from the legal relationship if insolvency proceedings have been opened in respect of the trustee's assets, provided that the trust property does not appear to be in jeopardy and the judge does not order the trustee's withdrawal. However, the judge, upon application of the participants or the insolvency administrator, may appoint a co-trustee.<sup>1382</sup>

### *C. Content and effect of the trust relationship*<sup>1383</sup>

#### Article 910

##### *I. In general*

1) The contents of the deed of trust, such as those of the agreement, the trust letter, the *disposition* mortis causa, or the articles of association, shall be authoritative in the first place for the interpretation of the trust relationship between settlor, trustee, and beneficiaries.

2) Where the content of such a document is in conflict with mandatory provisions or the public order of the country, they shall be interpreted so as to be in accord therewith, insofar as the law or the document does not provide otherwise.

3) Where the content and the effect of the trust relationship among the participants and third parties cannot be determined from the deed of trust, the provisions of this title shall apply *mutatis mutandis* and in this regard the rights of the trust entered in the Land Register shall be effective against all persons, while with respect to other rights the trustee shall have the status of a beneficiary (administrative right *in rem*).

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<sup>1381</sup> Article 909(2) amended by LGBL 2020 No. 369.

<sup>1382</sup> Article 909(5) amended by LGBL 202 No. 369.

<sup>1383</sup> Heading preceding Article 910 amended by LGBL 1980 No. 39.

4) The provisions governing amendment of a foundation shall apply *mutatis mutandis* to the amendment of a trust by the Court of Justice in special non-contentious proceedings.<sup>1384</sup>

5) To the extent not otherwise indicated from the conduct of business in a commercial manner or the entry in the Trust Register, the provisions governing the trust enterprise shall apply on a supplemental basis.<sup>1385</sup>

6) The interpretation and application of all provisions governing the trust enterprise and all other trust instruments shall be pursuant to the principles of equity.<sup>1386</sup>

## *II. Trust property*

### Article 911

#### *1. In general*

1) All assets so designated by the settlor or by operation of the law shall be trust property (the trust fund), as well as all assets acquired by the administration of such property, whether it has been included in a schedule or an inventory or not.

2) Items that have been included in a schedule or an inventory shall be presumed to be part of the trust property.

3) The trust property shall also include property acquired on grounds of a right accruing to the trust property as a substitute for an object of the trust property which has been destroyed, damaged, or removed, or acquired in any other way by the means of the trust property or as the result of a transaction related to the trust property.

4) Unless otherwise indicated by the law or other trust instrument, the provisions governing joint ownership, with the exception of those relating to division, shall apply to trust property as separate property on the understanding that the trustees have joint rights and duties and that in the case of withdrawal of a trustee or the appointment of a new trustee, the rights and duties shall devolve automatically upon the new trustee, except for the duty to appoint new trustees, to the extent that the transfer is not subject to special formalities.<sup>1387</sup>

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<sup>1384</sup> Article 910(4) amended by LGBL 2010 No. 454.

<sup>1385</sup> Article 910(5) inserted by LGBL 1928 No. 6.

<sup>1386</sup> Article 910(6) inserted by LGBL 1928 No. 6.

<sup>1387</sup> Article 911(4) inserted by LGBL 1928 No. 6.

## Article 912

*2. Specific trust property*

1) Where real estate or rights registered in the Land Register are the object of a trust, they must, in the absence of any directive to the contrary in the deed of trust and with effect of the trust vis-à-vis third parties, be transferred to the name of the trustee, whether with or without restriction on disposal. This may be done through reservation or notation of the trust in the Land Register.

2) Where an undertaking is entered in the Commercial Register under a legal name or where an asset forming part of the trust property is entered in another public register, such as the Patent Register or the like, then, in the absence of any directive to the contrary in the deed of trust, that undertaking or asset shall be described in the public register with an express designation as trust property upon application of participants.<sup>1388</sup>

3) Where third parties have acquired from the trustee property or rights which they knew were trust property and the trustee was not entitled to dispose of such property or rights, the settlor, a co-trustee, a beneficiary or, finally, a trustee appointed by the Court of Justice may, alone or as a joint litigant with others, claim the surrender of such assets or take action on grounds of unjust enrichment for the benefit of the trust assets.

4) A debtor shall acknowledge that a claim forms part of the trust property only after receiving notification to that effect.

5) Where claims are transferred to the trustee by the settlor or a third party acting on the settlor's behalf, the debtor may not, in the absence of provisions to the contrary in the deed of trust, raise any objections the debtor is entitled to raise against the trustee, but the debtor may raise all the objections the debtor is or was entitled to raise against the settlor.<sup>1389</sup>

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<sup>1388</sup> Article 912(2) amended by LGBl. 2013 No. 6.

<sup>1389</sup> Article 912(5) amended by LGBl. 1980 No. 39.

## Article 913

*3. Authorised trust investments*

1) Unless otherwise provided by the deed of trust, the trustee, where required to invest trust assets, shall invest them with the Liechtensteinische Landesbank or in negotiable securities issued by that bank or in debentures or in unsecuritised claims for which domestic polities guarantee the payment of interest or in loans to domestic polities or in real securities within the encumbrance limits prescribed for mortgages.

2) The investment of trust assets through the acquisition of real estate or the formation of homesteads or participation in undertakings is permitted only where so provided or allowed by the deed of trust or if the judge gives permission in special non-contentious proceedings.<sup>1390</sup>

3) Also exceptionally in other cases, the trust property, or individual parts thereof may, with the approval of the Court of Justice in special non-contentious proceedings, also be invested in other securities or in another manner, if there are important grounds and if not prohibited by the deed of trust.<sup>1391</sup>

4) These restrictions shall not apply to trusts whose object is assets belonging to persons or legal persons or firms domiciled abroad (domiciliary trusts).

*4. Compulsory execution and insolvency proceedings<sup>1392</sup>*

## Article 914

*a) Creditors of the settlor and beneficiary*

1) The creditors of the settlor or the settlor's legal successors may assert a claim against the trust property only if and to the extent that the conditions for doing so are met under the law governing acts voidable at the instance of creditors or otherwise according to the type of transfer, such as in the case of gifts or under the law of inheritance.

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<sup>1390</sup> Article 913(2) amended by LGBL. 2022 No. 227.

<sup>1391</sup> Article 913(3) amended by LGBL. 2010 No. 454.

<sup>1392</sup> Title preceding Article 914 amended by LGBL. 2020 No. 369.

2) The creditors of the beneficiary may assert any claims against the trust property by way of compulsory execution or insolvency proceedings only to the extent that the beneficiary has claims against the trust property and there is no provision prohibiting such withdrawal, such as in the case of family foundations.<sup>1393</sup>

3) If the beneficiary is simultaneously also a trustee, the above provisions shall apply *mutatis mutandis*.

#### Article 915

##### *b) Creditors of the trustee*

1) In proceedings to secure rights or in the case of compulsory execution and insolvency proceedings of the trustee, the trust property shall be regarded as third-party property, and the trustee's creditors shall therefore have no right of claim against the trust property, to the extent that the trustee's claims for reimbursement and compensation are not involved.<sup>1394</sup>

2) Where the trust property is comprised of real estate, movables, or other separable assets, it shall be separated as far as the circumstances permit and passed to the successor trustee or judicially appointed trustee according to the normal course of business, such as in the event a trustee is no longer available. The Court of Justice shall make the necessary arrangements for such transfers *ex officio*, such as entries in the public registers.

3) Where the trust property is mixed with the debtor's assets to such an extent that an immediate official separation is not possible, the separation shall be undertaken by the Court of Justice as soon as possible.

4) Where separation is not possible for the duration of the compulsory execution or insolvency proceedings, a compensation claim for surrender of the trust property shall take precedence over all other creditors, and if there is more than one settlor or beneficiary entitled to a claim, they shall rank equally among themselves.<sup>1395</sup>

5) Unless otherwise provided by the deed of trust, the settlor or the settlor's legal successor, the co-trustee, or the beneficiary may assert claims individually or as joint litigants against the trustee or the insolvency

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<sup>1393</sup> Article 914(2) amended by LGBl. 2020 No. 369.

<sup>1394</sup> Article 915(1) amended by LGBl. 2010 No. 369.

<sup>1395</sup> Article 915(4) amended by LGBl. 2020 No. 369.

administrator for separation or compensation, and they shall be entitled to examine all the debtor's books and records.<sup>1396</sup>

6) Within a period of time determined by the court, the creditors of the trustee may, for their part, contest by recourse to the law the claims for separation and compensation to the extent that they are unjustified, in whole or in part; in particular, they may assert that a mixed trust exists and for this reason their debtor may have a partial claim against the trust property for money, but not for other assets.

#### Article 916

##### *c) Creditors of the trust property*

1) The trustee is personally liable without limitation, jointly and severally with any co-trustees, for the debts of the trust property incurred by the trustee on behalf of the trust property to the extent that they cannot be met out of the trust property. However, unless otherwise provided by the deed of trust, the trustee shall have a right of recourse against the settlor and, where the conditions are met for a challenge or for unjust enrichment, against the beneficiary. However, liability on the part of the trustee and a right of recourse only exist to the extent it cannot be proven that the third party was not acting in the belief that a liability went beyond the amount of the trust property.<sup>1397</sup>

2) Repealed<sup>1398</sup>

3) Where a trustee participates in a firm or legal person, the trustee's creditors may have a claim against the trustee only to the extent permitted by the provisions governing the undertaking concerned.<sup>1399</sup>

4) The trust assets may be subject to separate insolvency proceedings pursuant to the provisions of the Insolvency Act, in which case the creditors of the trust property may, if they are not fully satisfied, claim compensation for loss from the trustee to the extent that such claims are not excluded pursuant to the paragraphs above.<sup>1400</sup>

<sup>1396</sup> Article 915(5) amended by LGBl. 2020 No. 369.

<sup>1397</sup> Article 916(1) amended by LGBl. 1980 No. 39.

<sup>1398</sup> Article 916(2) repealed by LGBl. 1980 No. 39.

<sup>1399</sup> Article 916(3) amended by LGBl. 1980 No. 39.

<sup>1400</sup> Article 916(4) amended by LGBl. 2020 No. 369.

*III. Rights and duties of the settlor*

## Article 917

*1. Rights*

1) The settlor is entitled to transfer any parts of the settlor's assets on trust to a trustee appointed by the settlor by means of a trust agreement, trust letter, last will and testament, or articles of association and, subject to the mandatory provisions of the law, the settlor may therein define the precise terms of the trust. In particular, the settlor may make provision for the trust property, under certain conditions or after a certain period of time, to revert to the settlor or the settlor's legal successor or to devolve upon third parties such as foundations or establishments.

2) The settlor may draw up the conditions in the deed according to which a trustee appointed by the settlor may be removed and any future trustees may be appointed.

3) Furthermore, the settlor may specify conditions under which a beneficiary named in the deed of trust is no longer available and another must be appointed in the beneficiary's place, and the settlor may state the conditions on which trust property shall pass to other beneficiaries in the event of death or lapse of beneficiaries or the like.

4) Where the disposition provides for an entailed estate, they may not contravene the mandatory provisions relating thereto.

## Article 918

*2. Duties and other standing*

1) The settlor may otherwise not draw up conditions which bind the trustee to continuous instructions by the settlor.

2) Where such provisions are drawn up, the relationship shall be deemed to be a normal agency agreement within the meaning of the law of obligations, unless the circumstances indicate a different relationship such as, in particular, a service contract.

3) When the trustee accepts the trust agreement or accepts the office on the basis of a different deed of trust, the settlor shall be bound by the provisions that have been drawn up.

4) The trustee shall not, however, be liable to the settlor for acts undertaken pursuant to the settlor's instructions but in violation of the provisions of the trust.

5) In the case of proceedings concerning trust property, the settlor may be heard only in a function equivalent to that of a party, not as a witness, and the objection of *res judicata* shall apply both for and against the settlor and the settlor's legal successors.<sup>1401</sup>

#### *IV. Fiduciary authority and duties*

##### *1. Fiduciary authority*

###### Article 919

###### *a) In general*

1) After the agreement has been concluded, the trustee may demand performance of the agreement by the settlor, unless otherwise provided by the deed of trust.

2) Unless the deed of trust provides otherwise or unless otherwise indicated by the special circumstances, the trustee may, after having accepted the office, demand that the settlor or other legally bound third parties, such as heirs or the like, comply with the terms of the trust.

3) Subject to the trustee's obligations arising from the deed of trust, the trustee shall be entitled to dispose of the trust property in the same manner as an independent holder of rights and duties such as, for instance, an owner, a creditor, a member or governing body of a legal person or partnership or the like, and the trustee may represent the trust property before the authorities and in all proceedings in the trustee's own name as a party, a participant, a co-summoned party, an intervener, and the like. The trustee may also administer and exercise the rights pertaining to the trust against all third parties pursuant to the deed of trust and, to the extent necessary, convert the trust property into cash and reinvest the same unless the purpose of the trust indicates otherwise.

4) Unless the deed of trust provides otherwise, the trustee may advance to a beneficiary an appropriate part of the assets that will subsequently devolve upon the beneficiary.

5) To the extent that trust duties do not require performance by the trustee personally, the trustee may delegate all administrative acts to third parties.

6) If the trustee is in doubt concerning the admissibility or appropriateness of an administrative act or a disposition concerning the trust

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<sup>1401</sup> Article 918(5) amended by LGBI. 1980 No. 39.

property or unusual acts which create obligations at the expense of the trust or if, where there are co-trustees, one of the co-trustees refuses to cooperate, the trustee shall, to the extent necessary, turn to the Court of Justice by way of special non-contentious proceedings to obtain binding information, and the court may call in suitable persons to assist in the legal findings.<sup>1402</sup>

7) Pursuant to the provisions governing the administration of companies with legal personality, the trustee has a right to request discharge relating to the trustee's activity in accordance with the last two paragraphs of the following article.

*b) Reimbursement, remuneration etc.*

Article 920

*aa) Claims*

1) The trustee is entitled to claim reimbursement for all necessary expenses and costs incurred by the trustee in the interest of the trust. The trustee is also entitled to be reimbursed for damage arising to the trustee from the trust property, to be released from liabilities entered into in the interest of the trust or otherwise incurred and, furthermore, to appropriate remuneration for the trustee's services, unless otherwise indicated by the deed of trust or other legal relationship between the parties.

2) The trustee may claim interest at the rate which is usual in the country on expenses or costs, calculated from the day on which such expenses or costs were incurred.

3) Unless otherwise provided by the deed of trust or otherwise indicated by the legal relationship between the trustee and the settlor, any claims shall be made in the first place against the settlor and then against the beneficiary entitled to the trust property or the income therefrom.

4) Alternatively, the claims may be made directly against the trust property, under the designation of the trust property pursuant to the deed of trust, or against the trust property and the persons under an obligation as mentioned in the preceding paragraph as joint litigants.<sup>1403</sup>

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<sup>1402</sup> Article 919(6) amended by LGBl. 2010 No. 454.

<sup>1403</sup> Article 920(4) amended by LGBl. 1980 No. 39.

## Article 921

*bb) Enforcement*

1) Without prejudice to the trustee's right to bring a later claim for enforcement in contentious proceedings, the trustee may petition the Court of Justice to determine the remuneration for the trustee's services in special non-contentious proceedings after the participants have been heard.<sup>1404</sup>

2) To settle the trustee's claims, the trustee may be satisfied from the trust property in preference to the beneficiaries, and for this purpose the trustee may also assert an offset against the settlor or beneficiary and a right of retention on the assets of the trust property.

2. *Fiduciary duties*

## Article 922

*a) In general*

1) The trustee is required to comply with the provisions of the deed of trust and the provisions of this Act which are not in contradiction with the deed of trust, to preserve and administer the trust property with the care of a prudent businessperson and, where customary or appropriate, the trustee shall insure the assets against risk.

2) The trustee may not dispose of the trust property in a manner which could<sup>1405</sup> adversely affect or frustrate the purpose of the trust.

3) In the absence of any directive to the contrary in the deed of trust or unless an emergency requires urgent measures, co-trustees must act jointly (collectively).

4) Trustees who conduct deposit business in a commercial manner similar to banks must strictly segregate trust property from other assets, to the extent the trust relationship does not indicate otherwise (trust deposits).

5) Special records must be kept by persons conducting trust business in a commercial manner.

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<sup>1404</sup> Article 921(1) amended by LGBl. 2010 No. 454.

<sup>1405</sup> This should read "könnten" instead of "könnte" in the German original.

## Article 923

*b) Schedule of assets and accounting*

1) If a schedule of assets for the trust property has not already been prepared, the trustee shall draw up a separate schedule of assets in accordance with Article 1045(3) and update it annually. The trustee shall ensure that the records and supporting documents are available at the domestic registered office within a reasonable period of time. Article 1059 shall apply *mutatis mutandis* to the management and retention of records and supporting documents.<sup>1406</sup>

2) The trustee is required to render accounts annually and to provide information at any time concerning the state of the trust to the audit office provided for in the deed of trust or, in the absence of such audit office, to the settlor or, if the settlor is deceased or is otherwise unreachable, to the beneficiary who has a right of claim and, in the absence of such beneficiary, to the Court of Justice, unless the circumstances necessitate a derogation such as, for instance, in the case of banking trusts, small trusts, or the like.<sup>1407</sup>

3) Where the beneficiary entitled to a claim is a partnership or a legal person, the accounts must be submitted and the information disclosed to the partner representing the partnership or to the governing bodies in the case of a legal person.

4) Where the beneficiary or beneficiaries are not legally responsible or if an administrator has been appointed for them, or if submitting the accounts is not feasible on other grounds, the trustee shall submit the accounts to the Court of Justice.<sup>1408</sup>

5) Repealed<sup>1409</sup>

6) If the trust object is an undertaking subject to the provisions of this Act concerning commercial accounting, the trustee shall be required to comply with such provisions.

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<sup>1406</sup> Article 923(1) amended by LGBL 2012 No. 124. This provision shall apply from 1 January 2014. For earlier financial years, see the transitional provisions.

<sup>1407</sup> Article 923(2) amended by LGBL 2000 No. 279.

<sup>1408</sup> Article 923(4) amended by LGBL 2010 No. 124.

<sup>1409</sup> Article 923(5) repealed by LGBL 2012 No. 124. This provision shall apply from 1 January 2014. For earlier financial years, see the transitional provisions.

7) Unless the deed of trust provides otherwise, the judge in special non-contentious proceedings may on important grounds order an official audit upon application by an entitled participant. The result of such audit shall be submitted to the court as in the case of legal persons.<sup>1410</sup>

*c) Responsibility*

Article 924

*aa) Breach of trust etc.*

1) Where the trustee is in breach of the provisions set out in the deed of trust or of the otherwise relevant provisions of this title (breach of trust), the trustee shall be personally liable to the settlor with the trustee's entire assets or, where the settlor is no longer available, to the beneficiary, pursuant to the principles of the law of contract. The third party acting in bad faith, however, shall be liable for damages to the settlor and to the beneficiary pursuant to the provisions governing torts, but only to the extent that they did not themselves cause the breach.

2) In the case of a breach of trust, co-trustees shall be jointly and severally liable, without limitation, unless the deed of trust provides otherwise, to the extent that they cannot prove that they acted with the care of a prudent businessperson in the supervision of the co-trustee and subject to their right of recourse against the guilty party.

3) Subject to the right of recourse or to the extent the circumstances of the individual trust do not indicate otherwise, the trustee shall also be liable for the acts and omissions of a third party to whom the trustee has delegated the performance of transactions on behalf of the trust or engaged in any other way, such as in the case of a person with registered power of attorney, authorised agent, and the like.

Article 925

*bb) Transactions for the benefit of the trustee*

1) In the absence of any directive to the contrary in the trust instrument and with the exception of claims for reimbursement and compensation, the trustee is not entitled to draw any benefit from the trust.

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<sup>1410</sup> Article 923(7) amended by LGBI. 2010 No. 454.

2) Unless the deed of trust provides otherwise, the trustee is therefore entitled to conclude transactions with the trust property for the trustee's own account such as, for example, renting or leasing trust property for the trustee, using money of the trust assets for the trustee's own business purposes, paying advances to the trustee, appropriating assets of the trust property for the trustee's own account or giving such assets to close relatives or friends, only to the extent that such transactions do not go beyond the scope of orderly administration.

3) Any other transaction which cannot be rescinded shall render the trustee liable for damages to the settlor or the beneficiary, subject to claims against a third party acting in bad faith.

4) Where it becomes apparent that the trustee has mixed money from the trust property with the trustee's own money, the trustee must pay interest on these monies at one and a half times the customary domestic rate and, if the trustee has used these monies profitably in business transactions, the trustee must render account of such business and provide information and deliver in full the share of the profit accruing to the trust property; where the amount of profit cannot be determined, the trustee must also pay interest on such monies at a higher rate, depending on the circumstances (remuneratory interest).

5) Unless the deed of trust provides otherwise, the claims referred to above may be brought by the settlor or, if the settlor is no longer alive or is otherwise unable to act, by the beneficiary and, if a beneficiary does not take action, by a trustee appointed by the Court of Justice in special non-contentious proceedings for the benefit of the trust property.<sup>1411</sup>

#### Article 926

##### 3. Reference etc.

1) The provisions governing agency agreements shall apply *mutatis mutandis* to the legal relationship between the settlor and the trustee insofar as not otherwise indicated by the provisions of this title or the particular purpose of the trust or unless the provisions governing another legal relationship apply on a supplemental basis such as, for instance, in the case of a publishing contract, a service contract, a partnership, or a consignment contract.

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<sup>1411</sup> Article 925(5) amended by LGBL 2010 No. 454.

2) The provisions governing changes to the organisation and the purpose in the case of family foundations shall apply to trusts *mutatis mutandis*.

3) To the extent that the trustee gives a guarantee or surety for the performance of the trustee's duties, the provisions governing guarantees shall also apply.

4) During the existence of the trust, the period of limitation and period of prescription do not operate in favour of the trustee with regard to the trust property.

#### *V. Status of the beneficiary*

##### Article 927

###### *1. In general*

1) The beneficiary is entitled to demand execution of the provisions of the trust, to the extent not otherwise provided by the deed of trust and to the extent that such execution is not left to the discretion of the trustee with regard to certain or all of the beneficiaries.

2) Each beneficiary entitled to claim who considers their rights or interests prejudiced by a disposition or an administrative act of the trustee may, in the absence of any provision to the contrary in the deed of trust, request the necessary injunctions from the Court of Justice in special non-contentious proceedings to remedy the deficit.<sup>1412</sup>

3) Where an application to the Court of Justice is unjustified, the beneficiary shall be liable to the trustee for costs and damages pursuant to the provisions governing torts.

4) Whether and to what extent a person is a beneficiary must be established in contentious proceedings before the court insofar as the question need not be decided as a preliminary or interposed question in other proceedings.

5) As in the case of establishments, the judge may, by way of a public notice procedure, call upon unknown beneficiaries to present their claims.

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<sup>1412</sup> Article 927(2) amended by LGBI. 2010 No. 454.

6) The settlor, but not solely the trustee, may also be one of the beneficiaries of the trust, such as, for example, in the case of conditions to be carried out for the benefit of a testator after the testator's death.<sup>1413</sup>

7) In the case of public-benefit or similar trusts where there are no beneficiaries entitled to a claim and where nothing else is indicated by the trust instrument, the claims conceded to the entitled beneficiaries in the case of other trusts may be exercised by the representative of public law upon application or *ex officio* at the expense of the trust property or, where there is fault, at the expense of the party at fault.<sup>1414</sup>

#### Article 928

##### 2. Trust certificate

1) The deed of trust may provide that trust certificates on the trust fund shall be issued as securities to the beneficiaries.

2) To the extent that the deed of trust or the nature of the trust does not indicate otherwise – such as in the case of trust certificates on membership rights – the trust certificates provide the beneficiary with a creditor's right to benefit from the trust fund, such as by a share in the income, in the dissolution surplus, and the like.

3) The trust certificates must be in the beneficiary's name, and transferable like registered shares, and a register on them shall be kept by the trustee similar to a share register.<sup>1415</sup>

4) The trust certificate shall list the trustee and the individual entitlements, making reference to the deed of trust and the law.

5) The rules governing the community of bond creditors shall also apply to the rights of the trust certificate beneficiaries, with the proviso that a simple majority of certificates shall be sufficient for passing resolutions unless the wording of the certificate provides otherwise at the time of issue.

6) This article is subject to the special provisions on trust certificates such as in the case of legal persons and partnerships, to which the above provisions shall apply *mutatis mutandis*.<sup>1416</sup>

<sup>1413</sup> Article 927(6) inserted by LGBL 1980 No. 39.

<sup>1414</sup> Article 927(7) inserted by LGBL 1980 No. 39.

<sup>1415</sup> Article 928(3) amended by LGBL 2016 No. 402.

<sup>1416</sup> Article 928(6) inserted by LGBL 1980 No. 39.

## Article 929

*D. Supervision and other measures concerning trusts*<sup>1417</sup>

1) The supervisory authority for trusts entered in public registers is the Court of Justice except in the case of family trusts or where another body is designated in the deed of trust or a supervisory authority is excluded entirely or, at the discretion of the court, such supervision is not necessary or appears ruled out by the circumstances.<sup>1418</sup>

2) The Court of Justice shall officiate in this capacity in special non-contentious proceedings and may from time to time at its discretion exercise control over the existence and administration of the trust property and shall keep a directory (trust directory) of the trusts subject to its supervision.<sup>1419</sup>

3) Where any trustee fails to carry out that trustee's duties, the Court of Justice in special non-contentious proceedings may, on application of a trustee or a beneficiary or *ex officio*, after hearing the participants and after prior warning, or without further ado where there are important grounds arising from the trust relationship itself, remove the trustee from office and order the appointment of another trustee or itself appoint such a trustee, subject to a right of appeal against the decision.<sup>1420</sup>

4) This article is subject to claims for damages brought by the participants against the trustee as well as those brought by the trustee against the participants and any claim brought by the trustee against the participants on grounds of violation of personal circumstances.

*E. International choice of law and trusts under foreign law*

## Article 930

*I. International choice of law*

1) The law of the state which is specified in the deed of trust shall apply to the trust relationship. If no express choice of law is apparent, the law of the state in which the trustee or the majority of the trustees have their habitual abode or domicile and, on a subsidiary basis, the law of the state

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<sup>1417</sup> Article 929 heading amended by LGBL 1980 No. 39.

<sup>1418</sup> Article 929(1) amended by LGBL 1980 No. 39.

<sup>1419</sup> Article 929(2) amended by LGBL 2010 No. 454.

<sup>1420</sup> Article 929(3) amended by LGBL 2010 No. 454.

in which the trustee functions are effectively exercised shall be applicable to the trust relationship.<sup>1421</sup>

2) Trusts which are not subject to Liechtenstein law may not assert a better legal position in Liechtenstein than domestic trusts.

#### Article 931

##### *II. Trusts under foreign law*

Trusts under foreign law may be formed in Liechtenstein, with the proviso:

1. that to the extent necessary in the individual case, the relationship between settlor, trustee, and beneficiary shall be subject to the rules on trusts of the foreign law – which shall be included in the deed of trust in detail – and the relationship between the trust and third parties shall be subject to the provisions of Liechtenstein law,
2. that a mandatory court of arbitration shall have jurisdiction for disputes between the settlor, the trustee, and the beneficiary.<sup>1422</sup>

#### Article 932<sup>1423</sup>

##### *F. Professional trustee*

These provisions are subject to the legislative provisions governing the professional exercise of the fiduciary business.

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<sup>1421</sup> Article 930(1) amended by LGBL 1997 No. 19.

<sup>1422</sup> Article 931(2) amended by LGBL 1980 No. 39.

<sup>1423</sup> Article 932 amended by LGBL 1980 No. 39.

## Section 2

**Trust enterprise (Business trust)<sup>1424</sup>**Article 932a<sup>1425</sup>

A trust enterprise (a business trust) may be formed and operated pursuant to the following provisions:

*A. In general**I. Special trust enterprises**1. Description*

## § 1

*a) Trust enterprise with and without legal personality*

1) A trust enterprise as a business trust without legal personality pursuant to the law is an undertaking managed or further operated on the basis of the trust articles by one or several trustees (as fiduciary owners), under their own name or legal name which, as a legally autonomous undertaking, pursues organised, economic or other objects and is endowed with its own assets, without legal personality, whose liability for its obligations shall be pursuant to this Act (trust enterprise without legal personality), and which does not have any character under public law or any other legal form under private law.

2) Where, applying the preceding paragraph *mutatis mutandis*, an undertaking is expressly created as a trust enterprise with legal personality in accordance with the trust articles (deed of formation) drawn up pursuant to the provisions of this Act, the provisions governing the business trust without legal personality shall apply *mutatis mutandis* to this trust enterprise with legal personality, in particular the provisions governing liability for obligations.

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<sup>1424</sup> Title preceding Article 932a inserted by LGBl. 1928 No. 6.

<sup>1425</sup> Article 932a including §§ 1 through 170 inserted by LGBl. 1928 No. 6.

§ 2<sup>1426</sup>*b) With divisions, trust funds, or the like*

1) Several trust enterprises pursuant to this Act with the same or different participants may be combined within the same trust articles in such a way that each individual trust forms a division, provided that it is a trust enterprise with legal personality as defined in § 1(2) and the following provisions of this Act (concerning trust enterprises), especially those governing liability, registration, or notification to the Office of Justice and, on a supplemental basis, Articles 243 et seq. shall apply *mutatis mutandis* to the individual divisions ("trust enterprise with divisions").

2) Furthermore, a trust enterprise may, pursuant to the provisions governing trusts in general, take over other trusts operating under a particular name or legal name without the aforementioned types of structure, as a trustee, with the proviso that the trust assets of the individual trust transferred to the trust enterprise or one of its divisions shall be solely liable for obligations arising from legal transactions of this trust, and in legal relations the trust enterprise shall also act for those trusts that have to be identified by their name or legal name.

3) In the absence of provisions to the contrary in the trust articles, it shall be conclusively presumed that a "trust enterprise without legal personality" and with no divisions, hereinafter abbreviated to "trust enterprise", is established.

## § 3

*2. Purpose or object*

1) A trust enterprise may be formed for any specific, reasonable, and possible purpose that is not unlawful, immoral, or a danger to the State, in particular also for the investment of assets, for the distribution of income, for the consolidation of undertakings by transfer of shares in trust or for acquisition, for family welfare, or for public-benefit, charitable, other personal, non-personal or similar purposes.

2) A fiduciary undertaking operated in a commercial manner may, if the liability of the participants is excluded or limited, be operated only as a trust enterprise, unless another form of undertaking has been chosen that is subject to an obligation to register pursuant to the provisions on trusts

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1426 Article 932a § 2 amended by LGBL 2014 No. 362.

in general or of this Act, or where an exclusion or limitation of liability has been agreed in each case with the third party.<sup>1427</sup>

3) Trust enterprises whose purpose is family welfare, a public benefit, or charity may in particular also erect homesteads of all kinds for beneficiaries.

4) If a trust is formed for a purpose other than a business (undertaking) operated in a commercial manner, such as for the purpose of satisfying creditors without commercial operations, this shall be subject to any special provisions that may apply and the provisions governing trusts in general.

§ 4<sup>1428</sup>

*II. Other fiduciary undertakings*

Repealed

§ 5

*III. Reference etc.*

1) The general provisions on legal persons and in particular those governing legal personality shall apply on a supplemental basis and *mutatis mutandis* to the trust enterprise, without and with legal personality, to the extent no derogations arise from any absence of membership, from the nature of the trust enterprise, or from the law.

2) The provisions governing companies with legal personality conducting business in a commercial matter such as trade, manufacturing, or the like, shall apply *mutatis mutandis* in accordance with the preceding paragraph, especially to trust enterprises with commercial operations.

3) The right and duty to register facts and circumstances with the Commercial Register serving as the Trust Register as well as the entry and their announcement shall conform on a supplemental basis with the provisions drawn up for establishments.<sup>1429</sup>

4) To the extent that derogations do not arise from the provisions of the law, the other provisions governing trusts in general shall be applied

<sup>1427</sup> Article 932a § 3(2) amended by LGBL 1980 No. 39.

<sup>1428</sup> Article 932a § 4 repealed by LGBL 1980 No. 39.

<sup>1429</sup> Article 932a § 5(3) amended by LGBL 2013 No. 6.

with the proviso that in lieu of the Court of Justice in special non-contentious proceedings, the Office of Justice shall act in administrative proceedings.<sup>1430</sup>

5) Insofar as the Office of Justice is competent and the procedure is not governed by the provisions on the Commercial Register, the provisions on administrative proceedings shall be applied on a supplemental basis with the proviso that decisions may be appealed to the Court of Justice and the higher courts.<sup>1431</sup>

6) In official proceedings, a trust enterprise may be designated as a party in the same manner as a legal person which is represented by its administration or in such a manner that the managing trustees as such are designated by their last names, first names, and places of residence or by legal name and domicile in their capacity as trustees of the undertaking.

## § 6

### *IV. Relationship of law and trust instrument*

1) To the extent that exceptions are not allowed for trust enterprises pursuant to foreign law or licensed foreign trust enterprises or otherwise, provisions of the law whose application is mandatory by virtue of the law or otherwise shall take precedence over a derogating trust instrument.

2) Other legislative provisions shall be applicable only in the absence of derogating rules in the trust instrument.

3) Subject to compensation for damages or other legal consequences against the persons acting, the intended legal form for a trust enterprise shall be acquired by entry in the Trust Register, even where the prerequisites for this did not exist.

4) Any defectiveness of a provision which contradicts the mandatory provisions of the law is remedied by entry only to the extent provided by law.

5) Where nothing else is indicated by the law, the expression "trust instrument" shall be understood to mean the deed of trust, trust articles, regulations, bylaws or the like, and the expression "trust articles" shall also be understood to mean the trust declaration or the trust formation deed for a trust enterprise.

<sup>1430</sup> Article 932a § 5(4) amended by LGBl. 2013 No. 6.

<sup>1431</sup> Article 932a § 5(5) amended by LGBl. 2013 No. 6.

*B. Coming into existence*<sup>1432</sup>*I. Trust Register*<sup>1433</sup>§ 7<sup>1434</sup>*1. Entry*

1) Every trust enterprise shall come into existence only upon entry in the Commercial Register serving as the Trust Register.<sup>1435</sup>

2) The formation of a trust enterprise shall be subject, on a supplemental basis, to the provisions on formation in the general provisions on legal persons, to the extent that the law does not provide otherwise.

## § 8

*2. Absence of entry*

1) Where action is taken on behalf of the trust enterprise before it comes into existence, the persons acting shall, to the extent not otherwise indicated by the provisions governing trusts in general, be jointly and severally liable by virtue of the law towards *bona fide* third parties, without limitation, subject to the right of recourse of the persons who acted against the persons who caused them to act in this capacity and to the claims for unjustified enrichment against the trust enterprise coming into existence at a later time.

2) Where a person has taken over assets for the purposes of a trust enterprise before the formation thereof and it turns out that the trust enterprise is invalid or that its establishment is unsuccessful, the person shall nevertheless, pursuant to the provisions governing trusts in general and subject to that person's personal claims, be treated as an implied trustee with regard to the received assets, but in particular relating to accounting and the provision of information.

3) The person shall be required to pay back the assets plus legal interest or other appropriate reimbursement to the settlors or, pursuant to the underlying legal relationship, to those persons who placed the assets at the disposal of the settlors or, to the extent that the law does not provide

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<sup>1432</sup> Heading preceding Article 932a § 7 amended by LGBl. 1980 No. 39.

<sup>1433</sup> Heading preceding Article 932a § 7 amended by LGBl. 1980 No. 39.

<sup>1434</sup> Article 932a § 7 amended by LGBl. 1980 No. 39.

<sup>1435</sup> Article 932a § 7(1) amended by LGBl. 2013 No. 6.

otherwise, to their legal successors or otherwise to surrender the assets to the trust enterprise established at a later time.

3. *Trust articles*<sup>1436</sup>

§ 9

a) *Necessary content*

1) The trust articles (trust declaration) may be included in the deed of trust itself, established pursuant to the provisions governing trusts in general, or in a document that is provided for or permitted by that deed of trust and, pursuant to the execution thereof, is specifically drawn up and signed with a certified signature by the settlor and the trustee or a third party or by one or the other.<sup>1437</sup>

2) The trust articles shall state:

1. the (company) name, domicile, duration, and purpose of the trust enterprise or object of the undertaking and express designation as a "trust enterprise", "trust foundation" or "business trust", or similar expression;
2. the trust fund, its procurement where applicable, with an enumeration of the individual assets, where applicable at fair and reasonable estimated values, in the articles themselves or in a schedule accompanying the articles, with certified signature and the assurance that the information is correct;
3. number and manner of appointment of the trustees as well as a statement concerning the manner of future appointment of trustees in cases where a trustee is no longer available for any reason, unless the enterprise would have to be dissolved if some or all of the initial trustees were no longer available, and finally
4. the form of announcement to third parties.

3) To the extent not indicated otherwise by the preceding information, or unless subparagraphs 3 and 4 are concerned, that information shall be deemed significant with the same effect in accordance with the provisions concerning voidability proceedings under the general provisions on legal persons.

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<sup>1436</sup> Heading preceding § 9 amended by LGBL 1980 No. 39.

<sup>1437</sup> Article 932a § 9(1) amended by LGBL 1980 No. 39.

4) Repealed<sup>1438</sup>

§ 10

*b) Other information and implementing provisions*

1) Pursuant to this Act, the trust articles themselves may furthermore contain additional information, for example relating to other trusts or divisions, the organisation, in particular the appointment of a supervisory body or audit office, more specific rules governing beneficial interest or the like, or further provisions may be reserved for regulations (bylaws) established by the trust articles.<sup>1439</sup>

2) The implementing provisions contained in the trust articles or in the regulations or the like, which have been drawn up without the consent of the settlor, may not contradict the deed of trust or the regulations drawn up by the latter; otherwise, subject to the claims of *bona fide* third parties, the contradicting provisions shall be invalid, to the extent that the Office of Justice does not allow exceptions on important grounds.<sup>1440</sup>

*4. Formation if the settlor is no longer available*

*a) In general*

§ 11

*aa) After the death of the settlor*

1) Where in a disposition *mortis causa*, the formation of a trust enterprise is provided, with instructions concerning the purpose and the amount of the trust fund, but without other important information, or where the settlor dies after the deed of trust has been established but before the trust articles have been prepared and nobody else, such as the executor or the administrator, is under obligation to draw up and execute the trust articles, then, with reservation of the rights of the heirs and the creditors, the heirs, or where applicable the legatees, executors, or administrators or, upon application of others with legal interests or in the case of public-benefit, charitable, or similar purposes, the representative of public law, shall, after hearing those with legal interests, at the expense of the estate, arrange for the drawing up of appropriate trust articles, the

<sup>1438</sup> Article 932a § 9(4) repealed by LGBl. 1980 No. 39.

<sup>1439</sup> Article 932a § 10(1) amended by LGBl. 2014 No. 362.

<sup>1440</sup> Article 932a § 10(2) amended by LGBl. 2013 No. 6.

transfer of the assets to the undertaking, the appointment of trustees and, where applicable, entry or notification.

2) Upon application of persons with legal interests, the Office of Justice may, after hearing other interested parties, order the formation of the trust enterprise.<sup>1441</sup>

3) The trust enterprise shall not be formed in the event that the settlor or the settlor's estate is overindebted or insolvent and the settlor has not received a corresponding performance from others for the trust fund to be endowed.

4) These provisions shall apply *mutatis mutandis* if, after the drawing up of a deed of trust ordering the formation of a trust enterprise with instructions concerning the purpose and trust fund by means of a transaction *inter vivos*, the settlors or one of the settlors die or become incapable of acting before the execution of the deed of trust, unless the living settlor or the heirs, executors, or the like were to withdraw from the trust transaction in a permissible manner, provided that the trust enterprise at issue does not have a public-benefit, charitable, or similar purpose.

#### § 12<sup>1442</sup>

##### *bb) In the case of termination of firms or legal persons*

In the case of termination of a firm or a legal person, the liquidators or, where applicable, the Office of Justice are under an obligation, subject to the same preconditions, to take the same measures as in the case of a disposition *mortis causa*, for the purpose of forming a trust enterprise at the expense of the liquidation assets, where such an enterprise is to be formed from the liquidation assets pursuant to the company agreement of the dissolved firm or legal person, the articles of association thereof, or the like.

#### § 13

##### *cc) Authorisation by law*

1) Where a trust in general exists, the trustees, after the death of the settlor or after the termination of the settlor firm or legal person, without prejudice to the liability for the obligations towards third parties up to the

<sup>1441</sup> Article 932a § 11(2) amended by LGBL 2013 No. 6.

<sup>1442</sup> Article 932a § 12 amended by LGBL 2013 No. 6.

time of conversion, shall be authorised by law, for the purpose of excluding or limiting their liability, to convert this trust into a trust enterprise with or without legal personality, in conformity with the deed of trust if at all possible, and to undertake at its expense all the legal acts necessary for that purpose.

2) Where, pursuant to the deed of trust, a trust enterprise is to be established for the members of a family or otherwise for the benefit of certain third parties and those persons waive the formation of the trust enterprise, whether with or without compensation, the trust enterprise shall not be formed, in the absence of any directive to the contrary.

3) In that case, the provisions governing the distribution of assets in the event of liquidation shall apply *mutatis mutandis* in the absence of any directive to the contrary in the deed of trust or by the persons appointed as entitled beneficiaries.

#### § 14

##### *b) Formation procedure*

1) Before the formation of a trust enterprise by the Office of Justice in administrative proceedings, persons with legal interests in the formation and in particular those upon whom the assets would devolve in the event the trust enterprise is not successfully established may be heard by the Office of Justice, and they shall have the right of complaint against the formation and, where applicable, the right of challenge by way of legal proceedings.<sup>1443</sup>

2) The provisions governing the involvement of beneficiaries for consultation shall apply *mutatis mutandis* to the involvement of persons with legal interests in the formation procedure provided for here.

3) Where a decision concerning formation or the deed of trust is challenged, the formation shall be suspended until the relevant decision authorising the formation becomes final.

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<sup>1443</sup> Article 932a § 14(1) amended by LGBl. 2013 No. 6.

*II. Registration, entry, and announcement or notification*

## § 15

*1. Obligation, right, and content<sup>1444</sup>*

1) Every trust enterprise must be registered for entry in the Commercial Register serving as the Trust Register by at least one trustee or one participant in the formation. If the Office of Justice itself undertakes the formation of the trust enterprise, entry in the Commercial Register shall be by way of an official procedure.<sup>1445</sup>

2) The registration for entry in the Commercial Register, the entry, and the announcement must contain:<sup>1446</sup>

1. the (company) name, domicile, duration, and purpose or object of the undertaking;
2. the amount of the trust fund or a statement regarding its estimated value if it does not consist in money, with a further brief statement about the composition thereof and, if the fund is not fully paid up, a statement on how the remaining payments are to be made;
3. the last names, first names, professions, and places of residence or the (company) name and domicile of the trustees who are to exercise fiduciary authority;
4. information concerning the form of announcement to third parties.<sup>1447</sup>

3) The application shall be accompanied by an original or certified copy of the trust articles, or possibly also a certified extract of the trust articles, which must represent the content of the trust articles required for entry.<sup>1448</sup>

4) In the case of trust enterprises that do not conduct business in a commercial manner, it shall suffice to announce the entry in accordance with Article 956(1). The provisions governing announcement under the general provisions on legal persons shall apply *mutatis mutandis*.<sup>1449</sup>

<sup>1444</sup> Article 932a § 15 heading amended by LGBL 1980 No. 39.

<sup>1445</sup> Article 932a § 15(1) amended by LGBL 2013 No. 6.

<sup>1446</sup> Article 932a § 15(2) introductory phrase amended by LGBL 2013 No. 6.

<sup>1447</sup> Article 932a § 15(2) amended by LGBL 1980 No. 39.

<sup>1448</sup> Article 932a § 15(3) amended by LGBL 1980 No. 39.

<sup>1449</sup> Article 932a § 15(4) amended by LGBL 2022 No. 227.

## § 16

## 2. Amendments and other declarations

1) Any amendment of the facts and circumstances subject to registration or notification shall in each case be registered at a later date by the managing trustees or notified to the Office of Justice and, where applicable, the trust articles or a certified excerpt shall be enclosed.<sup>1450</sup>

2) If there are no managing trustees, the Office of Justice may proceed according to the provisions governing the Commercial Register, either pursuant to notification by participants or *ex officio*.<sup>1451</sup>

3) The Government may, by way of an ordinance, order the registration, entry, announcement, or notification of further facts and circumstances or the deposit of documents relating to the formation or amendment or cancellation of the trust enterprise.

## C. Termination (dissolution and cancellation)

## § 17

## I. In general

1) In addition to the provisions of this Act, the relevant general provisions on legal persons and those governing trusts in general shall apply *mutatis mutandis* to termination.

2) Dissolution or cancellation shall take place in particular:

1. by means of opening of bankruptcy proceedings, by means of cancellation proceedings on grounds of the purposes being unlawful, immoral, or constituting a danger to the State or on grounds of activity constituting a danger to the State, and by means of voidability proceedings on grounds of essential defects in the trust articles pursuant to the rules drawn up according to this Act and under the general provisions on legal persons;<sup>1452</sup>
2. unless otherwise indicated by the deed of trust, by the assent of all the trustees, beneficiaries, and any prospective beneficiaries to an application for dissolution and if, pursuant to the deed of trust, the beneficial interest has been acquired without valuable consideration, also with the assent of the settlor or the settlor's direct universal

<sup>1450</sup> Article 932a § 16(1) amended by LGBl. 2013 No. 6.

<sup>1451</sup> Article 932a § 16(2) amended by LGBl. 2013 No. 6.

<sup>1452</sup> Article 932a § 17(2)(1) amended by LGBl. 2020 No. 369.

successors, which may, on important grounds, be replaced by the assent of the Office of Justice;<sup>1453</sup>

3. after expiry of a maximum fixed period, which may be determined by the Government by way of ordinance, applying the provisions on the time limit for reversionary inheritance *mutatis mutandis* for all or individual types of trusts whose purposes are not public-benefit, charitable, or the like;
4. unless otherwise indicated by the law or trust instrument, pursuant to the rules drawn up for the cancellation of a foundation.

3) In the case of point 2 above, the unknown or uncertain entitled or prospective beneficiaries shall be summoned by public notice procedure pursuant to the provisions governing the tracing of beneficiaries, and the Office of Justice, pursuant to the provisions of the Code of Civil Procedure concerning process administrators, shall appoint a special trustee to represent them, at the applicants' expense, who may grant or refuse consent for the unknown or uncertain beneficiaries.<sup>1454</sup>

4) This article is subject to the provisions governing amendment of the deed of trust, conversion, or merger of trust enterprises and the provisions governing changes to the organisation or purpose *ex officio* or the like as well as the claims of a beneficiary whose rights have been violated in accordance with these provisions.

#### § 18<sup>1455</sup>

##### *II. Insolvency proceedings*

1) Where an application for opening of insolvency proceedings does not proceed from all the managing trustees, the remaining trustees shall be questioned, and if agreement concerning the application is not reached or timely questioning is not possible, insolvency proceedings shall be initiated only if the insolvency or overindebtedness can be substantiated *prima facie*.

2) Trustees shall be jointly and severally liable, without limitation, to *bona fide* participants or third parties for damages arising from the fact that the application for opening of insolvency proceedings was not filed in a timely manner in accordance with the above provisions.

<sup>1453</sup> Article 932a § 17(2)(2) amended by LGBl. 2013 No. 6.

<sup>1454</sup> Article 932a § 17(3) amended by LGBl. 2013 No. 6.

<sup>1455</sup> Article 932 § 18 amended by LGBl. 2020 No. 369.

*III. Liquidation*

## § 19

*1. In general*

1) Where the undertaking is dissolved for reasons other than opening of bankruptcy proceedings, in particular also as the result of a challenge for any reason, or no other proceedings are provided by law, the provisions governing liquidation in the case of legal persons shall be applicable on a supplemental basis in addition to the following.<sup>1456</sup>

2) Should undistributed assets remain after suspension of insolvency proceedings, liquidation shall not take place, unless other prerequisites are met in this regard, and instead the trust enterprise shall be continued and the relevant entries shall be made in the Trust Register upon application of the participants or, if need be, *ex officio*.<sup>1457</sup>

3) In the case of trust enterprises without liabilities towards non-participants, the liquidation may be limited to the collection of any necessary adjustments among the participants, for defrayal of the costs, and for distribution or transfer of the assets to the allottees, without public notice to the creditors or waiting until the end of the prescribed period, and for any necessary notice of cancellation.

4) In the case of the preceding paragraph, the Office of Justice may, however, demand that a distribution or transfer list concerning the assets be submitted.<sup>1458</sup>

5) This article is subject to other provisions governing exclusion of liquidation, such as in the case of gradual distribution of assets, conversion, or merger.

## § 20

*2. Liquidators, time limit, and public notice to creditors*

1) The managing trustees shall act as liquidators where the trust instrument does not provide otherwise, or a supreme body which may be formed by all the trustees does not pass a resolution to the contrary, or the Office of Justice, whether upon application of the participants or *ex officio*, does not, on important grounds, determine otherwise in

<sup>1456</sup> Article 932 § 19(1) amended by LGBL 2020 No. 369.

<sup>1457</sup> Article 932 § 19(2) amended by LGBL 2020 No. 369.

<sup>1458</sup> Article 932a § 19(4) amended by LGBL 2013 No. 6.

administrative proceedings, or provided the trust enterprise is not to be subject to official liquidation or liquidation under official supervision.<sup>1459</sup>

2) The period of time after which the assets may be distributed or transferred to the allottees after settling or securing all liabilities of the trust enterprise may, with the agreement of the Office of Justice, be reduced or, on important grounds, waived entirely.<sup>1460</sup>

3) Under the same preconditions, the notice to creditors may be omitted.

4) Upon application by the liquidators, the notice to creditors may be issued by the Office of Justice at the expense of the trust enterprise; in such cases, the Office of Justice shall fix a time limit for registration, with the warning and effect that the assets shall be distributed to the creditors who have registered or are otherwise known and other creditors shall remain unconsidered.<sup>1461</sup>

## § 21

### 3. Distribution of assets

1) Where pursuant to the trust instrument or the law, certain claims against the assets are granted, the assets shall be distributed, without conversion into cash where possible, to the allottees or their universal successors, otherwise, in the event of the directive being lacking or inadequate, the provisions governing beneficial interest shall apply *mutatis mutandis* and, on a supplemental basis, those governing the appropriation of assets for legal person.

2) In the case of family trust enterprises with a special succession arrangement, the allottees shall be designated in the event of the trust enterprise being terminated or the family concerned or the group of beneficiaries dying out, otherwise the provisions applicable to entailed estates governing lapse of the assets to the State shall apply *mutatis mutandis*.

<sup>1459</sup> Article 932a § 20(1) amended by LGBL 2013 No. 6.

<sup>1460</sup> Article 932a § 20(2) amended by LGBL 2013 No. 6.

<sup>1461</sup> Article 932a § 20(4) amended by LGBL 2013 No. 6.

3) With regard to the implementation of the termination and the provisions governing lapse of the assets to the State, the representative of public law may, in case of doubt as to the availability of beneficiaries, apply to the Office of Justice for proceedings to trace beneficiaries.<sup>1462</sup>

4) Where satisfaction is sought from the available assets remaining undistributed after the trust enterprise has been terminated, the period of limitation of three years following the distribution or transfer of assets may not be asserted against an allottee.

#### *D. Trust fund*

##### § 22

#### *I. In general*

1) The minimum value of the trust fund must be 30 000 Swiss francs. If the entry in the Commercial Register is made in euros or US dollars, the value of the trust fund must be at least 30 000 euros or 30 000 US dollars.<sup>1463</sup>

2) Unless ruled out by the trust articles, the trust fund may be increased by successive contributions, made in whole or in part, by the old or newly joining settlors against a written declaration of membership, or reduced by gradual distribution.

3) Each year at the end of a calendar year, if an increase or reduction of the trust fund as such has taken place in this manner, the managing trustees of the enterprises entered in the Trust Register shall provide the Office of Justice with a statement of the changes to the trust fund which have taken place during the year for the purpose of correcting the entry concerned, without announcement of this entry being required.<sup>1464</sup>

4) In the event that all the trustees are jointly and severally liable, without limitation, for all the liabilities of the trust enterprise pursuant to the provisions applicable to registered cooperative societies, this provision may be included in the trust articles and also in the registration for the Trust Register in lieu of the information concerning the trust fund.

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<sup>1462</sup> Article 932a § 21(3) amended by LGBl. 2013 No. 6.

<sup>1463</sup> Article 932a § 22(1) amended by LGBl. 2013 No. 6.

<sup>1464</sup> Article 932a § 22(3) amended by LGBl. 2013 No. 6.

## § 23

*II. Securities in particular*

1) Where securities relating to the beneficial interest are issued for payments to the trust fund, the trust articles must contain a provision to avoid the consequences of any issuance of securities contrary to provisions.

2) If securities are to be issued below the nominal value or otherwise in such a manner that their total issue amount is not equivalent to the total estimated value of the trust fund, this shall require approval by the Office of Justice; the provisions governing the issuance of shares below the nominal value shall apply *mutatis mutandis*.<sup>1465</sup>

3) The provisions governing securities in the case of beneficial interest shall apply *mutatis mutandis* to the securities and their holders, in particular with regard to default.

## § 24

*III. Liability and default*

1) Unless otherwise provided by the trust articles and subject to torts or special arrangements, the liability of several settlors as such shall not be joint and several for the obligations entered into by virtue of the formation of the trust enterprise.

2) Where a person takes over obligations, combined with a beneficial interest, pertaining to performances in favour of the trust fund, and the transferors, but not the managing trustees as such, know at the time of the takeover that the person is insolvent, the transferors as well as the transferee shall be jointly and severally liable, without limitation, for the performance default.

3) Repealed<sup>1466</sup>

4) To the extent that the settlors' performances for the trust fund or other funds are not completely fulfilled, the settlors shall be liable in the case of default, notwithstanding the admissibility of provisions relating to the default clause, the loss of all rights as a beneficiary, or the like, equivalent to a debtor under the law of obligations.

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<sup>1465</sup> Article 932a § 23(2) amended by LGBL 2013 No. 6.

<sup>1466</sup> Article 932a § 24(3) repealed by LGBL 2020 No. 369.

5) The provisions governing performance default in the case of beneficial interest shall apply *mutatis mutandis*.

*E. Trust assets*

§ 25

*I. In general*

1) To the extent no derogations arise from the provisions governing trust enterprises, the provisions governing trust property under trusts in general shall apply on a supplemental basis to trust assets as separate property.

2) The rules applicable to foundations shall apply on a supplemental basis to the transfer of assets before and after the trust enterprise comes into existence.

3) Where under certain conditions the settlor has provided for the reversion of the trust property to the settlor or the settlor's descendants or for devolution upon a third party, this may take place, in the event that the reverting or devolving trust property is a part of the trust fund, only without prejudice to the provisions governing the liability of the undertaking for the obligations towards *bona fide* third parties (the right of reversion or devolution).

4) Otherwise, however, the right of reversion or devolution in the case of real estate or limited rights *in rem* to such may, upon application by participants, be noted or reserved in the Land Register to the extent that entries similar to Land Register entries are admissible in other public registers for other pieces of property.

5) This article is subject to the provisions governing trust funds *mutatis mutandis*.

*II. Separation and distribution of assets and yield*

§ 26

*1. In general*

1) Repealed<sup>1467</sup>

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<sup>1467</sup> Article 932a § 26(1) repealed by LGBl. 2000 No. 279.

2) If, pursuant to the trust instrument, the net yield or part thereof or assets are to be distributed annually or at shorter or longer intervals to the beneficiaries as income, the managing trustees shall, in the absence of other directives, determine at their equitable discretion, taking as a basis the rules applying to an orderly earnings management and, on a supplemental basis, those concerning usufruct, what shall be entered in the income statement (profit and loss statement) as usufruct, charges, expenses, and the like and what shall be entered in the trust assets account including gains and, where applicable, the period of time between the distributions of the net yield.

3) Where trust enterprises are operated only in a commercial manner, any income to the beneficiaries shall be distributed after completion of each calendar year on the basis of an annual balance sheet and, in case of doubt, in equal shares to be determined by the managing trustees, in the absence of any directive to the contrary.

4) Where, in the case of a trust enterprise, some beneficiaries are entitled to yields and others to distribution of the trust property, or where a succession arrangement is established with regard to the beneficial interest, yields may in particular not be paid out to beneficiaries in lieu of asset components or, conversely, asset components in lieu of yields, such as in the case of fictitious yields, value added purely in accounting terms to permanent investments belonging to the trust assets, and the like.

5) Where, in the case of a trust enterprise with defined claims to beneficial interest, the yields or asset components to be distributed are determined in a non-contestable manner by the trustees or other competent bodies, the parties entitled shall acquire unconditional creditor's rights.

## § 27

### 2. *Gradual distribution*

1) A gradual distribution (transfer) of trust assets among beneficiaries, such as the payment of a redemption sum resulting from cancellation, exclusion, or the like, or payment of interest or amortisation or re-acquisition of beneficial interests by means of trust assets without liquidation, may be performed, with otherwise unlimited joint and several responsibility of the acting trustees and asset recipients and subject to the obligation on the part of the latter to make restitution to any injured creditors and beneficiaries or to trustees called upon for this purpose, only to the extent that the liabilities of the trust enterprise towards third parties and other beneficiaries are still secured by the available assets, unless a

person having knowledge of the inadmissible distribution has become a creditor or a beneficiary.

2) Where, as the result of amortisation, re-acquisition, declaration of forfeiture, or for other reasons, all beneficial interests devolve to the trust enterprise which continues to exist, it shall be further determined in the trust instrument who, if applicable, shall receive the earnings from yields and assets, otherwise the provisions governing the lapse of assets to the State under the general provisions on legal persons shall apply *mutatis mutandis*.

3) Where the deed of trust empowers a person to dissolve the undertaking, that person shall, provided the circumstances do not indicate otherwise, also be authorised to dissolve it in part by ordering the gradual distribution of the assets to the allottees pursuant to the trust instrument or the law.

### *III. Administration of assets*

#### § 28

##### *1. In general*

1) Within the scope of the law and the trust instrument, the trustees shall ensure the orderly administration and preservation of the legal and economic aspects of the trust assets and shall in particular ensure, to the extent that the nature of the business, the circumstances, and the achievement of the purpose allow, that the trust assets come into the possession of the enterprise, that they are not mixed with the trustees' own assets, and that insecurely invested assets are redeemed and appropriately invested.

2) Moreover, there shall be an obligation to preserve, improve, and insure trust assets to the extent required by proper implementation of the purpose of the trust enterprise or the object of the undertaking in accordance with the law or trust instrument or, even contrary to the trust instrument by virtue of the law, by the principles of good business management, having regard to the circumstances.

3) The trustees may at their own discretion advance asset components, against or without security, to those beneficiaries entitled to a claim to the trust assets to be distributed at a later date; those beneficiaries shall have the capacity of debtors up to the time when the assets are to be transferred to them. However, where there are several beneficiaries, this shall be

permissible only insofar as the claims of other beneficiaries or third parties, in the absence of their assent, are not violated thereby.

4) In the case of family trust enterprises for the purpose of maintenance, childraising, education, or the like, the Office of Justice may, upon application of the participants and on important grounds, provided the trust instrument does not indicate otherwise, order that advances be granted accordingly.<sup>1468</sup>

5) Repealed<sup>1469</sup>

## § 29

### *2. Alienation and encumbrances*

1) Where, in the case of trust enterprises without business operations, the trust assets and the yield are, pursuant to the trust instrument, inalienable or alienable only to a limited extent within a certain family or category of persons or may be encumbered with such restrictions, the restriction may be noted or reserved as a restraint on disposal on the items of property entered in the Trust Register and in the Land Register or in other public registers in which the entries have a similar effect to entries in the Land Register.

2) Repealed<sup>1470</sup>

3) Within the framework of the purpose or object of the enterprise and also by virtue of the law, the trustees shall be authorised to alienate or encumber the trust assets including the yield: in the case of rapidly consumable or perishable items of property whose proceeds take the place of the item; in order to pay off liabilities of the participants, to the extent that trust property may be used for that purpose; in the event that the beneficial interest is not without valuable consideration in accordance with the trust instrument, with the consent of all entitled beneficiaries, and where applicable all prospective beneficiaries, but otherwise also with the assent of the settlors or their direct universal successors; or with the assent of the Office of Justice on important grounds, such as concerning disposals which serve public purposes, or the preservation or improvement of trust property, with the proviso that the rights of the

<sup>1468</sup> Article 932a § 28(4) amended by LGBL 2013 No. 6.

<sup>1469</sup> Article 932a § 28(5) repealed by LGBL 1980 No. 39.

<sup>1470</sup> Article 932a § 29(2) repealed by LGBL 1980 No. 39.

creditors concerned must take precedence over the rights accruing from the beneficial interest pursuant to the order of the Office of Justice.<sup>1471</sup>

4) Pure and mixed gifts or other similar transfers without valuable consideration as well as the existence of a liability charged against the trust enterprise or the non-existence of a claim to the detriment of the trust enterprise, acknowledged without legal reason, may be undertaken by the trustees only to the extent that the trust instrument allows or is customarily called for as a moral duty or having regard to the observance of propriety.

5) This article is also subject to claims for damages and other measures permissible by law against the trustees and other persons at fault, as well as provisions governing *bona fide* acquisitions for valuable consideration, the restriction of liability, and encumbrance by virtue of the law.

### § 30

#### 3. *Claim to surrender and enrichment*

1) Where a trustee or a representative of the trust enterprise wrongfully alienates trust property contrary to the trust instrument or the law, each of the other trustees or entitled beneficiaries or prospective beneficiaries shall have the right to trace the trust property and, after informing the managing trustees, may, in accordance with the rules of possession, reclaim the trust property on behalf and in favour of the trust enterprise, insofar as the trust property has not been acquired in return for reasonable payment by a third party who had no knowledge of the fiduciary character at the time of acquisition.

2) Any person who, pursuant to the preceding paragraph, is under an obligation to surrender but is no longer in a position to do so shall, in accordance with the rules of possession, in the case of the person's bad faith, surrender to the trust enterprise all that which has taken the place of the trust property, in return for the reimbursement of the person's performance or the value, but in the case of the person's good faith, where the acquisition is without valuable consideration, only inasmuch as the person is still enriched.

3) Where trust property has been wrongfully included in compulsory execution or insolvency proceedings, each trustee, entitled beneficiary, or prospective beneficiary may demand the surrender of the trust property or the substitution which has taken its place, pursuant to the preceding

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<sup>1471</sup> Article 932a § 29(3) amended by LGBL 2013 No. 6.

and other provisions, in favour of the trust enterprise, and take the permissible measures, in particular an action against execution.<sup>1472</sup>

4) The preceding provisions shall apply *mutatis mutandis* to the wrongful encumbrance of trust property or the wrongful imposition of an obligation on the trust enterprise, subject to the provisions governing restriction of liability of the trust enterprise as well as those governing transactions in favour of the trust enterprise itself and other provisions, such as those governing responsibility.

5) In the case of unsuccessful compulsory execution (issuance of a loss certificate) against the trust enterprise, the injured creditors or, in the case of insolvency proceedings, the insolvency administrator shall be authorised to assert the claim to surrender or enrichment, insofar as the creditors concerned did not take part in the unlawful alienation.<sup>1473</sup>

### § 31

#### 4. Asset investment

1) Unless otherwise indicated by the purpose of the trust enterprise or unless an express provision concerning the investment or deposit of trust property is contained in the trust instrument (investment clause), the trustees may decide by a simple majority to invest the trust assets safely and profitably, in particular also available yields, up to the time of the assets' distribution, pursuant to the provisions governing trusts in general.

2) An asset investment which pursuant to the law or trust instrument is inadmissible may be converted by the trustees at any time into an admissible investment, unless all entitled beneficiaries or other competent body approve it.

3) Where the conditions for the appointment of a fiduciary counsel are met or on other important grounds, the Office of Justice may, upon application of participants, or *ex officio* where applicable, order that the trustees shall invest or deposit the trust assets or individual parts thereof with the Landesbank or other suitable institution or that debtors of the trust enterprise may fulfil their liabilities with legal effect only by performance at the same or another institution determined by the Office of Justice.<sup>1474</sup>

<sup>1472</sup> Article 932a § 30(3) amended by LGBL. 2020 No. 369.

<sup>1473</sup> Article 932a § 30(5) amended by LGBL. 2020 No. 369.

<sup>1474</sup> Article 932a § 31(3) amended by LGBL. 2013 No. 6.

4) Where a debtor of the trust enterprise has important grounds for assuming that the trustees will commit a breach of trust with the money to be paid by the debtor, the debtor may also with legal effect make the payment of this debt to the Landesbank in favour of the trust enterprise.

### § 32

#### *IV. Costs*

1) The costs accruing from the coming into existence and termination of a trust enterprise as well as trust management, trust supervision, trust monitoring and from the activities of other persons or bodies appointed pursuant to the law or the trust instrument for the performance of such activities shall, in the absence of any provision of the law or the trust instrument to the contrary, be defrayed from the yield from the trust property or, if necessary, from the trust property itself.

2) Where culpable conduct on the part of a person or body is at issue, and if, in particular, an action or an omission is demanded without reason by a person authorised in this regard, the costs shall, in the absence of any directive to the contrary, be borne by the person at fault.

3) Where an authority intervenes upon application or *ex officio* pursuant to the law or the trust instrument, and no person is at fault or something else is ordered, the costs shall be charged to the income statement, and where a yield does not exist or is inadequate, to the statement of the trust assets.

### § 33

#### *V. Reserve fund and other reserves*

1) In the absence of any directive to the contrary and unless otherwise indicated by the purpose of the undertaking, such as in the case of liquidation trusts, the trustees shall be empowered to establish appropriate reserve funds as a safeguard against losses, devaluation, or sustainable yield capacity or the like and to provide a corresponding entry on the liability side of the balance sheet.

2) To the extent required by the preservation of the assets, such as in the case of devaluation or the like, as well as in the case of enterprises with commercial operations, the trustees shall be under obligation to establish appropriate reserves, unless important grounds justify an exception.

3) In the case of trust enterprises with commercial operations, the trustees shall, in the absence of any directive to the contrary, allocate one tenth of the net yield annually to the reserve fund for the purpose of covering balance sheet losses until that reserve fund amounts to one tenth of the trust assets.

4) Income which is due to available beneficiaries, but has not been drawn upon within three years of the due date, and also income which becomes due during an interim period up to the latest legally binding bestowal (intercalated beneficial interest) shall be allocated to the reserve fund for balance sheet losses or, in the case of undertakings without commercial operations, for accounting losses.

5) Similarly, any fines or the like set out in the trust articles that are payable by participants for non-attendance of meetings or for late arrival at such meetings or for other reasons, which fines or the like, in the case of doubt, shall be subject to the provisions governing contractual penalties, as well as, in the absence of any directive to the contrary, other asset components released when individual beneficiaries are no longer available, shall be allocated to the reserve fund.

6) The provisions governing the reserve fund in the case of public limited companies shall apply *mutatis mutandis* with the proviso that the reserve fund for balance sheet or accounting losses shall, as far as possible, be invested in readily realisable, safe securities.

#### § 34

##### *VI. Accounting*

1) To the extent not otherwise provided for a trust enterprise not operated in a commercial manner, managing trustees shall, from the time of coming into existence, observe the provisions of this Act and the provisions governing trusts in general relating to schedules of assets and accounting, and shall keep accurate, regular, clear, and appropriate accounts, accompanied by supporting documents if necessary, separate from other records, or, if they are not able to do so themselves, have these accounts kept by others.

2) To the extent that an enterprise is operated in a commercial manner (as a business), the provisions of this Act and, on a supplemental basis, those governing commercial accounting shall be observed, in the same manner as an establishment with commercial business, and otherwise the managing trustees shall bear responsibility from the time the trust enterprise comes into existence.

3) This article is subject to the provisions governing the official audit.

§ 35

*F. Challenge and right of redemption*

1) The provisions governing challenges to trusts in general shall apply to challenges to the formation or amendment of a trust enterprise; however, the claims of *bona fide* creditors accruing up to the time of final cancellation shall in all cases take precedence over the claims of the challenging parties.

2) Where, on the basis of the trust instrument, the settlors are at the same time the sole persons entitled to benefit from the alienable and transferable beneficial interest, with or without membership, a challenge on the part of the settlors or their creditors or on the part of the receiver or administrator after formation shall be admissible only pursuant to the provisions pertaining to membership under the general provisions on legal persons.

3) Where, within the last five years before the initiation of insolvency proceedings relating to the settlor's assets or before the implementation of unsuccessful compulsory execution from the settlor's assets, a trust enterprise was established without valuable consideration in favour of third parties or, in this manner, assets were otherwise transferred to the enterprise, the trust enterprise shall, in the event that the creditor of the settlor or the insolvency administrator shows that the settlor concerned was insolvent after separation of the assets transferred to the trust enterprise, and without prejudice to the *bona fide* rights acquired for valuable consideration by participants or third parties in the meantime, be liquidated in favour of the settlor's creditors by order of the execution authority only where the satisfaction of the creditor, on the basis of a liquidation balance sheet drawn up for this purpose, cannot be achieved appropriately in another manner.<sup>1475</sup>

4) Where, on the basis of a legal transaction, a person has become a creditor of the trustee, although that person had knowledge of the insolvency at the time of the formation, a challenge by that person or by that person's insolvency administrator shall be excluded.<sup>1476</sup>

5) The settlor's spouse, registered domestic partner, or descendants may, within a period of time determined by the Office of Justice and,

<sup>1475</sup> Article 932a § 35(3) amended by LGBl. 2020 No. 369.

<sup>1476</sup> Article 932a § 35(4) amended by LGBl. 2020 No. 369.

where applicable, in a manner determined by the latter, assert the right of redemption against the creditors or the insolvency administrator after payment of the amount demanded, which at most may amount to a fair and reasonable sum determined on the basis of a liquidation balance sheet.<sup>1477</sup>

6) Where a settlor or one of several settlors is insolvent, this provision governing the right of redemption shall apply *mutatis mutandis* with the proviso that after the spouse, registered domestic partner, or descendants, the beneficiaries shall also be entitled to the right of redemption within a period of time to be determined by the Office of Justice and, where applicable, in the manner directed by the latter.<sup>1478</sup>

7) Where a settlor forms a trust enterprise in the capacity of trustee of another trust or in fulfilment of another obligation towards a third party who, without valuable consideration, has made assets available to the settlor for this purpose, the preceding provisions governing the creditors or the insolvency administrator and governing the right of redemption shall apply *mutatis mutandis* to the settlor of the other trust enterprise or the third party concerned (indirect settlorship) or to their spouse, registered domestic partner, or descendants.<sup>1479</sup>

8) This article is also subject to the provisions governing the revocation of the beneficial interest and the breach of duty to support.

### *G. Liability for the obligations of the trust enterprise*

#### § 36

##### *I. By operation of the law*

1) To the extent that the law does not provide otherwise, only the trust fund stated in the trust articles and any further assets of the trust enterprise shall be liable for the obligations of the trust enterprise towards third parties, and a personal liability on the part of the participants shall not exist, unless the liabilities of the trust enterprise are, at the same time, the liabilities of all the participants or of individual participants.

2) Where in the exercise of their fiduciary authority, the trustees cause losses to *bona fide* third parties by intentional deception on the pretext that, contrary to the trust instrument, there exists a liability or additional

<sup>1477</sup> Article 932a § 35(5) amended by LGBL 2020 No. 369.

<sup>1478</sup> Article 932a § 35(6) amended by LGBL 2013 No. 6.

<sup>1479</sup> Article 932a § 35(7) amended by LGBL 2020 No. 369.

performance obligation extending beyond the trust property, or that the trust assets are greater than they are, or the like, the acting trustees shall be jointly and severally liable, without limitation, for the losses suffered in this connection by the third party, subject to their right of recourse to the trust enterprise or other persons, to the extent that the trust enterprise or other persons have become enriched thereby or have derived other benefit.

3) Moreover, in the case of a trust enterprise with commercial operations, the managing trustees shall, in the absence of any directive to the contrary, be jointly and severally liable for a period of six months after the date when the salaries and wages of the workers and employees are due for the amount no longer retrievable from the trust enterprise for this period of time.

4) Trustees who, in the exercise of their fiduciary authority, or a governing body or other representative appointed pursuant to the trust articles which, in the exercise of their representational activity, perform a tortious act or omission shall, in addition to the trust enterprise, be jointly and severally responsible, without limitation; the relevant provisions governing legal persons shall apply *mutatis mutandis*.

5) To the extent that no derogations arise from the provisions governing trust enterprises, the provisions governing trusts in general shall apply *mutatis mutandis* in regard to the legal position of the creditors of the trust enterprise in proceedings to secure rights, compulsory execution proceedings, or insolvency proceedings.<sup>1480</sup>

6) In the case of trust enterprises with divisions or with specifically separated trust funds, each division or each fund shall, in the absence of any other directive in the law and insofar as mutual claims do not require otherwise, occupy a special position in such a procedure, equivalent to that of an independent trust enterprise.<sup>1481</sup>

## *II. By operation of the trust instrument and other transactions*

### § 37

#### *1. Extension of liability*

1) It may be determined in the trust articles that also the other trust assets, not contained in the enterprise as a trust fund or otherwise from a

<sup>1480</sup> Article 932a § 36(5) amended by LGBl. 2020 No. 369.

<sup>1481</sup> Article 932a § 36(6) amended by LGBl. 2014 No. 362.

trust to which the enterprise itself belongs, shall be liable for its obligations.

2) Where assets are transferred to the enterprise for the trust property, and where liabilities towards third parties are attached to those assets, for example in the case of shares which are not fully paid up, the trust instrument or the relevant declaration of membership may provide that the transferors remain personally liable for the obligations, solely or in addition to the undertaking, unless the legal relationships with the third parties do not indicate otherwise.

3) Furthermore, the trust articles may, without it being possible or permissible to establish membership thereby, unless exceptions are admitted in this regard, direct that individual or all participants or third parties, with application *mutatis mutandis* of the provisions for registered cooperative societies, shall have limited liability or limited additional performance obligations for the liabilities of the enterprise towards third parties, for the adjusting amounts among those who are liable or who have additional performance obligations, and for the defrayal of costs, or that individual or all trustees in the case of undertakings operated in a commercial manner shall be jointly and severally liable, without limitation, or have additional performance obligations.

4) The provisions governing the enforcement of liability or additional performance obligations in contribution proceedings may, in the trust articles, also be declared to be applicable outside the cases determined by law.

5) In the case of an undertaking operated in a commercial manner, the provisions governing liability or additional performance obligations as well as any amendments thereof must be registered in the form of an excerpt in the Trust Register, entered there, and published, otherwise they shall be deemed null and void.

6) The provisions governing the directory of cooperative society members with liability or additional performance obligations and the provisions governing the list of members in the case of registered cooperative societies shall, where applicable, apply *mutatis mutandis* in the case of trust enterprises with commercial operations to the directory of beneficiaries and to the list of participants as referred to here.

## § 38

*2. Restriction of liability*

1) In the case of a trust enterprise without commercial operations that does not undertake any other business, the trust articles may include the provision, to be registered for entry with the Trust Register, that private liabilities which are valid for the enterprise after formation, apart from claims arising from torts, may be incurred only with the assent of a special governing body or of the next prospective beneficiaries or third parties, or that a private creditor may seek satisfaction only from assets which do not form part of the trust fund or only from the income or neither from the trust property nor from the yield, as long as the trust enterprise has not been terminated.

2) In the case of items of the trust assets which are entered in the Land Register or in another public register in which the entries have a similar effect to entries in the Land Register, such a restriction may be entered as a reservation or notation, or it may be entered in the Land Register as a debt limit or real security with a restriction on the yield from the trust property concerned.

3) Where neither the trust property nor the yield may be encumbered by way of a legal transaction or no valid liabilities may be incurred by the managing trustees, other bodies, or persons at the expense of the enterprise, the trustees exercising fiduciary authority or other representatives of the trust enterprise shall be jointly and severally liable, without limitation, if they fail to expressly draw the attention of the *bona fide* third parties with whom they are dealing to these restrictions, subject to claims against the trust enterprise on grounds of possible enrichment.

4) Repealed<sup>1482</sup>

*H. Participants**I. Joint provisions*

## § 39

*1. Kinds and regulation of legal position*

1) In the absence of provisions of the law or trust instrument to the contrary, the settlors, trustees, and beneficiaries, including the prospective beneficiaries, shall be deemed to be participants, irrespective of gender

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<sup>1482</sup> Article 932a § 38(4) repealed by LGBl. 2020 No. 369.

and, where nothing to the contrary arises from the law or the trust instrument, the participants occupying the legal position in each case, or individual kinds thereof, in the singular or plural.

2) To the extent that, within the meaning of individual provisions, persons other than settlors, trustees, or beneficiaries are members of governing bodies or other bodies or such persons are entitled to rights and duties, in particular a liability or an additional performance obligation for the liabilities of the trust enterprise, they shall, in this regard, also be deemed to be participants (irregular participants).

3) The deed of trust or the trust articles may provide rules governing the legal relationship of the participants with the trust enterprise, with each other, and with third parties, within the scope of the law, in a special regulation (bylaws) signed by the managing trustees or other competent bodies, which, to the extent it contains facts or circumstances which require registration, must be submitted to the Trust Register, either in the form of a notarised excerpt or the original.

4) To the extent a participant is entitled to a right and, in particular, to a prospective beneficial interest, each such participant shall be permitted to inspect the trust instrument, provided and to the extent that the documents concerned are not deposited with the public register office serving as the Trust Register office, and such participants may at their own expense make copies of the documents (articles, regulations, and the like) or, if they are duplicated, demand, with appropriate reimbursement of the duplication costs, that copies be supplied.

#### § 40

##### *2. Rights and duties in particular*

1) With regard to their rights and duties in relation to the trust enterprise, each other, and third parties, the provisions of the trust instrument shall, within the scope of the law, apply primarily, followed in priority by the provisions governing trusts in general and also – on a supplemental basis and provided it is not determined otherwise as the result of the absence of membership, the nature of the trust, or the position of the participants – general provisions governing membership of legal persons.

2) Where a person occupies the position of a trustee (co-trustee) and a beneficiary (co-beneficiary) simultaneously, the duties of a trustee shall take precedence.

3) Where, apart from possible contributions to the trust fund or liability or additional performance obligations, one or several participants commit themselves in writing, in the trust instrument or otherwise, to recurring cash or other payments (acts or omissions), in particular also to payments relating to cartels or corporate groups, the relevant provisions governing limited liability companies shall apply *mutatis mutandis*.

4) Insofar as the prerequisites for this exist, documents enforceable by execution may also be drawn up concerning the obligations of the participants or third parties in relation to the trust enterprise, such as contributions to the trust fund or the like or concerning the obligations of the trust enterprise towards participants, subject to the rights of the creditors.

5) Should the timely exercise of a right by a participant be endangered, the competent authority may also, upon demand of the participant, proceed by taking protective measures.

6) Where, pursuant to the law or the trust instrument, rights are granted to or duties are imposed upon a participant in relation to another participant, this other participant shall, in the absence of rules to the contrary, have corresponding duties and rights in relation to the first participant.

### 3. Organisation

#### § 41

##### a) In general

1) The trust instrument may set out in more detail the legal relationship among the participants or among the individual groups of participants such as, for example, between the trustees and the beneficiaries, by creating an organisation, and set out the rights and duties of these organised participants, such as the joint assertion of rights vis-à-vis the trust enterprise or other participants or the like.

2) Where such an organisation is provided without more explicit detail or with shortcomings, the general provisions on the supreme bodies of legal persons, and especially the provisions governing minority rights, shall in case of doubt be applied *mutatis mutandis*, to the extent no derogation arises from the nature of the trust or the absence of membership.

3) Even where the trust instrument does not make provisions for an organisation, groups of participants who are in the same legal position may

create such an organisation by means of bylaws or the like signed by them or under a legal form provided otherwise in the law. However, provisions drawn up in this manner may not contravene mandatory laws, the settlor's directives, the trust articles, or public order or morals, otherwise they shall be deemed null and void.

4) To the extent that resolutions of governing bodies may, pursuant to the applicable provisions, be challenged or repealed *ex officio*, the proceedings shall be expedited.

#### § 42

##### *b) Resolutions and membership*

1) Where pursuant to the law or the trust instrument, the participants or third parties have the right to elect or vote or both, and it is not determined to the contrary, each person entitled to vote shall have one vote and, if securities are issued, each security shall have one vote in the event of elections and resolutions. The general provisions governing the right to vote and resolutions for legal persons shall apply *mutatis mutandis* on a supplemental basis.

2) Where a certain number of participants register to take part in the passing of a resolution of the supreme body or in this manner and for this purpose deposit voting securities, but owing to an unforeseen or unavoidable circumstance are prevented from taking part and the result of the resolution would have been different if these participants had taken part, these participants may, within ten days after the passing of the resolution, by casting their vote by means of a substantiated petition to the trust enterprise and the Office of Justice, demand from the latter, at their own expense, the proposed amendment of the resolution (subsequent amendment of a resolution) in administrative proceedings, after hearing the trust enterprise, the supreme body concerned or the like.<sup>1483</sup>

3) However, legal acts executed in the meantime pursuant to the earlier resolution by the competent party in relation to *bona fide* third parties shall remain legally effective, without prejudice to any claims of parties unable to take part arising from responsibility or the taking of other admissible measures.

4) In the case of an organisation with the right to vote, which passes its resolutions with a majority, the majority of the participants concerned

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<sup>1483</sup> Article 932a § 42(2) amended by LGBL 2013 No. 6.

may not, in their position as implied trustees vis-à-vis the minority, violate the interests of the trust enterprise to the detriment of the minority or public morals.

5) In accordance with the provisions governing the supreme body of legal persons, conflicting resolutions may be repealed, and the participants concurring with the majority shall be jointly and severally liable to the trust enterprise and/or the injured participants belonging to the minority, pursuant to the provisions governing torts, for all the damages accruing to the trust enterprise and/or the individual participants.

6) Membership as in the case of legal persons with members may be validly granted to the participants only with the assent of the Office of Justice.<sup>1484</sup>

#### § 43

##### *c) Supervisory trust body<sup>1485</sup>*

1) To the extent prescribed in the general provisions on legal persons or if specifically provided in the trust instrument, an audit office shall be established to whom the provisions governing the audit office, whose members if any may not at the same time be managing trustees, under the general provisions on legal persons shall apply *mutatis mutandis*, unless otherwise provided.<sup>1486</sup>

2) The trustees or other bodies or persons competent by virtue of the trust instrument may register the members of the audit office for entry in the Trust Register with a statement of their last names, first names, profession, and place of residence or (company) name and domicile.<sup>1487</sup>

3) However, provision may also be made in the trust instrument for a supervisory board to serve as the supervisory trust body, comprised of one or several participants or third parties. To the extent the general provisions on legal persons prescribe a mandatory audit office, such a supervisory board may be provided additionally alongside the audit office.<sup>1488</sup>

4) Unless otherwise entailed by the law, the provision governing the responsibility of the audit office under the general provisions on legal

<sup>1484</sup> Article 932a § 42(6) amended by LGBl. 2013 No. 6.

<sup>1485</sup> Article 932a § 43 heading amended by LGBl. 1980 No. 39.

<sup>1486</sup> Article 932a § 43(1) amended by LGBl. 2000 No. 279.

<sup>1487</sup> Article 932a § 43(2) amended by LGBl. 1980 No. 39.

<sup>1488</sup> Article 932a § 43(3) amended by LGBl. 1980 No. 39 and LGBl. 2000 No. 279.

persons shall apply *mutatis mutandis* to the members of the supervisory trust body.<sup>1489</sup>

5) This article is subject to an order providing for an official trust supervision office and an official audit.<sup>1490</sup>

#### § 44

##### 4. *Period of limitation*

1) To the extent not otherwise determined by law or law as a whole is not concerned, individual claims of the trust enterprise against participants who are not trustees or are no longer trustees shall be subject to a period of limitation of three years after they become due.

2) Individual claims of the participants as such against the trust enterprise shall be subject to a period of limitation of three years after they become due in favour of the trust enterprise, if law as a whole is not concerned or if it is not determined otherwise.

3) Claims of the participants against each other arising from the trust relationship, to the extent they are not against active trustees and subject to the provisions on responsibility, shall be subject to the same period of limitation after they become due.

4) These provisions are without prejudice to shorter periods of limitation and, in the case of offences under criminal law and special provisions of this act, any longer periods of limitation.

5) The provisions governing statutes of limitations shall apply *mutatis mutandis* to irregular participants.

##### 5. *Legal venue, court of arbitration, and procedural standing of participants*

#### § 45

##### a) *In general*

1) The provisions governing domicile and legal venue under the general provisions on legal persons shall apply *mutatis mutandis* to the legal and administrative venue relating to the participants as such.

<sup>1489</sup> Article 932a § 43(4) amended by LGBL 1980 No. 39 and LGBL 2000 No. 279.

<sup>1490</sup> Article 932a § 43(5) amended by LGBL 1980 No. 39.

2) To the extent that the law has not established mandatory provisions, the trust instrument may provide for an impartial court of arbitration or a conciliation board of that kind for all participants' disputes with each another and with the trust enterprise or for the one or the other, analogous to domestic or foreign law, regardless of whether the participants concerned have signed the trust instrument or not.

3) The final decisions of such a court of arbitration are enforceable in the same manner as the judgment of a domestic court, to the extent the decisions do not violate public order and morals.

*b) Procedural standing of participants*

§ 46

*aa) In general*

1) In legal and administrative matters including administrative disputes of the trust enterprise as well as of all participants or groups (classes) of participants as such, every other participant with a legal interest, including prospective beneficiaries may, at their own expense, in the absence of any broader directive, appear as interveners, or in the same capacity, jointly with one of the parties, and in the absence of entitled and prospective beneficiaries, the representative of public law may appear in the same way at the expense of the trust enterprise; but where the law admits participant minorities as a party in the same way as member minorities in the case of legal persons, the participants belonging to this minority may, at their own expense, appear on one side or the other.

2) Where in official proceedings all or individual participants are to be taken into consideration, whose existence or abode or name is unknown or uncertain, the Office of Justice may, in order to safeguard the interests of the participants concerned, following a public notice procedure or without the latter, upon application of participants or third parties with a legal interest or *ex officio*, appoint a procedural trustee who may appear or be held responsible, alone or jointly with other participants.<sup>1491</sup>

3) If a participant is no longer available, the remaining participants or the procedural trustee appointed by the Office of Justice in accordance with the preceding paragraph may continue the already commenced proceedings or other official proceedings, as a rule without interruption.<sup>1492</sup>

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<sup>1491</sup> Article 932a § 46(2) amended by LGBl. 2013 No. 6.

<sup>1492</sup> Article 932a § 46(3) amended by LGBl. 2013 No. 6.

4) To the extent that a decision issued against the trust enterprise or against all participants or groups of participants is also binding for or against one participant, that participant or the opposing party shall be entitled to enter an objection of *res judicata* against later proceedings or against a later decision concerning the same matter, provided the law does not determine otherwise.

5) Where upon application of participants, third parties or *ex officio* the Office of Justice is called upon to intervene, it shall, unless important grounds exist, such as imminent danger and the like, if possible, hear the managing trustees and other participants with a legal interest or, where applicable, a trustee or representative officially appointed for this purpose, before issuing a decree or announcing a decision.<sup>1493</sup>

#### § 47

##### *bb) Virtual representation*

1) Moreover, one or several participants may, with the assent of the authority concerned, initiate official proceedings for other participants who, for some reason, are unknown or uncertain, but have a shared legal interest, or they may appear on one side or the other in such proceedings, where the unknown or uncertain participants are numerous.

2) These last mentioned participants may cite the issued final decision insofar as no detrimental intention or disadvantageous understanding whatsoever exists between the participants taking part in the proceedings and the opposing party, or the interests of the appearing party were not in conflict with those of the others who may derive rights from the decision.

#### § 48

##### *6. Standing of the defendant*

1) Where the provisions governing the supreme body do not determine otherwise with respect to all participants or groups of participants, or the trust instrument or the provisions governing virtual representation or other provisions of the law do not determine otherwise with respect to the assertion of rights of the trust enterprise or of all participants or groups of participants, and where such a right has not been asserted by all the participants and not to the full extent for the trust enterprise or for all of them, or it was not desired or not possible to realise or fully realise the

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<sup>1493</sup> Article 932a § 46(5) amended by LGBL 2013 No. 6.

right on grounds arising from the person (company or legal person) who appeared as claimant in the proceedings, such as due to acknowledgement, waiver, default of appearance, offset, or the like, or where the right itself has not been dismissed with respect to all those persons, the trust enterprise or its entitled persons who did not appear as claimants may assert its or their rights completely or within the scope of what remains thereof, independently and separately from previous proceedings, insofar as they, as the intervening party or the like in another proceeding, have not acknowledged the claim for themselves or waived the claim.

2) Where the same rights are asserted, in full or in part, by different claimants in the same proceedings which, however, are separate with respect to time, the said proceedings may, upon application of a party or *ex officio*, at the discretion of the competent administrative office, be combined for joint deliberation and decision.

3) A right which is not asserted by all entitled persons as well as the date for a possible hearing may, upon the application of a party, be announced pursuant to the trust articles or, if this is not possible, in the manner determined for official announcements or as directed at the discretion of the competent administrative office, and also be noted in the trust register where applicable.

4) If only individual entitled persons take action, the defendant may, moreover, at the claimants' expense, make an application, with warning and effect, for a public notice pursuant to the provisions governing the tracing of beneficiaries, which shall state that the other entitled persons may advance a further claim only if the defendant, as a result of the defendant's wilfully injurious conduct, fails to comply to the full extent with the existing right. Similarly, the defendant may also, at the claimants' expense, make such an application for the appointment of an official trustee for the other entitled persons for the retrieval and supplementation of the right not asserted or not fully asserted by the claimant.

#### § 49

##### *II. Settlor*

1) In case of doubt, the settlor shall be deemed to be the person who contributes assets or undertakes to contribute assets to the trust fund.

2) Without prejudice to their other and simultaneous position as trustee or beneficiary, the trust instrument may, within the scope of the law, concede rights to the settlors as such (trustors) or their universal successors against the trust enterprise or the other participants as such

only to the extent that such rights do not exist as a continuous and exclusive influence on the organisation or trust management of the trust enterprise, with the exception of the right to supervise public-benefit trust enterprises or the like.

3) Where settlors who, without valuable consideration, contributed the trust fund and on the basis of that contribution created, without valuable consideration, the beneficial interest of others are not also entitled to the legal position of trustee, they may, to the same extent as entitled beneficiaries, demand that other participants or third parties observe the trust instrument in accordance with the law.

4) To the extent nothing to the contrary arises from the provisions governing the trust fund, the provisions governing default in the case of the beneficial interest shall apply *mutatis mutandis* to the settlor's default in the case of other obligations.

5) This article is subject to the provisions governing the other rights and duties of the settlor under the law or trust instrument, especially those concerning the settlor's creditors.

### *III. Trustee*

#### *1. Appointment, removal, resignation etc.*

##### *a) In general*

#### § 50

##### *aa) In the case of trust enterprises without divisions<sup>1494</sup>*

1) The trust instrument shall govern appointment and substitution in the event a trustee is no longer available for any reason (such as death, incapacity to act, removal, resignation, or the like), to the extent not otherwise provided.

2) Where only certain entitled beneficiaries are available, they may, where applicable with the involvement of a trustee appointed by the register office for the unknown or uncertain entitled beneficiaries, appoint or remove, or the like, trustees by a unanimous resolution passed at a meeting or by means of a circular letter, at the expense of the enterprise.

3) Pursuant to the trust instrument, the right to appoint or remove or to nominate (right of nomination) may be left to all or individual trustees,

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<sup>1494</sup> Article 932a § 50 heading amended by LGBL. 2014 No. 362.

all or individual participants, or third parties, or the Office of Justice may be appointed to perform this duty, but without it being under obligation to execute such a directive.<sup>1495</sup>

§ 51<sup>1496</sup>

*bb) With divisions and in the case of several trusts etc.*

1) Where a trust enterprise is comprised of several divisions, or if a person is appointed as trustee for several trusts in the same enterprise or in respect of a branch only, the division, other trust, or branch in respect of which that person has been appointed, removed, or nominated shall be stated specifically in each case, in the absence of any directive to the contrary.

2) In case of doubt, a person may accept or decline the position of trustee in respect of all divisions, special trusts, or the like only insofar as that person was appointed as trustee pursuant to the same directive throughout.

*b) Appointment*

§ 52

*aa) Right to appointment*

1) In the absence of any directive to the contrary, the right to appoint new trustees shall be exercised by the person having a right to remove trustees, subject to appointment of a trustee by the register office or a public trustee pursuant to the provisions governing trusts in general and the provisions otherwise established.

2) Where fewer than three trustees are appointed pursuant to the trust instrument, the trustees may, at the expense of the trust enterprise, appoint new trustees in addition to those already appointed (supplementary trustees) or substitute trustees, for the event of incapacity to act or the like, with the same rights and duties as they themselves have.

3) The Office of Justice may, on important grounds, upon application of participants or *ex officio*, appoint or remove trustees, supplementary trustees, or the like, with or without observance of the trust instrument, for the entire trust enterprise, for a part of the trust assets to be segregated

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<sup>1495</sup> Article 932a § 50(3) amended by LGBl. 2013 No. 6.

<sup>1496</sup> Article 932a § 51 amended by LGBl. 2014 No. 362.

or that has already been segregated, a fund, a branch, or in the event that the preconditions are met for the appointment of a judicial trustee pursuant to the provisions governing the trust in general, in accordance with those provisions.<sup>1497</sup>

### § 53

#### *bb) Selection and duty to notify*

1) If a trustee is no longer available, persons having the right or the duty to appoint trustees may also appoint themselves as trustee, provided they have not been removed as trustee and provided there are no other important grounds which would preclude their appointment.

2) Whenever trustees are appointed subsequently, every possible attention should be paid to the commercial, financial, technical, and the like, proficiency of the trustee and to that trustee's personal relationships to the other participants, having regard to the purpose of the trust enterprise.

3) As soon as the existence of the trustee and the reasons for the appointment of a trustee for the person represented or the person no longer available or the debtor are known to the statutory representatives, universal successors, legatees, executors, administrators, liquidators, insolvency administrators, or the like, they shall be under obligation at the expense of the undertaking to notify the persons responsible or under obligation to appoint, where applicable to the Office of Justice, and to provisionally carry on the transactions of the trust up to the time of the appointment of the substitute and, pursuant to the provisions governing torts, shall be liable for losses accruing to the trust enterprise or other participants as a result of the grossly negligent or intentional violation of this duty.<sup>1498</sup>

#### *c) Removal*

### § 54

#### *aa) In general*

1) In case of doubt, the right to remove shall not also embrace the right to withdraw from the persons removed the power to appoint or to

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<sup>1497</sup> Article 932a § 52(3) amended by LGBL 2013 No. 6.

<sup>1498</sup> Article 932a § 53(3) amended by LGBL 2020 No. 369.

nominate other suitable trustees, the beneficial interest, and other rights to which they are entitled without being a trustee.

2) A trustee may, on important grounds such as, for example, conflict of interest, unsuitability, incompetence for the position of trustee, or the like, be removed with immediate effect by the remaining trustees, where applicable upon application by participants and in urgent cases *ex officio* by the Office of Justice, without prejudice to any claims of the person removed against the persons responsible for the removal, where the director of the Office of Justice is not concerned, or against the applying participants, arising from contract or tort or on grounds of violation of personal relationships and subject to the right to appeal the removal decision.<sup>1499</sup>

3) Trustees appointed by the Office of Justice or other authorities may be removed only with the assent of the authority concerned.<sup>1500</sup>

4) The provisional withdrawal (termination) of a trustee's right to manage the trust may be made at the discretion of the Office of Justice upon application by participants and also by applying *mutatis mutandis* the provisions governing the withdrawal of power of representation in the case of the general partnership, but subject to claims pursuant to the second paragraph.<sup>1501</sup>

## § 55

### *bb) In the case of security deposit by third parties*

1) Where, in fulfilment of the duties of a trustee pursuant to the law or other directive, a person has provided the trust enterprise or all participants with security or other guarantee, that person shall be entitled, in the event of the security or guarantee being endangered as a result of the conduct of the trustee, to demand from the body empowered to remove, where applicable at the Office of Justice, the removal of the trustee endangering the security or guarantee or to demand other protective measures.<sup>1502</sup>

2) If that person's demand is not complied with, the person may, from the day on which the demand was communicated, in the absence of further agreement, terminate the relationship with immediate effect, in such a

<sup>1499</sup> Article 932a § 54(2) amended by LGBl. 2013 No. 6.

<sup>1500</sup> Article 932a § 54(3) amended by LGBl. 2013 No. 6.

<sup>1501</sup> Article 932a § 54(4) amended by LGBl. 2013 No. 6.

<sup>1502</sup> Article 932a § 55(1) amended by LGBl. 2013 No. 6.

manner that the security may not be used for future obligations; in addition, the person may, provided claims have not already arisen, demand the surrender or cancellation of the security provided and, if necessary in case of doubt, compensation pursuant to the principles of contract law.

3) The other powers to which third parties are entitled, arising from a guarantee or other legal relationship, shall remain unaffected.

*d) Resignation*

§ 56<sup>1503</sup>

*aa) In general*

1) A trustee may at any time and at the trustee's own expense give notice of resignation to the other trustees and, where applicable, to the Office of Justice. The trustee shall, however, continue to perform the trustee's duty until an appointment by substitution has been made, pursuant to the trust instrument or by law and at the expense of the trust property.

2) On important grounds, the trustee may resign with immediate effect, provided the resignation is notified to the other trustees or the competent bodies, where applicable to the Office of Justice.

3) If only specifically designated entitled beneficiaries are available, a trustee may, with their assent, resign at any time even if the trust instrument provides otherwise; the same applies all cases where the Office of Justice gives its assent.

§ 57

*bb) Significance*

1) If a person is a trustee for several trusts that are connected with one another or in several divisions or branches of a trust enterprise, the resignation from the position shall in the absence of any other trust directive apply to all trusts, divisions, or branches, unless all entitled beneficiaries determine otherwise or unless an exception with the assent of the Office of Justice is justified on important grounds.<sup>1504</sup>

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<sup>1503</sup> Article 932a § 56 amended by LGBl. 2013 No. 6.

<sup>1504</sup> Article 932a § 57(1) amended by LGBl. 2014 No. 362.

2) Where, independently of the trustee's position as such, a trustee is granted the right to appoint, nominate, or remove trustees for the same trust enterprise or other trusts connected with that trust enterprise, it shall be assumed that the notice of resignation shall not also extend to this right.

#### § 58

##### *e) Form*

1) Each appointment, removal, resignation, or nomination shall be issued in writing by those empowered or under obligation to do so or otherwise be invalid and, in the absence of other legislative provision, be notified to the trust enterprise, where applicable to the Office of Justice.<sup>1505</sup>

2) An appointment shall be made with the written assent of the person to be appointed; by way of substitution, however, it may also be effected by submission of the person's signature in due form at the Office of Justice.<sup>1506</sup>

3) In the case of trust enterprises entered in the Trust Register, these steps shall be registered along with the facts and circumstances to be entered.

##### *f) Effect*

#### § 59

##### *aa) For those appointed, removed, resigning etc.*

1) Trustees shall fulfil their duties up to the time a successor is duly appointed and, where applicable, registered with the register office, unless the law, the trust instrument, all beneficiaries, or the Office of Justice determine otherwise or something to the contrary arises from the circumstances.<sup>1507</sup>

2) Trustees who are appointed by substitution or otherwise subsequently or remaining shall, in the absence of any directive to the contrary, such as where a special form is provided for the transfer of rights and duties or concerning signature, or where a provision exists governing the protection of a *bona fide* third party, automatically enter into the same legal position as their predecessor, but not into the same legal relationships

<sup>1505</sup> Article 932a § 58(1) amended by LGBl. 2013 No. 6.

<sup>1506</sup> Article 932a § 58(2) amended by LGBl. 2013 No. 6.

<sup>1507</sup> Article 932a § 59(1) amended by LGBl. 2013 No. 6.

arising from responsibility, personal liability, or additional performance obligations or other purely personal legal relationships of their predecessors or co-trustees.

3) The liabilities entered into by the trustees or arising from the employment itself shall remain unaffected by removal, resignation, or similar procedures.

4) Where trustees are referred to in the law or in the trust instrument, it shall be understood, in case of doubt, that supplementary or substitute trustees or the like are also included.

#### § 60

##### *bb) In the case of default or non-exercise of the right or obligation to appoint, remove, nominate, or the like*

1) Where one person alone is entitled or under obligation to appoint or remove or nominate and fails to exercise that right or fulfil the accepted obligation or fails to do so in a timely manner, appointment, removal, or nomination may, in the absence of any directive to the contrary, also be effected by the holders of beneficial interest, where applicable jointly with the next living prospective beneficiaries, pursuant to the regulations concerning the organisation of the beneficiaries.

2) In the case of other trust enterprises and in other cases, the appointment, removal, or the exercise of the nomination, where a person is appointed to undertake this alone, but fails or is unable or unwilling to exercise the right or the duty, shall, in the absence of any directive to the contrary, be undertaken by the Office of Justice upon application by participants.<sup>1508</sup>

3) If several persons are appointed to cooperate in the exercise of the same rights and duties and some of those appointed cannot or will not cooperate in the exercise of the right or duty, the remainder shall be entitled or under obligation to exercise the right or duty, and if all those appointed for that purpose cannot or will not cooperate, the foregoing provisions shall apply *mutatis mutandis*.

4) Upon application by participants, the Office of Justice may, on important grounds, temporarily or completely withdraw or cancel the right or the duty to appoint, remove, or nominate, or entrust another person with the right hereto, subject to any claims by the persons affected

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<sup>1508</sup> Article 932a § 60(2) amended by LGBL 2013 No. 6.

against the culpable applicant, arising from a contract or a tort or on grounds of violation of personal relationships.<sup>1509</sup>

5) Where a person culpably fails to fulfil or to fulfil in a timely manner the accepted obligation to appoint, remove, or nominate, that person shall be liable pursuant to the principles of contract law to the trust enterprise and to all others who have suffered loss thereby, without limitation in the latter case and, where applicable, jointly and severally.

## § 61

### 2. Organisation

1) In the absence of any provision to the contrary and applying the provisions governing the board of directors of public limited companies *mutatis mutandis*, co-trustees appointed pursuant to the trust instrument form a board of trustees (trustee board of management, trust committee, committee of trustees, or the like), which may elect and remove a chair, a treasurer, a keeper of the minutes (secretary), etc., from among its members and determine the powers and duties.

2) In case of doubt, the chair, cashier, keeper of the minutes, etc., shall be entitled to those powers and duties to which persons occupying similar positions in the case of legal persons in similar kinds of business are normally entitled.

3) Within the scope of the law governing the legal relationship between co-trustees and the trust enterprise, among co-trustees, and between co-trustees and other participants, the trust instrument may provide a more detailed arrangement concerning, in particular, the organisation of the trustees, establishing them, within the scope of the trust instrument, as an advisory and decision-making body similar to that of the supreme body under the general provisions on legal persons, the resolutions of which shall be executed by the managing board of trustees in the same manner as such resolutions are executed by the administration of a legal person.

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<sup>1509</sup> Article 932a § 60(4) amended by LGBL 2013 No. 6.

### 3. Trust management

#### § 62

##### a) *In general*

1) Unless otherwise provided by the trust instrument or the law, the trustees shall be entitled to manage jointly and they shall be under obligation to act and to decide jointly in good faith; in the case of public-benefit or similar trusts, however, a resolution of the majority shall, in the absence of any directive to the contrary, also be binding upon the minority of the trustees.

2) It shall not be determined in the trust instrument that all trustees shall be excluded from the management, otherwise the rule from the preceding paragraph shall apply.

3) To the extent that nothing otherwise emerges from the trust instrument, the nature of the trust, and the law, the relevant provisions governing administration under the general provisions on legal persons shall apply *mutatis mutandis* to the trust management.

4) Within the scope of the trust instrument and the law, the trustees shall be empowered to undertake all business transactions in the execution of the purpose of the trust or the object of the undertaking and shall be under obligation to take all possible care.

#### § 63

##### b) *Position of non-managing trustees*

1) Where there are other trustees in addition to trustees who are entrusted with management and the exercise of the fiduciary authority, those trustees shall be entitled by way of substitution to the same rights and obligations, to the extent that those rights and obligations do not concern the fiduciary authority, as in the case of representation by the administration of a legal person, or the law or trust instrument do not provide otherwise.

2) Within the scope of the trust instrument, non-managing trustees shall, at all times by operation of law, have the right and, depending upon the circumstances, also the duty individually or collectively or with the involvement of appropriate impartial and disinterested specialists, to satisfy themselves at the expense of the trust enterprise concerning the course of business, to examine the account books and papers, to demand information from the managing trustees and, at appropriate intervals or,

where justified on important grounds, at any time to demand submission of accounts.

3) They may in good faith object to the undertaking of business transactions not executed, with the effect that these shall be refrained from, otherwise the acting trustee shall be responsible to the undertaking and, where applicable, also to the other participants.

#### § 64

##### *c) Regulations (bylaws) and transfer of management*

1) Within the scope of the law and the trust instrument, the trustees may delegate management to individual trustees or third parties or, to the extent that they lack specialised knowledge or it is customary, enlist auxiliary persons and draw up regulations governing the performance of management responsibilities, with the proviso that individual trustees or third parties may also be entrusted with the performance of individual branches of the enterprise or with individual trust transactions, with or without remuneration, subject to the responsibility of all trustees for the choice they make and for supervision.

2) Where co-trustees perform management responsibilities at their own discretion and jointly, they may not delegate such management to one trustee alone.

3) A delegation of management responsibilities may, by virtue of the law, be revoked at any time by the managing trustees or, in case of imminent danger, by any trustee, subject to the obligations of the trust enterprise or of the culpable trustees arising from contract or tort or on grounds of violation of personal relationships vis-à-vis the other party.

##### *d) Fiduciary duties*

#### § 65

##### *aa) In general*

1) Within the scope of the law and the trust instrument, the fiduciary duties are governed by the provisions on fiduciary duties relating to trusts in general.

2) In the performance of their management responsibilities, trustees and representatives shall exercise the care of orderly businesspersons

devoted to their own business affairs and shall be liable for every culpable violation of their duties.

3) Trustees shall acquaint themselves thoroughly with the trust instrument and may not excuse themselves on grounds of ignorance of its provisions.

4) Unless the law or the trust instrument indicates otherwise, the trustees shall comply with the written instructions drawn up by all the beneficiaries, including any prospective beneficiaries, pursuant to the provisions governing the organisation of the beneficiaries.

5) Where, without being at fault, a person is appointed invalidly as trustee and acts in this capacity, the person concerned shall nevertheless be treated as a trustee in relation to persons acting in good faith and shall be responsible from the day of appointment, even though the person has not been entered in the Trust Register.

6) A prohibition of competition exists for the trustees insofar as this is determined in the trust instrument or is required for reasons of equity.

*bb) Own interest*

§ 66

*aaa) In general*

1) Each trustee shall be under obligation to avoid a conflict of the trustee's own interests with those of the trust enterprise or the participants as such and, if a conflict has already arisen, to eliminate that conflict.

2) Where, contrary to the law or the trust instrument, a trustee derives personal advantage from the trust enterprise, where applicable through resolutions or instructions of competent bodies, or in connection with the performance of management responsibilities, and if this advantage does not consist in customary and occasional gifts, the trustee concerned shall, as a constructive trustee in the same manner as an implied trustee, be under obligation to submit accounts, provide information, and surrender the advantages or any substitute advantage.

3) The provisions governing transactions for the benefit of the trustee applicable to trusts in general shall apply *mutatis mutandis*, and in this regard the injured undertaking shall be entitled to the claims in the first place, followed by the injured creditors in the case of unsuccessful compulsory execution or the insolvency administrator in the case of insolvency proceedings, and lastly the participants, if the creditors or

participants concerned were not themselves involved in this connection.<sup>1510</sup>

4) Where a trustee is at the same time the sole entitled beneficiary, the trustee may, in the absence of any directive to the contrary, conclude own transactions or as a representative or governing body of others under the same conditions as in the case of a legal person with a sole shareholder.

### § 67

#### *bbb) Acquisition of trust property and beneficiary rights*

1) Within the meaning of the preceding provisions and in the absence of any directive to the contrary, the trustees may acquire, rent, lease, etc. trust property from themselves, from a co-trustee, or from the trust enterprise only with the fullest transparency of the acquiring transaction at public auction or with the assent of other beneficiaries or bodies authorised to give assent or the Office of Justice, unless the acquisition involves freely transferable beneficiary rights or rights such as those which are disposed of at the instigation of third parties, or unless common business practice indicates otherwise.<sup>1511</sup>

2) Any circumvention of this provision, such as in particular the alienation of trust property to a third party for the purpose of reacquiring that trust property before the transaction involving alienation is complete, is inadmissible.

3) Where trustees acquire, rent, or lease from beneficiaries rights which are not embodied in freely negotiable securities, they shall, if the beneficiary so demands, provide that beneficiary, in good faith and to the best of their ability, with information concerning all the facts and circumstances influencing the alienation price, otherwise liability for the transferor's damages shall be incurred pursuant to the principles of contract law for a period of limitation of three years from the date of alienation.

4) The preceding provisions shall apply *mutatis mutandis* where trustees alienate, rent, or lease, etc. to beneficiaries trust property or beneficial interests or individual claims therefrom.

5) Moreover, the preceding provisions are subject to the provisions governing surrender and the claim on account of unjust enrichment in the case of unjustified alienation or encumbrance of trust property.

<sup>1510</sup> Article 932a § 66(3) amended by LGBl. 2020 No. 369.

<sup>1511</sup> Article 932a § 67(1) amended by LGBl. 2013 No. 6.

*cc) Obligation to disclose*

## § 68

*aaa) To beneficiaries*

1) To the extent not otherwise indicated by the law or the trust instrument or the circumstances, trustees, upon demand, shall equitably provide each entitled beneficiary and each prospective beneficiary, to the extent that their rights are concerned, with information relating to all facts and circumstances and in particular to the status and the investment of the trust assets, report at appropriate intervals and submit accounts and also explain why they have not actually maintained or achieved the assets including yield which, according to the usual course of events or according to other circumstances, they should have maintained or achieved or been able to maintain or achieve.

2) In the absence of other provisions of the law or the trust instrument, trustees shall be under obligation to allow the entitled beneficiaries, including any prospective beneficiaries, to the extent that their rights are concerned, at their expense, to examine, personally or through a representative, all the books of account and papers and to copy these and to inspect and examine all facts and circumstances and in particular, the accounting.

3) Should the preceding rights not be asserted jointly by all the entitled beneficiaries, including all the prospective beneficiaries, the assertion, in the absence of a directive to the contrary, may be made only to the extent that it is not demanded with dishonest intent, in an abusive manner or in a way which conflicts with the interests of the trust enterprise or other entitled beneficiaries or prospective beneficiaries or insofar as it is demanded in good faith.

## § 69

*bbb) To co-trustees etc.*

1) Trustees shall provide each other with information in the same way as they provide entitled beneficiaries with information, i.e., not only relating to individual transactions concluded by themselves but also relating to other facts and circumstances.

2) Trustees or their universal successors who are no longer available for any reason shall, to the best of their ability, provide succeeding trustees with unrestricted information concerning all facts and circumstances and hand over all the books of account, papers or assets concerning the trust

enterprise to the extent that they are not entitled to a right of offset or retention relating to the latter.

3) Succeeding trustees shall audit the management conducted by the trustees no longer available according to the requirements of the circumstances and assert any claims of the trust enterprise against them or their legal successors.

*e) Fiduciary powers*

§ 70

*aa) In general*

1) Within the scope of the law and the trust instrument, the fiduciary powers are determined, in case of doubt, by the provisions governing trusts in general, and where applicable by the instructions of the Office of Justice.<sup>1512</sup>

2) Where at the discretion of the managing trustees it appears necessary and the trust instrument does not provide otherwise, the managing trustees may conclude arbitration and conciliation agreements on behalf of the trust enterprise and establish branches, where appropriate with special trustees.

3) Where branches are established by registered undertakings, they and the trustees or representatives concerned must be registered with the Trust Register for the purpose of entry and publication and the facts and circumstances required to be registered must be declared.

*bb) Claims for compensation and remuneration of trustees*

§ 71

*aaa) In general*

1) Within the scope of the law and the trust instrument, trustees as creditors may demand satisfaction of their claims (reimbursement of expenses and dispositions on behalf of the trust enterprise and of the losses they incur which accrue from the enterprise, furthermore, release from the obligations entered into at their expense in the interests of the enterprise or otherwise as well as for remuneration and the reimbursement of the

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<sup>1512</sup> Article 932a § 70(1) amended by LGBl. 2013 No. 6.

interest customary in the country) only to the extent that they are not to blame for their accrual and the claims appear to be justified by the circumstances.

2) Where remuneration for trustees is not or not adequately provided for in the trust instrument and nothing otherwise is indicated by the legal relationships between the participants, the Office of Justice may, subject to other admissible directives, determine legally binding remuneration which is commensurate with the circumstances, after hearing the participants.<sup>1513</sup>

3) Where claims of the trustees as such have been satisfied by another party which, in addition to the trust enterprise, was under obligation to do so, the right to satisfaction from the enterprise passes, in the absence of any other agreement, to the extent that the claims were well founded and the right to compensation pursuant to the underlying legal relationship is not excluded, by operation of law to the other party.

4) The claims of the trustees as such take precedence over the claims against the trust enterprise arising from the beneficial interest, to the extent not otherwise determined by the law or the trust instrument.

## § 72

### *bbb) Assertion*

1) The claims of the trustees arising from management are directed, subject to the right of offset and retention, against the trust enterprise in the first instance, in such a way that claims are to be made first against the yield and then against the trust property itself. In the second instance, the claims are directed, in the absence of any directive to the contrary, against those beneficiaries who, in the individual case, are enriched or who have derived utility without valuable consideration from the trust enterprise or from the acts of management.

2) Where several beneficiaries have enriched themselves or have derived benefit without valuable consideration, the claim for compensation shall be made in proportion to their beneficial interest, as they derived benefit or enriched themselves.

3) Where claims can be made against the trustees for liabilities of the trust enterprise, the trustees may, to the extent that the enterprise does not, for instance, have a right to claim compensation from them, or

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<sup>1513</sup> Article 932a § 71(2) amended by LGBL 2013 No. 6.

nothing to the contrary is indicated, also surrender trust property in lieu of performance.

4) A trustee shall forfeit claims up to the extent of the damages caused by a breach of trust, with reservation of any further claims by the undertaking and other injured parties.

#### *4. Fiduciary authority*

##### *§ 73*

###### *a) In general*

1) Within the scope of this Act and the trust instrument, the provisions concerning representation by the administration under the general provisions governing legal persons shall apply with respect to scope, duration, effect, exercise, and the like of the fiduciary authority of the trustees, and then on a supplemental basis those concerning the fiduciary authority under the trusts in general and those concerning trust management.

2) The trustees appointed to exercise fiduciary authority as well as other authorised signatories and the lapse or amendment of fiduciary authority or the power of representation shall, in the case of enterprises entered in the Trust Register, be registered without delay, with the addition of the proof of their appointment and the relevant facts and circumstances capable of entry, to the extent that the circumstance is not a re-appointment.

3) A transfer of fiduciary authority as a whole or in individual parts is admissible within the scope of the trust instrument, pursuant where applicable to the law or the provisions governing the transfer of trust management.

##### *§ 74*

###### *b) Appointment of representatives by the Office of Justice<sup>1514</sup>*

1) In the event of imminent danger or on other important grounds, the Office of Justice may, apart from the admissibility of appointing legal advisors, upon application of participants or *ex officio* and after hearing or without hearing participants, also appoint and likewise remove authorised

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<sup>1514</sup> Article 932a § 74 heading amended by LGBL 2013 No. 6.

or other representatives for the trust enterprise, or a part thereof or a special trust or, finally, a branch.<sup>1515</sup>

2) Removal, however, may only take place without prejudice to any claims of those removed against the participants at fault arising from contract or tort or on grounds of violation of personal relationships.

#### § 75

##### *c) Minimum fiduciary authority and minimum power of representation by law*

1) Managing trustees and other bodies or representatives of the trust enterprise shall be appropriately entitled by law to at least those powers and be subject to those obligations which are provided under the general provisions governing legal persons for representation in the case of the administration, subject to derogating provisions of the law.

2) Where it is not directed to the contrary and, where applicable, is also registered in the Trust Register, or no urgency is involved, managing trustees shall exercise their fiduciary authority jointly.

3) Where the co-trustees have not acted jointly, such an act, in the absence of any directive to the contrary, shall require the approval of the remainder in order to be effective with respect to the trust enterprise, without prejudice to any claims of injured, *bona fide* third parties against the acting party.

4) However, a statement or notice may be submitted to the trust enterprise with legal effect and also to one of the managing trustees or to a representative in the same manner as to a member of the administration of a legal person.

#### § 76

##### *d) Signing authority*

1) The trustees appointed to exercise fiduciary authority as well as other authorised signatories shall, in the case of trust enterprises subject to the registration requirement or of those which register voluntarily, when registration first takes place, sign their signature before the director of the Office of Justice or submit it in a certified form as in the case of the administration as a governing body of a company with legal personality

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<sup>1515</sup> Article 932a § 74(1) amended by LGBL 2013 No. 6.

or their representatives. The same act shall be performed by those appointed subsequently if, at a later date, there is a change in the composition of these trustees or authorised signatories or in the fiduciary authority or power of representation.<sup>1516</sup>

2) In the absence of any other trust directive and, where applicable, entry in the Trust Register, signing on behalf of the trust enterprise in relation to third parties shall, in the case of co-trustees, be undertaken by all the trustees in the same manner as by members of the administration of a legal person in order to be valid with respect to the undertaking and third parties, and a seal or the like may also be used for the printed (company) name.

3) Should signing not be performed in the prescribed manner, those who act shall be jointly and severally liable for damages, without limitation, to the trust enterprise and *bona fide* third parties in the event that the trust enterprise rejects the validity of the legal transaction.

4) Where acts are performed on behalf of the trust enterprise verbally or in a similar manner without signature, this shall be made recognisable to third parties and, if necessary, shall be performed jointly, in order to avoid the consequences mentioned above.

#### § 77

##### *e) Evidence of authority (identification)*

1) The relevant provisions governing legal persons shall apply *mutatis mutandis* to the evidence of authority vis-à-vis public authorities and private parties, with the proviso that the public authority appointing a trustee or a competent third party may also issue a document which provides evidence of authority.

2) Where a document is issued providing evidence of the trustee's authority, the trustee shall be under obligation to return the document or deposit it with the Office of Justice after lapse of the trustee's fiduciary authority, for the trust enterprise to dispose of freely.<sup>1517</sup>

3) If the trustee is not held to this by the trust enterprise or, where applicable, by the universal successor of the trust enterprise, the trust enterprise or the universal successor shall be responsible to the *bona fide* third party, subject to the right of recourse to the trustee, unless the third party has knowledge otherwise of the lapse of fiduciary authority.

<sup>1516</sup> Article 932a § 76(1) amended by LGBl. 2013 No. 6.

<sup>1517</sup> Article 932a § 77(2) amended by LGBl. 2013 No. 6.

*IV. Beneficiaries (of the trust)**1. Beneficial interest in general*

## § 78

*a) Types*

1) Where not otherwise determined by the law, beneficiaries (of the trust) and the like shall be deemed to be those who, pursuant to the trust instrument, draw benefit from the trust enterprise, either at the present time or at some time in the future, either as a share in the yield or the trust assets, or both, regardless of whether the beneficiary has a claim thereto or not, or whether securities relating to the beneficial interest have been issued or a public-benefit or similar trust enterprise is involved, and subject to the beneficiary's simultaneous claims otherwise due as a participant or third party.

2) Provided the beneficial interest of persons is not excluded, recipients of beneficial interest (holders of beneficial interest) shall be deemed to be those persons who, pursuant to the trust instrument or the law, are actually entitled in a prescribed manner to a specifically designated benefit and, should they also have a legal entitlement thereto, shall be deemed to be entitled beneficiaries.

3) Where the right of beneficial interest in general is limited to a strictly defined circle of persons (firms or legal persons) and, after the holders of beneficial interest are no longer available, others, on the basis of the trust instrument, are designated as beneficiaries, pursuant to a certain arrangement, by virtue of a legal entitlement, to succeed as holders of beneficial interest, the latter shall have prospective rights (prospective beneficiaries).

4) Where it is not determined to the contrary, the expression "beneficiary (of the trust)" shall also include the prospective beneficiary with and without claim, in particular also the allottee, and the terms "beneficial interest" shall also include the prospective beneficial interest.

## § 79

*b) Legal nature of the beneficial interest etc.*

1) Beneficial interest may be qualified, limited in time, tied to a condition or the like, or also be dedicated for impersonal purposes.

2) Within the scope of the law, the right of the holders of beneficial interest, which rests upon the trust instrument, is restricted solely by the trust instrument and, where applicable, by any existing prospective right of others to a beneficial interest.

3) Where the trust instrument allows rights to beneficial interest or prospective beneficial interest, such rights shall be treated solely as restricted creditor rights which, realised pursuant to the law and the trust instrument, may be asserted and transferred to others.

4) By way of an ordinance, the relevant provision in the trust instrument being otherwise invalid, it may be provided that the determination of the beneficiaries may not be deferred or the yield or other advantages deriving from the trust enterprise may not be left undistributed or, similarly, that the non-alienation of trust property or beneficial rights may not be extended for longer than the period allowed for the appointment of a reversionary heir, insofar as important grounds do not justify an exception, as in the case of public-benefit undertakings or inalienable trust property or the like.

*c) Accrual and loss*

§ 80

*aa) In general*

1) The beneficial interest may accrue with or without consideration, for instance by the remittance of purchase payments, regular contributions, or the like, by the settlor for the beneficiaries or by the latter as settlors to the trust enterprise, with or without the issuance of securities relating to the beneficial interest, insofar as the trust instrument does not provide for a public-benefit trust or a trust having a similar purpose with beneficiaries not determined beforehand or with impersonal beneficial interests or the like.

2) Rights and duties arising from the beneficial interest may, in particular pursuant to the trust instrument, also after the trust enterprise has been formed, be constituted by original beneficiaries for other participants or third parties as new beneficiaries in the same or in a different manner or gradually (successively constituted beneficial interests).

3) Certain governing bodies or other bodies or third parties may be given the power to grant or withdraw beneficial interest at their discretion or owing to the discontinuation of certain prerequisites or a right of

provisional acquisition or redemption of the beneficial interest, effective with respect to all parties, against payment of a redemption sum in the event of the beneficial interest being alienated or the like. Upon application of the managing trustee or otherwise competent bodies, that right of provisional acquisition or redemption of the beneficial interest may be noted in the Trust Register.

4) Acceptance of the rights derived from the beneficial interest by the beneficiaries shall be assumed, provided that only advantages are associated therewith and that the circumstances do not indicate otherwise.

5) By way of derogation and *mutatis mutandis*, the accrual and loss of beneficial interest may also be governed, without the existence of a membership, pursuant to the rules concerning the acquisition and loss of beneficial interest established for registered cooperative societies.

#### § 81

##### *bb) Gratuitous beneficial interest and sociopolitical beneficial interest*

1) Beneficial interests may in particular also be granted without contribution by the beneficiaries to the trust fund or otherwise to the trust enterprise (gratuitous beneficial interests including gratuitous prospective beneficial interests) and sociopolitical beneficial interests.

2) Where doubt exists regarding the latter kind of beneficial interests, the provisions governing sociopolitical rights to shares and profit for legal persons shall apply *mutatis mutandis*.

3) This article is subject to the provision governing gradual distribution from the trust assets.

#### § 82

##### *cc) Special capacity*

1) Where pursuant to the trust instrument the existence or nonexistence of a certain attribute (capacity), such as belonging to a certain profession or circle of persons or a family, domicile in the country or in a certain municipality or the like, is required for the accrual (the granting) or the loss of the beneficial interest, this attribute, in case of doubt, must exist or must not exist, respectively, at the time of devolution of the possession of the beneficial interest upon the prospective beneficiary.

2) Where the position of beneficiary may be occupied only during the existence of such an attribute, this attribute must, in case of doubt, have continued to exist for the relevant period of time concerned.

§ 83

*dd) Convertible creditor and beneficiary rights*

1) The creditors of a trust enterprise may in particular also be granted the right to convert their creditor rights into ordinary or preference beneficial interests, which may be tied to the possession of a security (convertible bonds).

2) Conversely, the entitled beneficiaries may, in the same manner, be granted the right to convert their beneficiary rights into unconditional creditor rights (convertible beneficial interests).

3) This article is subject to the application of the provisions governing the gradual distribution of assets to the conversion of convertible beneficial interests.

§ 84

*ee) Termination etc.*

1) The trust instrument may grant the beneficiaries a right of termination for withdrawal from the beneficiary relationship, to which, in the absence of a detailed directive, the provisions governing notice of termination in the case of registered cooperative societies shall apply on a supplemental basis.

2) If the trust instrument also grants a beneficiary with a claim to the delivery of a part of the trust fund or the like the right, under certain conditions, such as notice of termination or the like, to withdraw from the beneficiary relationship, the withdrawal shall be effective only provided that the provisions governing the gradual distribution of trust assets are observed.

## § 85

*ff) Exclusion*

1) The trust instrument may also set out the reasons for which a beneficiary may be excluded from the trust relationship by the trustees or another body.

2) Following notification of exclusion by the trustees or the competent body serving as trustee, the beneficiary may no longer be active, other than in cases of imminent danger, and from that time on shall be excluded from exercising any right to vote or the like.

3) The exclusion shall be null and void if the provisions governing the gradual distribution of trust assets have not been observed.

4) This article is also subject to claims of the excluded party against parties at fault arising from another legal relationship, such as from contract or tort or on grounds of violation of personal relationships.

*gg) Revocation*

## § 86

*aaa) On grounds of unworthiness of trust*

1) Where the beneficial interest from a trust enterprise is handed over to the entitled beneficiary, pursuant to the settlor's directive, without valuable consideration, the settlor or the settlor's legal heir, provided the latter is not unworthy of the trust, shall have the right to revoke possession of the beneficial interest or prospective beneficial interest on grounds of unworthiness of the trust, with effect against the parties at fault:

1. if the entitled or prospective beneficiary concerned has committed or attempted to commit a serious crime against the settlor or a person with close ties to the settlor,
2. if the entitled or prospective beneficiary concerned has seriously violated a family obligation incumbent upon that beneficiary vis-à-vis the settlor or a relative of the settlor, or
3. if such beneficiaries fail in an unjustifiable manner to fulfil the conditions or other obligations connected with the possession of the beneficial interest or prospective beneficial interest.

2) Where in the execution of a duty as trustee of another trust, the settlor has procured the beneficial interest without valuable

consideration, the settlor of the other trust or that settlor's heirs shall be considered settlors or heirs in regard to unworthiness of trust.

3) Where in the execution of another obligation vis-à-vis a third party, for which that third party has effected or promised to effect something in return without valuable consideration, a settlor has procured the beneficial interest without valuable consideration for a person, the preceding provisions governing unworthiness of trust shall apply to the third party or that third party's universal successors.

4) Unworthiness of trust shall be cancelled by forgiveness by the settlor or by the third party concerned.

#### § 87

##### *bbb) On other grounds*

1) The revocation of a directive concerning the promise of a transfer of the beneficial interest without valuable consideration and the refusal of performance may also emanate from the settlor or the settlor's heirs who have taken over the fulfilment of the promise:

1. if, since the promise of the transfer of assets without valuable consideration to the trust enterprise for the purpose of beneficial interest without valuable consideration, the financial circumstances of the settlor or the settlor's heirs concerned have changed to such an extent that the further fulfilment of the promise to the trust enterprise, without the settlor or the settlor's heirs having the beneficial interest, would exceptionally burden the settlor or the settlor's heirs,
2. if, since the promise referred to above, support or maintenance obligations under family law have become incumbent upon the settlor or the heirs concerned, which beforehand did not exist at all or only to a substantially lesser degree.

2) Where, in the capacity of trustee of another trust, a settlor has formed a trust enterprise or, on the basis of an obligation to a third party for which that third party has effected or promised to effect something in return without valuable consideration, has procured beneficial interest for another person without valuable consideration, the prerequisites for revocation must have ensued in the person of the first trustee or of the third party concerned, or their heirs.

3) This is subject to challenge by the creditors of the settlor or the settlor's heirs.

## § 88

*ccc) Enforcement of revocation and reference*

1) Where revocation of the possession of beneficial interest or prospective beneficial interest is enforced, this shall be done by the party entitled thereto for the benefit of the settlor or the third party concerned and, should it concern their heirs or other legal successors, for their benefit, with notification to the trust enterprise and to those parties against whom grounds of revocation exist.

2) Where a prospective beneficiary has committed a serious crime endangering life or limb against that prospective beneficiary's predecessor in possession of the beneficial interest in order to gain that possession, the successor to the beneficial interests may enforce the revocation against that prospective beneficiary for the benefit of the successor.

3) Revocation may be enforced within a year, commencing at that time when the party entitled to revocation gains knowledge of the grounds of revocation.

4) Revocation shall be excluded if five years have already elapsed since the occurrence of the grounds of revocation, unless the grounds of revocation consisted in a serious crime and the prosecution or execution is not yet statute-barred.

5) Provisions governing the period of limitation shall apply *mutatis mutandis* to the deadline, and the provisions governing gifts shall apply *mutatis mutandis* to the legal relationship between the settlor and the beneficiary concerned.

## § 89

*bb) Violation of a duty of support*

1) Where, as the result of a transfer without valuable consideration, a settlor is no longer able to make a living or to fulfil a legal duty of support, the judge may require the trust enterprise to support the parties in need of or entitled to support, allowing those performances against that which the trust enterprise has to pay any entitled beneficiary without valuable consideration pursuant to the trust instrument and that transfer.

2) Where, in the capacity of trustee of another trust, a settlor has formed a trust enterprise or, in the execution of another obligation vis-à-vis a third party who has effected or promised to effect something in return without valuable consideration for the settlor's benefit, has

procured the beneficial interest without valuable consideration, the prerequisites for the need or the duty to support must apply in the person of the first settlor or the third party concerned.

3) The preceding provisions shall apply *mutatis mutandis* in the case of mixed transfers without valuable consideration.

4) This article is subject to actions by the heirs for reduction on grounds of violation of the compulsory portion, challenges by the creditors, and claims for enrichment by the parties in need of or entitled to support against the enriched party who is no longer a beneficiary.

*ii) Division and consolidation*

§ 90

*aaa) In general*

1) The division of beneficial interests as a whole, the alienation or encumbrance of such a part, and the consolidation of several independent beneficial interests or parts thereof which amount to more than an entire beneficial interest in the hands of one party shall, in the absence of any other trust directive or provisions of the law, without prejudice to the rights of other beneficiaries, be admissible only with the assent of the managing trustees.

2) Provided the trust enterprise does not have a special succession arrangement, the assent may, on important grounds and upon application of the beneficiaries, be substituted by the Office of Justice, after hearing the managing trustees and any other parties with a legal interest.<sup>1518</sup>

3) If a directory is kept of the beneficiaries or the participants in the case of liability and additional performance obligations and, accordingly, a list of participants is also kept, the changes arising from the division or consolidation shall also be entered in the directory, including in particular the joint representative.

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<sup>1518</sup> Article 932a § 90(2) amended by LGBL 2013 No. 6.

## § 91

*bbb) Effect*

1) If several such parts of beneficial interests are consolidated in adequate quantity in the hands of one party, they shall, by virtue of the law, confer the same rights as an undivided beneficial interest and, in the case of the consolidation of several hitherto independent beneficial interests, a corresponding increase of rights, in the absence of any directive to the contrary.

2) Where beneficial interests are simultaneously combined with obligations, the partial beneficiaries shall, after the division, be jointly and severally liable for the obligations, including the outstanding amounts, only insofar as these obligations include financial payments to the trust fund or a joint and several liability or additional performance obligation exists, and without prejudice to any rights of recourse.

3) When several independent beneficial interests are consolidated, the obligations also increase accordingly. In this event, the relevant provisions concerning several shares in the case of registered cooperative societies shall apply with regard to liability and additional performance obligations.

4) Upon demand of the trust enterprise, such beneficiaries with partial claims shall appoint a joint representative; otherwise, the trust enterprise may undertake against one of them all declarations of intent and other legal acts, with effect for and against all, which concern them all or, upon application of the managing trustees, the Office of Justice may appoint such a joint representative, at the expense of the beneficiaries concerned.<sup>1519</sup>

## § 92

*kk) Period of limitation*

1) A period of limitation of the prospective beneficial interest or the possession of the beneficial interest may only ensue in favour of the reserve fund for balance sheet and/or accounting losses, subject to the provisions governing the lapse of the assets to the State and the like.

2) A period of limitation of the prospective beneficial interest as such only commences at the time when the rights associated with possession of the beneficial interest could have been exercised by virtue of

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<sup>1519</sup> Article 932a § 91(4) amended by LGBL 2013 No. 6.

devolution upon the prospective beneficiary concerned but were not exercised.

3) The possession of beneficial interest as a whole is subject *mutatis mutandis* to the ordinary period of limitation, to the extent an exception is not permitted by law.

### § 93

#### *ll) Redemption sum*

1) Where in the case of trust enterprises without commercial operations a beneficiary is entitled to the payment of a redemption sum for their beneficial interest as the result of notice of termination, exclusion, or the like and no securities have been issued, the claim, in case of doubt, shall be comprised of that amount in cash with which, according to the value of the trust enterprise's payment, a corresponding pension could be acquired from a sound annuity institution.

2) In the case of trust enterprises with commercial activities or with securities, the redemption sum shall, in case of doubt, be determined on the basis of a liquidation balance sheet, without liquidation having to take place for this purpose.

3) If important grounds exist, however, the judge may determine the settlement in a different manner.

#### *d) Rights and duties arising from the beneficial interest*

### § 94

#### *aa) In general*

1) In general, rights and duties of the beneficiaries are determined pursuant to the law or the trust instrument, pursuant to the content of the securities issued in relation to the beneficial interest where applicable, and, on a supplemental basis, pursuant to the provisions governing trusts in general.

2) In the case of identical prerequisites and identical performances of the beneficiaries, their rights and duties may, without their assent, in the absence of any directive to the contrary, be treated only in an identical manner, in particular with respect to amendment, restrictions, or rescission, and individual beneficiaries may not be favoured to the detriment of others.

3) In the absence of any directive to the contrary, beneficiaries shall have no right to dissolve the trust enterprise, to individual elements of trust assets, or to divide such assets.

4) To the extent that a beneficiary makes contributions or undertakes to make contributions to the trust fund and the law does not indicate otherwise, that beneficiary shall be deemed a settlor in this regard and shall simultaneously be subject to the rules applicable to settlors.

#### § 95

##### *bb) Distribution of beneficial interest and compensation claims*

1) Where a beneficiary with a claim to payment from yield and asset components is paid amounts without further information concerning their character, it shall be assumed that they are in the nature of yield, but with reservation of the obligation of possible restitution pursuant to the principles concerning unjust enrichment, where applicable pursuant to the rules concerning the gradual distribution of trust assets.

2) Where a holder of beneficial interest loses the right of beneficial interest during a term of administration or is no longer included during such a term, following the conclusion of which the regular yield or another beneficial interest is distributed and no securities have been issued, the receipts from the beneficial interest shall be distributed after the conclusion of the duration of their period of possession during the term of administration among those no longer included or the universal successors of the predecessor and the successors in the possession of the beneficial interest, pursuant to the provisions governing separation and distribution of assets and yield; this shall apply in particular also to family trust enterprises.

3) In the case of securities, the yield or other payment of assets shall, in the absence of any directive to the contrary, be paid to the holder of the securities at the time for payment of the claim concerned.

4) The amounts to be distributed to the beneficiaries may be rounded down insofar as the result of a liquidation or redemption is not involved or nothing to the contrary has been determined.

5) Where, in the common interest, an entitled beneficiary has incurred expenses and, as a result of this, others actually enjoy benefits, that entitled beneficiary shall, with timely announcement of the expenses to the managing trustees, have a right in preference to other beneficiaries to proportionate compensation from the beneficial interest concerned before

distribution, where applicable also for that which is otherwise not obtainable from an entitled beneficiary.

§ 96

*cc) Undue delay*

1) To the extent that securities relating to beneficial interests have not been issued and the trust instrument does not provide otherwise, the relevant provisions on membership under the general provisions governing legal persons and, on a supplemental basis, those of the law of obligations shall apply to the beneficiary's delay in performance.

2) The trust instrument may provide that in the case of a beneficiary's or third party's delay in performance, the beneficial interest acquired on the basis of this obligation to perform may be declared void in favour of the reserve fund for balance sheet or accounting losses, without release from the beneficiary's or third party's obligation to the trust enterprise.

3) Where concerning the securities issued in connection with the beneficial interest, performances are in arrears, the managing trustees may, by operation of law, declare all the beneficiary's rights accruing from the securities concerned to be forfeited pursuant to the provisions governing undue delay on the part of the shareholder, without the beneficiary as a debtor being released as a result of this from the remainder of the beneficiary's obligation to perform, to the extent that that obligation to perform relates to the trust fund or the liability or additional performance obligations for the duration of the beneficiary's beneficial interest.

§ 97

*dd) Surrender and right of redemption*

1) In the absence of any trust directive to the contrary, a beneficiary may avert the obligations arising from the beneficial interest to make further contributions to the trust enterprise, to the extent that such contributions are not intended for the trust fund, by leaving the beneficiary's alienable beneficial interest in the hands of the trust enterprise in a written statement in favour of the reserve fund for balance sheet or accounting losses, whereby the beneficiary's predecessors in the beneficial interest are also released from the duty to effect contributions overdue from the time of their beneficial interest.

2) Where, pursuant to a certain arrangement, prospective beneficiaries are available by virtue of the right of succession, these prospective

beneficiaries, after they have been informed in writing by the managing trustees or any other body authorised pursuant to the trust instrument of the undue delay in performance or of the surrender by a beneficiary or defaulting third party, shall have the right, according to the sequence of their prospective beneficial interest, to redeem that beneficial interest or prospective beneficial interest in return for the fulfilment or, where admissible, in return for appropriate security for the defaulted performance (right of redemption).

3) To the extent that the right of redemption is not exercised pursuant to the preceding paragraph and in all other cases, the spouse, registered domestic partner, or descendants of the beneficiary may exercise that right of redemption and, if several parties entitled to redemption are unable to agree, pursuant to a directive of the Office of Justice.<sup>1520</sup>

*ee) Assertion of rights*

§ 98

*aaa) Rights of beneficiaries*

1) Within the scope of their rights pursuant to the trust instrument and the law, entitled beneficiaries and prospective beneficiaries, individually or in groups or all together, may demand the observance or fulfilment of their rights by the trust enterprise and the trustees or others under obligation in this respect and, for this purpose, also protective measures.

2) Entitled beneficiaries, individually or in groups or all together, as well as prospective beneficiaries may otherwise assert their claims against third parties only to the extent provided for by law or the third parties themselves are under obligation to them or have committed a tort.

3) The defendant may apply for a security deposit pursuant to the provisions governing voidability actions in the case of legal persons.

4) By means of the trust instrument, trustees or third parties may be entrusted exclusively with the protection of the rights accruing from the possession of beneficial interest or prospective beneficial interest against non-beneficiaries, to the extent that the assertion of the rights of beneficiaries among themselves is not an option or the interests of the trust enterprise are not in opposition to the rights of the beneficiaries.

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<sup>1520</sup> Article 932a § 97(3) amended by LGBL 2013 No. 6.

## § 99

*bbb) Rights of the trust enterprise*

1) The entitled beneficiaries and prospective beneficiaries, individually or in groups or all together, may, on behalf and in favour of the trust enterprise, demand that the trustees or other persons or bodies under obligation in this regard comply with the provisions, in particular the fulfilment of their trust duties pursuant to the law or the trust instrument and the cancellation of inadmissible measures, or they may take direct protective measures against acts or omissions which endanger the rights of the trust enterprise.

2) Where trustees fail to assert in accordance with their duty and the circumstances a due or not due but endangered claim of the trust enterprise against participants or third parties, in particular a claim on grounds of disturbance or withdrawal of possession or ownership of trust property, where such claim comes to the attention of those trustees, individual entitled beneficiaries or prospective beneficiaries or in groups or all together may, moreover, in the absence of any directive to the contrary, themselves call upon the trustees who fail to act to assert the claims within a reasonably determined period of time or request the Office of Justice to call upon them to do so, and after the expiry of this period of time or, in the case of inadequate assertion on the part of the trustees, the entitled parties concerned may assert their claim on behalf and in favour of the enterprise.<sup>1521</sup>

3) The provisions governing the security deposits in the case of voidability actions shall apply *mutatis mutandis* in favour of the defendants.

## § 100

*ccc) In the case of an organisation*

1) Where an organisation of the beneficiaries is provided for in the trust instrument and is implemented or is ordered by the Office of Justice, the powers of the beneficiaries may be asserted in accordance with that organisation and subject to any minority rights and such rights as those to which only the individual is entitled, in particular vested rights, such as the right to due yield or the like.<sup>1522</sup>

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<sup>1521</sup> Article 932a § 99(2) amended by LGBl. 2013 No. 6.

<sup>1522</sup> Article 932a § 100(1) amended by LGBl. 2013 No. 6.

2) To the extent they are not already so entitled, the organisation as well as any minorities shall have the capacity in official proceedings, in which they shall be represented by authorised persons in conformity with the articles or otherwise, to be a party to and to instigate legal proceedings.

3) Resolutions passed by a meeting of entitled beneficiaries or prospective beneficiaries, including preferentially or similarly entitled parties, convened on the basis of such an organisation may, pursuant to the provisions concerning challenges to resolutions of the supreme body, under the general provisions governing legal persons, be challenged by the participants concerned or repealed *ex officio*, particularly if the resolutions are unlawful or immoral or endanger the State.

4) Resolutions may furthermore be challenged in the same manner if they oppose the interests of the trust enterprise, the entirety of the beneficiaries or a special class thereof, for instance the preferentially entitled beneficiaries, and are suitable only to cause a loss to a minority or individuals.

5) Conduct of the relevant proceedings shall be expedited by the competent authority.

#### § 101

##### *ddd) Exceptions etc.*

1) The provisions governing the assertion of rights when an organisation exists shall not be applicable if the certificate holders act jointly by operation of law, pursuant to the provisions governing the community of creditors in the case of bonds or if, in the case of public benefit trust enterprises or trust enterprises with similar purposes, the interests of the beneficiaries are taken care of by the representative of public law.

2) Where in a trust enterprise there are beneficial interests other than for persons (firms or legal persons), everyone except the representative of public law may, with the assent of the Office of Justice, demand their fulfilment pursuant to the purpose or object of the enterprise (impersonal beneficial interest).<sup>1523</sup>

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<sup>1523</sup> Article 932a § 101(2) amended by LGBL 2013 No. 6.

*e) Directory of beneficiaries*

## § 102

*aa) Obligation to keep a directory and examination*

1) Where beneficial interest is not combined with a bearer security or the designation of beneficiaries is not left to the sole discretion of the trustees, other bodies, or third parties, or a public-benefit trust enterprise or trust enterprise with a similar purpose with undesignated recipients of beneficial interest is not otherwise at issue, or impersonal beneficial interests do not exist, the managing trustees, particularly in the case of family trust enterprises, in the absence of other bodies under obligation pursuant to the trust instrument to fulfil this duty, shall set up a directory of the specifically designated entitled beneficiaries and living prospective beneficiaries. The directory shall be kept and updated on an ongoing basis.

2) The directory shall be available for every entitled party to examine and copy in good faith at the expense of the entitled party, either at the premises of those under obligation to keep the directory or at the Office of Justice, if the directory is deposited there for examination, during the usual hours of business.<sup>1524</sup>

3) If the directory is not deposited at the Office of Justice for examination, a beneficiary may, at the beneficiary's own expense, demand from those under obligation to keep the directory a certificate (certificate of possession of beneficial interest, certificate of prospective beneficial interest) which confirms the beneficiary's right accruing from the beneficial interest or the prospective beneficial interest.<sup>1525</sup>

4) In the event of the certified right being dropped or amended, such a certificate shall, if the case arises, be returned to those under obligation to keep the directory in order that it may be corrected.

## § 103

*bb) Entry*

1) The directory shall contain in particular: last name, first name, place of residence, also the date and place of birth if at all possible, if securities are not issued, or (company) name and domicile of the holder

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<sup>1524</sup> Article 932a § 102(2) amended by LGBL 2013 No. 6.

<sup>1525</sup> Article 932a § 102(3) amended by LGBL 2013 No. 6.

of beneficial interest, if applicable of the living prospective beneficiaries including the same information concerning any joint representative, the date of acquisition or loss of possession of the beneficial interest or the prospective beneficial interest, the kind of beneficial interest, and the like.

2) Entry of a transfer of the possession of beneficial interest or the prospective beneficial interest shall be made, in the absence of any directive to the contrary, on the basis of an identification document relating to the formally correct transfer, in the case of succession upon death upon notification by the heir, legatee, executor, administrator or the probate authority and, in the case of the dissolution of a firm or legal person, upon notification by other universal successors or of the liquidators or of the receiver or insolvency administrator.<sup>1526</sup>

3) Where entry is refused, entry shall be performed if there are important grounds upon application of those entitled to apply, pursuant to the directive of the Office of Justice.<sup>1527</sup>

#### § 104

##### *cc) Effect*

1) Once a directory has been established, only that person shall be deemed to be entitled with respect to the exercise of the rights and duties arising from possession of the beneficial interest or prospective beneficial interest who is entered in the directory.

2) The acquiring party must accept any legal acts undertaken by the trust enterprise vis-à-vis the transferor or, conversely, by the transferor vis-à-vis the trust enterprise with regard to the beneficiary relationship, where those legal acts are undertaken before registration of the transfer.

3) The transferor and the acquiring party shall be jointly and severally liable for the performances outstanding from the beneficiary relationship at the time of registration.

4) Pursuant to the provisions governing responsibility, the trustees or others under obligation in this regard shall be jointly and severally liable, without limitation, for losses caused by the directory being kept inadequately or by an unjustified refusal of entry in the directory.

<sup>1526</sup> Article 932a § 103(2) amended by LGBL 2020 No. 369.

<sup>1527</sup> Article 932a § 103(3) amended by LGBL 2013 No. 6.

2. *Designation of the beneficiaries*

a) *In the case of no directive or an inadequate directive*

§ 105

aa) *In general*

1) In the absence of any other trust directive or where for any reason the provisions governing the beneficial interest cannot be implemented in accordance with their purpose, if, in particular, the rights accruing from the beneficial interest are not, in whole or in part, passed to or are not accepted by the persons (firms or legal persons) considered in one way or another as beneficiaries, it shall be assumed in the case of trust enterprises other than public-benefit trust enterprises or the like that, during the lifetime of the settlor, only the settlor has the right to hold the beneficial interest and if the settlor does not order otherwise by disposition *inter vivos* or *mortis causa* concerning the succession, that only the legal heirs shall have the right of succession to the beneficial interest in particular also to the assets, in accordance with their right of inheritance (implied holding of beneficial interest and implied succession).

2) Should the settlor have been under obligation to form a trust enterprise on grounds of assets paid in by a third party without valuable consideration or should the beneficial interest have been acquired only under these conditions, it shall be assumed in the case of lacking or inadequate directive that this third party is the holder of the beneficial interest or that the third party's universal successors are the implied successors (implied beneficial interest in the case of indirect settlorship).

3) Where persons other than natural persons are to be entitled to the beneficial interest, the further determination of the entitled persons in the case of the termination of the firm or legal person shall, in the absence of any directive to the contrary, be governed by the provisions on transfer of membership resulting from the dissolution of firms or legal persons in the case of registered cooperative societies.

4) Where a public-benefit or charitable purpose or the like is provided for in general terms in the trust articles, without details concerning the manner in which that purpose shall be fulfilled, on its own or alongside other purposes, the Government shall, upon application of the interested parties or upon notice from other authorities or *ex officio*, order in administrative proceedings what is necessary to implement this purpose that has been stated only in general terms, as far as possible within the intendment of the trust instrument.

*bb) Rules of interpretation etc.*

## § 106

*aaa) With regard to the beneficiaries*

1) The following rules of interpretation shall be applied with regard to beneficiaries:

1. Where children of a certain person are designated as beneficiaries, these shall be deemed to be the descendants of that person who are entitled to inherit, and the spouse or registered domestic partner shall be deemed to be the surviving spouse or surviving registered domestic partner, if and as long as that spouse or registered domestic partner has not entered into another marriage or registered domestic partnership.<sup>1528</sup>
2. The estate, heirs, legal successors, family, relatives, next of kin or the like of a person shall be deemed to be the descendants entitled to inherit and the surviving spouse or surviving registered domestic partner, if and as long as that spouse or registered domestic partner has not entered into another marriage or registered domestic partnership, and, in the absence of such, those persons (firms or legal persons) who are entitled to inherit the estate of the former.<sup>1529</sup>

2) A prospective beneficiary who was not yet born but was already procreated at the time of transfer of the beneficial entitlement from the previous holder to the next successor pursuant to the law or trust instrument (succession case) shall be deemed to have been born before the case of succession.

3) The rules of interpretation of the law of succession concerning the heirs and, where applicable, the legatees shall be applied on a supplemental basis.

## § 107

*bbb) With regard to shares in the beneficial interest*

1) In case of doubt, the following shall apply with respect to shares in the beneficial interest:

1. if possession of the beneficial interest devolves upon descendants entitled to inherit and the surviving spouse or registered domestic

<sup>1528</sup> Article 932a § 106(1)(1) amended by LGBL 2011 No. 370.

<sup>1529</sup> Article 932a § 106(1)(2) amended by LGBL 2011 No. 370.

partner as beneficiary, legal inheritance succession shall apply *mutatis mutandis*; if, however, other heirs are designated as beneficiaries, possession of the beneficial interest shall devolve upon them in accordance with their entitlement to the inheritance;<sup>1530</sup>

2. if other persons not entitled to inherit are designated as beneficiaries without their share being defined, they shall be entitled to the beneficial interest in equal parts;
3. where a beneficial interest lapses due, for example, to the predecease of the settlor, refusal by the beneficiaries, revocation of the beneficial interest or the like, this share shall devolve upon the other beneficiaries in equal parts.

2) Where descendants entitled to an inheritance, a spouse or registered domestic partner, parents, grandparents, or siblings are the beneficiaries, possession of the beneficial interest shall devolve upon them, even if they do not take possession of the inheritance.<sup>1531</sup>

3) Where the expression of a directive concerning beneficial interest is in doubt, it shall be interpreted in such a manner as to ensure that the beneficial interest may be exercised with the least possible hindrance.

4) The rules of the law of inheritance relating to the interpretation of shares of an inheritance or of bequests shall be applied on a supplemental basis.

*b) Special succession arrangement in the case of family trust enterprises*

§ 108

*aa) In general*

1) By means of the trust instrument or a body authorised for this purpose, a legal succession arrangement may be provided to govern the possession of beneficial interest or parts thereof, on a permanent basis, with or without a duty on the part of the current holder of beneficial interest to effect compensation for the excluded, equally close relatives or the like, in such a manner that either the first-born from the older line of descent of the settlor or another person or the youngest from the youngest line, or the closest succession-eligible relative by degree of the last holder of beneficial interest, with preference for the eldest or youngest among several equally close relatives or, irrespective of the line and the degree of relationship to the

<sup>1530</sup> Article 932a § 107(1)(1) amended by LGBl. 2011 No. 370.

<sup>1531</sup> Article 932a § 107(2) amended by LGBl. 2011 No. 370.

last holder, the eldest or the youngest from the entire family, or another in the same manner, shall be entitled to succeed the settlor or other persons (entailed trust enterprise).

2) Apart from the succession arrangement, further special provisions may be drawn up concerning succession eligibility, subject to the provisions governing the revocation of the beneficial interest.

3) The special succession arrangement including any special succession eligibility relating to the possession of beneficial interest may be reserved or noted in accordance with the provisions governing the restriction of alienation of trust property.

4) In the case of family trust enterprises with a special succession arrangement, including any special success eligibility, securities relating to the beneficial interest as a whole may not be issued, but they may be issued in regard to individual claims which are already due.

#### § 109

##### *bb) Rules of interpretation*

1) In the case of primogeniture from the older line of relationship, which is the succession arrangement assumed in case of doubt, the younger line, in the absence of any directive to the contrary, acquires beneficial interest only after extinction of the older line, so that, for example, the descendants of the last holder of beneficial interest take precedence over the latter's brother or sister.

2) Where the trust instrument designates the party which is closest in degree of relationship either to the settlor or, in the case of the beneficial interest being designated for a family other than that of the settlor, the acquirer of beneficial interest, or the party which is closest in degree of relationship to the last holder of the beneficial interest, in case of doubt consideration shall be given more to the higher degree of relationship to the last holder of beneficial interest rather than to the higher degree of relationship to the settlor or to the first acquirer, and among several having an equal degree of relationship, seniority of age shall be decisive.

3) Where it is directed that the beneficial interest shall always devolve upon the next of kin, that next of kin shall in case of doubt be deemed to be the next of kin pursuant to the usual legal inheritance succession from the descendants of the settlor or the person to be considered (inherited entailed trust enterprise), and where there are several equally close relatives, the beneficial interest shall be divided among them, and the

provisions governing the division of beneficial interests shall be applicable on a supplemental basis.

4) In the absence of any other trust directive, no preferential treatment of male descendants versus female descendants shall apply, and the waiver of a beneficial interest or prospective beneficial interest shall be valid only with respect to the person in possession of such beneficial interest or prospective beneficial interest, but not with respect to the person's descendants or other persons.

5) The rules applicable in the case of no directive or inadequate directive shall apply *mutatis mutandis*.

§ 110

*cc) In the case of several family trusts*

1) If special trust enterprises or other trusts have been established by the same or different settlors for several lines of the same family, so that in addition to a family trust for the first-born line there is one or more trusts for subsequent lines, in case of doubt, the holder of the beneficial interest in the first trust and that person's descendants shall not be entitled to the benefit of another trust until there is no descendant appointed to the trust in the other lines, and the various beneficial interests shall remain united in one person only until another two or more unprovided lines are created.

2) If, in the case of several trusts of this type with succession arrangements, the second line becomes extinct, in the absence of any other directive, the terminated possession of beneficial interest of an appointed, unprovided line shall revert to the first line and shall remain there united with the beneficiary until further lines have been formed.

3) In the absence of any other directive, several lines are deemed to have been formed only when the head of the line who acquired possession of the beneficial interest of the extinct line has died and left several descendants eligible to succeed.

*c) Right of nomination and right of conferment (patronage of beneficial interest)*

§ 111

*aa) In general*

1) The determination of the acquisition (the conferment) or loss of the beneficial interest and any beneficiaries thereof may, in accordance with the trust instrument, be entrusted to other bodies or third parties (collators) instead of the discretion of the trustees, if necessary by applying the rules of interpretation *mutatis mutandis* in the event of a lacking or inadequate directive; where applicable, an announcement may be made concerning application for the beneficial interest or the like.

2) The trust instrument may, to the exclusion of third parties involved, confer a right or, with their assent, impose a duty on the trustees, other bodies, or third parties to nominate the persons (firms or legal persons) to be considered for the conferment of the beneficial interest (beneficial interest patronage).

3) In case of doubt, the persons entitled to make the nomination or the persons under obligation to do so (the nominating parties) and also the trustees, if other bodies have the right to confer, shall also have the duty or the corresponding right to supervise the conferment and to take appropriate measures with regard to the correctness of the conferment and implementation of the beneficial interest.

§ 112<sup>1532</sup>

*bb) Public call*

If a public call to apply for the beneficial interest is published in the Liechtenstein national newspapers or if the trustees or other bodies publish another announcement or the like which best serves the purpose, it shall contain in particular: the object of the beneficial interest, any obligations of the beneficiaries attached to that beneficial interest, the group of persons appointed in accordance with the trust instrument with as precise a designation as possible, as well as an indication of the time up to which the application or the like is to be submitted, on penalty of exclusion from the application.

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<sup>1532</sup> § 112 amended by LGBl. 2016 No. 402.

## § 113

*cc) Effect*

1) The conferment of the beneficial interest shall take effect from the time when the beneficiary concerned is notified.

2) However, the beneficial interest may be handed over at the earliest after expiration of the unused period of one month for any judicial or otherwise admissible challenge, from the time of conferment or after the legal validity of the rendered decision, unless important grounds justify an exception.

3) If, as a result of a challenge to conferment of the beneficial interest, another applicant is designated as the beneficiary, the trust enterprise is entitled to a claim for enrichment in favour of the trust reserve fund for balance sheet losses or accounting losses against the person who may have wrongfully received the beneficial interest.

4) If these nominating or conferring bodies or third parties do not exercise their authority or duty in a timely manner, that authority or duty shall, at the request of the participants or, in the case of public-benefit trusts or trusts with a similar purpose, at the request of the representative of public law, and after a reasonable period has been set by the Office of Justice for the individual case and in the absence of any directive to the contrary, be transferred without further steps to the Office of Justice; the Office of Justice may, where necessary, proceed in accordance with the provision on the tracing of beneficiaries (substitute nomination and substitute conferment).<sup>1533</sup>

5) The provisions governing the withdrawal of the right of nomination in the case of appointment of trustees shall apply *mutatis mutandis* to the withdrawal of the right or duty to confer a benefit or to nominate beneficiaries, as well as the relevant provisions concerning compensation for damages.

*d) Securities relating to beneficial interest*

## § 114

*aa) In general*

1) Rights and duties arising from the beneficial interest and of the beneficiaries (certificate holders,) may, by express directive, be combined

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<sup>1533</sup> Article 932a § 113(4) amended by LGBL 2013 No. 6.

with the ownership of a security, such as an ordinary or preferred trust certificate, beneficial interest certificate, supplementary certificate, free certificate, interim certificate, credit note, depositing certificate or similar classes or types of securities to which, in the absence of any provision to the contrary, the provisions governing securities and, if they embody rights of membership, also those relating to membership securities under the general provisions governing legal entities shall apply *mutatis mutandis*.

2) Where the trust instrument provides for the issue of securities without specifying whether they are to be registered or order securities, or where the beneficiaries are required to make recurring payments or to assume liability or to make further contributions, only registered securities transferable with the consent of the trust enterprise may be issued.<sup>1534</sup>

3) The securities may not be designated in such a way that, owing to the lack of statutory preconditions, they may be confused with securities without payment of contribution or without other obligations to the trust enterprise, with another form of undertaking or with securities issued thereunder, or with other securities such as shares, profit-participation certificates, bonds or the like, or otherwise lead to deception.

4) Securities relating to beneficial interest may be issued in Liechtenstein by organising a public subscription of contributions to the trust enterprise, but only in accordance with the provisions governing the obligation to issue a prospectus for bonds and, in addition, only with the assent of the Office of Justice.<sup>1535</sup>

5) By ordinance, the Government may restrict or prohibit the issue of securities relating to beneficial interest in accordance with the provisions governing securities.

## § 115

### *bb) Registration in the Trust Register*

1) In the case of trust enterprises that are subject to the obligation to be entered in the Trust Register or are entered voluntarily, authority to issue securities in accordance with the trust instrument must be registered with the Trust Register, accompanied by an excerpt from the Trust

<sup>1534</sup> Article 932a § 114(2) amended by LGBL. 2013 No. 67.

<sup>1535</sup> Article 932a § 114(4) amended by LGBL. 2013 No. 6.

Register and a form for the security; this authority shall then be entered by the Office of Justice in extracts and published.<sup>1536</sup>

2) The registration with the Trust Register must also state, if applicable, whether the securities denominated in a certain nominal amount and certifying a contribution to the trust fund may be issued above or below the nominal value, and possibly also successively.

#### § 116

##### *cc) Consequences of unlawful issue*

1) If securities have been issued contrary to the provisions of the law, the Office of Justice may, within three years from the time of issue and at the request of interested parties, in particular subscribers or purchasers, or *ex officio*, take action against the issuers by means of the coercive measures permitted in special non-contentious proceedings and, in a public announcement, declare the securities and, where appropriate, the relevant provisions of the trust instrument null and void.<sup>1537</sup>

2) In addition, the issuers and all those involved in the issue shall be jointly and severally liable, without limitation, to the *bona fide* certificate holders for any damage.

##### *dd) Form and content*

#### § 117

##### *aaa) In general*

1) In the absence of any directive to the contrary, the security certificate shall, to the extent possible, be made out as a proportion of the related beneficial interest, such as, for example, a proportion of the yield or the assets, or both; in the case of several beneficiaries, in case of doubt, identical proportions shall be assumed.

2) Repealed<sup>1538</sup>

3) The certificate issued in relation to the beneficial interest shall be considered an evidentiary document.<sup>1539</sup>

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<sup>1536</sup> Article 932a § 115(1) amended by LGBL. 2013 No. 6.

<sup>1537</sup> Article 932a § 116(1) amended by LGBL. 2013 No. 6.

<sup>1538</sup> Article 932a § 117(2) repealed by LGBL. 2013 No. 67.

<sup>1539</sup> Article 932a § 117(3) amended by LGBL. 2013 No. 67.

## § 118

*bbb) Special information*

Apart from the express designation as a security, the security certificate must also contain the special rights derived from the beneficial interest, where applicable with reference to the provisions of the trust instrument relating thereto, the number of securities issued in each case, and, where applicable, the following:

1. in the case of registered securities the transfer of which is subject by law or by trust instrument to the assent of the enterprise, of participants, or of third parties, the inclusion of the relevant provisions and the requirement of such transfer, in accordance with the trust instrument;
2. where different classes of securities are issued to the beneficiaries, the listing of the different classes of ordinary or preferred securities and the name of the class to which the security in question belongs;
3. if the beneficiaries are obliged as settlors for registered or order securities to make recurring payments or the certificate holders are under an obligation to assume liability or make additional performances, the provision on this obligation and the scope of the performance;
4. the amount of any partial payments made to the trust fund and, if possible, the amount still outstanding on any securities that have not been fully paid up, as well as the consequences of delayed payment or default of the balance or recurring performances;
5. in the event that signing of the security certificate is subject in the trust instrument to observance of a particular form, the information concerning those requirements relating to form and the signature of at least one managing trustee or other representative authorised to sign, the signature being signed in person or otherwise produced in the manner customary to business practice.

*3. Tracing of beneficiaries*

## § 119

*a) In general*

1) Beneficiaries who are unknown or uncertain as to abode, existence, or name may, at the request of the managing trustees or other interested

parties, be summoned by the Office of Justice by way of a public notice procedure.<sup>1540</sup>

2) For the unknown or uncertain beneficiaries, an official trustee shall be appointed in accordance with the provisions of the Code of Civil Procedure concerning the proceedings administrator at the expense of the trust property after hearing the managing trustees, unless a counsel or similar statutory representative has already been appointed for individual beneficiaries.

## § 120

### *b) Content of the summons*

1) The summons shall be issued by public announcement, which at the discretion of the Office of Justice may also be published in foreign newspapers or in any other appropriate manner, in accordance with the provisions on the procedure for missing persons.<sup>1541</sup>

2) The announcement shall state the relevant circumstances such as the (company) name and domicile of the trust enterprise, date of formation, last name, first name, and place of residence or legal name and domicile of the settlor, as well as the initially appointed beneficiaries and the like, and it shall contain the summons to inform the Office of Justice or the trust enterprise or the officially appointed or other trustees of appointed, but unknown or uncertain beneficiaries.<sup>1542</sup>

3) The announcement shall also include as far as possible what shall happen to the beneficial interest after expiry of the stated time limits if the beneficiary does not report within one year of the announcement or does not provide evidence, in a legally binding manner and in expedited proceedings, of the contested entitlement within a further year following the contestation. A warning may, for instance, be issued to the effect that, until persons with a stronger entitlement emerge, others may be appointed to receive the beneficial interest without the obligation to reimburse, or that the beneficial interests may be declared forfeited by the managing trustees in favour of the reserve fund for balance sheet or accounting losses, or that the trust enterprise may be dissolved or its purpose or organisation amended.

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<sup>1540</sup> Article 932a § 119(1) amended by LGBL 2013 No. 6.

<sup>1541</sup> Article 932a § 120(1) amended by LGBL 2013 No. 6.

<sup>1542</sup> Article 932a § 120(2) amended by LGBL 2013 No. 6.

4) Where securities have been issued, the relevant summons may be made only after the expiry of five years since the last issue or other exercise of the beneficial interest on the securities concerned, with the warning that the latter may be declared forfeited.

#### § 121

##### *c) Declaration of forfeiture*

1) If beneficial interests are to be declared forfeited after the tracing procedure has been conducted, this may only be done without prejudice to the beneficiary's obligation, if any, to make contributions or to assume liability or to make additional performances up to the day of the relevant announcement and subject to the claim for enrichment of a beneficiary reporting subsequently within the period of limitation of three years from the date of the declaration of forfeiture against the beneficiary who has been enriched as a result of the forfeiture.

2) The trust enterprise shall not be responsible for any obligations associated with the beneficial interests declared forfeited and shall, in the case of any still outstanding performances in favour of the trust fund, reduce the trust fund accordingly, without liquidation.

3) Where, as a result of the tracing procedure, all beneficial interests are declared forfeited at once or gradually in favour of the reserve fund for balance sheet or accounting losses or in favour of the trust enterprise, the provision established in the case of the gradual distribution of assets on the accrual of all beneficial interests to the trust enterprise shall apply *mutatis mutandis*.

4) This article is subject to the provisions governing the cancellation of securities and any special provisions of the law and the trust instruments.

#### *4. Alienation, encumbrance, and transfer*

#### § 122

##### *a) In general*

1) If not provided otherwise in the case of family trust enterprises with or without a succession arrangement or other trust enterprises as, for example, in the case of the inalienability of the beneficial interest or where, by transfer to another party, the content of the performance is changed, the beneficial interest as a whole as well as individual rights and obligations arising from the possession of beneficial interest, including that from the

prospective beneficial interest, shall be alienable, transferable, and inheritable, and the beneficial interest as well as individual rights arising therefrom may be encumbered with limited rights *in rem* and, in accordance with the provisions governing the beneficiaries' creditors, may be included in compulsory execution and in insolvency proceedings.<sup>1543</sup>

2) Even if, pursuant to the trust instrument, the beneficial interest as such is inalienable or non-transferable, individual claims due may, subject to irrevocability and in the absence of any directive to the contrary, be alienated or encumbered and transferred by legal transaction.

3) The transfer of the beneficial interest as a whole or individual rights shall be made, in the absence of any provision to the contrary of the law or trust instrument or as long as no securities have been issued, pursuant to the provisions governing the assignment of claims and, in the event that obligations are combined with the beneficial interest, pursuant to the provisions governing the assumption of debt or, where applicable, pursuant to the provisions of the law of marital property or inheritance law or the like.

4) To be effective vis-à-vis the trust enterprise in the case of assignment or encumbrance with limited rights *in rem*, the managing trustees must be notified in writing by the assignor or the assignee and/or by the beneficiary to be encumbered or the usufructuary, pledgee or the like and, in the case of the assumption of debt, the written assent of the managing trustees shall be required, in the absence of any directive to the contrary.

5) Where securities have been issued relating to the beneficial interest, the assignment or the encumbrance shall be made pursuant to the provisions governing securities, in the absence of any legislative provision to the contrary.

### § 123

#### *b) Where other assent is needed and the substitution thereof*

1) Any other assent to the transfer of the rights arising from the beneficial interest by the managing trustees, other bodies, or third parties shall otherwise be required only if provided for by law or the trust instrument.

2) The assent to the transfer, if the transfer is permissible at all, may be substituted on important grounds by the Office of Justice at the request

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<sup>1543</sup> Article 932a § 122(1) amended by LGBL 2020 No. 369.

of the beneficiary, the executor, the administrator, the heirs of the legatee, at the time of acquisition by virtue of marital property law or in the compulsory execution or insolvency proceedings, provided that a beneficial interest or prospective beneficial interest is subject thereto, by application *mutatis mutandis* of the relevant provisions for the transfer of a share requiring assent in the case of limited liability companies.<sup>1544</sup>

3) Except in the cases mentioned above, assent may also be given or substituted on important grounds by the Office of Justice, at the request of the entitled parties, after hearing the managing trustees or, where appropriate, other bodies and any other persons with a legal interest.<sup>1545</sup>

### 5. Organisational matters

#### § 124

##### a) *In general*

1) An organisation shall exist among the entitled beneficiaries and prospective beneficiaries or for individual groups (classes) such as ordinary or preferred beneficiaries only to the extent provided for in the trust instrument or the law.

2) The exercise of the rights of the beneficiaries or groups of beneficiaries may be transferred by the trust instrument to a special body such as a family council or a council of beneficiaries or a family executor or committee whose members are subject to the principles of the mandate and to whose resolutions or directives the participants may be bound *mutatis mutandis* in accordance with the provisions governing resolutions of the supreme body of legal persons.

3) In the absence of any directive to the contrary, this article is also subject to the provisions governing the application of the community of creditors in the case of bonds to holders of securities who are in the same legal position as the trust enterprise, the creation by the beneficiaries of a special organisation to safeguard rights among themselves, and the provisions on family resolutions and compulsory cooperative societies.

<sup>1544</sup> Article 932a § 123(2) amended by LGBL 2020 No. 369.

<sup>1545</sup> Article 932a § 123(3) amended by LGBL 2013 No. 6.

*b) Consultation*§ 125<sup>1546</sup>*aa) In general*

1) Where the trustees are entitled to act at their discretion, they shall be empowered, even in the absence of such an organisation, to convene all entitled beneficiaries and prospective beneficiaries, to the extent that their rights are concerned in the individual case, in accordance with the provisions governing the supreme body and at the expense of the trust property, for the purpose of consultation on the directives to be made by the trustees, or to have them convened by the Office of Justice, if their opinion cannot be ascertained at a universal meeting or in writing by means of a circular letter.

2) At the request of the beneficiaries concerned or *ex officio*, the Office of Justice may, by way of a public notice procedure, invite them to a meeting, with notification of the agenda items and the place and time of the meeting. In the absence of any trust directive to the contrary, it may, at the request of participants or *ex officio*, appoint an official trustee at the expense of the trust property for any entitled parties not participating in the meeting to safeguard the rights of the unknown or uncertain beneficiaries, whose legal acts, in case of doubt, require the approval of the Office of Justice in the same manner as an advisory council in guardianship matters.

## § 126

*bb) In the case of special classes of entitlements or obligations*

Insofar as different classes of entitlements or obligations exist, such as ordinary or preferential beneficial interests with or without securities, special meetings may be held and resolutions may be passed, applying the above provisions *mutatis mutandis*, to the extent that the legal relationships of the entitled persons belonging to the respective class are concerned.

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<sup>1546</sup> Article 932a § 125 amended by LGBl. 2013 No. 6.

## § 127

*cc) Deposited proposals*

1) In lieu of meetings, the adoption of relevant resolutions may also take the form of the opinion of the entitled beneficiaries concerned by means of signed assent to a proposal deposited with the trustees or elsewhere.

2) The relevant public notice or other notification shall also contain details of the proposal, the place of deposit, the time up to which the signed assent may be given and after which such assent may be substituted for the unknown or uncertain beneficiaries by the accession of the official trustee.

*c) Family resolutions*

## § 128

*aa) In general*

1) To the extent that the affairs of the trust enterprise are not required to be taken care of by the trustees or other (governing) bodies, or the law or trust instrument does not provide otherwise, they may be settled by family resolutions as concurring, binding statements of entitled beneficiaries or prospective beneficiaries, without a definite succession arrangement for the possession of a beneficial interest or a relationship among the beneficiaries being required.

2) The following provisions must be applied when passing binding family resolutions where the trust instrument or a binding family resolution does not determine to the contrary or in the event that not all the beneficiaries including all the prospective beneficiaries or their representatives are in agreement with a family resolution at a universal meeting or in a vote by circular letter pursuant to the related provisions governing consultation and, on a supplemental basis, pursuant to the provisions concerning the passing of resolutions by the supreme body under the general provisions governing legal persons, separated where applicable according to classes of beneficial interests.

3) The adoption of such family resolutions, which, in the absence of any directive to the contrary or assent of the Office of Justice, shall, on important grounds, be passed unanimously, shall not be ruled out by the fact that only a single beneficiary is present.<sup>1547</sup>

4) Within the scope of the trust instrument and the law, the persons entitled to submit a motion for the adoption of a family resolution shall be the managing trustees or the majority of the other trustees or one-fifth of all the eligible voters to be taken into account as well as the Office of Justice, to the extent that the latter on important grounds does not take steps *ex officio*.<sup>1548</sup>

5) This article is subject to the amendment *ex officio* of the organisation or the purpose pursuant to the provisions drawn up for family foundations.

#### § 129

##### *bb) Convening, submission to Trust Register etc.*

1) Insofar as the law or the Office of Justice does not determine to the contrary, entitled participants shall be convened with the enclosure of a copy of the draft of the family resolution; in case of doubt, the managing trustees shall dispatch the invitation by means of registered letter.<sup>1549</sup>

2) In the case of trust enterprises entered in the Trust Register, a draft of the family resolution shall be submitted to the Office of Justice before the resolution is passed, together with a directory of all the beneficiaries to be included in the consideration of the resolution, unless the family resolution is adopted at a universal meeting convened without an invitation or the Office of Justice acts *ex officio*.<sup>1550</sup>

3) After adoption and, where applicable, approval of the resolution, the prescribed registration must be made and, to the extent that the resolution has changed registered facts and circumstances relating to registered trust enterprises, be accompanied by an extract concerning the changes to the registered facts and circumstances.

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<sup>1547</sup> Article 932a § 128(3) amended by LGBL 2013 No. 6.

<sup>1548</sup> Article 932a § 128(4) amended by LGBL 2013 No. 6.

<sup>1549</sup> Article 932a § 129(1) amended by LGBL 2013 No. 6.

<sup>1550</sup> Article 932a § 129(2) amended by LGBL 2013 No. 6.

4) To the extent that, in the case of non-registered trust enterprises, facts and circumstances subject to notification are changed, the Office of Justice shall be notified accordingly.<sup>1551</sup>

§ 130

*cc) Right of participation*

1) To the extent that their rights or obligations are concerned, all entitled beneficiaries and prospective beneficiaries or their representatives authorised in writing are entitled to participate in the meeting, provided they prove their entitlement by public document or by a document issued by the managing trustees or by another competent body or, lastly, by the entry in the directory of entitled parties kept by the trust enterprise or by a certification of that entry, or if all other entitled parties who are present to pass the family resolution and the trustees acknowledge them to be entitled to participate.

2) Where there is no reason to assume that other parties entitled to participate exist in addition to the known and convened parties, the written assurance of the managing trustees to the effect that there are no known beneficiaries who should be taken into account shall suffice; otherwise, the family resolution may be passed only after the entitled parties whose existence, abode, or name is unknown or uncertain, have been excluded with their objection by way of a public notice procedure, unless an official trustee has been appointed for them upon application of participants or *ex officio*.

3) Should, by means of a written notice to the trust enterprise, an objection be raised against the entitlement to participate in the family resolution, the trust enterprise shall request, in writing, the person against whom the objection is raised to bring proceedings, within one month of the receipt of the summons, against those disputing the entitlement. The purpose of the proceedings shall be to establish expeditiously the right to participate, failing which the family resolution taken without involvement of that person shall not be challengeable for that person.

4) A person eligible to vote may not participate in a family resolution and may not exercise a voting right for another for the same reasons as those which exclude a member from the right to vote at a meeting of the supreme body in the case of a legal person, and likewise if the eligible voter's special rights and obligations are concerned.

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<sup>1551</sup> Article 932a § 129(4) amended by LGBL 2013 No. 6.

## § 131

*dd) Public notice procedure (official tracing)*

1) The tracing of unknown or uncertain entitled beneficiaries shall be done pursuant to the provisions governing the tracing of beneficiaries, to the extent that derogations therefrom do not arise from the provisions set out here.

2) In addition to the subject matter of the family resolution, the public announcement shall also contain a statement to the effect that the beneficiaries concerned may object in writing, at the latest within a certain time period of not less than one month from the day the announcement is made, to the trust enterprise concerning the passing of the family resolution or against the entitlement to participate in that family resolution, failing which they shall be excluded with their objection and the family resolution shall be legally binding upon them.

## § 132

*ee) Adoption and approval of resolutions*

1) Adoption of a family resolution shall be by way of a public document or a document signed by all participants or official trustees.

2) A family resolution may be established in this form only once the preceding provisions are observed, the relevant time limit has expired, and, in the case of timely action concerning entitlement to participate, a final decision has been made on that action, insofar as in the latter case a special trustee did not participate temporarily in lieu of those whose right to participate is in dispute.

3) In the absence of any other trust directive, the family resolution shall require the approval of the Office of Justice where an official trustee has participated on behalf of unknown or uncertain entitled beneficiaries or prospective beneficiaries or to the extent that the law prescribes approval even for the acts of statutory or otherwise officially appointed representatives.<sup>1552</sup>

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<sup>1552</sup> Article 932a § 132(3) amended by LGBL 2013 No. 6.

## § 133

*d) Compulsory cooperative society*

1) In the absence of a trust directive to the contrary, the Office of Justice may, where organisation is lacking or inadequate, establish a compulsory organisation for all beneficiaries or certain groups (classes) on important grounds, such as, in particular, the mutual safeguarding of rights, on the application and at the expense of the parties concerned, by applying *mutatis mutandis* the provisions governing small cooperative societies.<sup>1553</sup>

2) Before forming the cooperative society, the applicants, the managing trustees, and the beneficiaries concerned shall be heard if at all possible, as well as any trustee appointed by the register office for the unknown or uncertain beneficiaries following the issuance of a public notice, where such notice includes information concerning the purpose of summoning the beneficiaries and a warning that after the expiration of an appropriate period of time, such trustee appointed by the register office may act on their behalf in a legally binding manner.

3) Within the scope of the trust instrument, the Office of Justice shall, by operation of law and with effect for and against the trust enterprise, participants, and third parties, be empowered to take all the measures necessary for the formation of such a compulsory organisation, in particular for drawing up the articles of association with determination of the obligation to effect contributions towards the costs and for the appointment of an executive board and other bodies which may be necessary.<sup>1554</sup>

4) With the approval of the Office of Justice, such a compulsory cooperative society may be dissolved or cancelled by a resolution passed by an absolute majority of the members of the cooperative society, furthermore, by operation of law, when all the beneficiaries are no longer available or the trust enterprise is terminated and, unless an exception is justified on important grounds, without liquidation.<sup>1555</sup>

<sup>1553</sup> Article 932a § 133(1) amended by LGBL 2013 No. 6.

<sup>1554</sup> Article 932a § 133(3) amended by LGBL 2013 No. 6.

<sup>1555</sup> Article 932a § 133(4) amended by LGBL 2013 No. 6.

*V. Creditors of the participants*

## § 134

*1. In general*

1) In the absence of any directive to the contrary, the relevant provisions governing the trust in general shall be applied *mutatis mutandis*, within the scope of the law, to the legal position of the creditors of the participants as such in proceedings to secure rights, compulsory execution proceedings, and insolvency proceedings.<sup>1556</sup>

2) A trust enterprise without commercial operations, whose purpose is family welfare, a public benefit, or charity, may assert its claims against participants as such, also in secondary compulsory execution in the same way as a ward, without prejudice to the other position of the trust property in the case of compulsory execution against the participants and in their insolvency proceedings.<sup>1557</sup>

3) To the extent no exceptions are provided, this article is subject to the provisions of the law governing challenge, as well as the provisions of the law governing acts voidable at the instance of creditors and the law governing gifts and inheritance.

## § 135

*2. Creditors of the settlors*

1) Where collections are unsuccessfully carried out against a settlor by a creditor other than the trust enterprise or insolvency proceedings are opened in respect of the settlor, the promise of a contribution by the settlor, without valuable consideration, in favour of the creditors or the insolvency administrator shall lapse in the case of a trust enterprise where, as a result of a directive of the settlor, the beneficial interest is acquired without valuable consideration.<sup>1558</sup>

2) Where a settlor in the capacity as trustee of a trust enterprise set up by another person or in fulfilment of an obligation entered into in favour of a third party, for which that third party has contributed or promised to contribute assets without valuable consideration, has secured the beneficial interest without valuable consideration, then the prerequisites

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<sup>1556</sup> Article 932a § 134(1) amended by LGBL 2020 No. 369.

<sup>1557</sup> Article 932a § 134(2) amended by LGBL 2020 No. 369.

<sup>1558</sup> Article 932a § 135(1) amended by LGBL 2020 No. 369.

for the lapse of the promise must be present in the case of the first settlor or third party concerned.

### 3. Creditors of the beneficiaries

#### a) Non-withdrawability (protective trust)

#### § 136

##### aa) In general

1) The creditors of an entitled beneficiary or a prospective beneficiary entitled to a succession may not withdraw from them their beneficial interest or prospective beneficial interest acquired on grounds of the trust instrument without valuable consideration or individual claims therefrom, by way of proceedings to secure rights, compulsory execution proceedings, or insolvency proceedings.<sup>1559</sup>

2) Where, in the case of a beneficial interest acquired on the basis of the trust instrument for valuable consideration, that trust instrument contains, in particular, the provision that the beneficial interest shall be inalienable, but may, however, be transferred by way of universal succession, or a party shall no longer be entitled to it or no longer have a claim to it once that party is insolvent or wishes to assign or encumber the beneficial interest, or that from such a time the beneficial interest may or shall be bestowed by the trustees or other bodies upon the former entitled beneficiary, the latter's spouse, registered partner or descendants,<sup>1560</sup> or other persons or in any other way at the discretion of those trustees or other bodies, or where a similar provision exists, the beneficial interest shall likewise not be withdrawable by the creditors of the beneficiaries or the prospective beneficiaries, subject to the provisions of the law governing acts voidable at the instance of creditors and the law governing gifts and inheritance.<sup>1561</sup>

3) The beneficial interest received from trust enterprises with a public-benefit or charitable purpose may under no circumstances be withdrawn.

<sup>1559</sup> Article 932a § 136(1) amended by LGBL 2020 No. 369.

<sup>1560</sup> The word "gehören" should be omitted from the German original.

<sup>1561</sup> § 136(2) amended by LGBL 2011 No. 370.

## § 137

*bb) Special cases*

1) Where the prospective beneficiaries have acquired their rights pursuant to the preceding paragraph, but not their predecessors or the present holders of beneficial interest, the rights of the latter, without prejudice to those of the other prospective beneficiaries, may be withdrawn only to the extent that they extend to the period of the right of use in respect thereof.

2) Where beneficiary or prospective beneficiary rights acquired pursuant to the preceding paragraph exist only in part, the preceding provisions shall apply *mutatis mutandis* in the absence of a more extensive trust directive.

3) Where, as the result of revocation owing to unworthiness of trust or as the result of the assertion of claims on grounds of the breach of duty to support or of the need for support, the beneficial interest is transferred to a party other than the settlor, any non-withdrawability shall nevertheless persist.

*b) Withdrawability*

## § 138

*aa) Possession of beneficial interest*

1) Where the prerequisites concerning non-withdrawability do not apply, claims under property law accruing from the beneficial interest and the beneficial interest itself may be withdrawn pursuant to the following provisions by way of proceedings to secure rights, compulsory execution proceedings, or insolvency proceedings, to the extent that the beneficiary has own rights and to the extent that and as long as that beneficiary may dispose of those rights, the existence of the rights of others is not questioned, and any obligations tied to the beneficial interest are accepted by the acquiring party, in the absence of any directive to the contrary.<sup>1562</sup>

2) Insofar as the delivery of an asset component to the beneficiary in consequence of the beneficiary's right of termination, dissolution, or the like is provided for in the trust instrument, the creditor or the insolvency administrator may exercise the right of termination in lieu of the beneficiary and demand delivery of the asset component by applying

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<sup>1562</sup> Article 932a § 138(1) amended by LGBL 2020 No. 369.

*mutatis mutandis* the relevant provisions governing termination in the case of registered cooperative societies, to the extent that no derogation arises from the provision concerning the redemption sum.<sup>1563</sup>

3) Where the inalienable beneficial interest acquired on the basis of the trust instrument for valuable consideration may be transferred to another person only by way of universal succession, non-withdrawability shall not preclude the creditor's satisfaction in respect of claims arising from intentional and unlawful injury committed by the beneficiary concerned.

4) In spite of the non-withdrawability of the beneficial interest, the injured party may seek satisfaction for claims against a beneficiary arising from acts or omissions committed in bad faith and unlawfully, if the loss of the beneficial interest acquired without valuable consideration is for some reason not provided for or the trust instrument does not determine otherwise, and the assertion of such a claim does not prejudice the rights of others or the ability of the beneficiary at fault, the beneficiary's spouse who has not remarried, the beneficiary's registered domestic partner who has not entered into a new registered domestic partnership, and the beneficiary's underage descendants or descendants otherwise not provided, to draw on the beneficial interest for the purpose of reasonable subsistence (food, clothing, and accommodation) and reasonable upbringing.<sup>1564</sup>

5) Where it is incumbent upon the beneficiary profiting from the non-withdrawability to provide support under family law, the parties entitled to such support may have recourse to the beneficial interest or to individual claims therefrom for the duration of the support obligation, to the extent that the beneficiary is not deprived of the necessary means of subsistence as a result.

6) Where the settlor is as at the same time the sole first beneficiary, or the settlor has alone acquired the beneficial interests later for valuable consideration, without prospective beneficiaries with right of succession being present or, where applicable, any other person alone has acquired for valuable consideration all the rights accruing from the beneficial interests, regardless of whether that person is also the sole trustee (one-person trust) or not, the provisions governing the special creditor in the case of the sole proprietorship with limited liability<sup>1565</sup> shall apply *mutatis mutandis*.

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<sup>1563</sup> Article 932a § 138(2) amended by LGBL 2020 No. 369.

<sup>1564</sup> § 138(4) amended by LGBL 2011 No. 370.

<sup>1565</sup> The provisions on sole proprietorships with limited liability (Articles 834 – 896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

## § 139

*bb) Prospective beneficial interest*

1) Before the devolution of the beneficial interest, a prospective right to a beneficial interest with a current asset value may be withdrawn by way of proceedings to secure rights, compulsory execution proceedings, or insolvency proceedings only provided it is alienable and nothing to the contrary arises from the law or the trust instrument in the same manner as for the possession of a beneficial interest, otherwise any disposition to the contrary is null and void.<sup>1566</sup>

2) Where a possession of beneficial interest and a prospective beneficial interest related thereto are claimed simultaneously by the creditors, the creditor of the holder of the beneficial interest may assert claims to that effect only without prejudice to the rights of the prospective beneficiary's creditors.

## § 140

*c) Right of subrogation*

1) If compulsory execution is carried out against the right arising from the beneficial interest as such or insolvency proceedings are opened in respect of the beneficiary's assets, a prospective beneficiary designated by name or otherwise with right of succession may, in the absence of any other legal directive, subrogate the trust relationship, provided that approval of the holder of the beneficial interest is given or, in the case of the prospective beneficial interest of the prospective beneficiary against whom collections are being carried out or on other important grounds, approval of the Office of Justice, against payment of the cash value of the beneficial interest concerned to the petitioning creditor or the insolvency estate in lieu of the beneficiaries concerned.<sup>1567</sup>

2) If no prospective beneficiary designated by name or with right of succession is available, the spouse or registered domestic partner and the descendants of the holder of the beneficial interest shall be entitled to the same right, jointly or individually, and in case of dispute, pursuant to the directive of the Office of Justice.<sup>1568</sup>

3) Subrogation shall be effected by written notification by the parties with right of subrogation to the trust enterprise and to the creditor or

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<sup>1566</sup> Article 932a § 139(1) amended by LGBL 2020 No. 369.

<sup>1567</sup> Article 932a § 140(1) amended by LGBL 2020 No. 369.

<sup>1568</sup> Article 932a § 140(2) amended by LGBL 2013 No. 6.

insolvency administrator; this notice must be made within one month after the party with right of subrogation has become aware of the commencement of compulsory execution or the opening of insolvency proceedings and only as long as realisation has not taken place.<sup>1569</sup>

4) Repealed<sup>1570</sup>

## *J. Responsibility*

### § 141

#### *I. In general*

1) Unless otherwise provided by law, the provisions concerning responsibility in the case of companies with legal personality shall apply *mutatis mutandis* to trust enterprises with commercial activities, and in the case of other trust enterprises, the remaining provisions concerning responsibility under the general provisions governing legal persons shall also apply *mutatis mutandis* to the trust enterprise, the participants, and third parties.

2) Where, pursuant to the preceding paragraph, the law makes reference to members of legal persons, these shall instead be deemed to be the beneficiaries of the trust enterprise to be considered and, where the law makes reference to major shareholders, these shall be deemed to be those beneficiaries with corresponding shares in the beneficial interest.

3) The responsible parties may not, on grounds of the obligations arising from their responsibility, credit the advantages they have procured from the trust enterprise in another manner for the trust enterprise or for the party that has a liability claim arising otherwise from the responsibility (no adjustment of advantages).

4) Unless otherwise provided, several responsible parties shall be jointly and severally liable, without limitation, to the parties entitled to claim; those parties shall bear the damage arising from the responsibility in equal parts, and similarly, they shall have rights of recourse in the same proportions with appropriate allowance being made, however, for the advantages drawn by the individual parties, to the extent that they are not claims in bad faith.

<sup>1569</sup> Article 932a § 140(3) amended by LGBL 2020 No. 369.

<sup>1570</sup> Article 932a § 140(4) repealed by LGBL 2020 No. 369.

5) Derogating from the provisions of this Act concerning responsibility, the trust instrument may declare those provisions concerning responsibility under the general provisions governing legal persons to be solely applicable *mutatis mutandis*.

6) To the extent that nothing else is indicated by the law, the trust instrument, or the relevant legal relationship, members of other governing bodies or persons otherwise active in accordance with the trust instrument shall be responsible pursuant to the provisions governing agency agreements.

## *II. Responsibility of trustees*

### § 142

#### *1. In general*

1) In addition to the cases otherwise provided for by law, the managing trustees, to the extent that they are concerned in the individual case, shall be under obligation to the trust enterprise, other participants, and third parties to comply correctly with the law, the trust instrument, the resolutions or instructions of competent offices, third parties, the court, or the Office of Justice and shall be responsible for the damage arising from the culpable non-fulfilment of these duties (breach of trust) in the same way as the members of the governing body of a company with legal personality.<sup>1571</sup>

2) Non-managing trustees shall be responsible for the damage arising from the inadequate supervision of the managers and, where they themselves have appointed the managing trustees or employees to general management or other (governing) bodies, they shall likewise be responsible for the damage arising from fault in the appointment (selection), as well as from the inadequate use of the employees.

3) The responsibility of the trustees on grounds of gross negligence or intent cannot be excluded in advance by the trust instrument or resolutions and instructions of the competent bodies.

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<sup>1571</sup> Article 932a § 142(1) amended by LGBL 2013 No. 6.

## 2. *Special liability cases*

### § 143

#### *a) In the case of co-trustees*

1) In the absence of any directive to the contrary, a co-trustee is also particularly responsible on grounds of breach of trust for the damage arising from the acts or omissions of another trustee:

1. where that co-trustee hands over to another trustee trust property received or permits such a trustee alone to receive such trust property without taking the precautions, prescribed or necessary under the circumstances of the individual case, for faithful administration and use, or fails to supervise the trustee appropriately;
2. in the event that that co-trustee gains knowledge of an attempted or committed breach of trust on the part of a co-trustee and fails to undertake the steps necessary and appropriate under the circumstances for the prevention of the breach of trust and/or for the assertion of the claims arising therefrom on behalf of the trust enterprise or the like.

2) Where together with others, a trustee has co-signed an acknowledgement of receipt in the usual or prescribed manner without, however, having personally received anything and where the receiving trustee has misused that which has been received, the co-signatory shall not be responsible, without prejudice to the obligations arising from breach of the duty of supervision or the like.

3) Where one of several trustees has alone received and misused trust property or otherwise has unlawfully derived advantages from it, or in the event that a breach of trust has been committed solely as the result of the advice of a co-trustee appointed as expert for the enterprise or where, in any case, only one of the co-trustees alone is at fault, that trustee alone shall, in the absence of any trust directive to the contrary, compensate the damage.

### § 144

#### *b) In the case of succeeding and departing trustees*

1) A trustee appointed subsequently is guilty of a breach of trust with liability for damages if that trustee fails to assert, at the expense of the enterprise and in a manner appropriate to the circumstances, the compensation claims of the enterprise that the trustee is aware of, arising from a breach of trust committed by the trustee's predecessors.

2) A resigning trustee shall be responsible for the damages arising from a breach of trust if the trustee departs with the intention of thereby enabling that breach of trust to be committed.

§ 145

*III. Responsibility of the beneficiaries*

1) Where co-beneficiaries have induced a trustee to commit a breach of trust, or otherwise in their simultaneous capacity as trustees alone, have committed or assented to such a breach of trust, they alone shall be liable for the damages incurred, up to the amount of their rights to beneficial interest and, beyond this, jointly with other persons at fault, to the other parties entitled to claim; the trust enterprise, however, to the extent that it is entitled to claim, shall have a lien on the beneficial interest, unless that beneficial interest has been declared inalienable.

2) In the absence of any directive to the contrary and subject to the right of offset or retention, this lien on the beneficiaries' right shall not extend to the claims to which the beneficiary is entitled from another trust, even if they are contained in the same trust instrument.

3) This article is subject to the provisions governing the responsibility of third parties.

§ 146

*IV. Responsibility of third parties as constructive trustees*

1) Where a third party acts in relation to the trust enterprise with the intentional deception that as a trustee, the third party is empowered to act in that capacity; or where the third party otherwise interferes in general management without authority to do so; or where the third party, in the purported capacity of trustee or in the knowledge of a breach of trust committed by another, receives trust assets in an inadmissible manner or otherwise draws utility from trust property in a manner which is unlawful or in bad faith; or where the third party in other cases knowingly helps the trustees to commit a breach of trust, then that third party shall be liable in the same way as a trustee and, like the latter, shall be under obligation to provide information.

2) Representatives, employees, auxiliary persons and the like of a trust enterprise shall also be deemed to be third parties.

3) Otherwise, third-party acquirers of trust property shall not be under obligation to ensure that their consideration is used in accordance with the law and the trust instrument.

#### *V. Release from responsibility*

##### § 147

###### *1. In general*

1) Where, in spite of committing a breach of trust, a trustee proves to have acted in good faith and under the prevailing circumstances was no longer able to obtain the assent of the parties authorised to give such assent or of other competent bodies or the instructions of the Office of Justice, the court or other competent authority may, if a claim is asserted, decide at its discretion whether an obligation to pay damages exists and whether other consequences shall ensue.<sup>1572</sup>

2) Where an entitled beneficiary induces a trustee to commit a breach of trust or consents to or participates in such a breach of trust, there shall be no responsibility on the part of the trustee towards the entitled beneficiary concerned and, where that entitled beneficiary is the sole beneficiary, also towards the trust enterprise, provided the latter is not overindebted.

3) This provision is also subject to a waiver of the claim arising from the responsibility in the event of slight negligence or a possible discharge on the part of all parties entitled to claim or other bodies so authorised, to the extent that the creditors of the trust enterprise do not suffer loss thereby.

###### *2. Period of limitation*

##### § 148

###### *a) In general*

1) In the absence of any directive to the contrary, claims arising from responsibility shall be subject to a period of limitation of three years from the time when the act or the omission which established the responsibility took place and no longer continues.

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<sup>1572</sup> Article 932a § 147(1) amended by LGBL 2013 No. 6.

2) Where, however, the claim arises from a punishable act or omission for which criminal law provides a longer period of limitation, that period of limitation shall also be valid with respect to the claim arising from the responsibility.

3) As long as a trustee occupies the position, the period of limitation commences to run in the trustees favour only if slight negligence is involved and the trustee no longer holds the trust property or its equivalent value from the breach of trust.

#### § 149

##### *b) In the case of rights of recourse*

Rights of recourse of the responsible parties among themselves shall be subject to the principles of the legal relationship which is decisive in the individual case, and they become statute-barred after expiry of the time periods mentioned above, which, however, commence to run only from the time when one of the jointly responsible parties is made legally responsible by a final decision.

#### *VI. Protective and preventive measures*

#### § 150

##### *1. Instruction by the Office of Justice<sup>1573</sup>*

1) In the case of well-founded doubt concerning the admissibility of the execution or omission of a certain act to be performed at present or concerning the interpretation of the trust instrument regarding, for instance, the separation of capital and yield or the like, the managing trustees may, at the expense of the trust enterprise, with or without the involvement of other participants and with submission of the facts and circumstances, approach the Office of Justice for an instruction. In complying with this instruction, no claim arising from responsibility may be asserted against those managing trustees (official instruction).<sup>1574</sup>

2) In urgent cases or on other important grounds, this right may be exercised by any trustee, even where the trust instrument determines otherwise.

<sup>1573</sup> Article 932a § 150 heading amended by LGBl. 2013 No. 6.

<sup>1574</sup> Article 932a § 150(1) amended by LGBl. 2013 No. 6.

## § 151

*2. Liability insurance and right of refusal*

1) The managing trustees are authorised to take out, at the expense of the trust enterprise, appropriate liability insurance against all the obligations arising for them from responsibility, to the extent that these obligations are not the result of gross negligence or intent (trustee liability insurance).

2) To the extent that the law does not allow exceptions regarding instructions of the entitled beneficiaries, the managing trustees may refuse to implement the provisions of the trust instrument, the resolutions, or instructions of other competent participants, bodies, or third parties authorised in this regard if those provisions, resolutions, or instructions violate the law or provisions of the trust instrument permitted by law and the implementation thereof would render the managing trustees responsible pursuant to the provisions set out here or elsewhere (right of refusal).

## § 152

*3. Occasional audit*<sup>1575</sup>

1) Where neither an audit office nor a special supervisory trust body or similar body is provided for and the trust instrument does not contain a provision to the contrary, the trustees shall be empowered, without prejudice to the official audit otherwise authorised by law, to have an audit carried out from time to time at the expense of the trust enterprise.<sup>1576</sup>

2) This article is subject to other measures permitted by law or the trust instrument.<sup>1577</sup>

<sup>1575</sup> Article 932a § 152 heading amended by LGBL 1980 No. 39.

<sup>1576</sup> Article 932a § 152(1) amended by LGBL 1980 No. 39 and LGBL 2000 No. 279.

<sup>1577</sup> Article 932a § 152(2) amended by LGBL 1980 No. 39.

## § 153

4. *Security deposit etc.*

1) The trust instrument may provide or allow, or the Office of Justice may, on important grounds and after hearing participants, direct that trustees may take up their position or continue in that position only after they have deposited, at their own expense, an appropriate security for the faithful and conscientious exercise of their position and for any claims for compensation. Such security may be provided by promissory note, guarantee or the like.<sup>1578</sup>

2) In the event that the security is not deposited within a reasonable period of time, which if necessary shall be determined by the Office of Justice, it shall be assumed that the person appointed or already acting as trustee does not wish to accept the position or has renounced the further exercise thereof; any required registrations with the Trust Register shall be arranged, and claims for damages shall be reserved.<sup>1579</sup>

3) Managing trustees as well as individual trustees or employees may, on important grounds, renounce all further responsibility arising from the administration of the trust assets also by transferring the trust assets, to the extent admissible, at the expense of the trust enterprise to the Landesbank or, with the assent of the Office of Justice, to another suitable body for appropriate administration and use.<sup>1580</sup>

4) The preceding provisions shall apply *mutatis mutandis* to members of other (governing) bodies appointed under the trust instrument.

*K. Official trust supervision office and audit**I. Official trust supervision office*

## § 154

1. *Appointment*

1) The Office of Justice may, on important grounds, appoint a trust supervision office for trust enterprises without commercial operations. Such an appointment may be made upon application by participants or such persons or bodies that have a right to appoint, remove, or nominate trustees or have a right of nomination for or conferment of beneficial

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<sup>1578</sup> Article 932a § 153(1) amended by LGBL. 2013 No. 6.

<sup>1579</sup> Article 932a § 153(2) amended by LGBL. 2013 No. 6.

<sup>1580</sup> Article 932a § 153(3) amended by LGBL. 2013 No. 6.

interest, or of the settlor's universal successors or executors who have made available without valuable consideration the entire trust fund for the beneficial interest.<sup>1581</sup>

2) Such an office may also be appointed by direction of the settlor, without the Office of Justice having to make such an appointment, in the absence of important grounds.<sup>1582</sup>

3) A supervision office may be appointed regardless of whether the otherwise prescribed number of trustees exists or not.

4) In the absence of any directive to the contrary, consideration should, where possible, be given to the Landesbank as the public trustee when appointing a supervision office.

### § 155<sup>1583</sup>

#### 2. *Dissolution*

After considering all the circumstances, the Office of Justice may, upon application by the supervising or other trustees or participants, partly or completely dissolve the trust supervision office, especially if this is the unanimous wish of all the entitled beneficiaries or in the event that this appears to be called for on other important grounds and the trust instrument does not determine otherwise.

#### 3. *Rights and duties*

### § 156

#### a) *In general*

1) To the extent that the law or trust instrument does not determine otherwise, the supervision office shall have those rights and duties determined by the Office of Justice at the time of appointment or subsequently, but at least those which the supervisory board has in the case of a public limited company, and, additionally, its members shall have the position of supplementary trustees.<sup>1584</sup>

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<sup>1581</sup> Article 932a § 154(1) amended by LGBl. 2013 No. 6.

<sup>1582</sup> Article 932a § 154(2) amended by LGBl. 2013 No. 6.

<sup>1583</sup> Article 932a § 155 amended by LGBl. 2013 No. 6.

<sup>1584</sup> Article 932a § 156(1) amended by LGBl. 2013 No. 6.

2) When exercising their rights and duties, the supervising trustees shall, as far as possible, take into consideration not only the type and the position of the other trustees but also the wishes of beneficiaries, to the extent that they are compatible with the law or trust instrument or the instruction of the Office of Justice.<sup>1585</sup>

3) To the extent that no derogations have been specified otherwise for the supervising trustees or nothing else arises from the purpose of the supervision office, the provisions governing the other trustees shall apply *mutatis mutandis*; the supervising trustees, however, shall pass resolutions with an absolute majority of the votes.

*b) Relationship to other trustees*

§ 157

*aa) In general*

1) In relation to the other (managing) trustees, the supervising trustees shall, without prejudice to the rights and duties of other participants or third parties, supervise the entire trust enterprise, in particular the assets, any securities, documents, or the like, with the proviso that the other trustees shall at all times during the normal hours of business have access to the assets, securities, documents, etc., and may make the necessary copies at the expense of the trust enterprise.

2) The direct asset administration activities of the other trustees and the exercise by the other trustees of their powers pursuant to the law or trust instrument or the instructions of the Office of Justice shall be safeguarded for the other trustees.<sup>1586</sup>

3) The supervising trustees shall participate in this regard and undertake whatever is necessary to enable the other trustees to exercise their powers and fulfil their duties, unless the participation calls for a breach of trust or could lead to a personal liability for the supervising trustees.

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<sup>1585</sup> Article 932a § 156(2) amended by LGBI. 2013 No. 6.

<sup>1586</sup> Article 932a § 157(2) amended by LGBI. 2013 No. 6.

## § 158

*bb) Participation in the appointment of trustees etc.*

1) In the absence of any directive to the contrary, the right or duty of the other trustees to appoint trustees, to nominate or remove or the like, shall be exercised jointly with the supervising trustees.

2) Provided there is no imminent danger or not only a temporary measure is involved, the supervising trustees shall be heard before trustees are appointed or removed or similar measures taken by the Office of Justice, upon application by participants or third parties or *ex officio*.<sup>1587</sup>

## § 159

*cc) Regarding trust assets and yield*

1) Without prejudice to the management activities of the other trustees, the supervising trustees shall take particular care that the trust assets and their yield are administered and used for the intended purpose, as though they were the sole trustees.

2) In the absence of any trust directive to the contrary, payments from the trust assets or the yield shall be made by the supervising trustees, and payments to the trust enterprise shall likewise be made to the supervising trustees.

3) Those supervising trustees may, however, permit payments to the trust enterprise to be received by other trustees or third parties, without the supervising trustees being liable for any fault of those other trustees or third parties, to the extent there is no deficiency in the supervision.

## § 160

*4. Responsibility*

1) The provisions governing the responsibility of other trustees shall apply to supervising trustees *mutatis mutandis*, with the proviso that they shall not be responsible for the acts or omissions of other trustees or bodies, insofar as they themselves are not responsible for a fault in the supervision.

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<sup>1587</sup> Article 932a § 158(2) amended by LGBL 2013 No. 6.

2) Where, in the determination of beneficiaries and the payment of beneficial interests, the supervising trustees act in good faith on the basis of written statements by the other trustees or otherwise competent bodies, no responsibility shall devolve upon them, notwithstanding any responsibility of the other trustees.

## II. Official audit

### § 161

#### 1. Appointment and removal of auditors

1) On important grounds, one or several uninvolved third parties may be appointed as auditors by the Office of Justice, upon application by participants or the universal successors or the executor of the settlor, who provided without valuable consideration the trust fund for the beneficial interest of others, or the supervision trust office or upon application of the enterprise's creditors at risk or *ex officio*.<sup>1588</sup>

2) These auditors shall be removed by the Office of Justice upon the unanimous application of entitled beneficiaries if their appointment was not made *ex officio* or upon application by creditors at risk.<sup>1589</sup>

3) On important grounds, they may be removed upon application by participants or other persons who occasioned the appointments.

4) In the event auditors are no longer available before the audit has been completed, as the result of removal, death, bankruptcy or insolvency or where the auditors are incapable of fulfilling their duties or on other important grounds, a successor may be appointed in the same manner as the predecessor.

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<sup>1588</sup> Article 932a § 161(1) amended by LGBL 2013 No. 6.

<sup>1589</sup> Article 932a § 161(2) amended by LGBL 2013 No. 6.

## 2. Rights and duties

### § 162

#### *a) In general*

1) The officially appointed auditors shall have all the rights and duties stated in the law as well as all those rights and duties which the Office of Justice orders as necessary for the exercise of their position.<sup>1590</sup>

2) In the absence of any directive to the contrary, the auditors shall audit the entire trust enterprise, in particular the general management, the position, and the investment of the assets as well as accounting.

3) All trustees and employees of the trust enterprise shall, on request, provide the auditors with information on all facts and circumstances; otherwise, they shall bear responsibility for damage, including costs, and, in the case of avoidance (failure to provide such information), they shall be removed pursuant to the provisions governing the obligation to provide information.

4) Other participants or third parties engaged in the conduct of business who have trust assets or books of account or business papers in their possession are also under obligation to provide information; in the event of refusal, a provisional decision of the Office of Justice may be invoked.<sup>1591</sup>

### § 163

#### *b) Audit report*

1) In addition to a clear balance sheet or, in the case of an enterprise without commercial operations, in addition to a clear statement of accounts relating to the trust assets, the auditors must submit an audit report with a statement as to whether the general management has acted in accordance with the regulations, and in particular has kept the accounts correctly and has invested and managed the assets correctly or not.

2) The balance sheet (statement of accounts) together with the audit report must be submitted to the Office of Justice and, in addition, the auditors must deliver a copy to those who applied for an official audit and to the trustees.<sup>1592</sup>

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<sup>1590</sup> Article 932a § 162(1) amended by LGBL 2013 No. 6.

<sup>1591</sup> Article 932a § 162(4) amended by LGBL 2013 No. 6.

<sup>1592</sup> Article 932a § 163(2) amended by LGBL 2013 No. 6.

3) Pursuant to the provisions governing the obligation to provide information, each beneficiary may, at the beneficiary's own expense and during normal business hours, review the balance sheet (statement of accounts) and the audit report, inspecting them and taking copies or extracts, or have representatives perform such review and inspection.

#### § 164

##### 3. Reference

The provisions concerning the official audit under the general provisions governing legal persons shall apply *mutatis mutandis*, in particular with respect to the expenses and remuneration of the auditors.

##### *L. Amendment of the trust instrument, conversion and merger, etc.*

#### § 165

##### I. Amendment

1) The trust instrument may provide for its amendment including its correction by one or other of the participants or by all the participants together or by third parties.

2) With the assent of all the parties to be considered in any given case or pursuant to the provisions governing the family resolution, the trust instrument may, on important grounds, after all the circumstances have been carefully considered and with the approval of the Office of Justice, be amended or corrected in all cases, even if the amendment is excluded or forbidden, but in the absence of any provision of the law or the trust instrument to the contrary, the trust enterprise may not be dissolved.<sup>1593</sup>

3) Upon application by and after hearing the participants concerned, particularly the managing trustees, the Office of Justice may, in the absence of any other provision, undertake a mere correction of the trust instrument.<sup>1594</sup>

4) In the absence of known entitled beneficiaries, the amendment may be made only subject to the later appearance of such entitled beneficiaries within the period of limitation if the rights of others may be violated and the trust instrument does not determine otherwise.

<sup>1593</sup> Article 932a § 165(2) amended by LGBL 2013 No. 6.

<sup>1594</sup> Article 932a § 165(3) amended by LGBL 2013 No. 6.

5) If the right to revoke the trust articles is reserved for a participant or third party, this shall not, in case of doubt, empower that participant or third party to amend trust articles, unless the Office of Justice on important grounds or the law allows an exception.<sup>1595</sup>

## § 166

### *II. Conversion and merger*

1) The trust instrument may provide for the conversion of a trust enterprise into an undertaking (firm or legal person) having another legal form or the merger with such an undertaking or another trust enterprise or another fiduciary undertaking, without liquidation of the trust enterprise, pursuant to detailed regulation and observing the provisions otherwise in force for the other legal form.

2) The conversion of a trust enterprise without legal personality into a trust enterprise with legal personality or vice versa, without other changes to the trust articles, may, in the absence of any directive to the contrary, be undertaken at any time by operation of law by the managing trustees without liquidation.

3) On a supplemental basis, the provisions drawn up for registered cooperative societies shall apply *mutatis mutandis* to the conversion and merger of trust enterprises whose participants or third parties have liability or additional performance obligations.

4) This article is also subject to a conversion or merger provided by law as a result of a change in organisation or purpose.

## § 167

### *III. Form*

1) Where the law does not provide otherwise, each amendment of the trust instrument shall be drawn up in writing by the parties empowered to do so and registered by them in the Trust Register through the managing trustees and, where required, be entered and published by the Office of Justice. To the extent that the amendment concerns the registered facts and circumstances, an excerpt from the amendment document shall be included with the registration.<sup>1596</sup>

<sup>1595</sup> Article 932a § 165(5) amended by LGBL 2013 No. 6.

<sup>1596</sup> Article 932a § 167(1) amended by LGBL 2013 No. 6.

2) Where the amendment to the trust instrument concerns a trust enterprise which is not entered in the Trust Register, each amendment shall be notified to the Office of Justice, to the extent that notifiable facts and circumstances are concerned and the Office of Justice did not take part or the files are not otherwise deposited with the Office of Justice.<sup>1597</sup>

3) The preceding provisions shall apply *mutatis mutandis* in the case of merger or conversion unless the law provides otherwise or the relevant provisions concerning another form of undertaking are to be applied.

#### § 168

##### *IV. Effect*

1) The special liability of the assets of the dissolved or amended trust enterprise with commercial operations and that of any participants and third parties for the liabilities of the trust enterprise accruing up to the time of the amendment, merger, or voluntary conversion shall persist for one year from that time; in the case of a merger, unless the Office of Justice allows an exception or liabilities do not exist, the assets of the dissolved trust enterprise shall be administered separately and a separate account shall be kept accordingly.<sup>1598</sup>

2) Up to that time, in the case of a merger, the received assets shall still be deemed to be the assets of the dissolved enterprise, as far as the relationship of the creditors of the dissolved trust enterprise to the receiving trust enterprise and to its other creditors is concerned, and compulsory execution may take place against the receiving trust enterprise as well as special insolvency proceedings limited to the received assets.<sup>1599</sup>

3) The trust instrument may determine that the certificate holders are under obligation to return their securities to the new form of undertaking, where applicable against a corresponding claim, otherwise they may be deprived of their rights with or without compensation.

4) This article is subject to the provisions concerning the lapse of the liability of the participants or third parties or of their obligation to make additional performances in the case of conversion or merger.

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<sup>1597</sup> Article 932a § 167(2) amended by LGBL 2013 No. 6.

<sup>1598</sup> Article 932a § 168(1) amended by LGBL 2013 No. 6.

<sup>1599</sup> Article 932a § 168(2) amended by LGBL 2020 No. 369.

## § 169

*V. Withdrawal of approval and declaration of nullity*

1) Where a trustee appointed by the register office has participated in the amendment, conversion, or dissolution on behalf of unknown or uncertain beneficiaries and the right of such a beneficiary has been seriously violated, that beneficiary may apply to the Office of Justice in administrative proceedings for the approval to be declared withdrawn and the approved act to be declared null and void and for the former state of affairs to be restored or, in the event that the latter no longer appears to be possible, the party whose rights have been violated may demand compensation from the party unjustifiably enriched as a result of the action complained of.<sup>1600</sup>

2) The withdrawal and declaration of nullity may take place only after the other participants have been heard and shall have no influence on the validity vis-à-vis *bona fide* third parties of the disposal of the trust assets made on the basis of the approval.

## § 170

*M. International choice of law and trust enterprises under foreign law etc.*

1) In the absence of any legislative provision to the contrary, the provisions of international choice of law under the general provisions governing legal persons shall apply to the trust enterprise *mutatis mutandis*, in particular also the provisions governing the legal representative.

2) Repealed<sup>1601</sup>

3) Repealed<sup>1602</sup>

4) Repealed<sup>1603</sup>

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<sup>1600</sup> Article 932a § 169(1) amended by LGBL 2013 No. 6.

<sup>1601</sup> Article 932a § 170(2) repealed by LGBL 1980 No. 39.

<sup>1602</sup> Article 932a § 170(3) repealed by LGBL 1980 No. 39.

<sup>1603</sup> Article 932a § 170(4) repealed by LGBL 1980 No. 39.

Title 17  
**Simple community of rights**

Article 933

*A. Definition and formation*

1) If several persons are jointly entitled to a certain fraction (non-material quota) of an item of property or of a right, or if several persons are simultaneously entitled to such an item of property or to such a right, without there being a special personal relationship among the parties by contract (such as a company agreement) or by law (such as a community of heirs or community of goods), they shall be governed by the following provisions, subject to those concerning co-ownership or other existing provisions.

2) If, on the other hand, a personal community among the parties exists, the provisions on joint ownership shall apply *mutatis mutandis*.

3) The provisions governing the simple community of rights shall apply on a supplemental basis *mutatis mutandis* to all other communities, regardless of how they came into being.

Article 934

*B. Shares*

1) In case of doubt, it shall be assumed that the participants are entitled to equal shares.

2) Each participant shall be entitled to the fraction of the fruits corresponding to that participant's share.

3) Each participant shall be entitled to use the common object to the extent that joint use by the other participants is not impaired and the law or contract does not provide otherwise.

4) Each participant may dispose of that participant's share alone, but the participants may dispose of the common object only jointly.

5) One participant is obliged in relation to the other participants to bear the burdens of the common object as well as the necessary or usual costs of maintenance, administration, and common use according to the proportion of that participant's share or to compensate the other participants accordingly.

*C. Administration*

## Article 935

*I. In general*

- 1) Unless otherwise agreed, the participants shall be jointly entitled to administration of the common object or other right.
- 2) A participant shall be entitled to take the usual administrative actions and measures necessary for the preservation of the object without the consent of the other participants, unless the majority decides otherwise.
- 3) Each participant may, unless administration and use are governed by agreement or by majority resolution, demand administration and use which are in the interest of all participants at their own reasonable discretion.
- 4) A participant may demand a statement of accounts, provision of information, and distribution of the proceeds.
- 5) The participant shall be liable for any fault.

## Article 936

*II. Arrangement*

- 1) Arrangement of important administrative actions shall require approval by the majority of the participants whose shares together make up more than half.
- 2) For the alienation or encumbrance of the property or the right, as well as for substantial changes thereto or for the change of its purpose, the agreement of all participants shall be required, unless the participants have unanimously decided otherwise.
- 3) The right of the individual participant to a fraction of the uses corresponding to that participant's share may not be impaired without the participant's consent.
- 4) If the administration and use of the common object or right is governed by majority resolution or judgment or by a document equivalent thereto, the provision made shall be effective also for and against all special successors, but in the case of rights under the Land Register only if the provision has been reserved in the Land Register.

*D. Dissolution**I. Preconditions*

## Article 937

*1. In general*

1) Any participant may at any time request the dissolution of the community, unless the time is inopportune or when such dissolution appears impossible by the nature of the object, such as walls on the border of two plots of land or documents for joint use.

2) Dissolution by legal transaction without judicial approval may be excluded for a maximum of ten years.

3) If the right to demand dissolution is excluded forever or for a limited period of time, dissolution may nevertheless be demanded on important grounds, subject to the provisions of the Property Act governing the division of co-ownership.

4) Under the same conditions, if a period of notice is specified, dissolution may be demanded without notice.

5) An agreement which excludes or limits the right to demand dissolution contrary to these provisions shall be null and void.

## Article 938

*2. Effect of exclusion*

1) If the participants have excluded the right to demand dissolution for a limited period of time, the agreement shall, in case of doubt, terminate upon the death of a participant or upon cessation of an entity with a legal name or a legal person.

2) If the participants have excluded the right to demand the dissolution of the community forever or for a limited period of time or have determined a period of notice, the agreement shall be effective for and against all special successors, but in the case of rights under the Land Register it shall have effect *in rem* only if it has been reserved in the Land Register.

*II. Execution for lack of agreement*

## Article 939

*1. Division in kind*

1) If the participants cannot agree on the nature of the dissolution, the dissolution of the community shall be effected by physical division, where possible without a significant reduction in value.

2) The distribution of equal shares among the shareholders shall be made by drawing lots.

## Article 940

*2. Sale*

1) If division is excluded by the nature of the object, the common property shall be auctioned publicly or among the co-owners as ordered by the Court of Justice.

2) In the case of rights entered in the Land Register, the action for division and the judgment may be noted with effect against any legal successor.

3) If sale to a third party is not permitted due to a prohibition of sale, the object shall be auctioned among the partners.

4) If the attempt to auction the object is unsuccessful, any participant may request that it be repeated, but shall bear the costs if the repeated attempt fails.

5) If individual co-owners object, the sale of a joint claim shall be permissible only if it cannot yet be collected, otherwise only the collection on the claim may be demanded.

## Article 941

*III. Debts and in rem rights*

1) If the participants are jointly liable for an obligation arising from the community, each participant may demand upon dissolution that the debt be reconciled using the common object.

2) The claim may also be asserted against the special successors.

3) The costs of division shall be borne by the participants in proportion to their shares.

4) To the extent that sale of the common object is necessary for the reconciliation of debt, the sale must take place.

#### Article 942

##### *IV. Claim of one participant against another*

1) Where a participant has a claim against another participant based on the community, the former may, in the event of a dissolution of the community, request that the former's claim be reconciled using the share of the common object attributable to the debtor; the last two paragraphs of the preceding article shall apply *mutatis mutandis*.

2) If, upon dissolution of the community, a common object is allocated to a participant, each of the other participants shall, on account of a defect in the rights or a defect in the item of property, provide a guarantee with respect to that participant's share in the same way as a seller.

3) In insolvency proceedings of a participant, the other participants may, for their claims arising from the community, request separate satisfaction from the shares determined for the bankrupt participant upon division.<sup>1604</sup>

4) The claim to dissolution of the community shall not be subject to a period of limitation.

#### Article 943

##### *E. International choice of law*

1) Where the legal relationship arising from the community relates to an item of property, the rules of the Property Act shall apply for purposes of international choice of law, unless otherwise provided.

2) In other cases, however, the community shall be governed by the law under which the legal transaction giving rise to the community is carried out, to the extent not otherwise specified.

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<sup>1604</sup> Article 942(3) amended by LGBI. 2020 No. 369.

Part 5  
**Commercial Register, legal names, and accounting**<sup>1605</sup>

Title 18  
**Commercial Register**<sup>1606</sup>

*A. Establishment*

*I. Structure*

Article 944<sup>1607</sup>

*1. In general*

- 1) A Commercial Register shall be kept for the entire country.
- 2) The Commercial Register shall contain data from the former Commercial Register, Register of Cooperative Societies, Register of Associations, Register of Establishments, Register of Foundations, Register of Marital Property, and similar registers for which it contains facts and circumstances.
- 3) The Commercial Register may be kept on paper or by means of electronic data processing.
- 4) When the Commercial Register is kept by means of electronic data processing, the textual and numerical data properly stored in the system and readable on the equipment of the Office of Justice by means of technical aids shall have legal effect.
- 5) By ordinance, the Government shall set out further details on the establishment and maintenance of the Commercial Register. When the Commercial Register is kept by means of electronic data processing, the Government shall also set out the requirements, in particular with regard to access to data, data protection, the data format, and the long-term security and archiving of data.<sup>1608</sup>

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<sup>1605</sup> Title preceding Article 944 amended by LGBL 2013 No. 6.

<sup>1606</sup> Title preceding Article 944 amended by LGBL 2013 No. 6.

<sup>1607</sup> Article 944 amended by LGBL 2013 No. 6.

<sup>1608</sup> Article 944(5) amended by LGBL 2024 No. 17.

2. *Obligation and right to be entered*<sup>1609</sup>

Article 945

a) *Obligation to be entered*<sup>1610</sup>

1) Anyone who engages in commerce, manufacturing, or other business conducted in a commercial manner is obliged to have the legal name of their business entered in the Commercial Register at the location of the principal place of business.<sup>1611</sup>

2) If there is no principal place of business, entry in the Commercial Register shall take place at the place of residence of the person subject to the obligation to be entered or at the seat of the Office of Justice.<sup>1612</sup>

3) If a person subject to the obligation to be entered runs several undertakings with primary places of business or branches under the same legal name, they shall be entered as a single undertaking. If they are run under different legal names, each legal name and the associated branch must be entered separately.<sup>1613</sup>

4) By ordinance, the Government shall issue more detailed provisions on the obligation to be entered in the Commercial Register. If the obligation to be entered does not arise from other provisions, the annual corporate income tax for the business and the annual turnover must be taken into account.<sup>1614</sup>

5) If there are doubts concerning the obligation to be entered, the Office of Justice shall decide in administrative proceedings.<sup>1615</sup>

6) Independent undertakings of domestic polities shall be entered in the Commercial Register, provided that they are not exempted under public law from the obligation to be entered.<sup>1616</sup>

7) In lieu of the place of residence, members of the administration of a legal person may also have their domestic office or professional address entered in the Commercial Register, provided they are lawyers under the Lawyers Act or have a licence from the FMA pursuant to special laws.<sup>1617</sup>

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<sup>1609</sup> Heading preceding Article 945 amended by LGBL 2003 No. 63.

<sup>1610</sup> Article 945 heading amended by LGBL 2003 No. 63.

<sup>1611</sup> Article 945(1) amended by LGBL 2013 No. 6.

<sup>1612</sup> Article 945(2) amended by LGBL 2013 No. 6.

<sup>1613</sup> Article 945(3) amended by LGBL 2003 No. 63.

<sup>1614</sup> Article 945(4) amended by LGBL 2013 No. 6.

<sup>1615</sup> Article 945(5) amended by LGBL 2013 No. 6.

<sup>1616</sup> Article 945(6) amended by LGBL 2013 No. 6.

<sup>1617</sup> Article 945(7) amended by LGBL 2022 No. 227.

Article 946<sup>1618</sup>*b) Right to be entered*

1) Persons who do not conduct any business subject to the obligation to be entered and have a place of residence or business domicile in Liechtenstein are entitled to be entered in the Commercial Register at the principal place of business.<sup>1619</sup>

2) Persons wishing to use a legal name for the operation of an undertaking or for the exercise of a profession shall be entitled to do so only if they maintain or choose a principal place of business or branch or place of residence in Liechtenstein and have themselves entered in the Commercial Register.<sup>1620</sup>

3) If they maintain a branch at another domestic location, they may have that branch entered under the legal name of the principal place of business with, where applicable, a clearly distinguishing affix.

4) The entry shall be carried out with the same procedure and content as the entry of the person subject to the obligation to be entered.

*II. The effects of entry*<sup>1621</sup>Article 947<sup>1622</sup>*1. Commencement of effectiveness*

1) The date of entry in the Commercial Register is determined by the inclusion of the registration in the journal.<sup>1623</sup>

2) An entry in the Commercial Register becomes effective in relation to third parties only on the working day following the day on which the entry is announced, provided that the announcement is required by law. This working day is also the relevant day for the start of a time period beginning with the announcement of the entry.<sup>1624</sup>

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<sup>1618</sup> Article 946 amended by LGBl. 2003 No. 63.

<sup>1619</sup> Article 946(1) amended by LGBl. 2013 No. 6.

<sup>1620</sup> Article 946(2) amended by LGBl. 2013 No. 6.

<sup>1621</sup> Heading preceding Article 947 inserted by LGBl. 2003 No. 63.

<sup>1622</sup> Article 947 amended by LGBl. 2003 No. 63.

<sup>1623</sup> Article 947(1) amended by LGBl. 2013 No. 6.

<sup>1624</sup> Article 947(2) amended by LGBl. 2013 No. 6.

3) This article is subject to the special legislative provisions according to which legal effects apply against third parties or time periods commence immediately upon entry.

Article 948<sup>1625</sup>

2. *Public credence*

1) Every person acting in good faith may rely on the accuracy of the entries, amendments, and removals in the register.

2) Entered persons must accept the content of the entry, amendment, or removal as valid against themselves provided that such entry, amendment, or removal has been made in accordance with their will.

Article 949

3. *Public effect*<sup>1626</sup>

1) Where an entry has become effective in relation to third parties, objections shall be ruled out that a person was unaware of the entry.<sup>1627</sup>

1a) In the case of public limited companies, partnerships limited by shares, or limited liability companies, a registered and announced fact cannot be asserted against a third party if:

1. it relates to an act carried out within fifteen days of the date on which the registration takes effect; and
2. the third party demonstrates that the third party neither knew nor should have known it.<sup>1628</sup>

2) Where a fact subject to the obligation to be entered has not been entered, it may be asserted against a third party only if it is demonstrated that the third party was aware of it.<sup>1629</sup>

3) The entries in the Commercial Register provide full proof of the facts attested by them, as long as the incorrectness of their content is not shown.<sup>1630</sup>

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<sup>1625</sup> Article 948 amended by LGBl. 2003 No. 63.

<sup>1626</sup> Article 949 heading amended by LGBl. 2003 No. 63.

<sup>1627</sup> Article 949(1) amended by LGBl. 2003 No. 63.

<sup>1628</sup> Article 949(1a) inserted by LGBl. 2005 No. 257.

<sup>1629</sup> Article 949(2) amended by LGBl. 2003 No. 63.

<sup>1630</sup> Article 949(3) amended by LGBl. 2013 No. 6.

4) The burden of proof shall be on anyone disputing the correctness of the entry.<sup>1631</sup>

5) This proof shall not be tied to any particular form.<sup>1632</sup>

Article 950<sup>1633</sup>

*4. Constitutive and declaratory effect*

1) Law and ordinance shall determine whether a legal relationship arises only upon entry in the Commercial Register.

2) Unless otherwise provided by law or ordinance, the legal effects in relation to the parties to the legal transaction shall be effective even without entry in the Commercial Register.

3) The legal effects of the appointment of a person or company as an authorised governing body shall apply to a registered legal person even without the appointment being entered in the Commercial Register.

Article 951<sup>1634</sup>

*5. Curing effect*

1) Entry in the Commercial Register confers legal personality even if the actual conditions for obtaining legal personality have not been met, if the law so provides.

2) Law and ordinance shall moreover determine whether the entry of a legal relationship in the Commercial Register has the effect of preventing certain deficiencies in the legal relationship from being asserted.

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<sup>1631</sup> Article 949(4) amended by LGBL 2003 No. 63.

<sup>1632</sup> Article 949(5) amended by LGBL 2003 No. 63.

<sup>1633</sup> Article 950 amended by LGBL 2013 No. 6.

<sup>1634</sup> Article 951 amended by LGBL 2013 No. 6.

Article 952<sup>1635</sup>*III. Responsibility*

1) Anyone who is obliged to apply for registration of an entry in the Commercial Register and intentionally or negligently fails to do so shall be liable for any damage caused thereby.<sup>1636</sup>

2) The owner of a legal name shall bear subsidiary liability for the transactions concluded by another person under that legal name, if the owner of the legal name allows transactions to be concluded by another person under the owner's legal name and the third party is acting in good faith.

*B. Procedure*<sup>1637</sup>*I. Public access and announcements*<sup>1638</sup>*1. Public access to the register*<sup>1639</sup>

## Article 953

*a) Access*<sup>1640</sup>

1) The Commercial Register, including applications for registration and supporting documents, is public.<sup>1641</sup>

2) Public access shall commence with submission of the registration or of supporting documents suitable to serve as evidence of entry.<sup>1642</sup>

3) Against payment of a fee, anyone shall be entitled to inspect the entries in the Commercial Register.<sup>1643</sup>

4) Against payment of a fee, anyone shall be entitled to inspect the supporting documents and other written records on which the entries are based.<sup>1644</sup>

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<sup>1635</sup> Article 952 amended by LGBl. 2003 No. 63.

<sup>1636</sup> Article 952(1) amended by LGBl. 2013 No. 6.

<sup>1637</sup> Heading preceding Article 953 inserted by LGBl. 2003 No. 63.

<sup>1638</sup> Heading preceding Article 953 inserted by LGBl. 2003 No. 63.

<sup>1639</sup> Heading preceding Article 953 inserted by LGBl. 2003 No. 63.

<sup>1640</sup> Article 953 heading amended by LGBl. 2007 No. 38.

<sup>1641</sup> Article 953(1) amended by LGBl. 2013 No. 6.

<sup>1642</sup> Article 953(2) amended by LGBl. 2003 No. 63.

<sup>1643</sup> Article 953(3) amended by LGBl. 2013 No. 6.

<sup>1644</sup> Article 953(4) amended by LGBl. 2016 No. 402.

5) The Office of Justice shall make the following entries in the Commercial Register available free of charge via a publicly accessible information platform:<sup>1645</sup>

1. legal name;
2. legal form;
3. registered office;
4. representative office/address for service;
5. date of entry and date of all changes including journal number;
6. Commercial Register number and European Unified ID (EUID);<sup>1646</sup>
7. object or purpose;<sup>1647</sup>
8. members of the administration of public limited companies, partnerships limited by shares, and limited liability companies and how they are represented;<sup>1648</sup>
9. branches established in other EEA Member States, including the name or legal name, the registration number, the EUID, and the Member State in which the branch is registered.<sup>1649</sup>

6) The Government shall provide further details governing access by ordinance.<sup>1650</sup>

#### Article 954

##### *b) Extracts, transcripts, and certificates*<sup>1651</sup>

1) The Office of Justice shall, upon request and against payment of a fee, issue extracts, copies, or transcripts of entries and records in electronic form or, upon express request, in paper form.<sup>1652</sup>

1a) Where documents are available only in paper form, electronic transmission may be requested only for documents filed with the Office of Justice less than ten years before the date on which the application is submitted.<sup>1653</sup>

<sup>1645</sup> Article 953(5) amended by LGBL 2020 No. 303.

<sup>1646</sup> Article 953(5)(6) amended by LGBL 2024 No. 17.

<sup>1647</sup> Article 953(5)(7) inserted by LGBL 2024 No. 17.

<sup>1648</sup> Article 953(5)(8) inserted by LGBL 2024 No. 17.

<sup>1649</sup> Article 953(5)(9) inserted by LGBL 2024 No. 17.

<sup>1650</sup> Article 953(6) inserted by LGBL 2007 No. 38.

<sup>1651</sup> Article 954 heading amended by LGBL 2003 No. 63.

<sup>1652</sup> Article 954(1) amended by LGBL 2013 No. 6.

<sup>1653</sup> Article 954(1a) amended by LGBL 2013 No. 6.

2) Extracts from the register, transcripts, or copies of documents and certificates in paper form shall be certified by the Office of Justice, unless the applicant waives such certification.<sup>1654</sup>

2a) In the case of the transmission of data in electronic form under paragraph 2, the data shall be certified only if requested by the applicant. An advanced electronic signature within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market must be used for certification.<sup>1655</sup>

3) Extracts or copies of register files may also be issued without certification on request.<sup>1656</sup>

4) The following may be confirmed by official certificates:

- a) that a certain legal name or a certain entry in the register concerning a legal name does not exist;
- b) the content of a removed entry, but with the remark that it has been removed;
- c) only parts of an entry;
- d) that a registration has been filed.<sup>1657</sup>

5) The Office of Justice may, on request and against payment of a fee, issue extracts, copies, and certificates in an official language of another EEA Member State, provided that the translations have been submitted to the Office of Justice.<sup>1658</sup>

#### Article 955

##### *c) Handing over of files<sup>1659</sup>*

1) The files, books, directories, record cards, or electronic data carriers relating to an entry may be handed over in the original only by order of the judge or the Office of the Public Prosecutor.

2) In all cases, a receipt must be requested from the borrowing authority, which must be placed in the archives in lieu of the document handed over.

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<sup>1654</sup> Article 954(2) amended by LGBl. 2013 No. 6.

<sup>1655</sup> Article 954(2a) amended by LGBl. 2019 No. 118.

<sup>1656</sup> Article 954(3) amended by LGBl. 2003 No. 63.

<sup>1657</sup> Article 954(4) amended by LGBl. 2003 No. 63.

<sup>1658</sup> Article 954(5) amended by LGBl. 2013 No. 6.

<sup>1659</sup> Article 955 heading amended by LGBl. 2003 No. 63.

3) The originals handed over must be returned to the Office of Justice in full and in an orderly manner within 14 days at the latest. The borrowing authority shall be entitled to make copies of the originals.<sup>1660</sup>

#### Article 955a<sup>1661</sup>

##### *1a. Public access to deposited materials*

1) Inspection, extracts, copies, or certificates of files and documents deposited in accordance with Article 990 as well as of registrations and supporting documents of foundations and trusts not entered in the Commercial Register may be requested only by the depositor and the person authorised to do so. This provision is subject to disclosure of the information set out in points 1 to 7 and 10 of Article 552 § 20(2) by way of official confirmation to third parties and data access under points 2 and 3 of Article 955b(2). The Government shall provide further details by ordinance.

2) On request, the Office of Justice shall confirm whether or not a trust not entered in the Commercial Register exists.

#### Article 955b<sup>1662</sup>

##### *1b. Online data access*

1) Domestic public authorities and courts shall have online access to the data in the Commercial Register.

2) In addition to the data referred to in paragraph 1, domestic prosecution authorities, the Financial Intelligence Unit, the FMA, and the Fiscal Authority shall have online access to the following data:<sup>1663</sup>

1. registrations and supporting documents pertaining to the data in the Commercial Register;
2. notified information pertaining to foundations not entered in the Commercial Register (Article 552 § 20(2)); and

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<sup>1660</sup> Article 955(3) amended by LGBL 2013 No. 6.

<sup>1661</sup> Article 955a amended by LGBL 2020 No. 520.

<sup>1662</sup> Article 955b inserted by LGBL 2020 No. 520.

<sup>1663</sup> Article 955b(2) introductory phrase amended by LGBL 2022 No. 227.

3. information electronically recorded by the Office of Justice as well as the deposited documents pertaining to trusts not entered in the Commercial Register.<sup>1664</sup>

3) The data referred to in paragraphs 1 and 2 may be used solely for the fulfilment of the tasks assigned to the public authorities and courts by law. The provisions of data protection law shall apply *mutatis mutandis*.

4) Access as referred to in paragraph 2 shall be logged.

5) The Government may provide further details by ordinance.

## 2. Announcements<sup>1665</sup>

### Article 956

#### a) In general<sup>1666</sup>

1) The entries in the Commercial Register shall be published without delay by the Office of Justice in the official publication medium with their entire contents.<sup>1667</sup>

2) All documents and information the deposit and announcement of which are required by law likewise shall be made public in the same manner.<sup>1668</sup>

3) In cases where the law does not mandate announcement in the official publication medium, announcement may be accomplished through publication on the website of the authority or in any other form the Government declares permissible by ordinance.<sup>1669</sup>

4) The entries in the Commercial Register shall additionally be announced by the Office of Justice in electronic form on a website sorted by dates. The Government shall provide further details by ordinance.<sup>1670</sup>

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<sup>1664</sup> Article 955b(2)(3) amended by LGBl. 2022 No. 227.

<sup>1665</sup> Heading preceding Article 956 inserted by LGBl. 2003 No. 63.

<sup>1666</sup> Article 956 heading amended by LGBl. 2003 No. 63.

<sup>1667</sup> Article 956(1) amended by LGBl. 2022 No. 227.

<sup>1668</sup> Article 956(2) amended by LGBl. 2003 No. 63.

<sup>1669</sup> Article 956(3) amended by LGBl. 2022 No. 227.

<sup>1670</sup> Article 956(4) amended by LGBl. 2013 No. 6.

Articles 957 and 958<sup>1671</sup>

Repealed

Article 958a<sup>1672</sup>

Repealed

## Article 959

*b) Effect, protection of transactions*<sup>1673</sup>

1) The announcement may be asserted directly against anyone upon expiry of the day on which it is published.<sup>1674</sup>

2) Where there is a conflict between the application for registration, the entry, and the announcement, the content of the entry shall prevail in the first instance, followed by the content of the announcement and, finally, the content of the supporting documents.<sup>1675</sup>

3) In the event of a conflict between the entry and the announcement, third parties acting in good faith may also rely on the content of the announcement in relation to the person in whose matter the entry was made.<sup>1676</sup>

4) The Office of Justice shall take all necessary precautions to prevent conflicts between the entry and the announcement. The Government may provide further details by ordinance.<sup>1677</sup>

II. Entries<sup>1678</sup>Article 960<sup>1679</sup>

## 1. Truthfulness of entries

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<sup>1671</sup> Articles 957 and 958 repealed by LGBL 2022 No. 227.

<sup>1672</sup> Article 958a repealed by LGBL 2010 No. 352.

<sup>1673</sup> Article 959 heading amended by LGBL 2022 No. 227.

<sup>1674</sup> Article 959(1) amended by LGBL 2003 No. 63.

<sup>1675</sup> Article 959(2) amended by LGBL 2003 No. 63.

<sup>1676</sup> Article 959(3) amended by LGBL 2003 No. 63.

<sup>1677</sup> Article 959(4) amended by LGBL 2013 No. 6.

<sup>1678</sup> Heading preceding Article 960 inserted by LGBL 2003 No. 63.

<sup>1679</sup> Article 960 amended by LGBL 2003 No. 63.

1) All entries in the Commercial Register must be true, must not give rise to deception, and must not contradict any public interest.<sup>1680</sup>

2) If, after completion of an entry, it is discovered that the entry does not meet these requirements, the entry shall be amended or removed in accordance with the procedure set out in Article 968.

#### Article 961

##### 2. *Document principle*<sup>1681</sup>

1) Facts may be entered in the Commercial Register only if they are shown to be true by suitable documents.<sup>1682</sup>

2) Law and ordinance shall determine which documents supporting the entry of certain facts must be provided by the persons required to apply for registration.<sup>1683</sup>

3) In principle, the supporting documents must be submitted in the original or as a certified copy, unless law or ordinance provide otherwise.<sup>1684</sup>

3a) Repealed<sup>1685</sup>

4) Where law and ordinance do not contain any information on the supporting documents to be provided, the Office of Justice shall decide at its due discretion.<sup>1686</sup>

5) The supporting documents pertaining to an entry shall remain with the Commercial Register. There shall be no right of return, not even after an entry in the Commercial Register has been removed.<sup>1687</sup>

6) The documents not belonging to an entry are not supporting documents for the purposes of paragraph 1; they may be kept with the correspondence files.<sup>1688</sup>

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<sup>1680</sup> Article 960(1) amended by LGBI. 2013 No. 6.

<sup>1681</sup> Article 961 heading amended by LGBI. 2003 No. 63.

<sup>1682</sup> Article 961(1) amended by LGBI. 2013 No. 6.

<sup>1683</sup> Article 961(2) amended by LGBI. 2003 No. 63.

<sup>1684</sup> Article 961(3) amended by LGBI. 2003 No. 63.

<sup>1685</sup> Article 961(3a) repealed by LGBI. 2024 No. 17.

<sup>1686</sup> Article 961(4) amended by LGBI. 2013 No. 6.

<sup>1687</sup> Article 961(5) amended by LGBI. 2013 No. 6.

<sup>1688</sup> Article 961(6) inserted by LGBI. 2022 No. 227.

Article 962<sup>1689</sup>*3. Facts and relationships capable of being entered*

1) Law and ordinance shall determine the scope of the entry in the Commercial Register, in particular which facts and circumstances are entered in the Commercial Register.<sup>1690</sup>

2) Facts the entry of which is not provided for may be entered only if the public interest justifies conferring upon them effect in relation to third parties.

3) The entry procedure shall be opened with submission of the registration or with submission of deeds or other documents which may serve as supporting documents for entry in the Commercial Register.<sup>1691</sup>

## Article 963

*4. Registration*<sup>1692</sup>

1) Unless otherwise provided by law or ordinance, entries in the Commercial Register shall be made only upon application for registration by the persons required to do so.<sup>1693</sup>

2) The application for registration shall consist of the letter of application and the attached supporting documents. The letter of application and the supporting documents must indicate the necessary content of the entry.<sup>1694</sup>

2a) Repealed<sup>1695</sup>

3) If, given the nature of the fact to be entered, no special supporting documents are required, the letter of application must contain all the facts to be entered in the Commercial Register.<sup>1696</sup>

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1689 Article 962 amended by LGBl. 2003 No. 63.

1690 Article 962(1) amended by LGBl. 2013 No. 6.

1691 Article 962(3) amended by LGBl. 2013 No. 6.

1692 Article 963 heading amended by LGBl. 2003 No. 63.

1693 Article 963(1) amended by LGBl. 2013 No. 6.

1694 Article 963(2) amended by LGBl. 2003 No. 63.

1695 Article 963(2a) repealed by LGBl. 2024 No. 17.

1696 Article 963(3) amended by LGBl. 2013 No. 6.

4) The application shall be made by the parties required to sign the letter of application accompanied by the supporting documents required for entry.<sup>1697</sup>

4a) If, in the case of an electronic registration, there is a suspicion that the person registering lacks legal capacity or power of representation, the Office of Justice may request their physical presence in individual cases. The same shall apply if there is a suspicion of identity fraud or identity forgery.<sup>1698</sup>

5) Where the Office of Justice has been instructed by a final decree of an administrative authority or by a final judgment of the judge to perform an entry, amendment, or removal, the entry shall be made directly on the basis of the order without application for registration or supporting documents. No legal remedies are available against such entries.<sup>1699</sup>

#### Article 964<sup>1700</sup>

##### *5. Duties of involved parties*

1) Law and ordinance shall determine the formal requirements for the application for registration and who is responsible for registering an entry in the Commercial Register.<sup>1701</sup>

2) If several persons are obliged to apply for registration and the law does not provide otherwise, it is sufficient for one person to sign the application for registration. In the case of legal persons, the scope of the legal power of representation of the persons applying for registration must be observed in all cases.

3) The persons obliged to apply for registration must sign the letter of application themselves.

4) Unless otherwise provided by law or ordinance, the persons obliged to apply for registration may not be represented by any other person entitled or obliged to apply for registration, nor by any third party.

<sup>1697</sup> Article 963(4) amended by LGBl. 2003 No. 63.

<sup>1698</sup> Article 963(4a) inserted by LGBl. 2024 No. 17.

<sup>1699</sup> Article 963(5) amended by LGBl. 2013 No. 6.

<sup>1700</sup> Article 964 amended by LGBl. 2003 No. 63.

<sup>1701</sup> Article 964(1) amended by LGBl. 2013 No. 6.

Article 964a<sup>1702</sup>*IIa. Submission of translations*

1) Documents may additionally be submitted to the Office of Justice in any official language of an EEA Member State. The Office of Justice shall, in an appropriate manner, draw attention to the existence of such translations in the extracts and official confirmations it draws up.<sup>1703</sup>

2) If a submitted translation differs from the original version, the former may not be asserted against third parties. However, third parties may rely on the submitted translation unless evidence is provided that they knew of the original version.

Article 965<sup>1704</sup>*III. Amendments and removals*

1) If a fact is entered in the Commercial Register, any change to this fact must also be entered. The registration for entry of the changes must be filed without delay.<sup>1705</sup>

2) Unless otherwise provided by law or ordinance, amendments and removals in the Commercial Register shall be made in accordance with the same provisions as new entries. The dissolution of a legal person shall be treated as an amendment.<sup>1706</sup>

3) The reason must be specified when removing a legal name.

4) The persons responsible for filing a registration must also arrange for entry of any restrictions or changes in the general management or representation of companies decreed by an administrative authority or by a judge, unless the decree instructs the Office of Justice to perform the entry directly.<sup>1707</sup>

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<sup>1702</sup> Article 964a inserted by LGBL 2007 No. 38.

<sup>1703</sup> Article 964a(1) amended by LGBL 2013 No. 6.

<sup>1704</sup> Article 965 amended by LGBL 2003 No. 63.

<sup>1705</sup> Article 965(1) amended by LGBL 2020 No. 520.

<sup>1706</sup> Article 965(2) amended by LGBL 2013 No. 6.

<sup>1707</sup> Article 965(4) amended by LGBL 2013 No. 6.

Article 966<sup>1708</sup>*IV. Preliminary procedure*

- 1) Deeds and documents suitable as supporting documents for an entry may be submitted to the Office of Justice in draft form for verification.<sup>1709</sup>
- 2) Legal questions relating to entry may also be examined.
- 3) The preliminary procedure, the related correspondence, and the draft supporting documents are not public.
- 4) If the response to the preliminary proceedings is in the form of a decree, the same legal remedies are available as against decrees in the entry procedure.

*V. Official procedures*<sup>1710</sup>Article 967<sup>1711</sup>*1. Omission of entry*

- 1) Anyone who is obliged to be entered in the Commercial Register and does not comply with this obligation shall be requested by the Office of Justice, with reference to the provisions and the threat of an administrative fine, to register for entry within 14 days.<sup>1712</sup>
- 2) Entry may also be requested by third parties. The request must be substantiated. The Office of Justice shall issue the demand if it can conclude from the circumstances that the conditions for the obligation to be entered are met.<sup>1713</sup>
- 3) The requested persons are obliged to provide the information necessary for the examination of the obligation to be entered and for the entry and to present existing account books.
- 4) If the application for registration is not submitted within the prescribed time limit and if no objection under public law has been lodged,

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<sup>1708</sup> Article 966 amended by LGBl. 2003 No. 63.

<sup>1709</sup> Article 966(1) amended by LGBl. 2013 No. 6.

<sup>1710</sup> Heading preceding Article 967 inserted by LGBl. 2003 No. 63.

<sup>1711</sup> Article 967 amended by LGBl. 2003 No. 63.

<sup>1712</sup> Article 967(1) amended by LGBl. 2013 No. 6.

<sup>1713</sup> Article 967(2) amended by LGBl. 2013 No. 6.

then the Office of Justice shall *ex officio* order the entry to be made. A fine shall simultaneously be imposed on the culpable party.<sup>1714</sup>

5) In addition to the content provided for by law and ordinance, a notice shall be included that the entry was performed *ex officio*.

#### Article 968<sup>1715</sup>

##### 2. Omission of amendment or removal

1) If an entry in the Commercial Register is no longer consistent with the facts, the Office of Justice shall request the person or persons responsible for filing the registration, with reference to the provisions and the threat of an administrative fine, or in serious cases accompanied by the immediate imposition of an administrative fine, to register the necessary amendment or removal within 14 days.<sup>1716</sup>

2) The provisions set out in Article 967 shall apply *mutatis mutandis*.

#### Article 969<sup>1717</sup>

##### 3. Corrections and addendums

1) If the Office of Justice determines that the content of the entry or announcement does not correspond to the content of the letter of application or the supporting documents relating to the entry, it shall correct the entry *ex officio* by way of an announcement, provided that law and ordinance provide for announcement of entry of the corrected fact. In the case of incorrect announcement, the actual entry is published with reference to the correction.<sup>1718</sup>

2) If the Office of Justice determines that facts are missing in the entry that should be entered and that are contained in the letter of application or the documents supporting the entry, the Office of Justice shall add an addendum with these facts *ex officio*. The addendum shall be published at the expense of the person responsible for filing the registration, provided that law and ordinance provide for announcement of entry of the

<sup>1714</sup> Article 967(4) amended by LGBL 2013 No. 6.

<sup>1715</sup> Article 968 amended by LGBL 2003 No. 63.

<sup>1716</sup> Article 968(1) amended by LGBL 2024 No. 370.

<sup>1717</sup> Article 969 amended by LGBL 2003 No. 63.

<sup>1718</sup> Article 969(1) amended by LGBL 2013 No. 6.

supplemented fact. In the case of incomplete announcement, the fact shall be published belatedly with reference to the addendum.<sup>1719</sup>

3) The correction or addendum of a fact in the entry shall be made *ex officio* only if it is apparent from the letter of application or from the supporting documents relating to the entry concerned. In all other cases, the amendment procedure shall be followed.

4) The persons involved are obliged to inform the Office of Justice of facts which have been incorrectly entered or which are missing from the entry. Third parties are entitled to inform the Office of Justice of the same.<sup>1720</sup>

#### 4. Dissolution and removal<sup>1721</sup>

##### Article 970

###### a) Sole proprietorships, general and limited partnerships<sup>1722</sup>

1) A sole proprietorship shall be removed *ex officio* if business operations have ceased as a result of the owner's departure or death and six months have passed since then, and the owner or, in the event of the owner's death, the owner's heirs could not be brought to do so.<sup>1723</sup>

2) A general partnership or limited partnership shall be removed *ex officio* if business operations have ceased as a result of death, departure, bankruptcy, or appointment of a custodian for all partners and the persons obliged to perform the removal could not be brought to do so.<sup>1724</sup>

3) These partnerships may also be removed if the aforementioned conditions have not arisen in regard to all partners and no justified objection to the public announcement of the removal has been raised by the deadline set by the Office of Justice.<sup>1725</sup>

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<sup>1719</sup> Article 969(2) amended by LGBl. 2013 No. 6.

<sup>1720</sup> Article 969(4) amended by LGBl. 2013 No. 6.

<sup>1721</sup> Heading preceding Article 970 inserted by LGBl. 2003 No. 63.

<sup>1722</sup> Article 970 heading amended by LGBl. 2003 No. 63.

<sup>1723</sup> Article 970(1) amended by LGBl. 2003 No. 63.

<sup>1724</sup> Article 970(2) amended by LGBl. 2010 No. 124.

<sup>1725</sup> Article 970(3) amended by LGBl. 2013 No. 6.

Article 971<sup>1726</sup>*b) Legal names of legal persons, etc.*

1) The dissolution and liquidation of a legal person or trust enterprise shall take place *ex officio* in the following cases:

1. if business operations have ceased and the governing bodies and representatives in Liechtenstein are no longer available;
2. if a representative is no longer appointed despite lack of approval by the Office of Justice or in the absence of a domestic address for service (Article 239);<sup>1727</sup>
- 2a. if service cannot be effected at the address for service entered in or notified to the Commercial Register;<sup>1728</sup>
3. if the conditions set out in Article 180a are not or no longer met or if the statutory obligation to appoint an audit office is not or no longer complied with;<sup>1729</sup>
4. at the request of the Fiscal Authority, if taxes or duties are not paid despite repeated demands to do so;
5. if a company damages Liechtenstein's national interests or is detrimental to the country's reputation and disrupts its relations with other states or international organisations. It shall be the responsibility of the Government to decide whether one of these conditions is met. For the duration of the administrative proceedings, the Government may apply to the Court of Justice for the appointment of a receiver as a means of security within the meaning of the National Administration Act;
6. in all other cases provided for by law.

2) If the Office of Justice becomes aware that a legal person or a trust enterprise no longer has any realisable assets, removal may be decreed *ex officio*.<sup>1730</sup>

3) Moreover, a legal person shall be removed *ex officio* if it is dissolved and there are no more liquidators, members of the administration, or members of the board of directors who can be called upon to apply for removal.

<sup>1726</sup> Article 971 amended by LGBL 2003 No. 63.

<sup>1727</sup> Article 971(1)(2) amended by LGBL 2013 No. 6.

<sup>1728</sup> Article 971(1)(2a) inserted by LGBL 2020 No. 520.

<sup>1729</sup> Article 971(1)(3) amended by LGBL 2016 No. 402.

<sup>1730</sup> Article 971(2) amended by LGBL 2016 No. 402.

Article 972<sup>1731</sup>*c) Non-commercial legal names and registered powers of attorney*

1) The non-commercial legal name of a natural person shall be removed:

1. if the owner has died or has been removed from the Commercial Register;<sup>1732</sup>
2. in case of loss of capacity to act, if the guardianship authority does not permit continuation of the legal name;
3. in the case of departure from the country, unless special reasons justify an exception.

2) Those provisions shall apply *mutatis mutandis* to the removal of the entry of a natural person who has exercised the right to entry because that person was able to enter into an obligation under a contract.

3) Non-commercial registered powers of attorney shall be removed *ex officio*:

1. if insolvency proceedings have been opened in respect of the principal's assets, as soon as the Office of Justice gains official knowledge of the opening of insolvency proceedings;<sup>1733</sup>
2. after the death or, if the entered person is not a natural person, after the dissolution of the principal, if one year has passed since then and the heirs or universal successors could not be brought to remove the entry;
3. if the person with registered power of attorney has died or, if that person is not a natural person, has been dissolved, provided that the principal or the principal's representative cannot be brought to remove the entry.

Article 973<sup>1734</sup>*d) Representatives*

The entry of a representative shall be removed *ex officio*:

1. at the same time as removal of the legal name;
2. if the representative has died or moved out of the country;

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<sup>1731</sup> Article 972 amended by LGBL 2003 No. 63.

<sup>1732</sup> Article 972(1)(1) amended by LGBL 2013 No. 6.

<sup>1733</sup> Article 972(3)(1) amended by LGBL 2020 No. 369.

<sup>1734</sup> Article 973 amended by LGBL 2003 No. 63.

3. if a legal person not entered in the Commercial Register for whom a representative had been appointed has been dissolved.<sup>1735</sup>

Article 974<sup>1736</sup>

*e) Associations and foundations*

1) Associations are removed on the instruction of the judge if they are dissolved because, contrary to the law, they operate a business in a commercial manner without a licence by the Government.

2) Foundations are removed *ex officio* on the instruction of the Government or the court if the prerequisites for such official intervention are met under foundation law.

Article 975<sup>1737</sup>

*f) Branches*

1) Branches shall be removed upon notification by the registrar of the principal place of business if the latter has been removed.

2) Branches of foreign companies shall be removed if it is officially established that their business operations have ceased and the main business abroad has not complied with the demand by the Office of Justice to remove the branch or if it has itself ceased to exist.<sup>1738</sup>

Article 976<sup>1739</sup>

*g) Procedure for dissolution and removal by the authorities*

The Government shall set out the procedure for dissolution and removal by the authorities by ordinance.

<sup>1735</sup> Article 973(3) amended by LGBl. 2013 No. 6.

<sup>1736</sup> Article 974 amended by LGBl. 2003 No. 63.

<sup>1737</sup> Article 975 amended by LGBl. 2003 No. 63.

<sup>1738</sup> Article 975(2) amended by LGBl. 2013 No. 6.

<sup>1739</sup> Article 976 amended by LGBl. 2003 No. 63.

5. *Infractions; contraventions*<sup>1740</sup>

Article 977<sup>1741</sup>

a) *Administrative fine*

1) The Office of Justice shall impose an administrative fine on those responsible in the event of infringements of:

1. statutory registration obligations, applying § 65(3) and (4) of the Final Part;
2. disclosure obligations, applying § 66(2) of the Final Part.

2) The administrative fine shall be imposed:<sup>1742</sup>

1. in the event of infringements under paragraph 1(1): upon the founders, governing bodies, or representatives of legal persons, business owners, or members required to apply for registration or bearing other legal obligations in relation to the Commercial Register;
2. in the event of infringements under paragraph 1(2): upon the legal person in question.

Article 978<sup>1743</sup>

b) *Legal remedies*

The same legal remedies are available against decrees of the Office of Justice imposing fines as against decrees in the ordinary entry procedure.

Article 979<sup>1744</sup>

c) *Obligations*

The fine does not release the fined person from the obligation to be entered, the obligation to register, or other legal obligations in relation to the Commercial Register. Moreover, the further legal consequences arising under the provisions of the Commercial Register shall remain unaffected.

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<sup>1740</sup> Heading preceding Article 977 inserted by LGBL 2003 No. 63.

<sup>1741</sup> Article 977 amended by LGBL 2013 No. 6.

<sup>1742</sup> Article 977(2) amended by LGBL 2019 No. 258. Applicable in this version for the first time to financial years commencing after 31 December 2018.

<sup>1743</sup> Article 978 amended by LGBL 2013 No. 6.

<sup>1744</sup> Article 979 amended by LGBL 2013 No. 6.

*VI. Legal remedies*Article 980<sup>1745</sup>*1. Complaint*

1) Decrees of the Office of Justice may be appealed by way of written presentation to the Office of Justice or by way of complaint to the Complaints Commission for Administrative Matters within 14 days of service.<sup>1746</sup>

2) Decisions of the Complaints Commission for Administrative Matters may be appealed by way of complaint to the Administrative Court within 14 days of service.

3) In the event of a complaint, the Office of Justice shall have the right of reply.<sup>1747</sup>

Article 981<sup>1748</sup>*2. Objection under public law*<sup>1749</sup>

1) The party subject to a demand by the Office of Justice to register a new entry, an amendment, or a removal may object in writing to the Office of Justice. The objection must contain a motion and justification thereof.

2) The Office of Justice shall duly examine the objection and decide without delay.

3) The decree of the Office of Justice in such objection proceedings may be appealed by way of presentation to the Office of Justice or by way of complaint to the Complaints Commission for Administrative Matters.

Article 982<sup>1750</sup>*3. Objection under private law*

1) Where third parties raise an objection to a completed entry before the Office of Justice on the grounds that their rights have been infringed,

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<sup>1745</sup> Article 980 amended by LGBL 2007 No. 38.

<sup>1746</sup> Article 980(1) amended by LGBL 2013 No. 6.

<sup>1747</sup> Article 980(3) amended by LGBL 2013 No. 6.

<sup>1748</sup> Article 981 amended by LGBL 2013 No. 6.

<sup>1749</sup> Article 981 heading amended by LGBL 2003 No. 63.

<sup>1750</sup> Article 982 amended by LGBL 2003 No. 63.

they shall be referred to the judge, unless they invoke rules which the register authority is required to observe *ex officio*.<sup>1751</sup>

2) If an objection under private law is raised against an entry that has not yet been completed, the Office of Justice shall grant the person raising the objection a period sufficient under procedural law to obtain a precautionary injunction from the judge.<sup>1752</sup>

3) If, within that period, the judge does not prohibit the entry, the entry shall be carried out provided that the conditions therefor are otherwise fulfilled.

4) The person raising the objection may, on request, be permitted to inspect the files.

5) The respondent to the objection shall be informed without delay by the Office of Justice of the objection under private law.<sup>1753</sup>

#### Article 983<sup>1754</sup>

##### 4. *Precautionary objection*

1) If an objection under private law is raised against an entry that has not been filed or announced with the Office of Justice, or which is at the stage of the preliminary procedure, the Office of Justice shall make a note of the objection under private law.<sup>1755</sup>

2) The Office of Justice shall without delay inform the person raising the objection and the respondent to the objection of the receipt of the precautionary objection.<sup>1756</sup>

3) As soon as the application for registration is submitted, the Office of Justice shall proceed in the same way as in the procedure for objections under private law.<sup>1757</sup>

4) If, within three months of the filing of the precautionary objection, neither the application for registration has been submitted nor a ban on registration has been imposed by the judge, the Office of Justice shall grant

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<sup>1751</sup> Article 982(1) amended by LGBL 2013 No. 6.

<sup>1752</sup> Article 982(2) amended by LGBL 2013 No. 6.

<sup>1753</sup> Article 982(5) amended by LGBL 2013 No. 6.

<sup>1754</sup> Article 983 amended by LGBL 2003 No. 63.

<sup>1755</sup> Article 983(1) amended by LGBL 2013 No. 6.

<sup>1756</sup> Article 983(2) amended by LGBL 2013 No. 6.

<sup>1757</sup> Article 983(3) amended by LGBL 2013 No. 6.

the person raising the objection a period sufficient under procedural law to obtain a decision from the judge prohibiting registration.<sup>1758</sup>

5) The precautionary objection shall be deemed settled with withdrawal by the person raising the objection, expiry of the period granted to the person raising the objection without it being used, or the decision of the judge.

6) In preliminary objection proceedings, the person raising the objection shall have no further rights as a party, in particular no right to inspect files.

### *VII. Fees*<sup>1759</sup>

#### *Article 984*<sup>1760</sup>

##### *1. Principle*

1) Fees shall be charged for the official acts to be performed by the Office of Justice. The fees shall also apply equally to electronic business transactions (Article 984c et seq.).<sup>1761</sup>

2) The capital-dependent fees are as follows:

- a) for the new entry of a public limited company, partnership limited by shares, limited liability company, cooperative society, establishment, or trust enterprise with a capital of more than 200 000 Swiss francs: 0.2‰ of the sum in excess of this amount as a surcharge to the fixed basic fee;
- b) for the entry of amendments to the articles of association, if the capital is increased or reduced and the capital exceeds 200 000 Swiss francs: 0.2‰ of the sum in excess of this amount as a surcharge to the fixed basic fee; in the case of capital reductions with a simultaneous re-increase, the fee shall be reduced by 50%;
- c) for the establishment of public documents on the occasion of the establishment of share capital or equity capital as well as for capital increases or capital reductions: 1‰ of the capital or of the amount of the increase or reduction.

3) The Government may, by ordinance, fix minimum and maximum amounts for the capital-dependent fees referred to in paragraph 2.

<sup>1758</sup> Article 983(4) amended by LGBL 2013 No. 6.

<sup>1759</sup> Heading preceding Article 984 inserted by LGBL 2004 No. 228.

<sup>1760</sup> Article 984 amended by LGBL 2004 No. 228.

<sup>1761</sup> Article 984(1) amended by LGBL 2024 No. 17.

4) For other official acts, the Government shall set the fees by ordinance. The fees shall be adapted to the time required and the importance of the business.

5) By ordinance, the Government shall set out the procedure for levying, securing, and collecting fees.

Article 984a<sup>1762</sup>

2. *Remission of fees*

1) Entries or removals in the Commercial Register made *ex officio* or by order of the supervisory authority are free of charge, as are extracts from the register intended for official use.<sup>1763</sup>

2) The Principality of Liechtenstein, the Reigning Prince, all domestic authorities and persons acting on their behalf, as well as corporate bodies, establishments, and foundations under public law, to the extent that they are involved in proceedings as a party, demonstrably in pursuit of their responsibilities under law or their articles of association, shall be exempt from the obligation to pay fees.

Article 984b<sup>1764</sup>

3. *Person owing fees*

1) The fees shall be due from the person requesting the official act.

2) If the request is made by several persons, they shall be jointly and severally liable.

3) This provision is subject to the right of recourse among the parties and agreements to the contrary.

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<sup>1762</sup> Article 984a inserted by LGBL 2004 No. 228.

<sup>1763</sup> Article 984a(1) amended by LGBL 2013 No. 6.

<sup>1764</sup> Article 984b inserted by LGBL 2004 No. 228.

*VIII. Electronic business transactions*<sup>1765</sup>Article 984c<sup>1766</sup>*1. Principle*

1) Subject to the special provisions of this Act, the provisions of the E-Government Act shall apply to electronic business transactions with the Office of Justice.

2) Unless otherwise stipulated below, the general provisions (Part 2, Title 3) and the provisions on the Commercial Register, legal names, and accounting (Part 5) shall also apply.

Article 984d<sup>1767</sup>*2. Registration*

1) Electronic registrations for entry in the Commercial Register shall be made via an online service portal of the Liechtenstein National Administration. The registration letter must be submitted using the following means of identification:

1. an electronic identity (eID) within the meaning of Article 3(1)(i) of the eGovernment Act; or
2. an electronic means of identification within the meaning of Article 15 of the E-Government Act.

2) Unless an exception is provided for by law or ordinance, the supporting documents must be submitted using either a qualified electronic signature in accordance with Article 25(2) of Regulation (EU) No 910/2014<sup>1768</sup> or an electronic means of identification in accordance with paragraph 1.

3) If certification of the signature on the supporting document is required by law or ordinance, the qualified electronic signature must be certified in accordance with paragraph 2. If the supporting document was

<sup>1765</sup> Heading preceding Article 984c inserted by LGBL 2024 No. 17.

<sup>1766</sup> Article 984c inserted by LGBL 2024 No. 17.

<sup>1767</sup> Article 984d inserted by LGBL 2024 No. 17.

<sup>1768</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

submitted using an electronic means of identification as referred to in paragraph 1, no additional certification is required.

Article 984e<sup>1769</sup>

*3. Duration of the procedure for entry in the Commercial Register*

1) If the electronic registration for the first-time entry of a limited liability company whose formation involves only natural persons is made using templates (Article 986a(1)), the entry in the Commercial Register must be made within a period of five working days from receipt of the complete registration, otherwise within a period of ten working days.

2) If the electronic registration for the first-time entry of a branch is made using templates (Article 986a (1)), the entry in the Commercial Register must be made within a period of ten working days from receipt of the complete application.

3) If the entry cannot be carried out within the time limits specified in paragraph 1 or 2, the person making the registration must be informed of the reasons for the delay.

Article 984f<sup>1770</sup>

*4. Ordinances*

The Government shall provide further details governing electronic business transactions with the Office of Justice by ordinance.

*C. Register authority<sup>1771</sup>*

Article 985<sup>1772</sup>

*I. Principle*

The Office of Justice shall be the register authority.

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<sup>1769</sup> Article 984e inserted by LGBl. 2024 No. 17.

<sup>1770</sup> Article 984f inserted by LGBl. 2024 No. 17.

<sup>1771</sup> Heading preceding Article 985 amended by LGBl. 2003 No. 63.

<sup>1772</sup> Article 985 amended by LGBl. 2016 No. 402.

*II. Responsibilities and duties of the Office of Justice*<sup>1773</sup>Article 986<sup>1774</sup>*1. Verification duty*

1) The Office of Justice shall verify whether the statutory conditions for entry have been met.<sup>1775</sup>

2) When entering legal persons, it must in particular be verified whether the articles of association do not contradict any mandatory provisions and have the content required by law.

3) The Office of Justice shall *ex officio* verify compliance with formal requirements and the provisions of public law.<sup>1776</sup>

4) If mandatory provisions of private law are violated, the Office of Justice shall be entitled to intervene only if those provisions have been issued to protect public interests or third parties.<sup>1777</sup>

5) In all other cases, the ordinary judge alone shall be responsible for reviewing whether action shall be instituted.

Article 986a<sup>1778</sup>*1a. Provision of templates and information*

1) On its website, the Office of Justice shall provide templates for the formation of limited liability companies and the establishment of branches as well as for the registration of amendments and removals.

2) The Office of Justice shall also provide free information on its website, which must include at least the following:

1. information on the use of the templates as referred to in paragraph 1;
2. rules governing the formation of public limited companies, partnerships limited by shares, and limited liability companies, including electronic procedures and requirements for the documents

<sup>1773</sup> Heading preceding Article 986 amended by LGBL 2003 No. 63.

<sup>1774</sup> Article 986 amended by LGBL 2003 No. 63.

<sup>1775</sup> Article 986(1) amended by LGBL 2013 No. 6.

<sup>1776</sup> Article 986(3) amended by LGBL 2013 No. 6.

<sup>1777</sup> Article 986(4) amended by LGBL 2013 No. 6.

<sup>1778</sup> Article 986a inserted by LGBL 2024 No. 17.

- necessary for formation, as well as on the identification of persons, the use of languages, and the applicable fees;
3. rules governing the establishment of branches, including electronic procedures and requirements for the documents necessary for registration, as well as on the identification of persons, the use of languages, and the applicable fees;
  4. overview of the procedures for the appointment of members of the administrative body, the management body, and the supervisory body of public limited companies, partnerships limited by shares, and limited liability companies, including the rules governing grounds for disqualification for the appointment of members of the administration of such companies with power of representation, and on the competent authorities and bodies responsible for providing information on the existence of these grounds for disqualification; and
  5. overview of the powers and responsibilities of the administrative body, the management body, and the supervisory body of public limited companies, partnerships limited by shares, and limited liability companies, including the powers of representation.
- 3) The Government may provide further details governing the provision of templates and information as referred to in paragraph 2 by ordinance.

#### Article 987<sup>1779</sup>

##### 2. *Warnings and sanctions*

- 1) The Office of Justice shall require the parties to comply with the obligation to file a registration and, if necessary, to make the prescribed entries *ex officio*.
- 2) If the parties violate their procedural obligations, in particular the obligation to cooperate, the Office of Justice shall impose the sanctions set out by law.

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<sup>1779</sup> Article 987 amended by LGBL 2013 No. 6.

Article 988<sup>1780</sup>3. *Collection of data*

1) The Office of Justice is required to identify the owners of businesses subject to the obligation to be entered and to bring about their entry in the register.

2) The Office of Justice must also determine the entries no longer corresponding to the facts.

3) For this purpose, judicial and administrative authorities as well as individual police bodies are required to assist the Office of Justice in fulfilling its duties and, in particular, to notify it of facts and circumstances of any kind subject to the obligation to be entered.

4) The notification obligation shall be conferred upon the representative of public law appointed by the Government for a specific case or on a permanent basis; the representative of public law may request that any entry in the register which conflicts with the law or facts be corrected or removed, and the representative may appeal any decrees of the Office of Justice in this regard.

Article 989<sup>1781</sup>4. *Ex officio intervention*

1) The Office of Justice shall intervene *ex officio* or at the request of the representative of public law or upon notification by a third party and, where applicable by setting a deadline, shall impose the administrative penalties admissible in the register procedure against anyone who:<sup>1782</sup>

1. intentionally induced the Office of Justice, in the course of the entry procedure, to authenticate in the register a fact likely to deceive, whether in regard to the person (legal name) to be entered in the register; the place of residence or nationality of that person; the amount, composition, or payment of the capital or assets of a legal person, partnership, or sole proprietorship with limited liability; or any other legally relevant facts and circumstances;<sup>1783</sup>

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<sup>1780</sup> Article 988 amended by LGBL 2013 No. 6.

<sup>1781</sup> Article 989 amended by LGBL 2003 No. 63.

<sup>1782</sup> Article 989(1) introductory phrase amended by LGBL 2013 No. 6.

<sup>1783</sup> Article 989(1)(1) amended by LGBL 2013 No. 6.

2. uses, with or without intent to deceive, a legal name for an undertaking entered in the register, where the legal name does not correspond to that entered in the register;
3. uses, for an undertaking not entered in the Commercial Register, whether or not the undertaking is required to be registered or not, a designation likely to deceive, where the use of a designation for such an undertaking is subject to official authorisation, and no such authorisation has been granted;<sup>1784</sup>
4. uses, in connection with a legal name or business designation, a national or international symbol, such as, in particular, a coat of arms, if that connection is likely to deceive as to the nationality or internationality of the undertaking.
  - 2) The Office of Justice may decree the confiscation of objects, in particular letterheads, forms, prospectuses, and signs, which have served or were intended to serve in the commission of the violation, and it may order that such objects be rendered useless, destroyed, or modified, unless other proceedings have already ordered that the objects be confiscated, rendered useless, destroyed, or modified.<sup>1785</sup>
  - 3) This article is also subject to any criminal prosecution.

#### Article 990<sup>1786</sup>

##### *D. Deposit of documents*

- 1) Documents, other files, and the like may be deposited for safekeeping, securing, or similar purposes with the Office of Justice by all or individual parties against payment of fees, if such materials are suitable for deposit.<sup>1787</sup>
- 2) Where the law imposes an obligation on legal persons or the like to notify the Office of Justice, that obligation may be replaced by the deposit of documents containing the facts and circumstances subject to notification.<sup>1788</sup>
- 3) The Government shall issue more detailed provisions by ordinance, in particular as to the legal relationships for which documents, files, or the

<sup>1784</sup> Article 989(1)(3) amended by LGBL 2013 No. 6.

<sup>1785</sup> Article 989(2) amended by LGBL 2013 No. 6.

<sup>1786</sup> Article 990 amended by LGBL 2003 No. 63.

<sup>1787</sup> Article 990(1) amended by LGBL 2013 No. 6.

<sup>1788</sup> Article 990(2) amended by LGBL 2013 No. 6.

like must be deposited or otherwise deemed invalid; the establishment of any special registers; the procedure; and the fees to be paid.

*E. Exchange of information via the European system of interconnection of registers*<sup>1789</sup>

Article 991<sup>1790</sup>

*1. Principle*<sup>1791</sup>

1) The entries in the Commercial Register including the registrations and supporting documents as well as the documents of the financial reporting of public limited companies, European Companies, limited liability companies, and partnerships limited by shares as well as of branches of limited liability companies governed by the law of another EEA Member State to be disclosed pursuant to Articles 1122 et seq. shall also be accessible via the European e-Justice Portal. For this purpose, the Office of Justice shall transmit the data of the Commercial Register to the European platform referred to in Article 22(1) of Directive (EU) 2017/1132 to the extent that transmission is necessary for opening access to the authentic data via the search service on the website of the European e-Justice Portal.

2) The Office of Justice shall participate in the exchange of information between the registers via the European central platform in respect of the companies and branches referred to in paragraph 1. For this purpose, a unique European identifier shall be assigned to the companies and branches referred to in paragraph 1. The Office of Justice shall transmit information to the European central platform in accordance with paragraph 3 pertaining to:

1. entry of the opening or suspension of bankruptcy proceedings in respect of the assets of the company;
2. entry of the dissolution and entry on the conclusion of liquidation or resolution or on continuation of the company;
3. removal of the company from the Commercial Register; and
4. entry into effect of a cross-border merger in accordance with Article 352h(2).

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<sup>1789</sup> Heading preceding Article 991 inserted by LGBL 2024 No. 17.

<sup>1790</sup> Article 991 amended by LGBL 2020 No. 303.

<sup>1791</sup> Article 991 heading amended by LGBL 2024 No. 17.

3) By ordinance, the Government may in particular set out provisions concerning:

1. the structure, assignment, and use of the unique European identifier;
2. the scope of the communication obligation pertaining to exchange of information between the registers and the list of data to be transmitted;
3. the details of the movement of electronic data in accordance with paragraphs 1 and 2, including specifications of data formats and payment modalities;
4. the date and time of the first data transmission.

Article 992<sup>1792</sup>

*2. Transmission of information on grounds for disqualification*

1) If the Office of Justice receives a request from another EEA Member State via the European system of interconnection of registers for information on whether there are grounds for disqualification for a particular person in relation to their appointment as a member of the administration, the Office of Justice shall request the Court of Justice to notify it of the existence of a ground for disqualification pursuant to Article 180b(1). The Court of Justice shall confirm to the Office of Justice whether a ground for disqualification exists.

2) The Office of Justice shall transmit information to the requesting EEA Member State via the European system of interconnection of registers as to whether a particular person is disqualified under paragraph 1.

3) The Government may provide further details governing the transmission of information by ordinance.

Article 993<sup>1793</sup>

*3. Transmission of information between the register of the company and the register of the branch*

1) Following the entry or removal of a domestic branch of a company whose registered office is in another EEA Member State, the Office of Justice shall inform the register of the EEA Member State in which the

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<sup>1792</sup> Article 992 amended by LGBL 2024 No. 17.

<sup>1793</sup> Article 993 amended by LGBL 2024 No. 17.

company is entered of the entry or removal of the branch via the European system of interconnection of registers.

2) In the case of a company as referred to in Article 991(1) with its registered office in Liechtenstein which has a branch in another EEA Member State, the Office of Justice shall notify the register of the EEA Member State in which the branch is entered without delay via the European system of interconnection of registers of changes relating to:

1. the name or legal name of the company;
2. the registered office of the company;
3. the registration number of the company;
4. the legal form of the company;
5. changes in connection with persons entered in the Commercial Register;
6. accounting documents.

3) The Office of Justice shall acknowledge receipt of notifications it receives via the European system of interconnection of registers in relation to:

1. changes to a legal person with a registered office in another EEA Member State that has a branch in Liechtenstein;
2. the entry or removal of a branch in another EEA Member State of a company as referred to in Article 991(1) with its registered office in Liechtenstein.

Articles 994 to 1010d<sup>1794</sup>

Repealed

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<sup>1794</sup> Articles 991 to 1010d repealed by LGBL 2003 No. 63.

Title 19  
**Legal names**

Article 1011

*A. Definition and meaning of legal name, etc.*

1) The legal name is the name of an entrepreneur under which the entrepreneur has registered an undertaking in the Commercial Register, operates it, and signs for it.<sup>1795</sup>

2) The natural person as a sole proprietor can act for the domain of the undertaking under the legal name before all judicial and administrative authorities and in all proceedings as a party, intervener, participant, or joined party.

3) Registered companies, sole proprietorships with limited liability,<sup>1796</sup> and any legal persons subject to the obligation to be entered may, in accordance with the preceding paragraph, appear only under their legal name, to the extent no exceptions are permitted by law.

4) Companies, legal persons, and sole proprietorships with limited liability<sup>1797</sup> entered in the Commercial Register and their branches may carry only one legal name, to the extent no exceptions are permitted.<sup>1798</sup>

*B. Principles for the creation of a legal name*

*I. In general*

Article 1012

*1. Permissible information*

1) In addition to the information required by law, the legal name may contain only the information permitted by law.

2) Affixes as ancillary components to the core of the legal name may express the personal circumstances of the legal name holder, information about the business object, succession relationships, business designations,

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<sup>1795</sup> Article 1011(1) amended by LGBL 2013 No. 6.

<sup>1796</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1797</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1798</sup> Article 1011(4) amended by LGBL 2013 No. 6.

trademarks, the location of the undertaking, or invented names, unless they are untrue, immoral, unlawful, or serve unfair competition.

3) Information for mere advertising purposes in a legal name and subtitles are impermissible.

4) The cases in which the inclusion of affixes is required shall be determined in accordance with the special provisions.

5) Permissible abbreviations of legal forms of undertakings in the case of companies without legal personality with a legal name, legal persons, and sole proprietorships with limited or unlimited liability may be used in the legal name only in such a way that confusion with another legal form is ruled out.

6) Subject to the provisions on unfair competition, the Government may determine by ordinance what purposes an undertaking must pursue or what object it must have in order to be entitled to use the designations "Treuhand", "Fiduzia" or a similar equivalent term in the (legal) name or in an affix.<sup>1799</sup>

## Article 1013

### 2. *National and international designations and Red Cross*

1) National designations, in particular the words "Principality", "princely", "Liechtenstein" as a noun or adjective, "State", and "national" alone or in conjunction with the remaining wording of the legal name, may not be contained in the legal name; this also applies to the official country codes LIE, LI, and FL.<sup>1800</sup>

2) However, the use of such designations may be authorised on an exceptional basis by the Office of Justice, where appropriate after hearing the FMA, the Wirtschaftskammer Liechtenstein, or the Liechtenstein Chamber of Commerce and Industry, if special reasons justify the authorisation of the designation.<sup>1801</sup>

3) The same provisions shall apply *mutatis mutandis* to municipal names, provided that this is not merely an indication of the location of the branch.

4) The words "Red Cross" may not appear in the legal name or in an affix.

<sup>1799</sup> Article 1012(6) inserted by LGBl. 1928 No. 6.

<sup>1800</sup> Article 1013(1) amended by LGBl. 2022 No. 227.

<sup>1801</sup> Article 1013(2) amended by LGBl. 2022 No. 227.

5) Other international designations may likewise be used only if special reasons justify the authorisation of the designation.<sup>1802</sup>

#### Article 1014

##### *3. Language and characters*

1) Legal names of entities whose head office is located in Liechtenstein must be entered in the German language, unless the register authority permits an exception; affixes in other languages are permissible.

2) Entry only in a foreign language is permissible for legal persons which do not operate a business in a commercial manner, but otherwise only in addition to entry in the national language, unless the Office of Justice grants an exception.<sup>1803</sup>

3) If a legal name is entered in more than one language, the content of the different language versions must be as consistent as possible.

4) The characters of a legal name must be Latin or German.

#### Article 1015

##### *4. Branches*

1) The legal name of the branch must contain, in addition to the unchanged legal name, the primary place of business and its location, the explicit designation as a branch, and the location of the branch.

2) If an identical registered legal name already exists at the place or in the municipality where a branch is established, then an affix must be appended to the legal name for the branch, so that it is clearly distinguished from the legal name that has already been entered.

#### Article 1016

##### *5. Exclusivity of the registered legal name*

1) A legal name entered in the Commercial Register may not be used as a legal name by any other entity in the country.<sup>1804</sup>

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<sup>1802</sup> Article 1013(5) amended by LGBL 2003 No. 63.

<sup>1803</sup> Article 1014(2) amended by LGBL 2013 No. 6.

<sup>1804</sup> Article 1016(1) amended by LGBL 2013 No. 6.

2) Where there is a risk of confusion with an already registered legal name, a distinguishing affix must be made even if the new business owner has the same civil name as the earlier legal name.

3) A legal name is clearly distinguishable from another in the country if its difference is discernible in the application of the care customary in business transactions.

4) Repealed<sup>1805</sup>

## *II. For individual legal names*

### *1. Sole proprietorships*

#### Article 1017

##### *a) In general*

1) A natural person who operates an undertaking without the participation of a general partner or limited partner, but with or without silent partners, may only use the natural person's surname (civil name), with or without first name, as the legal name.<sup>1806</sup>

2) If first names are used in a sole proprietorship, at least one first name must be written out.

3) The name of a sole proprietorship may also be formed using a designation derived from the object of the undertaking or other designation, in which case the owner's personal name must be added to the legal name.

4) The legal name may not be accompanied by an affix suggesting a status as a company.

#### Article 1018

##### *b) Sole proprietorship with limited liability<sup>1807</sup>*

1) The legal name of a sole proprietorship with limited liability or the affix to such a legal name must contain – in addition to the owner's surname or legal name, legal name derived from the object of the

<sup>1805</sup> Article 1016(4) repealed by LGBL 2016 No. 402.

<sup>1806</sup> Article 1017(1) amended by LGBL 1995 No. 169.

<sup>1807</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

undertaking, or invented name – the words "sole proprietorship with limited liability" or, if a natural person operates a business in a commercial manner, "sole proprietor with limited liability" in unabbreviated form and, if a surname or other legal name appears in the legal name, an affix indicating the object of the undertaking.

2) In lieu of this, however, where the name of a natural person, a name derived from the object of the undertaking, or an invented name is used, the legal name may also be formed in such a way that the words "with limited liability" or a similar expression appear unabbreviated in it or in an affix to it.

2a) In the legal name of a sole proprietorship with a limited partner, this designation must be included or appended in an affix.<sup>1808</sup>

3) The provisions on the creation of the legal name of a sole proprietorship shall apply *mutatis mutandis*.

## 2. Legal names of companies without legal personality

### Article 1019

#### a) General and limited partnership

1) The legal name of a general partnership must, as a rule, include the surname (legal name) of at least one of the partners, with an affix indicating the existence of a company, unless the names (legal names) of all partners are included in the legal name, or unless an exception is set out below.

2) To the extent no exception is provided below, the legal names of limited partnerships must always include, in addition to the name (legal name) of at least one general partner, an affix indicating the status as a company.

3) The addition of first names is not necessary.

4) General and limited partnerships may also choose a legal name derived from the object of the undertaking or formed from an invented name without appending a personal name.

5) The legal name of a general or limited partnership or an affix must in all cases, regardless of whether the partnership has been newly established or taken over, include the designation "general partnership" or "open partnership" or, if it operates a business in a commercial manner,

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<sup>1808</sup> Article 1018(2a) inserted by LGBL 1928 No. 6.

"open commercial company" or "limited partnership" or their abbreviations "OHG" or "KG".<sup>1809</sup>

#### Article 1020

##### *b) Partnership of limited partners and general partnership with limited liability and community of property*

1) The creation of the legal name of a partnership of limited partners shall be governed *mutatis mutandis* by the provisions on limited partnerships, with the proviso that the legal name or affix must contain the designation "partnership of limited partners".

2) The creation of the legal name of a general partnership with limited liability shall be governed *mutatis mutandis* by the provisions on general partnerships, with the proviso that the legal name or affix must contain the designation "general partnership with limited liability" or "open partnership with limited liability".

3) To the extent not otherwise provided by law, the legal name of a partnership of limited partners shall be subject *mutatis mutandis* to the provisions governing limited partnerships, and the legal name of a general partnership with limited liability shall be subject *mutatis mutandis* to the provisions governing general partnerships.

4) The common name of a community of property shall be formed following the provisions governing the legal name of general partnerships, with the proviso that it or an affix must contain the unabbreviated designation "community of property".

#### Article 1021

##### *c) Impermissibility of naming persons*

1) The names of individual or legal persons or legal names other than the general partner may not be included in the newly created legal name of a general or limited partnership.

2) If a person named in the legal name ceases to be a partner, the name of that person must be deleted from the legal name, otherwise the person shall continue to bear unlimited liability.

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<sup>1809</sup> Article 1019(5) amended by LGBL 2005 No. 257.

3) This article is subject to the provisions governing partnerships of limited partners and general partnerships with limited liability and other exceptions set out in the law.

#### Article 1022

##### *d) Changes when a person is no longer involved*

If a person whose name or legal name is contained in the legal name of a general or limited partnership or partnership of limited partners or general partnership with limited liability ceases to be a member of the partnership, that person's name or legal name may be retained in the legal name of the partnership only with the consent of that person or the person's heirs or other universal successors, unless the law itself provides for exceptions.

### *3. Legal names of legal persons*

#### Article 1023

##### *a) Public limited companies and cooperative societies*

1) Public limited companies and cooperative societies may freely choose their legal name. Public limited companies must include in their legal name either the unabbreviated words "public limited company" or the abbreviation "AG" or, in the case of public limited companies which do not operate in a commercial manner, the corresponding foreign language expressions. Cooperative societies must include in their legal name either the unabbreviated words "registered cooperative society" or the abbreviation "eG" or "e.Gen."<sup>1810</sup>

2) They may in particular also include in the legal name the names of persons related to the undertaking.

#### Article 1024

##### *b) Partnerships limited by shares and partnerships limited by units.*

1) The creation of the legal name of a partnership limited by shares, a partnership limited by units, or a limited partnership with equity capital shares shall be governed by the provisions on limited partnerships.

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<sup>1810</sup> Article 1023(1) amended by LGBL 2010 No. 352.

2) The phrase "partnership limited by shares" or "partnership limited by units" or "limited partnership with equity capital shares" must be included unabbreviated in the legal name or appended to it.

3) In particular, the provision on the impermissibility of naming persons shall apply.

#### Article 1025

##### *c) Limited liability companies*

1) The legal name of a limited liability company may, depending on the choice:

1. be derived from the object of the undertaking or be an invented designation,
2. contain the name or legal name of the members or at least one of them with an affix indicating the status as a company, or
3. consist in a combination of member names and a designation derived from the object of the undertaking.

2) Names of other persons or legal names other than members may not be included in the legal name, to the extent no exceptions are permitted.

3) In all cases, the legal name or affix must contain the designation "limited liability company" or the abbreviation "Ges.m.b.H." or "GmbH", or in the case of limited liability companies which do not operate in a commercial manner, an expression in a foreign language that is as equivalent as possible.<sup>1811</sup>

#### Article 1026

##### *d) Companies limited by units*

The creation of the legal name of a company limited by units shall be governed by the provisions laid down for public limited companies, with the proviso that the unabbreviated phrase "company limited by units" or "trade union" must be included in the legal name.

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<sup>1811</sup> Article 1025(3) amended by LGBL 2010 No. 352.

## Article 1027

*e) Variable share capital*<sup>1812</sup>

1) If a public limited company has variable share capital according to its articles of association, the legal name must also contain the affix "with variable share capital" or "with variable capital".<sup>1813</sup>

2) This provision shall not apply where, under the articles of association, variability consists only in a gradual increase in share capital.<sup>1814</sup>

## Article 1028

*f) Mutual insurance associations and auxiliary funds*

1) The creation of the legal name of a mutual insurance association or registered auxiliary fund shall be governed by the provisions on the legal name of a cooperative society.

2) The legal name itself or an affix must contain the unabbreviated designation "registered mutual insurance association" or "registered auxiliary fund".

## Article 1029

*g) Establishments*

1) The creation of the legal name of an establishment within the meaning of this Act shall be governed by the provisions laid down for the legal names of cooperative societies, with the proviso that the legal name or an affix must contain the designation "establishment".

2) The legal name of a public interest establishment must be derived from the object of the undertaking and must include in it or in an affix the term "public interest establishment".

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<sup>1812</sup> Article 1027 heading amended by LGBI. 2000 No. 279. This erroneously reads "c)" instead of "e)" in the German original.

<sup>1813</sup> Article 1027(1) amended by LGBI. 2003 No. 63.

<sup>1814</sup> Article 1027(2) amended by LGBI. 2000 No. 279.

## Article 1030

*b) Legal persons with a sole member*

1) The legal name of a legal person with a sole member shall be formed in accordance with the provisions of the legal person whose law applies to it, such as the public limited company, but it may instead call itself a "public limited company with a sole shareholder" or a "share undertaking with a sole shareholder" or an "undertaking under public limited company law", and the same shall apply to limited liability companies with a sole member and companies limited by units with a sole member.

2) If, however, the undertaking's capital or undertaking's assets do not consist of one or more shares, the undertaking may refer to itself in its legal name or affix as an "undertaking with a sole member" or "company with a sole member" or – if the name of a natural person, a name derived from the object of the undertaking, or an invented name is used to form the legal name – simply as an "undertaking".

3) In the case of other legal forms of legal persons with a sole member, the legal name must be formed accordingly, unless the law itself provides otherwise, as in the case of establishments.

## Article 1031

*i) Associations and foundations*

1) Ordinary associations and foundations entered in the Commercial Register shall contain in their name or in an affix the words "association" or "foundation", unless the Office of Justice allows an exception in the case of economic associations.<sup>1815</sup>

2) The provisions on permissible information, national or international designations, language, and exclusivity shall apply *mutatis mutandis* to the creation of names of associations and foundations to be entered in the Commercial Register.<sup>1816</sup>

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<sup>1815</sup> Article 1031(1) amended by LGBL 2013 No. 6.

<sup>1816</sup> Article 1031(2) amended by LGBL 2007 No. 38.

Article 1032<sup>1817</sup>4. *Other forms of companies and legal persons*

1) Companies and legal persons not specifically mentioned in this Title, such as legal persons licensed under foreign law or protected cell companies, shall, with approval by the Office of Justice, choose a legal name based on the form of the legal name of the company or legal person whose legal form is the closest.<sup>1818</sup>

2) The inclusion of the legal form in the legal name or in an affix may, however, be omitted at the discretion of the Office of Justice.

## Article 1032a

5. *Trust enterprises and entailed estate undertakings*<sup>1819</sup>

1) The legal name of a trust enterprise with or without legal personality shall be formed in such a way that it is derived from the object of the undertaking, contains an invented name or the name of one or more participants, or consists of a combination of name, object, or invented name, but without causing confusion with another legal form of an undertaking, such as a trust company or the like.<sup>1820</sup>

2) The legal name or affix must include "registered trust enterprise" or the like, or a similar designation such as "registered business trust", "registered trust foundation", or "registered trust institution"; for a trust enterprise not conducting a business in a commercial manner, an expression in a foreign language that is synonymous to the extent possible may also be used, with the proviso that any such expression or abbreviation thereof does not give rise to any confusion with another legal form of an undertaking.<sup>1821</sup>

3) The Office of Justice may permit derogations from the above provisions, with the restriction that confusion with another form of undertaking be excluded.<sup>1822</sup>

4) The above provisions shall apply *mutatis mutandis* to the legal name of an entailed estate undertaking with the proviso that the legal name or

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<sup>1817</sup> Article 1032 amended by LGBL 2013 No. 6.

<sup>1818</sup> Article 1032(1) amended by LGBL 2014 No. 362.

<sup>1819</sup> Article 1032a heading inserted by LGBL 1928 No. 6.

<sup>1820</sup> Article 1032a(1) inserted by LGBL 1928 No. 6.

<sup>1821</sup> Article 1032a(2) amended by LGBL 2010 No. 352.

<sup>1822</sup> Article 1032a(3) amended by LGBL 2013 No. 6.

an affix must contain the designation "registered entailed estate undertaking" or a similar designation, unless exceptions are permitted.<sup>1823</sup>

5) The name of an unregistered trust enterprise or entailed estate undertaking shall be formed accordingly, omitting the word "registered".<sup>1824</sup>

### *III. Acquisition or conversion of an undertaking*

#### *1. Acquisition*

#### Article 1033

##### *a) In general*

1) Anyone who acquires an existing undertaking *inter vivos* or *mortis causa* as a whole may in good faith continue to use the legal name previously used, with or without the addition of an affix indicating the succession relationship, if the previous owner or the previous owner's heirs or other legal successors expressly consent to the continuation of the legal name with or without the affix.

2) In order to continue the legal name of a legal person, the consent of the supreme body is required, unless otherwise provided in the articles of association, and in the case of general and limited partnerships the consent of all partners and, if insolvency proceedings have been opened in respect of the assets of the holder of the legal name, the insolvency administrator, and, if in the latter case a civil name appears in the legal name, the consent of the holder of that name.<sup>1825</sup>

3) The requirement of consent does not apply if the acquirer is the sole heir or if the testator has determined by disposition *mortis causa* that the co-heir or legatee continuing the undertaking may retain the old legal name.

4) If the transfer of the legal name itself is not restricted, the acquirer may further dispose of the legal name or transfer it in trust to a third party only together with the undertaking.

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<sup>1823</sup> Article 1032a(4) inserted by LGBL 1928 No. 6.

<sup>1824</sup> Article 1032a(5) inserted by LGBL 1928 No. 6.

<sup>1825</sup> Article 1033(2) amended by LGBL 2020 No. 369.

## Article 1034

*b) Nature of continuation*

1) Where a registered company, a sole proprietorship with limited liability,<sup>1826</sup> or a registered legal person is transferred to a sole proprietor as a natural person who assumes unlimited liability, the name of the transferee must be added to the transferred legal name, and the designation "public limited company", "partnership limited by shares", and the like must be omitted, unless an affix indicating the succession relationship is added in another way or the transferred undertaking continues to operate as a sole proprietorship with limited liability<sup>1827</sup> or as a company with a sole member.

2) Where the acquirer is a registered company or legal person or a sole proprietorship with limited liability,<sup>1828</sup> an affix must be added to the old legal name, indicating the form of company or legal person or the form of the sole proprietorship with limited liability,<sup>1829</sup> and the components of the old legal name contradicting that affix must be deleted.

3) The acquirer may expand or reduce the scope of the undertaking or extend it to include other objects or gradually transform it.

4) If a person acquires two businesses for the purpose of continuing them, with the right to continue their legal names, it is permissible to maintain the legal names of both businesses under their merger into a single legal name.

5) If the acquirer has deleted the legal name transferred together with the undertaking in the Commercial Register and registered a new legal name, the acquirer may not subsequently reinstate the transferred legal name.<sup>1830</sup>

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<sup>1826</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1827</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1828</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1829</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1830</sup> Article 1034(5) amended by LGBL 2013 No. 6.

## Article 1035

*c) Usufruct, lease, and the like*

1) If an undertaking is transferred on the basis of a usufruct, a lease, or a similar relationship, the preceding articles shall apply *mutatis mutandis*.

2) If, according to the existing rules, the transferee is entered as the owner in the Commercial Register for the duration of the legal relationship, the previous status shall be restored upon termination of the legal relationship, unless otherwise agreed.<sup>1831</sup>

## Article 1036

*d) Branches*

In the event of sale, lease, encumbrance with usufruct, or similar legal relationships of a branch, the preceding provisions shall apply *mutatis mutandis*.

## Article 1037

*2. Conversion*

1) The existing legal name may be continued:

1. with an affix indicating the company form, if an existing sole proprietorship with limited liability<sup>1832</sup> accepts a partner, thus converting it into a general partnership, a limited partnership, or a partnership of limited partners, or
2. without an affix, if an existing general partnership, limited partnership, or partnership of limited partners accepts a new partner, and finally
3. with the affix "sole proprietorship with unlimited liability", if a partner leaves a partnership as mentioned above and the undertaking is then continued under the company name by an individual with unlimited liability.

2) In the case of other types of conversion, such as from a sole proprietorship, general partnership, limited partnership, partnership limited by shares, partnership limited by units, or limited partnership with equity capital shares into another partnership or other legal person, the

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<sup>1831</sup> Article 1035(2) amended by LGBl. 2013 No. 6.

<sup>1832</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBl. 1980 No. 39.

existing legal name may be included in the legal name of the new legal person, partnership, or sole proprietorship with limited liability<sup>1833</sup> if the existing legal name is supplemented by the new form of undertaking – such as public limited company, cooperative society, or the like – in an unabbreviated affix clearly distinguishing the succession, where the legal form of the transferred undertaking is omitted in accordance with the provisions governing the continuation of a transferred legal name.

#### Article 1038

##### *3. Joint provisions*

1) To the extent not otherwise provided in advance, or to the extent that the continuation of the old legal name, albeit changed, could, in the estimation of the Office of Justice, cause errors and misunderstandings among the public, a legal name which no longer corresponds to the facts as a result of a change in circumstances must be changed to correspond to the changed circumstances, as where the object of the undertaking is changed.<sup>1834</sup>

2) Affixes to legal names must be omitted or changed if they no longer reflect the actual circumstances, as a result of a change in operation or for other reasons, unless the content of the affixes clearly indicates previous circumstances.

#### Article 1039

##### *IV. Transfer in compulsory execution or insolvency proceedings<sup>1835</sup>*

1) If the entire undertaking is transferred as a result of compulsory execution or insolvency proceedings, the legal name shall likewise be subject to such transfer.<sup>1836</sup>

2) If the legal name contains the civil name of the debtor, the consent of the debtor is required for alienation of the legal name.

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<sup>1833</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>1834</sup> Article 1038(1) amended by LGBL 2013 No. 6.

<sup>1835</sup> Article 1039 heading amended by LGBL 2020 No. 369.

<sup>1836</sup> Article 1039(1) amended by LGBL 2020 No. 369.

## Article 1040

*V. Change of name under civil law*

In all cases, the existing legal name may be retained if the civil name of the business owner or a partner changes by law.

## Article 1041

*VI. Legal signature*

1) In the case of a sole proprietorship whose legal name consists of the personal name of the owner, the legal signature in relation to third parties shall be the handwritten signature thereof.

2) In the case of a sole proprietorship, a sole proprietorship with limited liability,<sup>1837</sup> and a general partnership, limited partnership, or partnership of limited partners, the signature may instead be made in such a way that the signatory attaches the signatory's own signature to the wording of the legal name written by whomever.

3) Where, however, the legal name is derived from the object of the undertaking, or the legal name contains the legal name of another general partnership, limited partnership, partnership of limited partners, or legal person, it must follow in the same way.

4) This article is subject to special provisions governing legal persons.

5) If a legal name is maintained in several languages, the signature for the Commercial Register must be made in all the languages concerned.<sup>1838</sup>

6) Unabbreviated words contained in the legal name, such as first names and the like, may not be abbreviated in the signature.

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<sup>1837</sup> The provisions governing sole proprietorships with limited liability (Articles 834-896a) were repealed by the Law of 15 April 1980, LGBl. 1980 No. 39.

<sup>1838</sup> Article 1041(5) amended by LGBl. 2013 No. 6.

*VII. Protection of legal name, telegraphic address, and legal name abbreviation*

Article 1042

*1. In general*

1) A legal name which has not in fact lapsed and which is entered in the Commercial Register in accordance with the provisions of this Title shall be available for exclusive use by the *bona fide* holder of the right in relation to any person not previously entered.<sup>1839</sup>

2) If, at any given time, two legal names are registered for entry or entered which are not clearly distinguishable, the legal name registered for entry at the earlier time shall have priority; in all other cases, the Office of Justice shall decide at its own discretion.<sup>1840</sup>

2a) If the Office of Justice finds that two identical legal names have been entered, it may arrange for a correction *ex officio*. The procedure shall be governed by Articles 967-968 *mutatis mutandis*.<sup>1841</sup>

3) Anyone who is affected by the unauthorised use of a legal name, telegraphic address, or legal name abbreviation may assert their claims in accordance with the rules governing the protection of personality rights.

4) This article is subject to the provisions on unfair competition, trademarks and the like, and special arrangements.

Article 1043

*2. Entitlement to enrichment or compensatory financial gain*

1) In the case of blameless but unlawful use of the legal name, its abbreviation and the telegraphic address, as well as if the claim for damages has become statute-barred, the injured owner of the legal name is entitled to surrender of the gains made at the expense of the injured party (enrichment), within the period of limitation of three years from the date of use.

2) Anyone who is purposefully impaired by the unauthorised use may also demand compensation for the damage and, instead of or in addition

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<sup>1839</sup> Article 1042(1) amended by LGBl. 2013 No. 6.

<sup>1840</sup> Article 1042(2) amended by LGBl. 2013 No. 6.

<sup>1841</sup> Article 1042(2a) amended by LGBl. 2013 No. 6.

to satisfaction, the provision of information, accounting, and the surrender of the gains achieved (compensatory financial gain).

#### Article 1044

##### *C. International choice of law*

1) The legal names, their abbreviations, and telegraphic addresses of foreign undertakings and of domestic branches of foreign undertakings shall be recognised and protected in Liechtenstein in the form corresponding to the law in the place of residence of the sole proprietorship or of the registered office of partnerships and legal persons, even if they do not correspond to domestic law.

2) Protection of the legal name, its abbreviation, or telegraphic address may be asserted in accordance with Liechtenstein law and at the Liechtenstein Court of Justice against the unauthorised use of a domestic legal name abroad by a person, company, or legal person whose place of residence, registered office, or branch is in Liechtenstein.

3) This shall, however, be subject to mandatory provisions such as those concerning national designations, prevention of deception, and the like.

4) Any such legal name, abbreviation, or telegraphic address shall enjoy protection as a trademark in Liechtenstein only if it is protected both under domestic law and under the law of the place of residence or registered office of the undertaking.

#### Article 1044a

##### *D. Foundations not entered in the Commercial Register*<sup>1842</sup>

1) The provisions governing legal names in relation to foundations entered in the Commercial Register shall apply *mutatis mutandis* to foundations not entered in the Commercial Register.<sup>1843</sup>

2) If the name of an unregistered foundation cannot be clearly distinguished from a legal name entered in the Commercial Register, preference shall be given to the latter, irrespective of the date of registration, entry, or deposit.<sup>1844</sup>

<sup>1842</sup> Article 1044a heading amended by LGBL 2013 No. 6.

<sup>1843</sup> Article 1044a(1) amended by LGBL 2013 No. 6.

<sup>1844</sup> Article 1044a(2) amended by LGBL 2013 No. 6.

3) Article 1042(2a) shall apply *mutatis mutandis*.<sup>1845</sup>

Article 1044b<sup>1846</sup>

*E. Trusts entered or not entered in the Commercial Register*

1) Trusts, whether entered or not entered in the Commercial Register pursuant to Article 902, must contain the word "trust" or "Treuhänderschaft" in their designation.

2) Article 1016 shall apply *mutatis mutandis* to trusts entered or not entered in the Commercial Register pursuant to Article 902.

Title 20

**Accounting**<sup>1847</sup>

Section 1

**General accounting rules**<sup>1848</sup>

Article 1045

*A. Observance of accounting rules*<sup>1849</sup>

1) Anyone obliged to have their legal name or name entered in the Commercial Register (Article 945) and who conducts a business in a commercial manner (Article 107) is obliged to keep proper accounts.<sup>1850</sup>

2) Public limited companies, partnerships limited by shares, limited liability companies, as well as general partnerships and limited partnerships as referred to in Article 1063(2) are obliged to keep proper accounts even if they do not conduct a business in a commercial manner.<sup>1851</sup>

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<sup>1845</sup> Article 1044a(3) inserted by LGBL 2011 No. 537.

<sup>1846</sup> Article 1044b inserted by LGBL 2016 No. 402.

<sup>1847</sup> Title preceding Article 1045 amended by LGBL 2000 No. 279.

<sup>1848</sup> Title preceding Article 1045 inserted by LGBL 2000 No. 279.

<sup>1849</sup> Article 1045 heading amended by LGBL 2000 No. 279.

<sup>1850</sup> Article 1045(1) amended by LGBL 2012 No. 124 and LGBL 2013 No. 6. This provision shall apply from 1 January 2014. For earlier financial years, see the transitional provision.

<sup>1851</sup> Article 1045(2) amended by LGBL 2000 No. 279.

3) Legal persons, general partnerships, and legal partnerships not obliged to keep proper accounts pursuant to paragraphs 1 and 2 must, taking into account the principles of orderly bookkeeping, keep records appropriate to the financial circumstances and retain supporting documents from which the development of business and the development of the assets can be traced, subject to special legislative provisions. Article 1059 shall apply *mutatis mutandis* to the keeping and retention of records and supporting documents.<sup>1852</sup>

*B. Account books, inventory*<sup>1853</sup>

Article 1046<sup>1854</sup>

*I. Account books*

1) The account books must be such that a specialised third party is able to gain an overview of business transactions and the situation of the undertaking within a reasonable period of time. The origin and execution of business transactions must be traceable.

2) Living language must be used when maintaining account books and other required records. If abbreviations, digits, letters, or symbols are used, their meaning must be unambiguous in any given case.

3) The entries in the account books and other required records must be complete, correct, timely, and orderly.

4) An entry or record may not be changed in such a way that the original content can no longer be determined. Changes may also not be made whose nature leaves doubt as to whether they are made originally or only at a later time.

Article 1046bis<sup>1855</sup>

Repealed

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<sup>1852</sup> Article 1045(3) amended by LGBI. 2022 No. 227.

<sup>1853</sup> Heading preceding Article 1046 inserted by LGBI. 2000 No. 279.

<sup>1854</sup> Article 1046 amended by LGBI. 2000 No. 279.

<sup>1855</sup> Article 1046bis repealed by LGBI. 2000 No. 279.

Article 1047<sup>1856</sup>*II. Inventory*

Anyone obliged to keep proper accounts must draw up a precise list of all assets and liabilities at the time of entry in the Commercial Register and then at the end of each financial year, indicating their value in detail.

*C. Annual financial statement*<sup>1857</sup>*I. General rules on the annual financial statement*<sup>1858</sup>Article 1048<sup>1859</sup>*1. Obligation to prepare, components, and financial year*<sup>1860</sup>

1) Anyone obliged to keep proper accounts must prepare a balance sheet at the time of the corresponding entry in the Commercial Register and then an annual financial statement at the end of each financial year.<sup>1861</sup>

2) The annual financial statement shall comprise a balance sheet, income statement and, if necessary, notes to the financial statement; it must be drawn up within six months of the end of the financial year.

3) The financial year may not exceed 12 months. In justified cases, especially in relation to the first financial year or when the balance sheet date is changed, the financial year may last up to a maximum of 18 months.

## Article 1049

*2. Language and currency unit*<sup>1862</sup>

1) The annual financial statement and, if required under the provisions of this Title, the annual report shall be prepared in German or English and in Swiss francs, euros, or US dollars.<sup>1863</sup>

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<sup>1856</sup> Article 1047 amended by LGBL. 2013 No. 6.

<sup>1857</sup> Heading preceding Article 1048 inserted by LGBL. 2000 No. 279.

<sup>1858</sup> Heading preceding Article 1048 inserted by LGBL. 2000 No. 279.

<sup>1859</sup> Article 1048 amended by LGBL. 2000 No. 279.

<sup>1860</sup> Article 1048 heading amended by LGBL. 2019 No. 258.

<sup>1861</sup> Article 1048(1) amended by LGBL. 2013 No. 6.

<sup>1862</sup> Article 1049 heading amended by LGBL. 2000 No. 279.

<sup>1863</sup> Article 1049(1) amended by LGBL. 2020 No. 520.

2) Legal persons required to submit accounts which do not conduct business in a commercial manner may also prepare the documents referred to in paragraph 1 solely in French, Italian, Spanish, or Portuguese and in any freely convertible foreign currency.<sup>1864</sup>

3) By ordinance, the Government may permit further foreign languages for the preparation of the documents referred to in paragraph 1.<sup>1865</sup>

## *II. Proper accounting; layout; valuation; notes*<sup>1866</sup>

### Article 1050<sup>1867</sup>

#### *1. Proper accounting*

1) The annual financial statement must be prepared in accordance with the principles of proper accounting.

2) It must be clear, concise, and complete. It must include all assets, liabilities, provisions, accruals and deferrals, expenditure and income; asset items may not be set off against liability items, or expenditure against income, or property rights against property charges.

### Article 1051<sup>1868</sup>

#### *2. Layout*

1) The balance sheet must show the relationship between assets and liabilities, and the income statement must show the relationship between expenditure and income.

2) The balance sheet shall show current and fixed assets, borrowed capital, capital and reserves, and accruals and deferrals.

3) Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.

4) Fixed assets shall include only those assets which are intended for use on a continuing basis for the undertaking's activity.

<sup>1864</sup> Article 1049(2) amended by LGBL 2020 No. 520.

<sup>1865</sup> Article 1049(3) amended by LGBL 2000 No. 279.

<sup>1866</sup> Heading preceding Article 1050 inserted by LGBL 2000 No. 279.

<sup>1867</sup> Article 1050 amended by LGBL 2000 No. 279.

<sup>1868</sup> Article 1051 amended by LGBL 2000 No. 279.

*3. Valuation*<sup>1869</sup>Article 1052<sup>1870</sup>*a) General provisions*

1) Assets shall be reported in the balance sheet at no more than their purchase price or acquisition cost; if these are higher than the market price generally applicable on the balance sheet date, the latter shall be decisive.

2) Liabilities must be reported in the balance sheet at their repayment amount; capital and reserves must be reported in the balance sheet at nominal value or at least at historical value.

3) Write-offs, value adjustments, and provisions must be made to the extent that they are necessary for business purposes. Hidden reserves created by additional write-offs, value adjustments, and provisions are permissible.

Article 1053<sup>1871</sup>*b) Inclusion of costs under assets*

1) Formation costs and costs of development may be included under assets.

2) Formation costs must be written off within a period of five years.

3) Costs of development must be written off systematically over their useful economic lives. If, in exceptional cases, the useful economic life of costs of development cannot be reliably estimated, the costs of development must be written off over a period of five to ten years.

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<sup>1869</sup> Heading preceding Article 1052 amended by LGBL 2000 No. 279.

<sup>1870</sup> Article 1052 amended by LGBL 2000 No. 279.

<sup>1871</sup> Article 1053 amended by LGBL 2015 No. 165.

Article 1054<sup>1872</sup>*c) Goodwill*

1) Goodwill may be shown as the difference by which the consideration given for the takeover of an undertaking exceeds the value of the individual assets of the undertaking less the debt at the time of the takeover.

2) Goodwill must be written off systematically over the useful economic life during which it is expected to be used.

3) If, in exceptional cases, the useful economic life of goodwill cannot be reliably estimated, goodwill must be written off over a period of five to ten years.

Article 1054a<sup>1873</sup>*d) Currency conversion*

1) Assets and liabilities denominated in foreign currencies shall be converted at the average spot exchange rate on the balance sheet date. If the remaining term to maturity is one year or less, gains resulting from the conversion, even if not yet realised on the balance sheet date, may be considered realised. In this case, assets may be valued higher or liabilities lower than the purchase price and production cost.

2) Where companies as referred to in Article 1063 apply paragraph 1 for the purpose of currency conversion, the fourth clause of Article 1066a(2)(3) and the first sentence of Article 1085(1) shall not apply.<sup>1874</sup>

Article 1054b<sup>1875</sup>*e) Creation of valuation units*

1) Assets, debts, pending transactions, or highly probable forecast transactions may be grouped with financial instruments to offset opposing changes in value or cash flows from the occurrence of comparable risks (valuation unit).

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<sup>1872</sup> Article 1054 amended by LGBI. 2015 No. 165.

<sup>1873</sup> Article 1054a inserted by LGBI. 2015 No. 165.

<sup>1874</sup> Article 1054a(2) amended by LGBI. 2022 No. 227.

<sup>1875</sup> Article 1054b inserted by LGBI. 2015 No. 165.

2) Valuation units as referred to in paragraph 1 shall be measured like assets and liabilities.

Article 1055<sup>1876</sup>

*4. Notes*

The notes must contain the total amounts of sureties, guarantees, and pledges as well as any other contingent liabilities.

Article 1056<sup>1877</sup>

*III. Signature*

The annual financial statement and, where required by the provisions of this Title, the consolidated annual financial statement, the annual report, and the consolidated annual report shall be signed by all partners with personal liability in the case of partnerships and by the persons entrusted with administration in the case of legal persons and trust enterprises.

*D. Other requirements*<sup>1878</sup>

Article 1057<sup>1879</sup>

*I. Disclosure requirement*

If bonds have been issued with a public subscription or company shares are listed on an exchange, the annual financial statement shall, after acceptance by the supreme body, either be published together with the audit report in the Liechtenstein national newspapers or a copy thereof sent to any person who requests it within one year of approval, at the expense of that person, unless such documents are disclosed in accordance with Article 1122 et seq.

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<sup>1876</sup> Article 1055 amended by LGBl. 2015 No. 165.

<sup>1877</sup> Article 1056 amended by LGBl. 2000 No. 279.

<sup>1878</sup> Heading preceding Article 1057 inserted by LGBl. 2000 No. 279.

<sup>1879</sup> Article 1057 amended by LGBl. 2016 No. 402.

*II. Audit and review requirement*<sup>1880</sup>Article 1058<sup>1881</sup>*1. In general*<sup>1882</sup>

1) The annual financial statement and the consolidated annual financial statement of companies as referred to in Article 1063, with the exception of those considered small companies in accordance with Article 1064, but not those subject to disclosure as referred to in paragraph 1057, shall be audited by an auditor or an audit firm (statutory audit). If, pursuant to the provisions of this Title, an annual report and a consolidated annual report must be prepared, the auditor or audit firm shall also make an assessment whether or not the annual report is consistent with the annual financial statement and the consolidated annual report is consistent with the consolidated annual financial statement.<sup>1883</sup>

1a) Without prejudice to the reporting requirements referred to in Article 196, the scope of a statutory audit shall not include any assurance on the future viability of the audited entity nor the efficiency or effectiveness with which the management or administrative body has conducted or will in future conduct the affairs of the entity.<sup>1884</sup>

2) To the extent that undertakings not subject to an audit requirement as referred to in paragraph 1 must prepare an annual financial statement pursuant to the provisions of this Title, a review shall be carried out by an auditor or audit firm, subject to a waiver in accordance with Article 1058a. If, pursuant to the provisions for such undertakings, an annual report must also be prepared, the auditor or audit firm shall also make an assessment whether or not the annual report is consistent with the annual financial statement.<sup>1885</sup>

3) Partnerships must submit the documents referred to in paragraph 2 to a review by an auditor or audit firm only if those documents must be disclosed pursuant to the provisions of this Title.

4) The review shall be conducted in accordance with standards to be set by the relevant professional organisations.

<sup>1880</sup> Heading preceding Article 1058 inserted by LGBL 2020 No. 22.

<sup>1881</sup> Article 1058 amended by LGBL 2011 No. 7.

<sup>1882</sup> Article 1058 heading amended by LGBL 2020 No. 22.

<sup>1883</sup> Article 1058(1) amended by LGBL 2019 No. 18.

<sup>1884</sup> Article 1058(1a) inserted by LGBL 2019 No. 18.

<sup>1885</sup> Article 1058(2) amended by LGBL 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

Article 1058a<sup>1886</sup>2. *Waiver of review*

1) Undertakings that meet the requirements of a micro-company as referred to in Article 1064(1a) and operate a business in a commercial manner may waive the review. This does not apply to protected cell companies (Articles 243 et seq.) and public limited companies with bearer shares (Articles 323 et seq.).

2) The waiver as referred to in paragraph 1 requires a unanimous resolution of the supreme body.

3) The administration may request the members of the supreme body in writing to agree to a waiver as referred to in paragraph 1 and to indicate that the absence of a reply shall be considered as consent.

4) If the supreme body has unanimously waived a review, this waiver also applies to subsequent years. However, each member of the supreme body has the right to request a review at any time. In this case, the supreme body must elect the audit office.

5) Together with the application for entry of the waiver, undertakings that waive the review must submit a declaration to the Office of Justice that:

1. the undertaking meets the conditions for waiving the review as referred to in paragraph 1; and
2. the supreme body has unanimously waived the review.

6) The declaration referred to in paragraph 5 must be signed by at least one member of the administration or general management. The declaration must be accompanied by copies of an extract from the minutes of the supreme body that decided on the waiver and the relevant current documents such as balance sheets, income statements, and annual reports, unless the latter have already been submitted to the Office of Justice as part of the disclosure requirements.<sup>1887</sup>

7) The declaration referred to in paragraph 5 may be made already at the time of formation.

8) The Office of Justice may request a renewal of the declaration as well as further information and documents in order to verify whether the conditions for a waiver under paragraph 1 are still met.

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<sup>1886</sup> Article 1058a inserted by LGBl. 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

<sup>1887</sup> Article 1058a(6) amended by LGBl. 2022 No. 227.

9) Together with the entry of the fact that the review has been waived and the date of the declaration referred to in paragraph 5, removal of the audit office in the Commercial Register must also be effected. If necessary, the articles of association shall be amended.<sup>1888</sup>

10) The Government may provide further details by ordinance.

#### Article 1059<sup>1889</sup>

##### *III. Obligation to maintain and retain account books*

1) Anyone obliged to keep proper accounts must retain account books, accounting vouchers, and business correspondence for a period of ten years.

2) The annual financial statement and, if their preparation is required pursuant to the provisions of this title, the consolidated annual financial statement, the annual report, and the consolidated annual report shall be retained in writing and signed; the other account books, accounting vouchers, and business correspondence may be kept and retained in writing, electronically, or in a comparable manner, to the extent conformity with the underlying business transactions is ensured and if they can be made readable at any time. The Government shall provide detailed conditions by ordinance.

3) Account books, accounting vouchers, and business correspondence retained electronically or in a comparable manner are deemed to have the same probative value as those readable without aids.

4) The retention period shall commence upon the end of the financial year in which the last entries were made, accounting vouchers were created, and business papers were received or sent.

#### Article 1060<sup>1890</sup>

##### *IV. Obligation to produce business documents*

1) In the event of disputes concerning the business, the court may, upon request or *ex officio*, require the person obliged to keep proper accounts to produce the account books, accounting vouchers, and business correspondence if an interest worthy of protection is demonstrated.

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<sup>1888</sup> Article 1058a(9) amended by LGBI. 2022 No. 227.

<sup>1889</sup> Article 1059 amended by LGBI. 2007 No. 38.

<sup>1890</sup> Article 1060 amended by LGBI. 2007 No. 38.

2) Where the account books, accounting vouchers, or business correspondence are kept electronically or in a comparable manner, the court or authority which may require production may order that:

1. they be produced in such a way that they can be read without any aids;  
or
2. aids be provided to make them legible.

3) The account books may not be realised by way of compulsory execution or insolvency proceedings, unless the undertaking is sold as a whole and they are indispensable for its continuation. No right of retention may be asserted.<sup>1891</sup>

#### Article 1061

##### *V. Inspection of account books*<sup>1892</sup>

1) If the account books are produced in official proceedings, they shall, where necessary with the involvement of the parties, be inspected and, where suitable, an extract shall be prepared, to the extent that the subject matter of the proceedings is concerned.<sup>1893</sup>

2) The remaining contents of the account books must be disclosed to the court only to the extent necessary to verify that they are properly kept.<sup>1894</sup>

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<sup>1891</sup> Article 1060(3) amended by LGBL 2020 No. 369.

<sup>1892</sup> Article 1061 heading amended by LGBL 2007 No. 38.

<sup>1893</sup> Article 1061(1) amended by LGBL 2007 No. 38.

<sup>1894</sup> Article 1061(2) amended by LGBL 2007 No. 38.

3) In the event of property disputes, in particular in inheritance, marital property, and company division matters, or where there is otherwise an obligation to render accounts or provide information, the court may, in special non-contentious proceedings or in contentious proceedings, order production of the account books for the purpose of inspecting their contents. Article 1060(2) shall apply *mutatis mutandis*.<sup>1895</sup>

Article 1062<sup>1896</sup>

*E. Penal provisions*

These provisions are subject to penal provisions governing the violation of obligations set out in this Title.

Article 1062a

*F. International choice of law*<sup>1897</sup>

1) Domestic branches of foreign undertakings are also subject to the provisions of this Title.<sup>1898</sup>

2) The probative force of the business documents in Liechtenstein is governed by Liechtenstein law also for foreign companies.<sup>1899</sup>

3) Where an obligation under public law subject to a penalty is involved, the obligation to produce business documents is assessed according to the law applicable to business establishments, whereas the obligation to produce documents vis-à-vis a party in contentious or special non-contentious proceedings is assessed according to the law of the trial court.<sup>1900</sup>

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1895 Article 1061(3) amended by LGBL 2007 No. 38 and LGBL 2010 No. 454.

1896 Article 1062 amended by LGBL 2000 No. 279.

1897 Article 1062a heading inserted by LGBL 2000 No. 279.

1898 Article 1062a(1) inserted by LGBL 2000 No. 279.

1899 Article 1062a(2) inserted by LGBL 2000 No. 279.

1900 Article 1062a(3) inserted and amended by LGBL 2010 No. 454.

## Section 2

**Supplementary rules for certain company forms<sup>1901</sup>**

## Subsection 1

**Business report (Annual financial statement and annual report)<sup>1902</sup>**Article 1063<sup>1903</sup>*A. Scope of application*

1) The supplementary provisions of this Section apply to companies in the legal form of a public limited company, a partnership limited by shares, and a limited liability company.

2) The supplementary provisions also apply to general partnerships and limited partnerships, provided that all the general partners are companies as referred to in paragraph 1 or are companies which are not governed by the law of an EEA Member State but whose legal form is comparable to the legal forms referred to in paragraph 1. The same applies to companies whose general partners are companies as referred to in the first sentence. The supplementary provisions also apply to general and limited partnerships, provided that all the general partners are general or limited partnerships as referred to in the first sentence.

Article 1063bis<sup>1904</sup>

Repealed

## Article 1064

*B. Description of size classes<sup>1905</sup>*

1) Small companies are those that do not exceed two of the following three criteria:<sup>1906</sup>

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1901 Title preceding Article 1063 inserted by LGBL 2000 No. 279.

1902 Title preceding Article 1063 inserted by LGBL 2000 No. 279.

1903 Article 1063 amended by LGBL 2000 No. 279.

1904 Article 1063bis repealed by LGBL 2000 No. 279.

1905 Article 1064 heading amended by LGBL 2000 No. 279.

1906 Article 1064(1) amended by LGBL 2015 No. 165.

1. 9.2 million Swiss francs balance sheet total;<sup>1907</sup>
2. 18.5 million Swiss francs net turnover (Article 1081) for the financial year preceding the balance sheet date;<sup>1908</sup>
3. 50 employees on average during the financial year.
  - 1a) Micro-companies which do not exceed two of the following three criteria are also deemed small companies:<sup>1909</sup>
    1. 580 000 Swiss francs balance sheet total;<sup>1910</sup>
    2. 1 160 000 Swiss francs net turnover (Article 1081) for the financial year preceding the balance sheet date;<sup>1911</sup>
    3. 10 employees on average during the financial year.
      - 2) Medium-sized companies are those which exceed at least two of the three criteria enumerated in paragraph 1 and which do not exceed two of the following three criteria:<sup>1912</sup>
        1. 32.4 million Swiss francs balance sheet total;<sup>1913</sup>
        2. 64.8 million Swiss francs net turnover (Article 1081) for the financial year preceding the balance sheet date;<sup>1914</sup>

<sup>1907</sup> Article 1064(1)(1) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>1908</sup> Article 1064(1)(2) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>1909</sup> Article 1064(1a) amended by LGBL 2015 No. 165.

<sup>1910</sup> Article 1064(1a)(1) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>1911</sup> Article 1064(1a)(2) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>1912</sup> Article 1064(2) amended by LGBL 2015 No. 165.

<sup>1913</sup> Article 1064(2)(1) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>1914</sup> Article 1064(2)(2) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

3. 250 employees on average during the financial year.

3) Large companies are those which exceed at least two of the three criteria enumerated in paragraph 2.<sup>1915</sup>

4) The legal consequences of the criteria referred to in paragraph 1 to 3 occur only if they are exceeded or fallen below on the balance sheet dates of two consecutive financial years. When applying paragraphs 1 to 3 for the first time, the legal consequences arise already if the requirements set out in paragraphs 1, 2, or 3 are met on the first balance sheet date.<sup>1916</sup>

5) By ordinance, the Government shall set out which thresholds are to be applied in accordance with paragraph 1(1) and (2) and paragraph 2(1) and (2) if the annual financial statement is not prepared in Swiss francs.<sup>1917</sup>

### *C. General provisions on the business report*<sup>1918</sup>

#### Article 1065

##### *I. Components*<sup>1919</sup>

1) Companies as referred to in Article 1063 must prepare a business report.<sup>1920</sup>

2) The business report is made up of the annual financial statement, consisting of the balance sheet, income statement, and notes to the financial statement, which form a single unit, and the annual report.<sup>1921</sup>

3) Small companies as referred to in Article 1064 need not draw up an annual report; moreover, micro-companies as referred to in Article 1064 need not draw up notes; however, Article 1095a shall apply. This does not apply to small companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market as defined in Article 4(1)(21) of Directive 2014/65/EU or to investment undertakings and financial holding undertakings as defined in Article 2(14) and (15) of Directive 2013/34/EU.<sup>1922</sup>

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<sup>1915</sup> Article 1064(3) amended by LGBL 2000 No. 279.

<sup>1916</sup> Article 1064(4) amended by LGBL 2000 No. 279.

<sup>1917</sup> Article 1064(5) amended by LGBL 2000 No. 279.

<sup>1918</sup> Heading preceding Article 1065 inserted by LGBL 2000 No. 279.

<sup>1919</sup> Article 1065 heading amended by LGBL 2000 No. 279.

<sup>1920</sup> Article 1065(1) amended by LGBL 2000 No. 279.

<sup>1921</sup> Article 1065(2) amended by LGBL 2000 No. 279.

<sup>1922</sup> Article 1065(3) amended by LGBL 2017 No. 420.

Article 1066<sup>1923</sup>*II. True and fair view*

1) The annual financial statement must give a true and fair view of the assets and liabilities, financial position, and profit or loss of the company.

2) If the application of the provisions of this Title is not sufficient to give a true and fair view of the assets and liabilities, financial position, and profit or loss as referred to in paragraph 1, additional information shall be provided in the notes.

3) Where, in exceptional cases, the application of a provision of this Title is incompatible with the obligation set out in paragraph 1, the provision must be derogated from in order to ensure that a true and fair view is conveyed as set out in paragraph 1. The derogation must be disclosed and explained in the notes; its influence on the assets and liabilities, financial position, and profit or loss must be presented.

4) Paragraph 3 shall not apply to micro-companies as referred to in Article 1064, with the exception of investment undertakings and financial holding undertakings as defined in Article 2(14) and (15) of Directive 2013/34/EU.<sup>1924</sup>

Article 1066a<sup>1925</sup>*III. General financial reporting principles*

1) The principle of materiality must be applied to the recognition and measurement of items reported in the annual financial statement. All information shall be considered material where its omission or misstatement could be expected to influence decisions that users make on the basis of the annual financial statement. The materiality of individual items shall be assessed in the context of other similar items.

2) The following general principles shall apply to the recognition and measurement of items reported in the annual financial statement:

1. The undertaking shall be presumed to be carrying on its business as a going concern, provided that this is not contradicted by factual or legal circumstances.

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<sup>1923</sup> Article 1066 amended by LGBL 2000 No. 279.

<sup>1924</sup> Article 1066(4) amended by LGBL 2015 No. 165.

<sup>1925</sup> Article 1066a inserted by LGBL 2015 No. 165.

2. Accounting policies and measurement bases shall be applied consistently from one financial year to the next.
3. Recognition and measurement shall be on a prudent basis; in particular, all liabilities arising by the balance sheet date shall be recognised, even if such liabilities become apparent only between the balance sheet date and the date on which the annual financial statement is drawn up; in addition, all foreseeable liabilities and anticipated losses that arose up to the balance sheet date may be taken into account, even if such liabilities or losses became apparent only between the balance sheet date and the date on which the annual financial statement is drawn up; profits shall be taken into account only if they are realised on the balance sheet date. All negative value adjustments shall be recognised, whether the result of the financial year is a profit or a loss.
4. Amounts recognised in the balance sheet and income account shall be computed on the accrual basis.
5. The opening balance sheet for each financial year shall correspond to the closing balance sheet for the preceding financial year.
6. The components of asset and liability items shall be valued separately on the balance sheet date.
7. Any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.
8. Items in the balance sheet and income statement may be accounted for and presented having regard to the substance of the transaction or arrangement concerned.
9. Assets and liabilities shall be measured in accordance with the principle of purchase price or production cost.

3) The requirements set out in this Title regarding recognition, measurement, presentation, disclosure and consolidation need not be complied with when the effect of complying with them is immaterial.

*D. Layout*<sup>1926</sup>Article 1067<sup>1927</sup>*I. General principles*

1) The form of presentation, in particular the layout of successive balance sheets and income statements, shall be retained, to the extent that departures from this principle are not necessary in exceptional cases due to special circumstances in order to give a true and fair view of the company's assets and liabilities, financial position, and profit or loss. Any such departure and the reasons therefor shall be disclosed in the notes to the financial statement.<sup>1928</sup>

2) In the balance sheet and in the income statement, the corresponding amount for the previous financial year must be stated for each item. If the amounts are not comparable, this must be disclosed and explained in the notes. If the previous year's amount is adjusted, this must also be disclosed and explained in the notes.

3) Where an asset or liability relates to more than one balance sheet item, its relationship to other items shall be disclosed either under the item where it appears or in the notes to the financial statement, if this is necessary to provide a clear and concise annual financial statement. Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

4) In the balance sheet and in the income statement, the items set out in the layouts shall be shown separately in the order indicated. A more detailed subdivision of those items is permitted, subject to adherence to the prescribed layouts. New items may be added, provided that the contents of such new items are not covered by any of the prescribed items.

5) The layout and designation of the items in the balance sheet and the income statement that are preceded by Arabic numerals shall be changed where the special nature of the company so requires in order to provide a clear and concise balance sheet and income statement.

6) The items of the balance sheet and the income statement that are preceded by Arabic numerals may be combined if:

1. they contain an amount which is not material to conveying a true and fair view as referred to in Article 1066, or

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<sup>1926</sup> Heading preceding Article 1067 inserted by LGBL 2000 No. 279.

<sup>1927</sup> Article 1067 amended by LGBL 2000 No. 279.

<sup>1928</sup> Article 1067(1) amended by LGBL 2015 No. 165.

2. such combination makes for greater clarity of the presentation; in such cases, the items so combined must be dealt with separately in the notes to the financial statement.

7) An item of the balance sheet or income statement which does not show an amount need not be included unless an amount was included in that item in the previous financial year.

## *II. Balance sheet*<sup>1929</sup>

### Article 1068

#### *1. Layouts*<sup>1930</sup>

1) The balance sheet may be prepared in account form or report form.<sup>1931</sup>

2) If the balance sheet is prepared in account form, the following must be shown:<sup>1932</sup>

#### Assets

##### A. Fixed assets

###### I. Intangible assets

1. Formation expenses
2. Costs of development
3. Concessions, patents, licences, trade marks and similar rights and assets, if they were acquired for valuable consideration and need not be shown under the following item 4
4. Goodwill, to the extent that it was acquired for valuable consideration
5. Payments on account

###### II. Tangible assets

1. Land, rights to immovables and other similar rights and buildings, including buildings on third-party land
2. Plant and machinery

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<sup>1929</sup> Heading preceding Article 1068 inserted by LGBL 2000 No. 279.

<sup>1930</sup> Article 1068 heading inserted by LGBL 2000 No. 279.

<sup>1931</sup> Article 1068(1) inserted by LGBL 2000 No. 279.

<sup>1932</sup> Article 1068(2) amended by LGBL 2015 No. 165.

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3. Other fixtures and fittings, tools and equipment
  4. Payments on account and tangible assets in the course of construction
- III. Financial assets
1. Shares in affiliated undertakings
  2. Loans to affiliated undertakings
  3. Participating interests
  4. Loans to undertakings with which the undertaking is linked by virtue of participating interests
  5. Investments held as fixed assets
  6. Other loans
- B. Current assets
- I. Stocks
1. Raw materials and consumables
  2. Work in progress
  3. Finished goods and goods for resale
  4. Payments on account
- II. Debtors
1. Trade debtors
  2. Amounts owed by affiliated undertakings
  3. Amounts owed by undertakings with which the undertaking is linked by virtue of participating interests
  4. Other debtors
- III. Investments
1. Shares in affiliated undertakings
  2. Own shares
  3. Other investments
- IV. Cash at bank and in hand
- C. Prepayments and accrued income

Capital, reserves and liabilities

- A. Capital and reserves
  - I. Subscribed capital
  - II. Capital reserves
  - III. Retained earnings
    - 1. Legal reserve
    - 2. Reserve for own shares
    - 3. Reserves provided for by the articles of association
    - 4. Other reserves
  - IV. Profit or loss brought forward
  - V. Profit or loss for the financial year
- B. Provisions
  - 1. Provisions for pensions and similar obligations
  - 2. Provisions for taxation
  - 3. Other provisions
- C. Creditors
  - 1. Debenture loans, showing convertible loans separately
  - 2. Amounts owed to banks
  - 3. Payments received on account of orders
  - 4. Trade creditors
  - 5. Bills of exchange payable
  - 6. Amounts owed to affiliated undertakings
  - 7. Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests
  - 8. Other creditors, showing tax and social security amounts owed separately
- D. Accruals and deferred income
  - 3) If the balance sheet is prepared in report form, the following must be shown:<sup>1933</sup>

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<sup>1933</sup> Article 1068(3) amended by LGBL 2015 No. 165.

## A. Fixed assets

## I. Intangible assets

1. Formation expenses
2. Costs of development
3. Concessions, patents, licences, trade marks and similar rights and assets, if they were acquired for valuable consideration and need not be shown under the following item 4
4. Goodwill, to the extent that it was acquired for valuable consideration
5. Payments on account

## II. Tangible assets

1. Land, rights to immovables and other similar rights and buildings, including buildings on third-party land
2. Plant and machinery
3. Other fixtures and fittings, tools and equipment
4. Payments on account and tangible assets in the course of construction

## III. Financial assets

1. Shares in affiliated undertakings
2. Loans to affiliated undertakings
3. Participating interests
4. Loans to undertakings with which the undertaking is linked by virtue of participating interests
5. Investments held as fixed assets
6. Other loans

## B. Current assets

## I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

## II. Debtors

1. Trade debtors
2. Amounts owed by affiliated undertakings

3. Amounts owed by undertakings with which the undertaking is linked by virtue of participating interests
  4. Other debtors
- III. Investments
1. Shares in affiliated undertakings
  2. Own shares
  3. Other investments
- IV. Cash at bank and in hand
- C. Accrued income
- D. Creditors: amounts becoming due and payable within one year
1. Debenture loans, showing convertible loans separately
  2. Amounts owed to banks
  3. Payments received on account of orders
  4. Trade creditors
  5. Bills of exchange payable
  6. Amounts owed to affiliated undertakings
  7. Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests
  8. Other creditors, showing tax and social security amounts owed separately
- E. Current assets (including accrued income) exceeding creditor amounts becoming due and payable within one year
- F. Total assets (including accrued income) less current liabilities becoming due and payable within one year
- G. Creditors: amounts becoming due and payable after more than one year
1. Debenture loans, showing convertible loans separately
  2. Amounts owed to banks
  3. Payments received on account of orders
  4. Trade creditors
  5. Bills of exchange payable
  6. Amounts owed to affiliated undertakings
  7. Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests

- 8. Other creditors, showing tax and social security amounts owed separately
- B. Provisions
  - 1. Provisions for pensions and similar obligations
  - 2. Provisions for taxation
  - 3. Other provisions
- I. Deferred income
- K. Capital and reserves
  - I. Subscribed capital
  - II. Capital reserves
  - III. Retained earnings
    - 1. Legal reserve
    - 2. Reserve for own shares
    - 3. Reserves provided for by the articles of association
    - 4. Other reserves
  - IV. Profit or loss brought forward
  - V. Profit or loss for the financial year

4) Small companies as referred to in Article 1064 may, in lieu of the presentation set out in paragraphs 2 and 3, draw up an abridged balance sheet showing, separately in the order indicated, only those items preceded by letters and Roman numerals. Micro-companies as referred to in Article 1064, with the exception of investment undertakings and financial holding undertakings as defined in Article 2(14) and (15) of Directive 2013/34/EU, may, in lieu of the presentation set out in paragraphs 2 and 3, draw up an abridged balance sheet showing separately only those items preceded by letters. These options may not be exercised by small companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>1934</sup>

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<sup>1934</sup> Article 1068(4) amended by LGBL 2017 No. 420.

2. *Provisions on the individual balance sheet items*<sup>1935</sup>

Article 1069<sup>1936</sup>

a) *Balance sheet after appropriation of profit*

The balance sheet may also be prepared taking into account the full or partial appropriation of the profit or loss for the financial year. If the balance sheet is drawn up taking into account the partial appropriation of the profit or loss for the financial year, the items "Profit or loss brought forward" and "Profit or loss for the financial year" shall be replaced by the item "Net profit or loss"; any existing profit or loss brought forward must be included in the item "Net profit or loss" and disclosed separately in the balance sheet or in the notes.

Article 1070<sup>1937</sup>

b) *Fixed asset schedule*

Repealed

Article 1071<sup>1938</sup>

c) *Debtors and creditors*

1) The amount of debtors becoming due and payable after more than one year shall be shown for each separately disclosed item in item group B. II. and summarised for the whole of item group B. II.<sup>1939</sup>

2) Where Article 1068(2) is applied, the amount of creditors becoming due and payable within one year and of creditors becoming due and payable after more than one year shall be indicated for each separately disclosed creditor item and for those items as a whole.

<sup>1935</sup> Heading preceding Article 1069 inserted by LGBl. 2000 No. 279.

<sup>1936</sup> Article 1069 inserted by LGBl. 2000 No. 279.

<sup>1937</sup> Article 1070 repealed by LGBl. 2015 No. 165.

<sup>1938</sup> Article 1071 inserted by LGBl. 2000 No. 279.

<sup>1939</sup> Article 1071(1) amended by LGBl. 2015 No. 165.

Article 1072<sup>1940</sup>*d) Inclusion of costs under assets; payout block*

If formation costs or costs of development are shown in the balance sheet, profits may be distributed only if the retained earnings remaining after distribution, which can be released at any time, plus any profit brought forward and minus any loss brought forward, correspond at least to the book value.

Article 1073<sup>1941</sup>*e) Participating interests and affiliated undertakings*

1) Participating interests are rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the activities of the undertaking which holds these rights. In case of doubt, shares in a company exceeding in total one fifth of the share capital of that company shall be regarded as a participating interest.

2) For the purposes of this Title, affiliated undertakings are parent and subsidiary undertakings which, irrespective of the existence of a consolidation requirement and irrespective of the legal form and registered office of the parent undertaking, are in a relationship as defined in Article 1097(1). Subsidiaries of subsidiaries are always considered as subsidiaries of the ultimate parent undertaking. The parent undertaking and all its subsidiaries form a group.<sup>1942</sup>

Article 1074<sup>1943</sup>*f) Capital and reserves*

1) Subscribed capital is the capital to which the liability of the member for the company's obligations to its creditors is limited. Subscribed capital unpaid must be shown separately before fixed assets and designated accordingly; subscribed capital called but unpaid must be noted. Uncalled capital unpaid may also be openly deducted from the item "Subscribed capital"; in that case, the remaining amount must be shown as an item "Called capital" in the main column of the liabilities side and, in addition,

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<sup>1940</sup> Article 1072 amended by LGBl. 2015 No. 165.

<sup>1941</sup> Article 1073 inserted by LGBl. 2000 No. 279.

<sup>1942</sup> Article 1073(2) amended by LGBl. 2015 No. 165.

<sup>1943</sup> Article 1074 inserted by LGBl. 2000 No. 279.

the amount called but not yet paid must be shown separately under debtors and designated accordingly.

2) The nominal amount or, in the absence thereof, the accounting par value of the own shares referred to in Article 151(2)(1) and (2) must be openly deducted from the item "Subscribed capital" as a capital reduction in the preceding column. If the nominal or accounting par value of own shares is deducted in accordance with the preceding sentence, the difference between the nominal value or accounting par value of these shares and their price payable must be set off against the item "Other reserves"; any further purchase price must be taken into account as expenditure for the financial year.

3) The following shall be shown as capital reserves:

1. the amount achieved when shares, including subscription shares, are issued in excess of the nominal value or, if there is no nominal value, in excess of the accounting par value;
2. the amount achieved by issuing debentures for conversion and option rights for the acquisition of shares;
3. the amount of additional performances made by members with or without the granting of a preference for their shares.

4) Only those amounts which were created from the result in the financial year or in an earlier financial year may be shown as retained earnings. These include legal reserves and reserves provided for by the articles of association to be formed from the result, the reserve for own shares, and other retained earnings.

5) The amount corresponding to the amount to be entered on the assets side of the balance sheet for own shares must be included in the reserve for own shares. The reserve may be released only to the extent that own shares are issued, sold, or cancelled or to the extent that a lower amount is shown on the assets side. The reserve, which must already be made when the balance sheet is drawn up, may be formed from existing retained earnings, to the extent that they are freely available. The reserve for own shares must also be established for shares of a controlling undertaking or an undertaking with a majority participating interest.

## Article 1075

*g) Provisions*<sup>1944</sup>

1) Provisions are intended to cover liabilities the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.<sup>1945</sup>

2) Provisions may also be created that are intended to cover expenses attributable to the financial year or an earlier financial year the nature of which is clearly defined and which at the balance sheet date are either likely to be incurred or certain to be incurred, but uncertain as to their amount or as to the date on which they will arise.<sup>1946</sup>

3) A provision shall represent the best estimate of the expenses likely to be incurred or, in the case of a liability, of the amount required to meet that liability. Provisions shall not be used to correct the values of assets (write-offs, value adjustments) and may be created only for the purposes referred to in paragraphs 1 and 2.<sup>1947</sup>

Article 1076<sup>1948</sup>*b) Prepayments and accrued income*

1) Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, though relating to the financial year in question, is not due until after its expiry must be shown under "Prepayments and accrued income".

2) Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under "Accruals and deferred income".

3) Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown under "Prepayments and accrued income". It shall be shown separately in the balance sheet or in the notes to the financial statement. The amount of that difference shall

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<sup>1944</sup> Article 1075 heading inserted by LGBL 2000 No. 279.

<sup>1945</sup> Article 1075(1) amended by LGBL 2004 No. 141.

<sup>1946</sup> Article 1075(2) inserted by LGBL 2000 No. 279.

<sup>1947</sup> Article 1075(3) amended by LGBL 2015 No. 165.

<sup>1948</sup> Article 1076 inserted by LGBL 2000 No. 279.

be written off systematically each year; these write-offs may be distributed over the entire term of the debt.

Article 1077<sup>1949</sup>

*i) Deferred tax*

1) If the tax expense attributable to the financial year and earlier financial years is too low because the taxable profit under tax law is lower than the result under commercial law, and if the too low tax expense of the financial year and earlier financial years is expected to be offset in later financial years, a provision must be formed in the amount of the anticipated tax expense of subsequent financial years. The provision must be reversed as soon as the higher tax burden occurs or is no longer expected to occur.

2) If the tax expense attributable to the financial year and earlier financial years is too high because the taxable profit under tax law is higher than the result under commercial law, and if the too high tax expense of the financial year and earlier financial years is expected to be offset in later financial years, a deferred item may be formed on the assets side of the balance sheet in the amount of the anticipated tax relief of subsequent financial years. This item is to be shown separately with a designation to that effect. If such an item is shown, profits may be distributed only if the retained earnings remaining at any time after distribution plus any profit brought forward and minus any loss brought forward are at least equal to the amount recognized. The amount must be reversed as soon as the tax relief occurs or is no longer expected to occur.

*III. Income statement*<sup>1950</sup>

Article 1078<sup>1951</sup>

*1. Layout in general*

The income statement must be prepared in report form using either the total cost method or cost-of-sales method.

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<sup>1949</sup> Article 1077 amended by LGBl. 2015 No. 165.

<sup>1950</sup> Heading preceding Article 1078 inserted by LGBl. 2000 No. 279.

<sup>1951</sup> Article 1078 amended by LGBl. 2015 No. 165.

Article 1079<sup>1952</sup>*2. Layout when using the total cost method*

- 1) If the total cost method is used, the following must be disclosed
1. Net turnover
  2. Variation in stocks of finished goods and in work in progress
  3. Work performed by the undertaking for its own purposes and capitalised
  4. Other operating income
  5. Cost of raw materials and consumables:
    - a) Cost of raw materials and consumables for purchased goods
    - b) Cost of purchased services
  6. Staff costs:
    - a) Wages and salaries
    - b) Social security contributions and costs for pensions and other employee benefits, with a separate indication of those relating to pensions
  7. Write-offs and value adjustments:
    - a) On intangible and tangible assets
    - b) On current assets to the extent that they exceed the amount of value adjustments which are normal in the company concerned
  8. Other operating expenses
  9. Income from participating interests, with a separate indication of that derived from affiliated undertakings
  10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings
  11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings
  12. Write-offs on financial assets and value adjustments on investments held as current assets
  13. Interest payable and similar expenses, with a separate indication of amounts payable to affiliated undertakings
  14. Tax on profit or loss

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<sup>1952</sup> Article 1079 amended by LGBL 2015 No. 165.

15. Profit or loss after taxation
16. Other taxes not shown under items 1 to 15
17. Profit or loss for the financial year

2) Small and medium-sized companies as referred to in Article 1064 may combine items 1 to 5 into one item called "Gross profit or loss".

3) The option set out in paragraph 2 may not be exercised by small and medium-sized companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>1953</sup>

#### Article 1080<sup>1954</sup>

##### *3. Layout when using the cost-of-sales method*

- 1) If the cost-of-sales method is used, the following must be disclosed
  1. Net turnover
  2. Expenses for services rendered to generate sales (including write-offs and value adjustments)
  3. Gross profit or loss
  4. Distribution costs (including write-offs and value adjustments)
  5. Administrative expenses (including write-offs and value adjustments)
  6. Other operating income
  7. Income from participating interests, with a separate indication of that derived from affiliated undertakings
  8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings
  9. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings
  10. Write-offs on financial assets and value adjustments on investments held as current assets
  11. Interest payable and similar expenses, with a separate indication of amounts payable to affiliated undertakings
  12. Tax on profit or loss

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<sup>1953</sup> Article 1079(3) amended by LGBl. 2017 No. 420.

<sup>1954</sup> Article 1080 amended by LGBl. 2015 No. 165.

13. Profit or loss after taxation
14. Other taxes not shown under items 1 to 13
15. Profit or loss for the financial year

2) Small and medium-sized companies as referred to in Article 1064 may combine items 1, 2, 3, and 6 into one item called "Gross profit or loss".

3) The option set out in paragraph 2 may not be exercised by small and medium-sized companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>1955</sup>

#### Article 1081<sup>1956</sup>

##### *a) Net turnover*

The proceeds from the sale of products, goods and services typical of the company's ordinary activities shall be reported as net turnover, after deducting sales rebates and value added tax and other taxes directly linked to turnover.

#### Article 1082<sup>1957</sup>

##### *b) Unscheduled write-offs*

Unscheduled write-offs in accordance with the third and fourth sentences of Article 1085(2) must be shown separately or disclosed in the notes.

#### Article 1083<sup>1958</sup>

##### *5. Simplifications for micro-companies*

1) Micro-companies as referred to in Article 1064, with the exception of investment undertakings and financial holding undertakings as defined in Article 2(14) and (15) of Directive 2013/34/EU, may, instead of the

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<sup>1955</sup> Article 1080(3) amended by LGBL 2017 No. 420.

<sup>1956</sup> Article 1081 amended by LGBL 2015 No. 165.

<sup>1957</sup> Article 1082 amended by LGBL 2015 No. 165.

<sup>1958</sup> Article 1083 amended by LGBL 2015 No. 165.

layouts set out in Articles 1079 and 1080, present an abridged income statement showing at least the following items separately:

1. Net turnover
2. Other income
3. Cost of raw materials and consumables
4. Staff costs
5. Value adjustments
6. Other charges
7. Tax
8. Profit or loss for the financial year

2) The option set out in paragraph 1 may not be exercised by micro-companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>1959</sup>

Article 1083a<sup>1960</sup>

Repealed

*E. Valuation*<sup>1961</sup>

*I. General principles*<sup>1962</sup>

Article 1084<sup>1963</sup>

Repealed

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<sup>1959</sup> Article 1083(2) amended by LGBL 2017 No. 420.

<sup>1960</sup> Article 1083a repealed by LGBL 2015 No. 165.

<sup>1961</sup> Heading preceding Article 1084 inserted by LGBL 2000 No. 279.

<sup>1962</sup> Heading preceding Article 1084 inserted by LGBL 2000 No. 279.

<sup>1963</sup> Article 1084 repealed by LGBL 2015 No. 165.

Article 1085<sup>1964</sup>*II. Measurements for assets and liabilities*

1) Assets are to be reported at most at the purchase price or production cost, reduced by write-offs and value adjustments in accordance with paragraphs 2 and 3. Liabilities are to be reported at their repayment amount; pension obligations for which a consideration is no longer expected at their cash value; and provisions only to the extent of the necessary amount.

2) In the case of fixed assets whose use is limited in time, the purchase price or production cost must be reduced by scheduled write-offs. The schedule must allocate the purchase price or production cost to the financial years in which the asset is expected to be economically useful. Regardless of whether their use is limited in time and in the event of a probable permanent value reduction on fixed assets, unscheduled write-offs must be performed on fixed assets in order to value the assets at the lower value attributable to them on the balance sheet date. In addition, unscheduled write-offs of financial assets may be carried out in order to value these assets at the lower value attributable to them on the balance sheet date if this does not constitute a probable permanent value reduction.

3) Value adjustments must be made for current assets in order to value them at a lower figure resulting from an exchange or market price on the balance sheet date. If an exchange or market price cannot be determined and if the purchase price or production cost exceeds the value attributed to the assets on the balance sheet date, the assets must be written off to this value.<sup>1965</sup>

4) Write-offs, value adjustments, and provisions as referred to in the second sentence of Article 1052(3) may not be made.

Article 1086<sup>1966</sup>*III. Write-offs and value adjustments under tax law*

1) Write-offs and value adjustments may also be made in order to value fixed and current assets at the lower figure based on a write-off or value adjustment permitted only under tax law.

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<sup>1964</sup> Article 1085 inserted by LGBl. 2000 No. 279.

<sup>1965</sup> Article 1085(3) amended by LGBl. 2015 No. 165.

<sup>1966</sup> Article 1086 inserted by LGBl. 2000 No. 279.

2) Repealed<sup>1967</sup>Article 1087<sup>1968</sup>*IV. Purchase price*

1) The purchase price is the expenditure incurred to acquire an asset and bring it to working condition, to the extent that it can be allocated to the asset individually.

2) The purchase price also includes any incidental expenses and subsequent acquisition costs.

3) Reductions in the cost of acquisition shall be applied.

Article 1088<sup>1969</sup>*V. Production cost*

1) The production cost is the expenditure incurred through the consumption of goods and services for the production of an asset, for the expansion thereof, or for a significant improvement over its original condition. This includes the material and manufacturing costs directly attributable to an individual asset as well as the special costs associated with manufacturing.

2) When calculating the production cost, reasonable portions of the material, manufacturing, and administrative overhead costs that are only indirectly attributable to an individual asset may also be included; these expenses may be taken into account only to the extent that they relate to the period of production. Distribution costs may not be included in the production cost.

3) Interest on borrowed capital is not part of the production cost. Interest on capital borrowed to finance the production of an asset may be included to the extent that it relates to the period of production; in such cases, it shall be considered part of the production cost of the asset.

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<sup>1967</sup> Article 1086(2) repealed by LGBl. 2015 No. 165.

<sup>1968</sup> Article 1087 inserted by LGBl. 2000 No. 279.

<sup>1969</sup> Article 1088 inserted by LGBl. 2000 No. 279.

Article 1089<sup>1970</sup>*VI. Simplified valuation method*

1) For the measurement of similar inventory assets and all movable assets including securities, it may be assumed that the assets acquired or produced first or last have been consumed or sold first or in some other specific sequence; valuation at weighted average prices is also permissible.

2) Repealed<sup>1971</sup>

Article 1090<sup>1972</sup>*VII. Requirement to reinstate original values*

1) Where write-offs and value adjustments are made to assets in accordance with the third and fourth sentences of Article 1085(2), Article 1085(3), or Article 1086(1), and it turns out in a subsequent financial year that the reasons therefor no longer exist, the amount of such write-offs and value adjustments shall be attributed to the extent of the increase in value, taking into account the write-offs and value adjustments which would have had to be made in the meantime.

2) The allocation referred to in paragraph 1 may be waived if the lower measurement can be maintained in the determination of taxable earnings and if the condition for maintaining it is that the lower measurement is also maintained in the balance sheet.

3) Repealed<sup>1973</sup>

*F. Notes*<sup>1974</sup>Article 1091<sup>1975</sup>*I. In general*

1) The notes must include the information required on individual items of the balance sheet or income statement, or which must be disclosed in

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1970 Article 1089 inserted by LGBL 2000 No. 279.

1971 Article 1089(2) repealed by LGBL 2015 No. 165.

1972 Article 1090 inserted by LGBL 2000 No. 279.

1973 Article 1090(3) repealed by LGBL 2015 No. 165.

1974 Heading preceding Article 1091 inserted by LGBL 2000 No. 279.

1975 Article 1091 amended by LGBL 2015 No. 165.

the notes because they have not been included in the balance sheet or income statement by exercising an option. The information must be presented in the order in which the items are presented in the balance sheet and income statement.

2) The notes must indicate:

1. the accounting policies applied to the items in the balance sheet and income statement and the basis of conversion into Swiss francs or the foreign currency unit used in the preparation of the annual financial statement, where the annual financial statement contains items whose underlying amounts are denominated or originally expressed in another currency;
2. the following disclosures for the individual items of fixed assets:
  - a) amount of the purchase price and production cost;
  - b) additions, disposals and transfers during the financial year;
  - c) the accumulated write-offs at the beginning and end of the financial year;
  - d) write-offs for the financial year;
  - e) write-ups during the financial year;
  - f) movements in accumulated value adjustments in respect of additions, disposals, and transfers during the financial year; and
  - g) capitalised amount of interest on borrowed capital included in the production cost;
3. the amount of and reasons for the write-offs, value adjustments and omitted write-ups of individual fixed or current assets solely in accordance with tax regulations;
4. the amount and nature of individual items of income or expenditure which are of exceptional size or incidence;
5. information on the inclusion of interest on borrowed capital in the production cost;
6. all sureties, guarantee commitments, pledges and other contingent liabilities to the extent that they are not recognised in the balance sheet, as well as information on the nature and form of any real security granted. Any pension obligations and obligations to affiliated or associated companies shall be disclosed separately;
7. the number and nominal value or the accounting par value (in the case of non-par value shares) of the shares and participation certificates of each class; of these, shares and participation certificates subscribed for in a conditional capital increase or in an authorised capital increase during the financial year shall be disclosed separately in each case;

8. the number of convertible bonds and comparable securities, stating the rights they securitise;
9. participation rights, rights from loss certificates and similar rights, stating the type and number of the respective rights as well as the new rights created during the financial year.

#### Article 1092

##### *II. Other mandatory information*<sup>1976</sup>

The following shall also be disclosed in the notes:

1. in regard to the liabilities shown in the balance sheet:
  - a) the total amount of liabilities with a remaining term of more than five years,
  - b) the total amount of liabilities secured by liens or similar rights *in rem*, stating the nature and form of the collateral;<sup>1977</sup>
2. the nature and the financial effect of material events arising after the balance sheet date which are not reflected in the income statement or balance sheet;<sup>1978</sup>
3. the proposal on the appropriation of the result and, if applicable, the resolution on the appropriation of the result;<sup>1979</sup>
4. the net turnover broken down by categories of activity and into geographical markets, in so far as those categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services are organised;<sup>1980</sup>
5. Repealed<sup>1981</sup>
6. Repealed<sup>1982</sup>
7. the average number of staff employed during the financial year;<sup>1983</sup>
  - a) as a whole;
  - b) broken down by categories;

<sup>1976</sup> Article 1092 heading inserted by LGBL 2000 No. 279.

<sup>1977</sup> Article 1092(1) inserted by LGBL 2000 No. 279.

<sup>1978</sup> Article 1092(2) amended by LGBL 2015 No. 165.

<sup>1979</sup> Article 1092(3) amended by LGBL 2015 No. 165.

<sup>1980</sup> Article 1092(4) amended by LGBL 2015 No. 165.

<sup>1981</sup> Article 1092(5) repealed by LGBL 2015 No. 165.

<sup>1982</sup> Article 1092(6) repealed by LGBL 2015 No. 165.

<sup>1983</sup> Article 1092(7) amended by LGBL 2015 No. 165.

8. where the cost-of-sales method is used (Article 1080(1)), the staff costs for the financial year, broken down in accordance with Article 1079(1)(6);<sup>1984</sup>
9. for members of the administrative and management bodies, of a supervisory board, an advisory board or similar body, for each category of persons<sup>1985</sup>
  - a) the total remuneration (salaries, profit-sharing, subscription rights, expense allowances, insurance fees, commissions and fringe benefits of any kind) granted for activities during the financial year. Total remuneration also includes remuneration which is not paid out but converted into entitlements of a different kind or used to increase other entitlements. In addition to the remuneration for the financial year, information must be provided on any other remuneration granted in the financial year but not previously disclosed in any annual financial statement;
  - b) the total emoluments (severance pay, pensions, survivors' benefits and benefits of a related nature) of the former members of the designated bodies and their survivors; the second and third sentences of point (a) shall apply *mutatis mutandis*. Furthermore, the amount of provisions for current pensions and pension entitlements established for this group of persons must be disclosed;
  - c) the advances and loans granted, indicating the interest rates, the main conditions and any amounts repaid or waived during the financial year, and the commitments entered into on behalf of these persons;<sup>1986</sup>
  - d) the information referred to in points (a) and (b) need not be given if the emoluments of a particular member of these bodies can be determined on the basis of this information;
10. the name and registered office of each of the other undertakings of which the company or a person acting for the company's account owns at least one fifth of the shares; in addition, the proportion of the capital held, the capital and reserves, and the profit or loss for the latest financial year of those undertakings for which an annual financial statement is available; the name, registered office, and legal form of each of the undertakings of which the company is a member having unlimited liability. This information may also be provided separately in a list of participating interests instead of in the notes; the list of participating interests shall

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<sup>1984</sup> Article 1092(8) amended by LGBL 2015 No. 165.

<sup>1985</sup> Article 1092(9) inserted by LGBL 2000 No. 279.

<sup>1986</sup> Article 1092(9)(c) amended by LGBL 2015 No. 165.

form an integral part of the notes; reference to the list of participating interests and their place of deposit shall be made in the notes;<sup>1987</sup>

11. Repealed<sup>1988</sup>
12. an explanation of the period over which goodwill is written off when applying Article 1054(3);<sup>1989</sup>
13. the deferred tax liabilities (Article 1077(1)) at the end of the financial year and the changes that have occurred during the financial year;<sup>1990</sup>
14. the name and registered office of the parent undertaking of the company which draws up the consolidated annual financial statement of the largest body of undertakings and of its parent undertaking which draws up the consolidated annual financial statement for the smallest body of undertakings, and, in the case of disclosure of the consolidated annual financial statements drawn up by these parent undertakings, the place where they can be obtained.<sup>1991</sup>
15. the nature and purpose of the arrangements not included in the balance and their financial impact on the company, provided that:<sup>1992</sup>
  - a) the risks and benefits arising from such arrangements are material; and
  - b) the disclosure of such risks and benefits is necessary for the assessment of the financial position;
16. the company's transactions which have been entered into with related parties by the undertaking, including the value of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the company. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company. Transactions entered into between one or more members of a group need not be disclosed, provided that subsidiaries which are party to the transaction are wholly owned by such a member. Related parties are related parties as defined in the international accounting standards of the IASB in accordance with Article 1139;<sup>1993</sup>

<sup>1987</sup> Article 1092(10) amended by LGBL 2004 No. 141.

<sup>1988</sup> Article 1092(11) repealed by LGBL 2015 No. 165.

<sup>1989</sup> Article 1092(12) amended by LGBL 2015 No. 165.

<sup>1990</sup> Article 1092(13) amended by LGBL 2015 No. 165.

<sup>1991</sup> Article 1092(14) inserted by LGBL 2000 No. 279.

<sup>1992</sup> Article 1092(15) amended by LGBL 2015 No. 165.

<sup>1993</sup> Article 1092(16) amended by LGBL 2015 No. 165.

17. the total fees invoiced for the financial year by the auditor or audit firm carrying out the audits referred to in Article 1058, broken down into the total fees for:
- a) the audit of the annual financial statement;
  - b) other audit or assurance services;
  - c) tax advisory services; and
  - d) other services.

This information need not be disclosed where the undertaking is included within the consolidated annual financial statement in accordance with the provisions of Article 1097 et seq., provided that such information is given in the consolidated annual financial statement.<sup>1994</sup>

Article 1093<sup>1995</sup>

*III. Notes on financial instruments*

- 1) The following must be disclosed with regard to financial instruments:
1. for each class of derivative financial instrument:
    - a) the fair value of the instruments, if such a value can be reliably determined by any of the methods prescribed in Article 1116b(1), indicating the valuation method used; and
    - b) the extent and nature of the instruments;
  2. for financial assets that are stated at above their fair value without making use of the option to write them off in accordance with the last sentence of Article 1085(2):
    - a) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets; and
    - b) the reasons for the omission of the write-off in accordance with the last sentence of Article 1085(2), and those factors which, in the opinion of the company, indicate that the reduction in value is not likely to be permanent.
- 2) Contracts for the purchase or sale of goods that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments,

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<sup>1994</sup> Article 1092(17) inserted by LGBl. 2008 No. 224.

<sup>1995</sup> Article 1093 amended by LGBl. 2004 No. 141.

unless the contract was entered into to hedge the expected demand for the purchase, sale, or own use, provided that this purpose existed at the inception and continues to exist and the contract is deemed to be fulfilled upon delivery of the goods.

Article 1094<sup>1996</sup>

*IV. Omission of information*

1) Reporting shall be omitted to the extent that it is necessary for the welfare of the Principality of Liechtenstein.

2) The breakdown of net turnover in accordance with Article 1092(4) may be omitted when its nature is such that it would be seriously prejudicial to the company or to an undertaking of which the company owns at least one fifth of the shares.

3) The information referred to in Article 1092(10) may be omitted provided that

1. it is not material for the presentation of the company's assets and liabilities, financial position, and profit or loss, or
2. its nature is such that it would be seriously prejudicial to the company or another undertaking.

4) The disclosure of the capital and reserves and the profit and loss for the financial year in accordance with Article 1092(10) may also be omitted if the undertaking being reported on is not required to disclose its annual financial statement and the reporting company and persons acting on its account own less than half of the shares.

5) Any application of the exemptions set out in paragraphs 2 and 3(2) must be disclosed in the notes.

6) Repealed<sup>1997</sup>

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<sup>1996</sup> Article 1094 inserted by LGBl. 2000 No. 279.

<sup>1997</sup> Article 1094(6) repealed by LGBl. 2015 No. 165.

Article 1095<sup>1998</sup>*V. Simplifications based on size*

1) Small companies as referred to in Article 1064 are not required to provide the information referred to in points 2, 3, 7, 8, and 9 of Article 1091(2), points 2 to 4, 7(b), 8, 9(a), (b), and (d), 10, 11, and 13 to 17 of Article 1092, and point 1 of Article 1093(1).

2) Medium-sized companies as referred to in Article 1064 are not required to provide the information referred to in points 4 and 17 of Article 1092. They may limit the information referred to in point 16 of Article 1092 to transactions entered into with:

1. owners holding a participating interest in the company;
2. undertakings in which the company itself has a participating interest; and
3. members of the administrative, management or supervisory bodies of the company.

3) Paragraphs 1 and 2 shall not apply to companies whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>1999</sup>

Article 1095a<sup>2000</sup>*VI. Special obligations for micro-companies*

Micro-companies as referred to in Article 1064 must provide the information referred to in point 2 of Article 1055, point 6 of Article 1091(2), point 9(c) of Article 1092, and point 4 of Article 1096(4) below the balance sheet line.

*G. Annual report (Management report)*<sup>2001</sup>

## Article 1096

*I. In general*<sup>2002</sup>

<sup>1998</sup> Article 1095 amended by LGBL 2015 No. 165.

<sup>1999</sup> Article 1095(3) amended by LGBL 2017 No. 420.

<sup>2000</sup> Article 1095a inserted by LGBL 2013 No. 72. Applicable for the first time to financial years commencing on or after 1 January 2013.

<sup>2001</sup> Heading preceding Article 1096 amended by LGBL 2015 No. 165.

<sup>2002</sup> Article 1096 heading amended by LGBL 2008 No. 224.

1) The annual report must at least give a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that the company faces. The development and performance of the company's business and of its position must be analysed in a balanced and comprehensive manner consistent with the size and complexity of the business.<sup>2003</sup>

2) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.<sup>2004</sup>

3) As part of the analysis, the annual report shall, where appropriate, include notes and additional explanations of the amounts shown in the annual financial statement.<sup>2005</sup>

3a) Large companies as referred to in Article 1064(3), and small and medium-sized companies as referred to in Article 1064(1) and (2) in conjunction with Article 1138g(1)(a), except micro-companies as referred to in Article 1064(1a), shall report information on the key intangible resources and explain how the business model of the undertaking fundamentally depends on such resources and how such resources are a source of value creation for the undertaking.<sup>2006</sup>

4) The annual report should also include details of:

1. Repealed<sup>2007</sup>
2. the company's likely future development;
3. the field of research and development;
4. the number of own shares held by the company which it, a dependent or majority-owned undertaking of the company, or another undertaking for the account of the company or of a dependent or majority-owned undertaking of the company, has acquired or taken as a pledge; the number and nominal value or the accounting par value (in the case of non-par value shares) of such shares and the proportion of the share capital represented by them must be disclosed; in the case of acquired shares, the date of acquisition and the reasons for the

<sup>2003</sup> Article 1096(1) amended by LGBL 2004 No. 141.

<sup>2004</sup> Article 1096(2) amended by LGBL 2004 No. 141.

<sup>2005</sup> Article 1096(3) amended by LGBL 2004 No. 141.

<sup>2006</sup> Article 1096(3a) inserted by LGBL 2024 No. 170.

<sup>2007</sup> Article 1096(4)(1) repealed by LGBL 2015 No. 165.

acquisition must also be disclosed. If such shares have been acquired or disposed of during the financial year, a report must also be made on the acquisition or disposal, stating the number and nominal value or the accounting par value (in the case of non-par value shares) of such shares, the proportion of the share capital and the acquisition or disposal price, as well as on the use of the proceeds; this provision shall also apply *mutatis mutandis* to own participation certificates;

5. the existing branches of the company;
6. in relation to the company's use of financial instruments and where material for the assessment of its assets and liabilities, financial position, and profit or loss:
  - a) the company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used; and
  - b) existing exposure to price risk, credit risk, liquidity risk and cash flow risk.<sup>2008</sup>

5) Small companies as referred to in Article 1064 must provide the information referred to in point 4 of paragraph 4 in the notes.<sup>2009</sup>

6) In the case of medium-sized companies as referred to in Article 1064, the analysis referred to in paragraph 2 may be limited to financial information.<sup>2010</sup>

7) Paragraphs 5 and 6 shall not apply to companies whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>2011</sup>

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<sup>2008</sup> Article 1096(4) amended by LGBL 2004 No. 141.

<sup>2009</sup> Article 1096(5) amended by LGBL 2004 No. 141.

<sup>2010</sup> Article 1096(6) amended by LGBL 2004 No. 141.

<sup>2011</sup> Article 1096(7) amended by LGBL 2017 No. 420.

Article 1096a<sup>2012</sup>*II. Corporate governance statement*

1) Companies whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU must include a corporate governance statement in their annual report. This report shall be included as a specific section of the annual report and shall contain at least the following information:<sup>2013</sup>

1. a reference to the following, where applicable:<sup>2014</sup>
  - a) the corporate governance code to which the company is subject;
  - b) the corporate governance code which the company may have voluntarily decided to apply;
  - c) all relevant information about the corporate governance practices applied over and above the requirements of national law.

In all cases referred to in points (a) and (b), the company shall also indicate where the relevant texts are publicly available; in the cases under point (c), the company shall make its corporate governance practices publicly available;
2. where a company, in accordance with national law, departs from a corporate governance code referred to in point 1(a) or (b), an explanation as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to in point 1(a) or (b), it shall explain its reasons for not doing so;
3. a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;
4. the information required under Article 10(1)(c), (d), (f), (h) and (i) of Directive 2004/25/EC on takeover bids, where the company is covered by that Directive;
5. unless the information is already fully provided for in national law, a description of the operation of the general meeting and its key powers and a description of shareholders' rights and how they can be exercised;<sup>2015</sup>

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2012 Article 1096a inserted by LGBL 2008 No. 224.

2013 Article 1096a(1) introductory phrase amended by LGBL 2017 No. 420.

2014 Article 1096a(1)(1) amended by LGBL 2015 No. 165.

2015 Article 1096a(1)(5) amended by LGBL 2015 No. 165.

6. the composition and operation of the administrative, management and supervisory bodies and their committees;
7. a description of the diversity policy applied in relation to the company's administrative, management and supervisory bodies with regard to gender and other aspects such as, age, disabilities or educational and professional background, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why that is the case. Undertakings subject to the sustainability reporting requirements set out in Article 1096b et seq. shall be deemed to have complied with the above obligations where they include the information required as part of their sustainability reporting and a reference thereto is included in their corporate governance statement.<sup>2016</sup>

2) The information pursuant to paragraph 1 need not be integrated into the annual report but may be contained in a separate corporate governance statement. In that case, the corporate governance statement shall be disclosed together with the annual report pursuant to Article 1123, unless the corporate governance statement is publicly available on the company's website and a reference to it is made in the annual report. In the case of a separate corporate governance statement, that statement may include a reference to the annual report in which the information referred to in point 4 of paragraph 1 can be found.

3) Companies which have only issued securities other than shares admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU need not apply points 1, 2, 5, and 6 of paragraph 1 unless such companies have issued shares which are traded on a multilateral trading facility within the meaning of Article 4(1)(22) of Directive 2014/65/EU.<sup>2017</sup>

4) In the course of the audit of the company's business report, the auditor or audit firm shall express an opinion regarding information prepared under points 3 and 4 of paragraph 1 and shall check that the information referred to in points 1, 2, 5, 6, and 7 of paragraph 1 has been provided.<sup>2018</sup>

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<sup>2016</sup> Article 1096a(1)(7) amended by LGBL 2024 No. 170.

<sup>2017</sup> Article 1096a(3) amended by LGBL 2017 No. 420.

<sup>2018</sup> Article 1096a(4) amended by LGBL 2019 No. 18.

*III. Sustainability reporting<sup>2019, 2020</sup>*Article 1096b<sup>2021</sup>*1. Definitions*

For the purposes of the following provisions, the following definitions shall apply:

1. "sustainability matters" means environmental, social and human rights, and governance factors, including sustainability factors relating to environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters;
2. "sustainability reporting" means reporting information related to sustainability matters in accordance with Articles 1096d to 1096g and 1121;
3. "key intangible resources" means resources without physical substance on which the business model of the undertaking fundamentally depends and which are a source of value creation for the undertaking.

Article 1096c<sup>2022</sup>*2. Applicable standards and duty to inform*

1) When reporting on the information referred to in Article 1096d and 1096e, companies shall apply the sustainability reporting standards adopted by the European Commission pursuant to Article 29b of Directive 2013/34/EU by means of delegated acts pursuant to Article 49 of Directive 2013/34/EU.

2) The management of the undertaking shall inform the workers' representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability information. The workers' representatives' opinion shall be communicated, where applicable, to the relevant administrative, management or supervisory bodies.

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<sup>2019</sup> Heading preceding Article 1096b inserted by LGBL 2024 No. 170.

<sup>2020</sup> On the applicability of the provisions on sustainability reporting and consolidated sustainability reporting, see IV(2) to (5) in LGBL 2024 No. 170.

<sup>2021</sup> Article 1096b amended by LGBL 2024 No. 170.

<sup>2022</sup> Article 1096c inserted by LGBL 2024 No. 170.

Article 1096d<sup>2023</sup>*3. Content of sustainability reporting*

1) Large companies as referred to in Article 1064(3), and small and medium-sized companies as referred to in Article 1064(1) and (2) in conjunction with Article 1138g(1)(a), except micro-companies as referred to in Article 1064(1a), shall include in the annual report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position. This information shall be clearly identifiable in a dedicated section of the annual report.

2) The information referred to in paragraph 1 shall contain:

1. a brief description of the company's business model and strategy, including:
  - a) the resilience of the company's business model and strategy in relation to risks related to sustainability matters;
  - b) the opportunities for the company related to sustainability matters;
  - c) the plans of the company, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the "Paris Agreement") and, where relevant, the exposure of the company to coal-, oil- and gas-related activities;
  - d) how the company's business model and strategy take account of the interests of the undertaking's stakeholders and of the impacts of the undertaking on sustainability matters;
  - e) how the company's strategy has been implemented with regard to sustainability matters;
2. a description of the time-bound targets related to sustainability matters set by the company, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the company has made towards achieving those targets, and a statement of whether the company's targets related to environmental factors are based on conclusive scientific evidence;

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<sup>2023</sup> Article 1096d inserted by LGBL 2024 No. 170.

3. a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;
4. a description of the company's policies in relation to sustainability matters;
5. information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies;
6. a description of:
  - a) the due diligence process implemented by the company with regard to sustainability matters, and, where applicable, in line with the requirements of EEA law on undertakings to conduct a due diligence process;
  - b) the principal actual or potential adverse impacts connected with the company's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and monitor those impacts, and other adverse impacts which the company is required to identify pursuant to other requirements of EEA law on undertakings to conduct a due diligence process;
  - c) any actions taken by the company to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts, and the result of such actions;
7. a description of the principal risks to the company related to sustainability matters, including a description of the undertaking's principal dependencies on those matters, and how the company manages those risks;
8. indicators relevant to the disclosures referred to in points 1 to 7.

3) The company shall report the process carried out to identify the information that it has included in the annual report in accordance with paragraph 1. The information listed in paragraph 2 shall include information related to short-, medium- and long-term time horizons, as applicable.

Article 1096e<sup>2024</sup>*4. Additional information to be included and omitted where applicable*

1) Where applicable, the information referred to in Article 1096d shall contain information about the company's own operations and about its value chain, including its products and services, its business relationships and its supply chain.

2) For the first three years following the first application of the sustainability reporting provisions and in the event that not all the necessary information regarding its value chain is available, the company shall explain:

1. the efforts made to obtain the necessary information about its value chain;
2. the reasons why not all of the necessary information could be obtained; and
3. its plans to obtain the necessary information in the future.

3) Where applicable, the information referred to in Article 1096d shall also contain references to, and additional explanations of, the other information included in the annual report in accordance with Article 1096, and the amounts reported in the annual financial statement.

4) Information relating to impending developments or matters in the course of negotiation may be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the company, provided that such omission does not prevent a fair and balanced understanding of the company's development, performance and position, and the impact of its activity.

Article 1096f<sup>2025</sup>*5. Simplifications*

1) By way of derogation from Article 1096c(1), Article 1096d(2) and Article 1096(e), and without prejudice to Article 1096g, small and medium-sized companies as referred to in Article 1064(1) and (2) in conjunction with

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<sup>2024</sup> Article 1096e inserted by LGBl. 2024 No. 170.

<sup>2025</sup> Article 1096f inserted by LGBl. 2024 No. 170.

Article 1138g(1)(a) may limit their sustainability reporting to the following information:

1. a brief description of the company's business model and strategy;
2. a description of the company's policies in relation to sustainability matters;
3. the principal actual or potential adverse impacts of the company on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;
4. the principal risks to the company related to sustainability matters and how the undertaking manages those risks;
5. key indicators necessary for the disclosures referred to in points 1 to 4.

2) Companies that rely on the derogation referred to in paragraph 1 must apply the sustainability reporting standards adopted by the European Commission pursuant to Article 29c of Directive 2013/34/EU by means of delegated acts pursuant to Article 49 of Directive 2013/34/EU for these companies.

3) For financial years starting before 1 January 2028, small and medium-sized companies as referred to in Article 1064(1) and (2) in conjunction with Article 1138g(1)(a) may decide not to include in their annual report the information referred to in Article 1096d(1). In such cases, the company shall, nevertheless, briefly state in its annual report why the sustainability reporting was not provided.

4) Companies that comply with the requirements set out in Articles 1096c(1), 1096d and 1096e and companies that rely on the derogation laid down in paragraph 1 shall be deemed to have complied with the requirement set out in the third subparagraph of Article 1096(3a).

#### Article 1096g<sup>2026</sup>

##### *6. Exemption for subsidiary undertakings*

1) Subject to paragraph 3, an undertaking which is a subsidiary undertaking shall be exempted from the obligations set out in Articles 1096c(1), 1096d and 1096e ("the exempted subsidiary undertaking") if:

1. such undertaking and its subsidiary undertakings are included in the consolidated annual report of a parent undertaking; and

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<sup>2026</sup> Article 1096g inserted by LGBL 2024 No. 170.

2. the consolidated annual report referred to in point 1 is drawn up in accordance with Article 1121.

2) An undertaking which is a subsidiary undertaking of a parent undertaking that is established in a third country shall, subject to paragraph 3, also be exempted from the obligations set out in Articles 1096c(1), 1096d and 1096e where:

1. such undertaking and its subsidiary undertakings are included in the consolidated sustainability reporting of that parent undertaking that is established in a third country; and
2. the consolidated sustainability reporting referred to in point 1 is carried out in accordance with the sustainability reporting standards defined in Article 1096c(1) or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted by the European Commission pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC<sup>2027</sup>.

3) The exemption in paragraphs 1 and 2 shall be subject to the following conditions:

1. The annual report of the exempted subsidiary undertaking contains all of the following information:
  - a) the name and registered office of the parent undertaking that reports information at group level in accordance with the sustainability reporting standards defined in Article 1096c(1) or in a manner equivalent to those sustainability reporting standards, as determined by the European Commission in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC;
  - b) the weblinks to the consolidated annual report of the parent undertaking or, where applicable, to the consolidated sustainability reporting of the parent undertaking, as referred to in paragraphs 1 and 2 and to the opinion of the auditor or audit firm as referred to in Article 196b(2)(c) or as referred to in point 2;
  - c) the information that the undertaking is exempted from the obligations set out in Articles 1096c(1), 1096d and 1096e.

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<sup>2027</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

2. If the parent undertaking is established in a third country, its consolidated sustainability reporting and the opinion of the auditor or audit firm on this consolidated sustainability reporting is published in accordance with Article 1125.
3. If the parent undertaking is established in a third country, the disclosures laid down in Article 8 of Regulation (EU) 2020/852, covering the activities carried out by the exempted subsidiary undertaking established in the EEA and its subsidiary undertakings, are included in the annual report of the exempted subsidiary undertaking, or in the consolidated sustainability reporting carried out by the parent undertaking established in a third country.

4) Exempted subsidiary undertakings shall not be obliged to provide the information referred to in paragraph 3(1), provided that they publish the consolidated annual report of their ultimate parent undertaking in accordance with Article 1125.

5) The exemption laid down in paragraphs 1 to 4 shall also apply to public-interest entities as defined in Article 1138g subject to the sustainability reporting requirements set out in Articles 1096b et seq., with the exception of large undertakings as referred to in Article 1064(3) which are public-interest entities as defined in Article 1138g(1)(a).

#### Article 1096h<sup>2028</sup>

##### *7. Single electronic reporting format*

Undertakings subject to the sustainability reporting requirements set out in Articles 1096b to 1096g shall prepare their annual report in the electronic reporting format specified in Article 3 of Commission Delegated Regulation (EU) 2019/815<sup>2029</sup> and shall mark up their sustainability reporting, including the disclosures provided for in Article 8 of Regulation (EU) 2020/852, in accordance with the electronic reporting format specified in that Delegated Regulation.

<sup>2028</sup> Article 1096h inserted by LGBL 2024 No. 170.

<sup>2029</sup> Commission Delegated Regulation (EU) 2018/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).

Article 1096i<sup>2030</sup>*8. Sustainability report of subsidiary undertakings of an ultimate parent undertaking and branches of an undertaking from third countries*

1) A subsidiary undertaking whose ultimate parent undertaking is governed by the law of a third country shall publish and make accessible a sustainability report covering the information specified in points 1(c) to (e), 2 to 6, and, where appropriate, 8 of Article 1096d(2) at the group level of that ultimate third-country parent undertaking. The first sentence shall be applied only by large subsidiary undertakings within the meaning of Article 1064(3) and by small and medium-sized subsidiary undertakings within the meaning of Article 1064(1) and (2) in conjunction with Article 1138g(1)(a), with the exception of micro-companies as referred to in Article 1064(1a).

2) A branch of an undertaking governed by the law of a third country, which is either not part of a group or is ultimately held by an undertaking that is formed in accordance with the law of a third country, shall publish and make accessible a sustainability report covering the information specified in points 1(c) to (e), 2 to 6, and, where appropriate, 8 of Article 1096d(2) at the group level, or, if not applicable, the individual level of the third-country undertaking.

3) Paragraph 2 shall be applied only where the third-country undertaking does not have a subsidiary undertaking as referred to in paragraph 1 and where the branch generated a net turnover of more than EUR 40 million in the preceding financial year. "Net turnover" for this purpose means the revenue as defined by or within the meaning of the financial reporting principles on the basis of which the financial statements of the undertaking are prepared.

4) The first sentence of paragraph 1 and paragraph 2 shall apply to the subsidiary undertakings or branches referred to in those paragraphs only where the third-country undertaking, at its group level, or, if not applicable, the individual level, generated a net turnover of more than EUR 150 million in the European Economic Area for each of the last two consecutive financial years. The second sentence of paragraph 3 shall apply.

5) The sustainability report communicated by a subsidiary undertaking as referred to in paragraph 1 or a branch as referred to in paragraph 2 shall be drawn up in accordance with the sustainability reporting standards adopted by the European Commission pursuant to

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<sup>2030</sup> Article 1096i inserted by LGBl. 2024 No. 170.

Article 40b of Directive 2013/34/EU by means of delegated acts pursuant to Article 49 of Directive 2013/34/EU for such subsidiary undertakings and branches that specify the information that is to be included in those sustainability reports. By way of derogation from the first sentence, a sustainability report as referred to in paragraphs 1 and 2 may also be drawn up using the sustainability reporting standards adopted by the European Commission pursuant to Article 29b of Directive 2013/34/EU by means of delegated acts pursuant to Article 49 of Directive 2013/34/EU or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted by the European Commission pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC.

6) Where the information required to draw up the sustainability report is not available, the subsidiary undertaking as referred to in paragraph 1 or the branch as referred to in paragraph 2 shall request the third-country undertaking to provide it with all information necessary to meet the legal obligations.

7) In the event that not all the required information is provided, the subsidiary undertaking as referred to in paragraph 1 or the branch as referred to in paragraph 2 shall itself draw up, publish and make accessible the sustainability report referred to in paragraphs 1 and 2; this sustainability report shall contain all information in its possession, obtained or acquired. In this case, the subsidiary undertaking or branch concerned shall issue a statement indicating that the third-country undertaking did not make the necessary information available.

8) The branches of third-country undertakings shall be responsible for ensuring, to the best of their knowledge and ability, that their sustainability report is drawn up in accordance with the provisions of this Article, and that that report is published and made accessible in accordance with Article 1123a.

9) The members of the administrative, management and supervisory bodies of the subsidiary undertakings covered by this Article shall have collective responsibility for ensuring, to the best of their knowledge and ability, that their sustainability report is drawn up in accordance with the provisions of this Article, and that that report is published and made accessible in accordance with Article 1123a.

Article 1096k<sup>2031</sup>*9. Audit*

Sustainability reporting in accordance with Article 1096b et seq. shall be audited by an auditor or audit firm using the auditing standards set out in Article 47c of the Auditors Act.

## Subsection 2

**Consolidated business report (Consolidated annual financial statement and consolidated annual report)<sup>2032</sup>***A. Scope of application<sup>2033</sup>*Article 1097<sup>2034</sup>*I. Obligation to prepare a consolidated business report*

1) An undertaking (parent undertaking) as referred to in Article 1063 which has its registered office in Liechtenstein is required to draw up a consolidated business report, consisting of a consolidated annual financial statement and a consolidated annual report, if, in respect of an undertaking (subsidiary undertaking), the parent undertaking is entitled to:

1. a majority of the voting rights of the members, or
2. the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is also a member, or
3. exercise a controlling influence under a control agreement concluded with that undertaking or under a provision in its articles of association, and is also a member, or
4. a majority of the voting rights of the members by virtue of an agreement with other members of that undertaking, of which it is a member.

2) Rights to which a parent undertaking as referred to in paragraph 1 is entitled shall also include rights to which a subsidiary is entitled and rights to which persons acting on behalf of the parent undertaking or of

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<sup>2031</sup> Article 1096k inserted by LGBL 2024 No. 170.

<sup>2032</sup> Title preceding Article 1097 inserted by LGBL 2000 No. 279.

<sup>2033</sup> Heading preceding Article 1097 inserted by LGBL 2000 No. 279.

<sup>2034</sup> Article 1097 inserted by LGBL 2000 No. 279.

subsidiaries are entitled. The rights that a parent undertaking has in another undertaking are added to the rights that it or a subsidiary may have under an agreement with other members of that company. The following rights shall be deducted:

1. those linked to shares held by the parent undertaking or by subsidiaries for the account of another person, or
2. those associated with shares held as collateral, provided that these rights are exercised in accordance with the instructions of the collateral provider or, if a bank holds the shares as collateral for a loan, in the interest of the collateral provider.

3) For the application of points 1 and 4 of paragraph 1, the total number of voting rights shall be reduced by the voting rights attaching to own shares held by the subsidiary itself, by any of its subsidiaries, or by any other person acting on its behalf.

## *II. Exemptions*<sup>2035</sup>

### Article 1098<sup>2036</sup>

Repealed

### Article 1099

#### *2. Exemption for intermediate companies with EEA parent companies*<sup>2037</sup>

1) A parent undertaking (intermediate company) which is also a subsidiary of a parent undertaking having its registered office in an EEA Member State need not prepare a consolidated business report if a consolidated business report of its parent undertaking which meets the requirements of paragraph 2, including the audit report, is disclosed in accordance with the provisions applicable to the consolidated business report in question. An exempting consolidated business report may be prepared by any undertaking, irrespective of its legal form and size, if the undertaking, as a company as referred to in Article 1063 having its registered office in an EEA Member State, would be obliged to prepare a

<sup>2035</sup> Heading preceding Article 1098 inserted by LGBL 2000 No. 279.

<sup>2036</sup> Article 1098 repealed by LGBL 2015 No. 165.

<sup>2037</sup> Article 1099 heading inserted by LGBL 2000 No. 279.

consolidated business report including the parent undertaking to be exempted and its subsidiaries.<sup>2038</sup>

2) The consolidated business report of a parent undertaking domiciled in an EEA Member State has exempting effect if:<sup>2039</sup>

1. the parent undertaking to be exempted and its subsidiaries have been included in the exempting consolidated business report, without prejudice to Article 1104, and<sup>2040</sup>
2. the exempting consolidated business report has been prepared in accordance with the law applicable to the parent undertaking preparing the exempting consolidated business report, with the exception of the requirements set out in Article 1121(1) in conjunction with Articles 1096b to 1096e and 1096g and Article 1121(3a) to (3c), or in accordance with international accounting standards adopted pursuant to Regulation (EC) No 1606/2002, and<sup>2041</sup>
3. the notes to the annual financial statement of the undertaking to be exempted contain the following information:<sup>2042</sup>
  - a) name and registered office of the parent undertaking that prepares the exempting consolidated business report,
  - b) a reference to the exemption from the obligation to draw up a consolidated business report.

3) The exemption pursuant to paragraph 1 may not be claimed by a parent undertaking, despite the fact that the conditions pursuant to paragraph 2 are met, if members who own at least 10% of the shares in the parent undertaking to be exempted in the case of public limited companies and partnerships limited by shares and at least 20% in the case of companies with other legal forms have requested preparation of a consolidated business report at least six months before the end of the financial year. If the parent undertaking owns at least 90% of the shares in the parent undertaking to be exempted, paragraph 1 may be applied only if the other members have agreed to the exemption.<sup>2043</sup>

4) A parent undertaking (intermediate company) that is also a subsidiary of a parent undertaking having its registered office in an EEA Member State must prepare a consolidated business report, despite the fact that the conditions for exemption pursuant to paragraphs 1 to 3 are met,

<sup>2038</sup> Article 1099(1) amended by LGBL 2003 No. 52.

<sup>2039</sup> Article 1099(2) introductory phrase inserted by LGBL 2000 No. 279.

<sup>2040</sup> Article 1099(2)(1) amended by LGBL 2004 No. 141.

<sup>2041</sup> Article 1099(2)(2) amended by LGBL 2024 No. 170.

<sup>2042</sup> Article 1099(2)(3) amended by LGBL 2015 No. 165.

<sup>2043</sup> Article 1099(3) inserted by LGBL 2000 No. 279.

if its securities are available for trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>2044</sup>

Article 1100<sup>2045</sup>

*3. Exemption for intermediate companies with non-EEA parent companies*

1) Article 1099 shall apply to the consolidated business report of a parent undertaking established in a State which is not an EEA Member State, with the proviso that the exempting consolidated business report which includes the undertaking to be exempted (intermediate company) and all its subsidiaries is prepared in accordance with paragraph 2 and audited in accordance with paragraph 3.

2) Only those consolidated business reports of parent undertakings domiciled in a non-EEA Member State pursuant to paragraph 1 that have been prepared using the following accounting standards shall be recognised as exempting consolidated business reports:

1. under the law of an EEA Member State, with the exception of the requirements set out in Article 1121(1) in conjunction with Articles 1096b to 1096e and 1096g and Article 1121(3a) to (3c);<sup>2046</sup>
2. according to rules equivalent to the law of an EEA Member State, with the exception of the requirements set out in Article 1121(1) in conjunction with Articles 1096b to 1096e and 1096g and Article 1121(3a) to (3c);<sup>2047</sup>
3. in accordance with international accounting standards adopted pursuant to Regulation (EC) No 1606/2002; or
4. in accordance with international accounting standards that are equivalent to those referred to in point 3, as defined in accordance with Regulation (EC) No 1569/2007.

3) The exempting consolidated business report referred to in paragraph 1 shall be audited by one or more auditors or audit firms authorised to audit consolidated business reports under the law to which the parent

<sup>2044</sup> Article 1099(4) amended by LGBL 2017 No. 420.

<sup>2045</sup> Article 1100 amended by LGBL 2015 No. 165.

<sup>2046</sup> Article 1100(2)(1) amended by LGBL 2024 No. 170.

<sup>2047</sup> Article 1100(2)(2) amended by LGBL 2024 No. 170.

undertaking preparing the exempting consolidated business report is subject.<sup>2048</sup>

Article 1100a<sup>2049</sup>

*4. Exemption from presentation requirement*

Repealed

Article 1101

*5. Exemption based on size*<sup>2050</sup>

1) A parent undertaking is exempted from the obligation to prepare a consolidated business report if:<sup>2051</sup>

1. on the balance sheet date of its annual financial statement and on the previous balance sheet date at least two of the three characteristics set out below are met:
  - a) the aggregate balance sheet totals of the balance sheets of the parent undertaking and subsidiaries that would have to be included in the consolidated annual financial statement do not exceed 38.9 million Swiss francs;<sup>2052</sup>
  - b) the total net turnover of the parent undertaking and subsidiaries to be included in the consolidated annual financial statement does not exceed 77.8 million Swiss francs in the financial year preceding the balance sheet date;<sup>2053</sup>
  - c) the parent undertaking and the subsidiaries to be included in the consolidated annual financial statement did not have more than 250 employees on average during the financial year preceding the balance sheet date; or
2. on the balance sheet date of a consolidated annual financial statement that it shall prepare and on the previous balance sheet date at least two of the three following characteristics are met:

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<sup>2048</sup> Article 1100(3) amended by LGBL 2019 No. 18.

<sup>2049</sup> Article 1100a repealed by LGBL 2003 No. 52.

<sup>2050</sup> Article 1101 heading inserted by LGBL 2000 No. 279.

<sup>2051</sup> Article 1101(1) amended by LGBL 2015 No. 165.

<sup>2052</sup> Article 1101(1)(1)(a) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>2053</sup> Article 1101(1)(1)(b) amended by LGBL 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

- a) the balance sheet total does not exceed 32.4 million Swiss francs;<sup>2054</sup>
- b) the net turnover in the financial year preceding the balance sheet date does not exceed 64.8 million Swiss francs;<sup>2055</sup>
- c) the parent undertaking and the subsidiaries to be included in the consolidated annual financial statement did not employ more than 250 employees on average in the financial year preceding the balance sheet date.

2) Except in the cases referred to in paragraph 1, a parent undertaking shall be exempt from the obligation to draw up a consolidated business report if the requirements of paragraph 1 are met only on the balance sheet date or only on the preceding balance sheet date and the parent undertaking was exempt from the obligation to draw up a consolidated business report on the preceding balance sheet date.<sup>2056</sup>

3) Paragraphs 1 and 2 shall not apply if the parent undertaking or another subsidiary to be included in the consolidated annual financial statement of the parent undertaking is a company whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU.<sup>2057</sup>

4) By ordinance, the Government shall specify the thresholds to be applied pursuant to point 1(a) and (b) as well as point 2(a) and (b) of paragraph 1 if the consolidated annual financial statement is not prepared in Swiss francs.<sup>2058</sup>

#### Article 1101a<sup>2059</sup>

##### 6. Exemption based on immateriality

1) A parent undertaking which has only subsidiaries which, individually and collectively, are immaterial in relation to the objective of Article 1105(2), or which, under Article 1104, is not required to include any of its subsidiaries in the consolidation need not prepare a consolidated business report.<sup>2060</sup>

<sup>2054</sup> Article 1101(1)(2)(a) amended by LGBL. 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>2055</sup> Article 1101(1)(2)(b) amended by LGBL. 2024 No. 170. Applicable in this form for the first time to financial years commencing on or after 1 January 2024.

<sup>2056</sup> Article 1101(2) inserted by LGBL. 2000 No. 279.

<sup>2057</sup> Article 1101(3) amended by LGBL. 2017 No. 420.

<sup>2058</sup> Article 1101(4) inserted by LGBL. 2000 No. 279.

<sup>2059</sup> Article 1101a inserted by LGBL. 2011 No. 537.

<sup>2060</sup> Article 1101a(1) amended by LGBL. 2015 No. 165.

2) An explanation of any application of paragraph 1 must be given in the notes.

*B. Scope of consolidation*<sup>2061</sup>

Article 1102

*I. Undertakings to be included*<sup>2062</sup>

1) The consolidated annual financial statement shall include the parent undertaking and all its subsidiaries, regardless of where those subsidiaries have their registered offices, unless consolidation is waived in accordance with Article 1104. For this purpose, any subsidiary of a subsidiary shall be considered a subsidiary of the ultimate parent undertaking.<sup>2063</sup>

2) If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated annual financial statement shall include information which makes the comparison of successive sets of consolidated annual financial statements meaningful. This obligation may also be met by adjusting the corresponding amounts in the previous consolidated annual financial statement to reflect the changes.<sup>2064</sup>

Article 1103<sup>2065</sup>

*II. Prohibition of inclusion*

Repealed

Article 1104<sup>2066</sup>

*III. Waiver of inclusion*

1) A subsidiary need not be included in the consolidated annual financial statement if:

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<sup>2061</sup> Heading preceding Article 1102 inserted by LGBL 2000 No. 279.

<sup>2062</sup> Article 1102 heading inserted by LGBL 2000 No. 279.

<sup>2063</sup> Article 1102(1) amended by LGBL 2004 No. 141.

<sup>2064</sup> Article 1102(2) inserted by LGBL 2000 No. 279.

<sup>2065</sup> Article 1103 repealed by LGBL 2004 No. 141.

<sup>2066</sup> Article 1104 inserted by LGBL 2000 No. 279.

1. severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or
  2. the information necessary for the preparation of the consolidated annual financial statement cannot be obtained without disproportionate expense or delay; or
  3. the shares in the subsidiary are held exclusively with a view to their subsequent resale; or
  4. Repealed<sup>2067</sup>
- 2) Repealed<sup>2068</sup>
  - 3) An explanation of any application of paragraph 1 must be given in the notes.

*C. Content and form of consolidated annual financial statement*<sup>2069</sup>

Article 1105<sup>2070</sup>

*I. Content*

1) The consolidated annual financial statement shall comprise the consolidated balance sheet, the consolidated income statement and the notes, which form a single entity.

2) The consolidated annual financial statement shall be drawn up clearly. It shall give a true and fair view of the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidation taken as a whole. Where the application of this Title would not be sufficient to give a true and fair view of the assets and liabilities, financial position, and profit or loss as referred to in the second sentence, additional information shall be given in the notes. Where in exceptional cases the application of a provision of this Title is incompatible with the obligation laid down in the second sentence, that provision shall be derogated from in order to give a true and fair view as required under the second sentence. The derogation shall be disclosed in the notes together with an explanation of the reasons for it and of its effect on the assets and liabilities, financial position, and profit or loss.

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<sup>2067</sup> Article 1104(1)(4) repealed by LGBL 2015 No. 165.

<sup>2068</sup> Article 1104(2) repealed by LGBL 2015 No. 165.

<sup>2069</sup> Heading preceding Article 1105 inserted by LGBL 2000 No. 279.

<sup>2070</sup> Article 1105 inserted by LGBL 2000 No. 279.

3) The assets and liabilities, financial position, and profit or loss of the companies included must be presented in the consolidated annual financial statement as if these companies were a single undertaking. The consolidation methods must be applied consistently. Derogations from the second sentence are permissible in exceptional cases. They shall be disclosed in the notes together with an explanation of the reasons for it. Their effect on the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole must be disclosed.

Article 1106<sup>2071</sup>

*II. Applicable provisions*

Articles 1063 to 1090 shall apply *mutatis mutandis* to the consolidated annual financial statement, unless the particular characteristics of a consolidated annual financial statement as compared with an annual financial statement necessitate significant adjustments.

Article 1107<sup>2072</sup>

*III. Reporting date for the statement*

1) The consolidated annual financial statement shall be prepared as at the same date as the parent undertaking's annual financial statement or, if different, as at the same date as the annual financial statements of the most significant or the majority of the undertakings included in the consolidated annual financial statement; any difference from the balance sheet date of the parent undertaking shall be disclosed in the notes together with the reasons for it.

2) The annual financial statements of the undertakings included in the consolidated annual financial statement must be prepared as of the same date as the consolidated annual financial statement. If the balance sheet date of an undertaking is more than three months before the balance sheet date of the consolidated annual financial statement, that undertaking must be included in the consolidated annual financial statement on the basis of an interim financial statement drawn up for the balance sheet date of and the period covered by the consolidated annual financial statement.

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<sup>2071</sup> Article 1106 amended by LGBl. 2015 No. 165.

<sup>2072</sup> Article 1107 inserted by LGBl. 2000 No. 279.

3) If, in the case of different balance sheet dates, an undertaking is not included in the consolidated annual financial statement on the basis of an interim financial statement drawn up for the balance sheet date of and the period covered by the consolidated annual financial statement, events of particular importance for the assets and liabilities, financial position, and profit or loss of the undertaking included in the consolidated annual financial statement which have occurred between the balance sheet date of that undertaking and the balance sheet date of the consolidated annual financial statement shall be reflected in the consolidated balance sheet and the consolidated income statement or disclosed in the notes.

#### *D. Full consolidation*<sup>2073</sup>

##### Article 1108<sup>2074</sup>

###### *I. Consolidation principles; completeness requirement*

1) The annual financial statement of the parent undertaking must be combined in the consolidated annual financial statement with the annual financial statements of the subsidiaries. The assets and liabilities of the subsidiaries shall take the place of the shares in the included subsidiaries belonging to the parent undertaking.

2) The assets and liabilities and the income and expenditure of the undertakings included in the consolidated annual financial statement must be taken over in full, regardless of how they are reflected in the annual financial statements of those undertakings. Accounting options permitted under the law of the parent undertaking may be exercised in the consolidated annual financial statement regardless of their exercise in the annual financial statements of the companies included in the consolidated annual financial statement.

##### Article 1109<sup>2075</sup>

###### *II. Capital consolidation*

1) The book values of the parent undertaking's shares in the subsidiaries included in the consolidated annual financial statement shall be set off against the amount of the subsidiaries' capital and reserves attributable to these shares.

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<sup>2073</sup> Heading preceding Article 1108 inserted by LGBI. 2000 No. 279.

<sup>2074</sup> Article 1108 inserted by LGBI. 2000 No. 279.

<sup>2075</sup> Article 1109 inserted by LGBI. 2000 No. 279.

2) Capital and reserves must be stated at the amount corresponding to the book value of the assets, liabilities, provisions, and accruals and deferrals to be included in the consolidated annual financial statement. Differences arising from the set-off in accordance with paragraph 1 shall, as far as possible, be entered directly against those items in the consolidated balance sheet which have values above or below their book values.

3) Capital and reserves may also be stated at an amount equal to the value of the assets, liabilities, provisions, and accruals and deferrals to be included in the consolidated annual financial statement.

4) The set-off in accordance with paragraphs 2 and 3 shall be based on the corresponding values at the time of the first inclusion of the subsidiary in the consolidated annual financial statement or at the time of the acquisition of the shares or, if the shares were acquired at different times, at the time when the company became a subsidiary. The date chosen shall be stated in the notes.

5) Any difference remaining under paragraph 2 or arising under paragraph 3 shall be shown in the consolidated balance sheet as goodwill if it arises on the assets side and as a difference arising from capital consolidation if it arises on the liabilities side. The item, the methods used, and significant changes compared with the previous year must be explained in the notes. Where differences on the assets side are set off against differences on the liabilities side, the offset amounts shall be disclosed in the notes.

6) Paragraph 1 shall not apply to shares in the parent undertaking which belong to the parent undertaking or to a subsidiary included in the consolidated annual financial statement. Such shares must be shown separately in the consolidated balance sheet as own shares.

Article 1110<sup>2076</sup>

*III. Debt consolidation*

1) Loans and other receivables, provisions, and liabilities between the undertakings included in the consolidated annual financial statement as well as corresponding accruals and deferrals shall be omitted.

2) Paragraph 1 need not be applied if the amounts to be omitted are immaterial for the presentation of a true and fair view of the assets and

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<sup>2076</sup> Article 1110 inserted by LGBL 2000 No. 279.

liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole.

Article 1111<sup>2077</sup>

*IV. Treatment of interim results*

1) Assets to be included in the consolidated annual financial statement which are based in whole or in part on deliveries or services between undertakings included in the consolidated annual financial statement shall be stated in the consolidated balance sheet at an amount at which they could be stated in the annual balance sheet of that undertaking prepared as at the balance sheet date of the consolidated annual financial statement if the undertakings included in the consolidated annual financial statement formed a single undertaking also in legal terms.

2) The application of paragraph 1 may be waived if:

1. the delivery or service has been made under normal market conditions and the determination of the measurement prescribed by paragraph 1 would be disproportionately burdensome; in that case, this must be disclosed in the notes and, if the effect on the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole is material, this must be explained; or
2. the treatment of the interim results in accordance with paragraph 1 is immaterial for the fair presentation of the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole.

Article 1112<sup>2078</sup>

*V. Expenditure and income consolidation*

1) The following must be set off in the consolidated income statement:

1. under net turnover, the turnover from deliveries and services between the undertakings included in the consolidated annual financial statement against the expenditure attributable to them, unless they are to be shown as an increase in the inventory of finished and unfinished goods or as work performed by the undertaking for its own purposes and capitalised;

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<sup>2077</sup> Article 1111 inserted by LGBl. 2000 No. 279.

<sup>2078</sup> Article 1112 inserted by LGBl. 2000 No. 279.

2. other turnover from deliveries and services between the undertakings included in the consolidated annual financial statement against the expenditure attributable to them, unless they are to be shown as work performed by the undertaking for its own purposes and capitalised.

2) Paragraph 1 need not be applied if the amounts to be omitted are immaterial for the presentation of a true and fair view of the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole.

Article 1113<sup>2079</sup>

*VI. Deferred tax*

1) If, as a result of measures taken in accordance with the provisions of this Subsection, the profit or loss for the financial year shown in the consolidated annual financial statement is lower or higher than the sum of the individual profits and losses of the companies included in the consolidated annual financial statement, the tax expense arising for the financial year and earlier financial years must be adjusted, if it is too high in relation to the profit or loss for the financial year, by forming an item under prepayments and accrued income or, if it is too low in relation to the profit or loss for the financial year, by forming a provision, provided that the too high or too low tax expense is likely to be set off in later financial years.

2) The item shall be disclosed separately in the consolidated balance sheet or in the notes. It may be combined with the items referred to in Article 1077.

Article 1114<sup>2080</sup>

*VII. Shares of other members*

1) For shares not belonging to the parent undertaking in subsidiaries included in the consolidated annual financial statement, an adjustment item must be shown separately in the consolidated balance sheet for the shares of other members in the amount of their share in the capital and reserves and designated as such.

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<sup>2079</sup> Article 1113 inserted by LGBl. 2000 No. 279.

<sup>2080</sup> Article 1114 inserted by LGBl. 2000 No. 279.

2) The profit attributable to other members and the loss attributable to them contained in the profit or loss for the financial year must be shown separately in the consolidated income statement, after the item "Profit or loss for the financial year" under the appropriate heading.

*E. Valuation*<sup>2081</sup>

Article 1115

*I. Uniform valuation*<sup>2082</sup>

1) The assets and liabilities of the undertakings included in the consolidated annual financial statement pursuant to Article 1108(2) shall be valued on a uniform basis in accordance with the valuation methods applicable to the annual financial statement of the parent undertaking or other methods permitted by Directive 78/660/EEC. Any derogations from the valuation methods applied to the parent undertaking's annual financial statement must be disclosed in the notes together with an explanation of the reasons for it. Valuation options permitted under the law of the parent undertaking may be exercised in the consolidated annual financial statement regardless of their exercise in the annual financial statements of the undertakings included in the consolidated annual financial statement.<sup>2083</sup>

2) If assets and liabilities of the parent undertaking or of subsidiaries to be included in the consolidated annual financial statement have been valued in the annual financial statements of these undertakings using methods that differ from those used for the consolidated annual financial statement or that are applied to the consolidated annual financial statement by exercising valuation options, the assets and liabilities valued differently must be revalued in accordance with the valuation methods applied to the consolidated annual financial statement and included in the consolidated annual financial statement using the new measurements. A uniform valuation in accordance with the first sentence need not be carried out if its effects are immaterial for the presentation of a true and fair view of the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole. Further derogations are permitted in exceptional cases;

<sup>2081</sup> Heading preceding Article 1115 inserted by LGBI. 2000 No. 279.

<sup>2082</sup> Article 1115 heading inserted by LGBI. 2000 No. 279.

<sup>2083</sup> Article 1115(1) inserted by LGBI. 2000 No. 279.

they must be disclosed in the notes together with an explanation of the reasons for it.<sup>2084</sup>

3) In the valuation of fixed and current assets in the consolidated annual financial statement, write-offs and value adjustments that are permitted only under tax law may not be taken into account under Articles 1086(1) and 1090(2).<sup>2085</sup>

#### Article 1116<sup>2086</sup>

##### *II. Treatment of the difference*

1) A difference to be shown on the assets side of the balance sheet in accordance with Article 1109(5) shall be treated in accordance with Article 1054. It may not be set off against the reserves.

2) A difference to be shown on the liabilities side of the balance sheet in accordance with Article 1109 (5) may be released to income only where:

1. an unfavourable development of the future profit or loss of the company expected at the time of the acquisition of the shares or first-time consolidation has occurred, or expenditure expected at that time has to be taken into account, or
2. it is certain on the balance sheet date that it corresponds to a realised gain.

##### *III. Measurement of financial instruments<sup>2087</sup>*

#### Article 1116a

##### *1. Fair value measurement<sup>2088</sup>*

1) Financial instruments, including derivative financial instruments, may be measured at fair value in exercise of the option in Article 1115(1), subject to paragraphs 2 to 4.<sup>2089</sup>

2) Contracts for the purchase or sale of goods that give either contracting party the right to settle in cash or some other financial

<sup>2084</sup> Article 1115(2) inserted by LGBL 2000 No. 279.

<sup>2085</sup> Article 1115(3) amended by LGBL 2004 No. 141.

<sup>2086</sup> Article 1116 inserted by LGBL 2000 No. 279.

<sup>2087</sup> Heading preceding Article 1116a inserted by LGBL 2004 No. 141.

<sup>2088</sup> Article 1116a heading inserted by LGBL 2004 No. 141.

<sup>2089</sup> Article 1116a(1) inserted by LGBL 2004 No. 141.

instrument shall be considered to be derivative financial instruments, unless the contract was entered into to hedge the expected demand for the purchase, sale or own use, provided that this purpose existed at the inception and continues to exist and the contract is deemed to be fulfilled upon delivery of the goods.<sup>2090</sup>

3) Paragraph 1 shall apply to such liabilities which:

1. are held as part of a trading portfolio; or
2. are derivative financial instruments.<sup>2091</sup>

4) Paragraph 1 shall not apply to:

1. non-derivative financial instruments held to maturity;
2. originated loans and advances not held for trading purposes; and
3. interests in subsidiaries, interests in associated undertakings and joint ventures, equity instruments issued by the undertaking, contracts for contingent consideration in a business combination, and other financial instruments with such special characteristics that the instruments, according to what is generally accepted, are accounted for differently from other financial instruments.<sup>2092</sup>

5) Assets or liabilities that qualify as hedged items for fair value hedge accounting, or a specific portion of such assets or liabilities, shall be recognised at the value designated for hedge accounting.<sup>2093</sup>

6) By way of derogation from paragraphs 3 and 4, financial instruments may be valued together with the related disclosure requirements using the international accounting standards of the IASB in accordance with Article 1139.<sup>2094</sup>

#### Article 1116b<sup>2095</sup>

##### *2. Determination of fair value*

1) The fair value for purposes of Article 1116a shall be determined by one of the following methods:

<sup>2090</sup> Article 1116a(2) inserted by LGBL 2004 No. 141.

<sup>2091</sup> Article 1116a(3) inserted by LGBL 2004 No. 141.

<sup>2092</sup> Article 1116a(4) inserted by LGBL 2004 No. 141.

<sup>2093</sup> Article 1116a(5) inserted by LGBL 2004 No. 141.

<sup>2094</sup> Article 1116a(6) inserted by LGBL 2008 No. 224.

<sup>2095</sup> Article 1116b inserted by LGBL 2004 No. 141.

1. In the case of financial instruments for which a market value can be determined, the fair value corresponds to that market value. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument;
2. In the case of financial instruments for which a reliable market value cannot be readily identified, fair value is determined using generally accepted valuation models and techniques. Such valuation models and techniques shall ensure a reasonable approximation of the market value.
  - 2) Financial instruments that cannot be measured reliably using any of the methods described in paragraph 1 shall be measured in accordance with Article 1085.

Article 1116c<sup>2096</sup>

*3. Change in fair value*

- 1) If a financial instrument is measured in accordance with Article 1116b(1), a change in value must be recognised in the income statement. Derogating from this principle, the change in value must be recognised directly in capital and reserves in a separate item with an appropriate heading if:
1. the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be included in the income statement; or
  2. the change in value relates to an exchange difference arising on a monetary item that forms part of an undertaking's net investment in a foreign entity.
- 2) The change in value of an available-for-sale financial asset, other than a derivative financial instrument, may be included in a separate item under the appropriate heading directly in capital and reserves instead of in the income statement.
- 3) The separate item pursuant to paragraphs 1 and 2 shall be reduced to the extent that the amounts stated therein are no longer necessary for the application of paragraphs 1 and 2. Dissolution in other cases is not permitted.

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<sup>2096</sup> Article 1116c inserted by LGBL 2004 No. 141.

Article 1116d<sup>2097</sup>

## 4. Notes

If financial instruments are measured at fair value, the following must be disclosed:

1. the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 1116b(1)(2);
2. for each group of financial instruments, the fair value itself, the changes in value recognised directly in the income statement, and the changes recognised in a separate item under capital and reserves;
3. for each class of derivative financial instrument, the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows, and
4. a statement of movements within the separate item under capital and reserves (Article 1116c) during the financial year.

F. Associated undertakings<sup>2098</sup>Article 1117<sup>2099</sup>

## I. Definition; exemption

1) If an undertaking included in the consolidated annual financial statement exercises a significant influence on the operating and financial policies of a non-included undertaking in which the undertaking has a participating interest pursuant to Article 1073(1) (associated undertaking), this participating interest must be shown in the consolidated balance sheet under a special item with a corresponding heading. Significant influence is presumed to exist when an undertaking holds at least one fifth of the members' voting rights in another undertaking; Article 1097(2) and (3) applies.

2) Paragraph 1 and Article 1118 need not be applied to participating interest in an associated undertaking if the participating interest is immaterial for the presentation of a fair view of the assets and liabilities,

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<sup>2097</sup> Article 1116d inserted by LGBL 2004 No. 141.

<sup>2098</sup> Heading preceding Article 1117 inserted by LGBL 2000 No. 279.

<sup>2099</sup> Article 1117 inserted by LGBL 2000 No. 279.

financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole.

Article 1118<sup>2100</sup>

*II. Measurement of the participating interest and treatment of the difference*

1) A participating interest in an associated undertaking shall be recognised in the consolidated balance sheet either:

1. at book value or
2. at the amount corresponding to the *pro rata* share of capital and reserves of the associated undertaking.

If they are recognised at book value in accordance with the first sentence of point 1, the difference between that value and the *pro rata* capital and reserves of the associated undertaking must be shown separately in the consolidated balance sheet or disclosed in the notes when these provisions are applied for the first time. If they are recognised at the *pro rata* share of capital and reserves in accordance with the first sentence of point 2, the capital and reserves shall be stated at the amount which results if the assets, liabilities, provisions, and accruals and deferrals of the associated undertaking are stated at the value which is attributed to them on the date chosen in accordance with paragraph 3; the difference between this measurement and the book value of the participating interest shall be shown separately in the consolidated balance sheet or disclosed in the notes when these provisions are applied for the first time. The method used shall be disclosed in the notes.

2) The difference referred to in the second sentence of paragraph 1 must be allocated to the measurements of the assets, liabilities, provisions, and accruals and deferrals of the associated undertaking to the extent that their value is higher or lower than the previous measurement. The amount allocated under the first sentence or the amount resulting under point 2 of the first sentence of paragraph 1 must be continued, written off, or dissolved in the consolidated annual financial statement in accordance with the treatment of the measurements of these assets, liabilities, provisions, and accruals and deferrals in the annual financial statement of the associated undertaking. Article 1116 shall apply *mutatis mutandis* to any difference remaining after allocation under the first sentence and any difference under the second clause of the third sentence of paragraph 1.

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<sup>2100</sup> Article 1118 inserted by LGBL 2000 No. 279.

3) The measurement of the participating interest and the differences shall be determined on the basis of the measurements at the time of the first application of Article 1117(1) to the participating interest or at the time of the acquisition of the shares or, if the shares were acquired at different times, at the time when the undertaking became an associated undertaking. The date chosen shall be stated in the notes.

4) The measurement of a participating interest determined in accordance with paragraph 1 shall be increased or decreased in subsequent years by the amount of changes in capital and reserves corresponding to the shares in the capital of the associated undertaking belonging to the parent undertaking; profit distributions attributable to the participating interest shall be deducted. The profit or loss attributable to participating interests in associated undertakings must be shown under a separate item in the consolidated income statement.

5) If the associated undertaking applies valuation methods in its annual financial statement that differ from the consolidated annual financial statement, assets or liabilities valued differently may be valued for the purposes of paragraphs 1 to 4 in accordance with the valuation methods applied to the consolidated annual financial statement. If the valuation is not adjusted, this must be disclosed in the notes. Article 1111 on the treatment of interim results shall apply *mutatis mutandis* to the extent that the facts relevant to the assessment are known or available. Interim results may also be omitted *pro rata* in accordance with the parent undertaking's share in the capital of the associated undertaking.

6) The most recent annual financial statement of the associated undertaking is to be used. If the associated undertaking prepares a consolidated annual financial statement, this consolidated annual financial statement must be used as a basis and not the annual financial statement of the associated undertaking.

#### *G. Notes*<sup>2101</sup>

#### Article 1119<sup>2102</sup>

##### *I. In general*

1) The information required under Articles 1091 to 1094 shall be included in the notes, together with the information required under other provisions of this Title. This must be done in such a way as to facilitate the

<sup>2101</sup> Heading preceding Article 1119 inserted by LGBL 2000 No. 279.

<sup>2102</sup> Article 1119 amended by LGBL 2015 No. 165.

assessment of the financial situation of the companies included in the consolidation taken as a whole. In doing so, the essential adjustments resulting from the particular characteristics of the consolidated business report compared to the business report must be made.

2) When making the essential adjustments referred to in paragraph 1, the following must be taken into account in particular:

1. in disclosing transactions under point 16 of Article 1092, transactions between companies included in the consolidation that are eliminated on consolidation shall not be included;
2. in disclosing transactions under point 9 of Article 1092, only the amount of the remuneration, advances, and loans granted by the parent undertaking and its subsidiaries to members of the administrative or management body, supervisory board, advisory board, or similar body of the parent undertaking must be disclosed.

#### Article 1120<sup>2103</sup>

##### *II. Information on participating interests*

1) The following information on the ownership of participating interests must be disclosed in the notes:

1. the name and registered office of the undertakings included in the consolidated annual financial statement, the share of capital of the subsidiaries owned by the parent undertaking and the subsidiaries included in the consolidated annual financial statement or held by a person acting on behalf of those undertakings, and the circumstances requiring inclusion in the consolidated annual financial statement, unless the inclusion is based on a majority of voting rights corresponding to the share of capital and the share of capital and the share of voting rights do not match. This information must also be provided for subsidiaries which have not been included in the consolidation pursuant to Articles 1101a and 1104; in the case of Article 1104, the reasons must be stated for the application of that provision;
2. the name and registered office of the associated undertakings and the share in the capital of the associated undertakings held by the parent undertaking and the subsidiaries included in the consolidated annual financial statement or held by a person acting on behalf of those companies;

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<sup>2103</sup> Article 1120 amended by LGBl. 2015 No. 165.

3. the name and registered office of undertakings other than those referred to in points 1 and 2 in which the parent undertaking, a subsidiary, or a person acting on behalf of those undertakings owns at least one fifth of the shares, stating the share of the capital and the amount of the capital and reserves as well as the profit or loss for the last financial year for which an annual financial statement has been prepared. Capital and reserves as well as profit or loss need not be disclosed if the undertaking whose shares are owned is not required to disclose its annual financial statement.

2) The information required under paragraph 1 need not be provided to the extent that it must be expected that the information would be seriously prejudicial to the parent undertaking, a subsidiary, or another undertaking referred to in paragraph 1. The application of the exemption shall be disclosed in the notes.

#### Article 1121<sup>2104</sup>

##### *H. Consolidated annual report (Consolidated management report)*

1) In addition to the other information required under this Title, the consolidated annual report shall contain at least the information referred to in Article 1096 and, to the extent applicable, in Articles 1096a (corporate governance statement) and 1096b to 1096e and 1096g (sustainability reporting); the consolidated annual report shall be drawn up in compliance with the requirements set out in those provisions. This provision is subject to paragraphs 2 to 4. In preparing the consolidated annual report, account must be taken of the essential adjustments resulting from the particular characteristics of the consolidated annual report compared with an annual report in such a way as to facilitate the assessment of the development and performance of the business and of position of the undertakings included in the consolidated annual financial statement taken as a whole.<sup>2105</sup>

2) Point 4 of Article 1096(4) concerning the reporting of own shares shall be applied with the proviso that the number and nominal value or the accounting par value (in the case of non-par value shares) of all the shares of the parent undertaking held either by the parent undertaking itself, by subsidiaries of that parent undertaking, or by a person acting in that person's own name but on behalf of one of those undertakings must be disclosed.

<sup>2104</sup> Article 1121 amended by LGBL 2015 No. 165.

<sup>2105</sup> Article 1121(1) amended by LGBL 2024 No. 170.

3) Point 3 of Article 1096a(1) must be applied with the proviso that the description of the main features of the internal control and risk management systems in relation to the financial reporting process covers all undertakings included in the consolidation.

3a) Where the reporting undertaking identifies significant differences in the consolidated sustainability reporting as referred to in paragraph 1 between the risks for, or impacts of, the undertakings included in the consolidation taken as a whole and the risks for, or impacts of, one or more subsidiary undertakings, the undertaking shall provide an adequate understanding of, as appropriate, the risks for, and impacts of, the subsidiary undertaking or subsidiary undertakings concerned. Undertakings shall indicate which subsidiary undertakings included in the consolidation are exempted from annual or consolidated sustainability reporting pursuant to Articles 1096g or paragraph 1 in conjunction with Article 1096g respectively.<sup>2106</sup>

3b) A parent undertaking that complies with the consolidated sustainability reporting requirements set out in paragraphs 1 to 3a shall be deemed to have complied with the requirements set out in Article 1096(3a) and Articles 1096b to 1096e and 1096g.<sup>2107</sup>

3c) If an undertaking is exempt from sustainability reporting pursuant to Article 1096g, this exemption shall also apply to the information pursuant to paragraph 3a.<sup>2108</sup>

3d) Undertakings subject to the consolidated sustainability reporting requirements of paragraphs 1 and 3a to 3c shall prepare their management report in the single electronic reporting format specified in Article 3 of Commission Delegated Regulation (EU) 2019/815 and shall mark up their sustainability reporting, including the disclosures provided for in Article 8 of Regulation (EU) 2020/852, in accordance with the electronic reporting format specified in that Delegated Regulation.<sup>2109</sup>

4) The consolidated annual report and the annual report of the parent undertaking may be combined.

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<sup>2106</sup> Article 1121(3a) inserted by LGBL 2024 No. 170.

<sup>2107</sup> Article 1121(3b) inserted by LGBL 2024 No. 170.

<sup>2108</sup> Article 1121(3c) inserted by LGBL 2024 No. 170.

<sup>2109</sup> Article 1121(3d) inserted by LGBL 2024 No. 170.

## Subsection 3

**Disclosure**<sup>2110</sup>*A. Principle*<sup>2111</sup>*I. Business report*<sup>2112</sup>

## Article 1122

*1. Annual financial statement*<sup>2113</sup>

1) The legal representatives of companies as referred to in Article 1063 shall submit the duly approved annual financial statement and, unless the review has been waived in accordance with Article 1058a, the audit report to the Office of Justice no later than the end of the 12th month following the balance sheet date. On duly motivated request, the Office of Justice may extend the period for the submission of the documents referred to in the first sentence. After submission of the documents, the Office of Justice shall, at the expense of the submitting companies, publish in the official publication medium the registration number under which those documents have been submitted.<sup>2114</sup>

2) Companies which have issued bonds with public subscription or whose shares are listed on an exchange must additionally publish their annual financial statement in printed form and make it available to the press and to anyone else who so requests.<sup>2115</sup>

3) Companies as referred to in Article 1063(2) may, instead of submitting and publishing the documents referred to in paragraph 1 at the registered office of the company, make the documents referred to in paragraph 1 available for inspection by any person, provided that:

1. all its general partners are companies as referred to in Article 1063(1) which are governed by the law of an EEA Member State other than the Principality of Liechtenstein, and none of those companies publishes the designated documents of the company concerned with its own documents, or

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<sup>2110</sup> Title preceding Article 1122 inserted by LGBL 2000 No. 279.

<sup>2111</sup> Heading preceding Article 1122 inserted by LGBL 2000 No. 279.

<sup>2112</sup> Heading preceding Article 1122 inserted by LGBL 2000 No. 279.

<sup>2113</sup> Article 1122 heading inserted by LGBL 2000 No. 279.

<sup>2114</sup> Article 1122(1) amended by LGBL 2022 No. 227.

<sup>2115</sup> Article 1122(2) amended by LGBL 2003 No. 52.

2. all its general partners are companies which are not governed by the law of an EEA Member State, but whose legal form is comparable to the legal forms referred to in Article 1063 (1).<sup>2116</sup>
- 4) In case of application of paragraph 3, a copy of the annual financial statement must be obtainable on request. The price of such a copy may not exceed its administrative cost.<sup>2117</sup>
- 5) In lieu of paragraphs 3 and 4, companies as referred to in Article 1063(2) whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU shall apply paragraphs 1 and 2.<sup>2118</sup>
- 6) The submission of the documents referred to in paragraph 1 shall be made in electronic form.<sup>2119</sup>

#### Article 1123

##### 2. *Annual report*<sup>2120</sup>

- 1) The annual report to be drawn up by medium-sized and large companies as referred to in Article 1064 need not be submitted to the Office of Justice; however, it must be available for inspection by the public at the registered office of the company. A full or partial copy of the annual report must be obtainable on request. The price of such a copy may not exceed its administrative cost.<sup>2121</sup>
- 2) Medium-sized and large companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State as referred to in Article 4(1)(21) of Directive 2014/65/EU shall disclose the annual report (second sentence of Article 1065(3)) in accordance with Article 1122(1) and (2).<sup>2122</sup>
- 3) Small companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State as referred to in Article 4(1)(21) of Directive 2014/65/EU shall disclose the

<sup>2116</sup> Article 1122(3) inserted by LGBL 2000 No. 279.

<sup>2117</sup> Article 1122(4) inserted by LGBL 2000 No. 279.

<sup>2118</sup> Article 1122(5) amended by LGBL 2017 No. 420.

<sup>2119</sup> Article 1122(6) amended by LGBL 2024 No. 17.

<sup>2120</sup> Article 1123 heading amended by LGBL 2004 No. 141.

<sup>2121</sup> Article 1123(1) amended by LGBL 2013 No. 6.

<sup>2122</sup> Article 1123(2) amended by LGBL 2017 No. 420.

annual report (second sentence of Article 1065(3)) in accordance with Article 1122(1) and (2).<sup>2123</sup>

4) Undertakings that must comply with the sustainability reporting requirements under Articles 1096b to 1096g must publish the annual report in the single electronic reporting format (Article 1096h) together with the opinion and statement of the auditor or audit firm in accordance with Article 196(1)(e) and Article 196b(2)(c). Paragraph 1 shall not apply.<sup>2124</sup>

Article 1123a<sup>2125</sup>

*3. Sustainability report of subsidiary undertakings of ultimate parent undertakings and branches of undertakings from third countries*

1) The sustainability reports referred to in Article 1096i(1) and (2) shall be published accompanied by an assurance opinion expressed by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law of the third-country undertaking or of an EEA Member State. In the event that the third-country undertaking does not provide the assurance opinion in accordance with the first sentence, the subsidiary undertaking or branch shall issue a statement indicating that the third-country undertaking did not make the necessary assurance opinion available.

2) The subsidiary undertakings and branches referred to in Article 1096i(1) and (2) shall publish their sustainability report, together with the assurance opinion and, where applicable, the statement mentioned in Article 1096i(7), within 12 months of the balance sheet date of the financial year for which the report is drawn up, in accordance with paragraph 3.

3) The sustainability report, together with the audit opinion and, where applicable, the statement mentioned in Article 1096i(7), shall be made accessible to the public in at least one of the official languages of an EEA Member State, free of charge, no later than 12 months after the balance sheet date of the financial year for which the sustainability report is drawn up, on the website of the subsidiary undertaking or the branch as referred to in Article 1096i (1) and (2).

<sup>2123</sup> Article 1123(3) amended by LGBL 2017 No. 420.

<sup>2124</sup> Article 1123(4) inserted by LGBL 2024 No. 170.

<sup>2125</sup> Article 1123a inserted by LGBL 2024 No. 170.

*II. Consolidated business report*<sup>2126</sup>

## Article 1124

*1. Consolidated annual financial statement*<sup>2127</sup>

1) The legal representatives of a company required to prepare a consolidated annual financial statement must submit the duly approved consolidated annual financial statement and the audit report to the Office of Justice no later than the end of the 12th month following the balance sheet date. The second and third sentences of Article 1122(1) and Article 1122(3), (4) and (6) shall apply *mutatis mutandis*.<sup>2128</sup>

2) If one of the companies included in the consolidated annual financial statement has issued bonds with public subscription or if its shares are listed on an exchange, the consolidated annual financial statement must additionally be published in printed form and made available to the press and to anyone else who so requests.<sup>2129</sup>

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<sup>2126</sup> Heading preceding Article 1124 inserted by LGBL 2000 No. 279.

<sup>2127</sup> Article 1124 heading amended by LGBL 2003 No. 52.

<sup>2128</sup> Article 1124(1) amended by LGBL 2015 No. 165.

<sup>2129</sup> Article 1124(2) amended by LGBL 2003 No. 52.

## Article 1125

*2. Consolidated annual report*<sup>2130</sup>

1) The consolidated annual report need not be submitted to the Office of Justice; it must, however, be made available for inspection by the public at the registered office of the company. A full or partial copy of the consolidated annual report must be obtainable on request. The price of such a copy may not exceed its administrative cost.<sup>2131</sup>

2) If the securities of a company included in the consolidated annual financial statement are admitted to trading on a regulated market in an EEA Member State as referred to in Article 4(1)(21) of Directive 2014/65/EU, the consolidated annual report referred to in Article 1122(1) and (2) shall be disclosed.<sup>2132</sup>

3) Undertakings that must comply with the consolidated sustainability reporting requirements under Article 1121(1) and (3a) to (3c) must publish the consolidated annual report in the single electronic reporting format (Article 1121(3d)) together with the opinion and statement of the auditor or audit firm in accordance with Article 196(1)(e) and Article 196b(2)(c). Paragraph 1 shall not apply.<sup>2133</sup>

*B. Simplifications*<sup>2134</sup>Article 1126<sup>2135</sup>*I. Simplifications for small companies based on size*

1) Article 1122(1) shall apply to small companies as referred to in Article 1064, with the proviso that the legal representatives need only submit the abridged balance sheet in accordance with the first sentence of Article 1068(4) and the abridged notes in accordance with Article 1095(1). The notes need not contain the information relating to the income statement.<sup>2136</sup>

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<sup>2130</sup> Article 1125 heading amended by LGBL 2004 No. 141.

<sup>2131</sup> Article 1125(1) amended by LGBL 2013 No. 6.

<sup>2132</sup> Article 1125(2) amended by LGBL 2017 No. 420.

<sup>2133</sup> Article 1125(3) inserted by LGBL 2024 No. 170.

<sup>2134</sup> Heading preceding Article 1126 inserted by LGBL 2000 No. 279.

<sup>2135</sup> Article 1126 amended by LGBL 2013 No. 72. Applicable for the first time to financial years commencing on or after 1 January 2013.

<sup>2136</sup> Article 1126(1) amended by LGBL 2015 No. 165.

2) Article 1122(1) shall apply to micro-companies as referred to in Article 1064, with the proviso that the legal representatives need only submit the abridged balance sheet in accordance with the second sentence of Article 1068(4); this shall not apply to investment undertakings and financial holding undertakings as defined in Article 2(14) and (15) of Directive 2013/34/EU.<sup>2137</sup>

3) Small companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU may not make use of the simplifications under paragraphs 1 and 2.<sup>2138</sup>

#### Article 1127

##### *II. Simplifications for medium-sized companies based on size*<sup>2139</sup>

1) Article 1122(1) shall apply to medium-sized companies as referred to in Article 1064(2), with the proviso that the legal representatives:<sup>2140</sup>

1. must submit the balance sheet only in the form prescribed for small companies as referred to in Article 1064 in accordance with the first sentence of Article 1068(4).
  - a) However, when applying Article 1068(2), the following items shall also be disclosed separately in the balance sheet or in the notes:

##### On the assets side

- |         |  |
|---------|--|
| A.I.1   | B. Formation expenses  |
| A.I.4   | Goodwill, to the extent that it was acquired for valuable consideration                                    |
| A.II.1  | Land, rights to immovables and other similar rights and buildings, including buildings on third-party land |
| A.II.2  | Plant and machinery  |
| A.II.3  | Other fixtures and fittings, tools and equipment   |
| A.II.4  | Payments on account and tangible assets in the course of construction                                      |
| A.III.1 | Shares in affiliated undertakings  |

<sup>2137</sup> Article 1126(2) amended by LGBL 2015 No. 165.

<sup>2138</sup> Article 1126(3) amended by LGBL 2017 No. 420.

<sup>2139</sup> Article 1127 heading inserted by LGBL 2000 No. 279.

<sup>2140</sup> Article 1127(1) amended by LGBL 2015 No. 165.

- A.III.2 Loans to affiliated undertakings
- A.III.3 Participating interests
- A.III.4 Loans to undertakings with which the undertaking is linked by virtue of participating interests
- B.II.2 Loans to affiliated undertakings
- B.II.3 Loans to undertakings with which the undertaking is linked by virtue of participating interests
- B.III.1 Shares in affiliated undertakings
- B.III.2 Own shares or interests

On the liabilities side

- C.1 Debenture loans, showing convertible loans separately
  - C.2 Amounts owed to banks
  - C.6 Amounts owed to affiliated undertakings
  - C.7 Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests
- b) Where Article 1068(3) applies, the following items shall also be disclosed separately in the balance sheet or in the notes:
- A.I.1 Formation expenses
  - A.I.4 Goodwill, to the extent that it was acquired for valuable consideration
  - A.II.1 Land, rights to immovables and other similar rights and buildings, including buildings on third-party land
  - A.II.2 Plant and machinery
  - A.II.3 Other fixtures and fittings, tools and equipment
  - A.II.4 Payments on account and tangible assets in the course of construction
  - A.III.1 Shares in affiliated undertakings
  - A.III.2 Loans to affiliated undertakings
  - A.III.3 Participating interests
  - A.III.4 Loans to undertakings with which the undertaking is linked by virtue of participating interests
  - B.II.2 Loans to affiliated undertakings

- B.II.3 Loans to undertakings with which the undertaking is linked by virtue of participating interests
  - B.III.1 Shares in affiliated undertakings
  - B.III.2 Own shares or interests
  - D.1 Debenture loans, showing convertible loans separately
  - D.2 Amounts owed to banks
  - D.6 Amounts owed to affiliated undertakings
  - D.7 Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests
  - G.1 Debenture loans, showing convertible loans separately
  - G.2 Amounts owed to banks
  - G.6 Amounts owed to affiliated undertakings
  - G.7 Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests
- c) For the items of assets and liabilities to be disclosed separately, the information referred to in Article 1071 shall also be disclosed.
2. may submit the notes without the information referred to in points 8 and 9 of Article 1091(2) as well as point 13 of Article 1092.
- 2) Medium-sized companies as referred to in Article 1064 whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU may not make use of the simplifications under paragraph 1.<sup>2141</sup>

#### Article 1128<sup>2142</sup>

##### *C. Branches of companies domiciled abroad*

- 1) In the case of a domestic branch of a company domiciled abroad which is comparable to a company as referred to in Article 1063, its legal representatives shall publish the business report, consolidated business report, and audit reports that have been prepared, audited, and published in accordance with the law applicable to that branch, in accordance with Articles 1122 to 1125, 1129, and 1130(1).

<sup>2141</sup> Article 1127(2) amended by LGBl. 2017 No. 420.

<sup>2142</sup> Article 1128 inserted by LGBl. 2000 No. 279.

2) If the documents referred to in paragraph 1 have not been drawn up in German, they shall be submitted to the Office of Justice as a copy certified by the registry office of the principal place of business. A certified translation into German of the certification by the registry office must be submitted.<sup>2143</sup>

#### Article 1129

*D. Form and content of documents upon disclosure; publication and copies pursuant to company agreement, articles of association, or other reasons*<sup>2144</sup>

1) The following provisions must be observed when disclosing all or part of the annual financial statement and consolidated annual financial statement and when publishing or reproducing them in any other form on the basis of the company agreement or the articles of association:<sup>2145</sup>

1. The annual financial statement and the consolidated annual financial statement must be presented in such a way that they comply with the provisions applicable to their preparation, except where simplifications under Articles 1126 and 1127 are made; within that framework, they must be complete and accurate.
2. In addition, the full text of the audit report issued by an auditor or audit firm must be reproduced.
3. If the annual financial statement is only partially disclosed due to the use of simplifications and if the audit report refers to the complete annual financial statement, this must be pointed out.
4. The annual financial statement must contain the name, legal form, registered office, and commercial register number of the company, supplemented, where applicable, by the affix that the company is in liquidation. The first sentence shall apply *mutatis mutandis* to the consolidated annual financial statement.<sup>2146</sup>

2) If the annual financial statement or the consolidated annual financial statement are not reproduced in the form prescribed in paragraph 1 in publications or reproductions which are not prescribed by law, the company agreement, or the articles of association, a heading shall indicate that the publication is not in the form prescribed by law. An audit report may not be attached; however, it must be stated whether the audit report

<sup>2143</sup> Article 1128(2) amended by LGBL 2013 No. 6.

<sup>2144</sup> Article 1129 heading inserted by LGBL 2000 No. 279.

<sup>2145</sup> Article 1129(1) inserted by LGBL 2000 No. 279.

<sup>2146</sup> Article 1129(1)(4) inserted by LGBL 2015 No. 165.

has been issued with or without qualifications or whether the annual financial statement or consolidated annual financial statement has been rejected, where the auditors or the audit firm were unable to express an audit opinion. It must also be stated whether the audit report refers to circumstances to which the auditors or the audit firm have drawn special attention without qualifying the audit report. In addition, it must be stated under which registration number the filing with the Office of Justice has been made or that the filing has not yet been made.<sup>2147</sup>

3) Paragraph 1 shall apply *mutatis mutandis* to the annual report, the consolidated annual report, and the list of participating interests.<sup>2148</sup>

#### Article 1130<sup>2149</sup>

##### *E. Verification duty of the Office of Justice*

1) The Office of Justice shall verify whether the documents to be disclosed have been submitted in due time and in full and have been signed by the competent persons in accordance with Article 1056. If documents are missing or if their signature is inadequate, the Office of Justice shall issue an order for amelioration and set a reasonable deadline of no more than four weeks.<sup>2150</sup>

<sup>2147</sup> Article 1129(2) amended by LGBl. 2013 No. 6.

<sup>2148</sup> Article 1129(3) amended by LGBl. 2015 No. 165.

<sup>2149</sup> Article 1130 amended by LGBl. 2013 No. 6.

<sup>2150</sup> Article 1130(1) amended by LGBl. 2019 No. 258. Applicable in this version for the first time to financial years commencing after 31 December 2018.

2) If the verification pursuant to paragraph 1 gives reason to believe that simplifications based on the size of the company should not have been claimed, the Office of Justice may, within a reasonable period of time, require the company to provide information on net turnover and the average number of employees. If the company fails to make the notification by the deadline, the simplifications shall be deemed to have been wrongly claimed.

3) The date of submission of the documents to be disclosed shall be recorded in the Commercial Register.<sup>2151</sup>

Article 1130a<sup>2152</sup>

*F. Reservation of the Disclosure Act*

These provisions are subject to the provisions of the Disclosure Act.

Section 3

**Supplementary rules for certain business sectors<sup>2153</sup>**

Subsection 1

**Banks and investment firms<sup>2154</sup>**

Article 1131

*A. Scope of application; applicable provisions; exemptions<sup>2155</sup>*

1) For banks as defined in Article 4 of the Banking Act and investment firms as defined in Article 4(1)(1) of the Investment Firms Act, irrespective of their legal form, the provisions of Section 2 of this Title for large companies as well as Articles 119 and 120 of the Banking Act and Article 43 of the Investment Firms Act, respectively, shall apply in addition to the provisions of Section 1 of this Title, unless otherwise provided below. For

<sup>2151</sup> Article 1130(3) inserted by LGBL. 2019 No. 258. Applicable in this version for the first time to financial years commencing after 31 December 2018.

<sup>2152</sup> Article 1130a inserted by LGBL. 2008 No. 356.

<sup>2153</sup> Title preceding Article 1131 inserted by LGBL. 2000 No. 279.

<sup>2154</sup> Title preceding Article 1131 amended by LGBL. 2007 No. 265.

<sup>2155</sup> Article 1131 heading inserted by LGBL. 2000 No. 279.

the purposes of this Subsection, parent undertakings shall also be deemed banks and investment firms where their purpose is to acquire participating interests in subsidiaries and to manage and dispose of such participating interests (financial holding undertakings), provided that these subsidiaries are predominantly banks, investment firms, electronic money institutions, or payment institutions; for the purpose of assessing the criterion "predominantly", Articles 6 and 9 of the Financial Conglomerates Act shall apply *mutatis mutandis*.<sup>2156</sup>

2) Articles 1051(3) and (4), 1057, 1064, 1065(3), 1067(5) and (6), 1068, 1071, the second sentence of Article 1074(1), Articles 1075(2), 1078 to 1081, 1083, 1086, 1090, 1091(2)(3), points 1, 4, 8, 9(c) and the last sentence of point 10 of Article 1092, Articles 1094(2), 1095, 1095a, 1096(5) to (7), 1101, 1101a, 1122, 1123(1) to (3), 1124, 1125(1) and (2), 1126 to 1128, and 1130(2) shall not apply.<sup>2157</sup>

2a) For the purposes of sustainability reporting, the following shall apply to banks and investment firms by way of derogation from paragraphs 1 and 2:<sup>2158</sup>

1. The size classes set out in Article 1064 (small, medium-sized, and large companies) and Article 1101 (large groups) shall apply.
2. When the sustainability reporting provisions refer to large, medium-sized, or small companies or undertakings, this shall always include banks and investment firms.
3. For banks and securities firms, net turnover is the sum of the items "Interest income", "Current income from securities", "Income from commission business and services", "Result from financial transactions", and "Other ordinary income" in the income statement.
4. Article 1096f may be applied only by small and non-complex institutions as defined in Article 4(1)(145) of Regulation (EU) No 575/2013.

3) For banks and investment firms, the exempting consolidated business report pursuant to Article 1099(2) shall, without prejudice to the other conditions, be prepared in accordance with Directive 86/635/EEC.<sup>2159</sup>

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<sup>2156</sup> Article 1131(1) amended by LGBL 2025 No. 98.

<sup>2157</sup> Article 1131(2) amended by LGBL 2024 No. 170.

<sup>2158</sup> Article 1131(2a) inserted by LGBL 2024 No. 170.

<sup>2159</sup> Article 1131(3) amended by LGBL 2007 No. 265.

Article 1132<sup>2160</sup>*B. Provisions for general banking risks*

1) An item "Provisions for general banking risks" may be created on the liabilities side of the balance sheet to cover general banking risks, to the extent this is necessary for reasons of prudence due to the special risks of the banking business.

2) Allocations to provisions for general banking risks or income from the release of provisions for general banking risks must be shown separately in the income statement.

*C. Valuation rules*<sup>2161</sup>Article 1133<sup>2162</sup>*I. Measurement of assets*

1) For the purposes of Article 1085(2), intangible assets and tangible assets under items A.I. and II. of Article 1068(2) and (3) as well as participating interests shall always be regarded as fixed assets.

2) For the purposes of Article 1085(3), all assets not mentioned in paragraph 1, in particular debtors and investments, shall always be considered current assets, unless they are intended for use on a continuing basis for the undertaking's activities, in which case they shall be measured in accordance with paragraph 1.

3) The option of valuing financial assets at the lower figure to be attributed to them at the balance sheet date, if it is not expected that the reduction in value will be permanent, applies to all participating interests, shares in affiliated undertakings, and securities that are intended for use on a continuing basis for the undertaking's activities.

4) By way of derogation from Article 1085(1), fixed-interest securities which are intended for use on a continuing basis for the undertaking's activities and which are intended to be held until their final maturity shall always be valued at the amount repayable. If the purchase price of these securities is higher than the amount repayable, the difference must be written off *pro rata temporis* and no later than the date of repayment of these securities. If the purchase price of these securities is less than the

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<sup>2160</sup> Article 1132 inserted by LGBL 2000 No. 279.

<sup>2161</sup> Heading preceding Article 1133 inserted by LGBL 2000 No. 279.

<sup>2162</sup> Article 1133 inserted by LGBL 2000 No. 279.

amount repayable, the difference must be recognised as income *pro rata temporis* over the entire remaining term until repayment. The difference according to the second and third sentences must be shown separately in the notes.

5) By way of derogation from Article 1085(1), items within the scope of the trading business (trading portfolio) shall always be valued at the market price on the balance sheet date, provided that they are traded on a recognised exchange or on a representative market. Only those items which are not intended for use on a continuing basis for the undertaking's activities are considered to be items within the scope of the trading business.

Article 1134<sup>2163</sup>

*II. Currency conversion*

1) Assets, liabilities, provisions, and accruals and deferrals other than those denominated in the accounting currency as well as spot transactions not yet settled on the balance sheet date shall be converted into the accounting currency at the spot exchange rate on the balance sheet date. Forward transactions shall be converted into the accounting currency at the forward rate on the balance sheet date.

2) Expenditure and income resulting from currency conversion must be taken into account in the income statement.

Article 1135<sup>2164</sup>

*III. Measurement of financial instruments*

If, in preparing the consolidated annual financial statement, financial instruments, including derivative financial instruments, are measured at fair value (Article 1116a(1)), Article 1133(2), (4) and (5) and Article 1134 may not be applied.

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<sup>2163</sup> Article 1134 inserted by LGBl. 2000 No. 279.

<sup>2164</sup> Article 1135 amended by LGBl. 2008 No. 224.

## Article 1136

*D. Undertakings to be included in the scope of consolidation*<sup>2165</sup>1) Repealed<sup>2166</sup>

2) Where, pursuant to point 3 of Article 1104(1), a bank or investment firm does not include in its consolidated annual financial statement a subsidiary which is a bank or investment firm and where shares in that undertaking are held for the purpose of a financial assistance operation designed to reorganise or save that undertaking, it must attach the annual financial statement of that undertaking to its consolidated annual financial statement and provide additional information in the notes to the consolidated annual financial statement concerning the nature and conditions of the financial assistance operation.<sup>2167</sup>

## Subsection 2

**Insurance undertakings**<sup>2168</sup>

## Article 1137

*A. Scope of application; applicable provisions; exemptions*<sup>2169</sup>

1) For domestic insurance undertakings and foreign insurance undertakings that are obliged to prepare separate accounts for domestic business activities in accordance with Article 117(1)(c) of the Insurance Supervision Act, irrespective of their legal form, the provisions of Section 2 of this Title for large companies as well as Articles 75 and 99 of the Insurance Supervision Act shall apply in addition to the provisions of Section 1 of this Title, unless otherwise provided below. For the purposes of this Subsection, parent undertakings shall also be deemed insurance undertakings where their sole or predominant purpose is to acquire participating interests in subsidiaries and to manage and dispose of such participating interests (financial holding undertakings), provided that these subsidiaries are solely or predominantly insurance undertakings.<sup>2170</sup>

2) Articles 1051(3) and (4), 1057, 1064, 1065(3), 1067(5) and (6), 1068, 1070, 1071, the second sentence of Article 1074(1), Articles 1078 to 1081,

<sup>2165</sup> Article 1136 heading inserted by LGBL 2000 No. 279.

<sup>2166</sup> Article 1136(1) repealed by LGBL 2004 No. 141.

<sup>2167</sup> Article 1136(2) amended by LGBL 2007 No. 265.

<sup>2168</sup> Title preceding Article 1137 inserted by LGBL 2000 No. 279.

<sup>2169</sup> Article 1137 heading inserted by LGBL 2000 No. 279.

<sup>2170</sup> Article 1137(1) amended by LGBL 2024 No. 170.

point 4 of Article 1092, Articles 1094(2), 1095, 1098, 1101, 1106(2), point 3 of Article 1120(1) and Article 1120(2), Articles 1122(3) and (4), 1123(1) to (3), 1125(1) and (2), 1126 to 1128, 1130(2), and 1139 shall not apply. The information referred to in point 8 of Article 1092 must be provided.<sup>2171</sup>

3) For the purposes of sustainability reporting, the following shall apply to insurance undertakings by way of derogation from paragraphs 1 and 2:<sup>2172</sup>

1. The size classes set out in Article 1064 (small, medium-sized, and large companies) and Article 1101 (large groups) shall apply.
2. When the sustainability reporting provisions refer to large, medium-sized, or small companies or undertakings, this shall always include insurance undertakings.
3. For insurance undertakings, net turnover is the amount of the item "Gross premiums written" in the income statement.
4. Article 1096f may be applied only by captive insurance undertakings as defined in Article 10(1)(13) of the Insurance Supervision Act.

4) Point 6 of Article 1091(2) shall not apply to obligations arising in the context of insurance business.<sup>2173</sup>

5) For insurance undertakings, the exempting consolidated business report pursuant to Article 1099(2) shall, without prejudice to the other conditions, be prepared in accordance with Directive 91/674/EEC.<sup>2174</sup>

6) Article 1107(2) shall apply with the proviso that the period of three months specified therein shall be six months.<sup>2175</sup>

7) Point 1 of Article 1111(2) shall also apply if the determination of the measurement prescribed in accordance with paragraph 1 would not be disproportionately burdensome, but the transaction has created legal entitlements in favour of the policyholders. The application of this exemption must be disclosed in the notes and, if the effect on the assets and liabilities, financial position, and profit or loss of the undertakings included in the consolidated annual financial statement taken as a whole is material, an explanation must be given.<sup>2176</sup>

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<sup>2171</sup> Article 1137(2) amended by LGBL 2024 No. 170.

<sup>2172</sup> Article 1137(3) amended by LGBL 2024 No. 170.

<sup>2173</sup> Article 1137(4) inserted by LGBL 2000 No. 279.

<sup>2174</sup> Article 1137(5) amended by LGBL 2003 No. 52.

<sup>2175</sup> Article 1137(6) inserted by LGBL 2000 No. 279.

<sup>2176</sup> Article 1137(7) inserted by LGBL 2000 No. 279.

8) Article 1115(1) and (2) shall not apply to assets whose changes in value affect or create rights for policyholders if their valuation in the annual financial statements of the undertakings included in the consolidated annual financial statement is based on the application of insurance-specific requirements and to liabilities whose valuation in the annual financial statements of the undertakings included in the consolidated annual financial statement is based on the application of such requirements. The application of this exemption shall be disclosed in the notes.<sup>2177</sup>

Article 1138<sup>2178</sup>

*B. Valuation rules*

1) For the purposes of Article 1085(2), intangible assets, all capital investments, other tangible assets, and stocks shall be regarded as fixed assets. However, capital investments for the benefit of life insurance policyholders who bear the investment risk shall be valued in accordance with the specific rules applicable to such capital investments. The option of valuing assets at the lower figure to be attributed to them at the balance sheet date, if it is not expected that the reduction in value will be permanent, applies to all capital investments with the exception of those for the benefit of life insurance policyholders who bear the investment risk as well as land, rights to immovables, other similar rights, and buildings, and also to own shares.

2) For the purposes of Article 1085(3), all debtors not forming part of capital investments, with the exception of subscribed capital called but not yet paid and cash at bank and in hand, shall be considered current assets.

3) Article 1137 shall apply *mutatis mutandis*.

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<sup>2177</sup> Article 1137(8) inserted by LGBI. 2000 No. 279.

<sup>2178</sup> Article 1138 inserted by LGBI. 2000 No. 279.

Subsection 3<sup>2179</sup>**Undertakings in the extractive industry and  
the logging of primary forests<sup>2180</sup>**Article 1138a<sup>2181</sup>*A. Definitions*

For the purposes of this Subsection, the following definitions shall apply:

1. "undertaking active in the extractive industry" means an undertaking with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006;
2. "undertaking active in the logging of primary forests" means an undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests;
3. "government" means any national, regional or local authority of an EEA Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 1097;
4. "project" means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project;
5. "payment" means an amount paid, whether in money or in kind, for activities, as described in points 1 and 2, of the following types:
  - a) production entitlements;
  - b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
  - c) royalties;
  - d) dividends;

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<sup>2179</sup> Title preceding Article 1138a inserted by LGBL 2015 No. 165.

<sup>2180</sup> Title preceding Article 1138a inserted by LGBL 2015 No. 165.

<sup>2181</sup> Article 1138a inserted by LGBL 2015 No. 165.

- e) signature, discovery and production bonuses;
- f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
- g) payments for infrastructure improvements.

Article 1138b<sup>2182</sup>

*B. Scope of application; duty to present and publish a report*

1) Large companies as referred to in Article 1064 which are active in the extractive industry or the logging of primary forests shall prepare and make public a report on payments made to governments on an annual basis.

2) The obligation under paragraph 1 shall not apply to any undertaking which is a subsidiary or a parent undertaking, where both of the following conditions are fulfilled:

1. the parent undertaking is subject to the laws of an EEA Member State; and
2. the payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by that parent undertaking in accordance with Article 1138d.

Article 1138c<sup>2183</sup>

*C. Content of the report*

1) Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below 123 600 Swiss francs within a financial year.

2) The report shall disclose the following information in relation to activities as described in points 1 and 2 of Article 1138a in respect of the relevant financial year:

1. the total amount of payments made to each government;
2. the total amount per type of payment as specified in point 5 of Article 1138a made to each government; and

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<sup>2182</sup> Article 1138b inserted by LGBl. 2015 No. 165.

<sup>2183</sup> Article 1138c inserted by LGBl. 2015 No. 165.

3. where those payments have been attributed to a specific project, the total amount per type of payment as specified in point 5 of Article 1138a, made for each such project and the total amount of payments for each such project; payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

3) Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.

4) The disclosure of the payments shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of the provisions of this Subsection.

#### Article 1138d<sup>2184</sup>

##### *D. Consolidated report on payments to public authorities*

1) Large companies as referred to in Article 1064 which are active in the extractive industry or the logging of primary forests shall prepare a consolidated report on payments to governments as referred to in Articles 1138b and 1138c, provided that they are required to draw up a consolidated business report in accordance with Articles 1097 to 1101a. Large companies as referred to in Article 1064 which are parent undertakings are considered to be active in the extractive industry or the logging of primary forests if any of their subsidiary undertakings are active in the extractive industry or the logging of primary forests. The consolidated report shall only include payments resulting from extractive operations and/or operations relating to the logging of primary forests.

2) The obligation to prepare a consolidated report in accordance with paragraph 1 shall apply in any case if the affiliated undertaking (Article 1073(2)) of the ultimate parent undertaking is a company whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU, a bank, or an insurance undertaking.<sup>2185</sup>

3) Undertakings, including companies whose securities are admitted to trading on a regulated market in an EEA Member State within the meaning of Article 4(1)(21) of Directive 2014/65/EU, banks, and insurance

<sup>2184</sup> Article 1138d inserted by LGBL 2015 No. 165.

<sup>2185</sup> Article 1138d(2) amended by LGBL 2017 No. 420.

companies need not be included in a consolidated report on payments to governments if at least one of the following conditions is met:<sup>2186</sup>

1. severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
2. extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Subsection cannot be obtained without disproportionate expense or undue delay;
3. the shares of that undertaking are held exclusively with a view to their subsequent resale.

#### Article 1138e<sup>2187</sup>

##### *E. Disclosure; responsibility*

1) The report referred to in Article 1138b and the consolidated report referred to in Article 1138d shall be disclosed in accordance with Article 1122 et seq.

2) The members of the responsible bodies shall have responsibility for ensuring that, to the best of their knowledge and ability, the report referred to in Article 1138b and the consolidated report referred to in Article 1138d are drawn up and published in accordance with the requirements of this Title.

#### Article 1138f<sup>2188</sup>

##### *F. Exemption from requirement to prepare a report; equivalence*

1) Undertakings that prepare and make public a report referred to in Article 1138b or a consolidated report referred to in Article 1138d complying with third-country reporting requirements assessed, in accordance with Article 47 of Directive 2013/34/EU, as equivalent shall be exempt from the requirements of this Subsection.

2) Paragraph 1 shall not apply to the obligation to publish. The report referred to in Article 1138b and the consolidated report referred to in Article 1138d must be published in accordance with Article 1122 et seq.

<sup>2186</sup> Article 1138d(3) introductory phrase amended by LGBL 2017 No. 420.

<sup>2187</sup> Article 1138e inserted by LGBL 2015 No. 165.

<sup>2188</sup> Article 1138f inserted by LGBL 2015 No. 165.

Section 4<sup>2189</sup>**Public-interest entities**Article 1138g<sup>2190</sup>*Terminology and applicable provisions*

- 1) For the purposes of this Act, "public-interest entities" means:
- a) companies under Liechtenstein law whose transferable securities are admitted to trading on a regulated market of an EEA Member State within the meaning of point 21 of Article 4(1) of Directive 2014/65/EU;
  - b) banks as defined in Article 4 of the Banking Act;<sup>2191</sup>
  - c) insurance undertakings within the meaning of Article 2 of the Insurance Supervision Act.
  - d) market operators, including a Liechtenstein exchange operating company as defined in Article 3(1)(2) of the Trading Venues and Exchanges Act.<sup>2192</sup>

2) The provisions of this Act shall apply *mutatis mutandis* to the statutory audit of public-interest entities. In all other respects, the provisions of Regulation (EU) No 537/2014 shall apply, subject to Article 192(10) and (11), Article 196(9), Article 201(7), Article 347a, and § 67a of the Final Part.

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<sup>2189</sup> Heading preceding Article 1138g amended by LGBL 2024 No. 170.

<sup>2190</sup> Article 1138g inserted by LGBL 2019 No. 18.

<sup>2191</sup> Article 1138g(1)(b) amended by LGBL 2025 No. 98.

<sup>2192</sup> Article 1138g(1)(d) inserted by LGBL 2025 No. 98.

## Section 5

**International accounting standards<sup>2193</sup>**Article 1139<sup>2194</sup>

1) In preparing the annual financial statement and the consolidated annual financial statement, the international accounting standards of the International Accounting Standards Board (IASB) may be applied instead of the accounting rules otherwise applicable (Article 1045 et seq.). This provision is subject to paragraph 3.

(2) "International accounting standards of the IASB" shall mean the International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related interpretations (SIC/IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations.

3) By ordinance, the Government shall determine which provisions of this Title shall also apply when applying the international accounting standards of the IASB.

4) Companies whose shares are listed on an exchange and companies that have issued bonds with public subscription must in all cases prepare their consolidated annual financial statement in accordance with the international accounting standards of the IASB.

5) The international accounting standards of the IASB within the meaning of this article may be applied only to the extent that their applicability in the European Union has been decided by the European Commission in accordance with the procedure set out in Article 3 in conjunction with Article 6 of Regulation (EC) No 1606/2002 and by the EEA Joint Committee.<sup>2195</sup>

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<sup>2193</sup> Title preceding Article 1139 inserted by LGBl. 2003 No. 52.

<sup>2194</sup> Article 1139 inserted by LGBl. 2003 No. 52.

<sup>2195</sup> Article 1139(5) amended by LGBl. 2022 No. 227.

Section 6<sup>2196, 2197</sup>**Report on income tax information**Article 1140<sup>2198</sup>*A. Definitions*

1) For the purpose of this Section, the following definitions shall apply:

1. "ultimate parent undertaking" means an undertaking which draws up the consolidated financial statements of the largest body of undertakings;
2. "consolidated financial statements" means the financial statements drawn up by a parent undertaking of a group, in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;
3. "tax jurisdiction" means a State or non-State jurisdiction which has fiscal autonomy in respect of corporate income tax;
4. "standalone undertaking" means an undertaking which is not part of a group which comprises a parent undertaking and all its subsidiary undertakings.

2) For the purposes of Articles 1141 to 1146, "revenue" shall have the same meaning as:

1. "net turnover", for undertakings governed by the law of an EEA Member State that do not apply international accounting standards as referred to in Article 1139; or
2. "revenue" as defined by or within the meaning of the financial reporting principles on the basis of which the financial statements are prepared, for undertakings that are not governed by the law of an EEA Member State.

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<sup>2196</sup> Heading preceding Article 1140 inserted by LGBl. 2024 No. 170.

<sup>2197</sup> The provisions on income tax reporting (Articles 1140 to 1153) shall be applicable for the first time to financial years beginning on or after the date of entry into force of the decision of the EEA Joint Committee incorporating Directive (EU) 2021/2101 (LGBl. 2024 No. 170).

<sup>2198</sup> Article 1140 inserted by LGBl. 2024 No. 170.

*B. Undertakings and branches subject to reporting requirements; content, disclosure, responsibility, and audit*<sup>2199</sup>

*I. Group of undertakings subject to reporting requirement*<sup>2200</sup>

Article 1141<sup>2201</sup>

*1. Ultimate parent undertakings and standalone undertakings*

1) Ultimate parent undertakings, where the consolidated revenue in the consolidated annual financial statements drawn up by them in accordance with Articles 1097 et seq. exceeded for each of the last two consecutive financial years a total of EUR 750 million, shall draw up, publish and make accessible a report on income tax information as regards the latter of those two consecutive financial years.

2) An ultimate parent undertaking shall no longer be subject to the income tax reporting obligations set out in paragraph 1 where the total consolidated revenue on the basis of the consolidated annual financial statements drawn up by it in accordance with Articles 1097 et seq. falls below EUR 750 million for each of the last two consecutive financial years.

3) Standalone undertakings, where the revenue in the annual financial statements drawn up by them in accordance with Articles 1063 et seq. exceeded for each of the last two consecutive financial years a total of EUR 750 million, shall draw up, publish and make accessible a report on income tax information as regards the latter of those two consecutive financial years.

4) A standalone undertaking shall no longer be subject to the income tax reporting obligations set out in paragraph 3 where the total revenue on the basis of the annual financial statements drawn up by it in accordance with Articles 1063 et seq. falls below EUR 750 million for each of the last two consecutive financial years.

Article 1142<sup>2202</sup>

*2. Exemptions*

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<sup>2199</sup> Heading preceding Article 1141 inserted by LGBL 2024 No. 170.

<sup>2200</sup> Heading preceding Article 1141 inserted by LGBL 2024 No. 170.

<sup>2201</sup> Article 1141 inserted by LGBL 2024 No. 170.

<sup>2202</sup> Article 1142 inserted by LGBL 2024 No. 170.

1) Article 1141 shall not apply to standalone undertakings or ultimate parent undertakings and their affiliated undertakings where such undertakings, including their branches, have their registered office only in Liechtenstein and do not have an establishment, fixed place of business, or permanent business activity in any other tax jurisdiction.

2) Article 1141 shall not apply to standalone undertakings and ultimate parent undertakings where such undertakings or their affiliated undertakings disclose a report in accordance with Article 89 of Directive 2013/36/EU<sup>2203</sup> that encompasses information on all of their activities and, in the case of ultimate parent undertakings, on all the activities of all the affiliated undertakings included in the consolidated financial statements.

Article 1143<sup>2204</sup>

*3. Medium-sized and large subsidiary undertakings with third-country parent undertakings*

1) Medium-sized and large subsidiary undertakings as referred to in Article 1063 et seq. having their registered office in Liechtenstein that are controlled by an ultimate parent undertaking that is not governed by the law of an EEA Member State, where the consolidated revenue in the consolidated annual financial statements drawn up by them exceeded for each of the last two consecutive financial years a total of EUR 750 million, shall publish and make accessible a report on income tax information concerning that ultimate parent undertaking as regards the latter of those two consecutive financial years.

2) Where that information or report as referred to in paragraph 1 is not available, the subsidiary undertaking shall request its ultimate parent undertaking to provide it with all information required to enable it to meet its obligations under paragraph 1. If the ultimate parent undertaking does not provide all the required information, the subsidiary undertaking shall draw up, publish and make accessible a report on income tax information containing all information in its possession, obtained or acquired, and a statement indicating that its ultimate parent undertaking did not make the necessary information available.

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<sup>2203</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>2204</sup> Article 1143 inserted by LGBL 2024 No. 170.

3) Medium-sized and large subsidiary undertakings shall no longer be subject to the income tax reporting obligations set out in paragraphs 1 and 2 where the total consolidated revenue of the ultimate parent undertaking on the basis of the annual financial statements drawn up by it falls below EUR 750 million for each of the last two consecutive financial years.

Article 1144<sup>2205</sup>

*4. Branches of third-country undertakings*

1) Branches opened by undertakings that are not governed by the law of an EEA Member State, where such undertaking has a legal form comparable to those listed in Article 1063, shall publish and make accessible a report on income tax information concerning the ultimate parent undertaking or the standalone undertaking), as regards the latter of the last two consecutive financial years, if the requirements under paragraph 4 and 6(1) are met.

2) Where the information or report as referred to in paragraph 1 is not available, the person or persons designated to carry out the disclosure formalities referred to in Article 1152(2) shall request the ultimate parent undertaking or the standalone undertaking referred to in paragraph 6(1) to provide them with all information necessary to meet the legal obligations.

3) In the event that not all the required information referred to in paragraph 2 is provided, the branch shall draw up, publish and make accessible a report on income tax information, containing all information in its possession, obtained or acquired, and a statement indicating that the ultimate parent undertaking or the standalone undertaking did not make the necessary information available.

4) The reporting obligations set out in paragraphs 1 to 3 shall apply only to branches which have a net turnover that exceeded the threshold for each of the last two consecutive financial years as set out in Article 1064(1).

5) A branch subject to the reporting obligations set out in paragraphs 1 to 4 shall, however, no longer be subject to those obligations where its net turnover falls below the threshold for each of the last two consecutive financial years as set out in Article 1064(1).

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<sup>2205</sup> Article 1144 inserted by LGBl. 2024 No. 170.

6) The provisions set out in this Article shall apply to a branch only where the following criteria are met:

1. The undertaking that opened the branch is either an affiliated undertaking of a group whose ultimate parent undertaking is not governed by the law of an EEA Member State and the consolidated revenue in the consolidated annual financial statements drawn up by it exceeded for each of the last two consecutive financial years a total of EUR 750 million or a standalone undertaking the revenue of which in the annual financial statements exceeded for each of the last two consecutive financial years a total of EUR 750 million.
2. The ultimate parent undertaking referred to in point 1 does not have a medium-sized or large subsidiary undertaking as referred to in Article 1143.

7) A branch shall no longer be subject to the reporting obligations set out in paragraphs 1 to 4 where the criterion provided for in paragraph 6(1) ceases to be met for two consecutive financial years.

#### Article 1145<sup>2206</sup>

##### *5. Exempting reports on income tax information*

Articles 1143 and 1144 shall not apply where a report on income tax information is drawn up by an ultimate parent undertaking or standalone undertaking that is not governed by the law of an EEA Member State, in a manner that is consistent with Articles 1147 to 1150, and meets the following criteria:

1. It is made accessible to the public, free of charge and in an electronic reporting format which is machine-readable:
  - a) on the website of that ultimate parent undertaking or of that standalone undertaking;
  - b) in at least one of the official languages used in the EEA Member States;
  - c) no later than 12 months after the balance sheet date of the financial year for which the report is drawn up.
2. It identifies the name and the registered office of a single subsidiary undertaking, or the name and the address of a single branch governed by the law of an EEA Member State, which has published a report in accordance with Article 1151(1).

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<sup>2206</sup> Article 1145 inserted by LGBL 2024 No. 170.

Article 1146<sup>2207</sup>*6. Circumvention of reporting obligation*

Subsidiary undertakings or branches not subject to Articles 1143 and 1144 shall nevertheless be obliged to publish and make accessible a report on income tax information where such subsidiary undertakings or branches serve no other objective than to circumvent the reporting requirements set out in this Section.

*II. Content of the report on income tax information*<sup>2208</sup>Article 1147<sup>2209</sup>*1. Required information*

1) The report on income tax information to be drawn up pursuant to Articles 1141 to 1146 shall include information relating to all the activities of the standalone undertaking or ultimate parent undertaking, including those of all affiliated undertakings consolidated in the financial statements in respect of the relevant financial year.

2) The information referred to in paragraph 1 shall consist of:

1. the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned, the currency used for the presentation of the report and, where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, in respect of the relevant financial year, established in the EEA Member States or in the tax jurisdictions determined by the Government by ordinance, taking into account Article 48c(2)(a) of Directive 2013/34/EU;
2. a brief description of the nature of their activities;
3. the number of employees on a full-time equivalent basis;
4. revenues, which are to be calculated as:
  - a) the sum of the following items of the income statement as set out in Article 1079 and 1080: net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and

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<sup>2207</sup> Article 1146 inserted by LGBL 2024 No. 170.

<sup>2208</sup> Heading preceding Article 1147 inserted by LGBL 2024 No. 170.

<sup>2209</sup> Article 1147 inserted by LGBL 2024 No. 170.

- loans forming part of the fixed assets, other interest receivable and similar income; or
- b) the income as defined by the financial reporting principles on the basis of which the annual financial statements are prepared, excluding value adjustments and dividends received from affiliated undertakings;
5. the amount of profit or loss for the financial year before income tax;
  6. the amount of income tax accrued during the relevant financial year, which is to be calculated as the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches in the relevant tax jurisdiction;
  7. the amount of income tax paid on a cash basis, which is to be calculated as the amount of income tax paid during the relevant financial year by undertakings and branches in the relevant tax jurisdiction; and
  8. the amount of accumulated earnings at the end of the relevant financial year.
- 3) The following further specifications apply to paragraph 2(4), (6), (7) and (8):
1. the revenues referred to in paragraph 2(4) shall also include transactions with related parties;
  2. the current tax expense referred to in paragraph 2(6) shall relate only to the activities of an undertaking in the relevant financial year and shall not include deferred taxes or provisions for uncertain tax liabilities;
  3. taxes paid as referred to in paragraph 2(7) shall include withholding taxes paid by other undertakings with respect to payments to undertakings and branches within a group;
  4. the accumulated earnings referred to in paragraph 2(8) shall mean the sum of the profits from past financial years and the relevant financial year, the distribution of which has not yet been decided upon. With regard to branches, accumulated earnings shall be those of the undertaking which opened the branch.
- 4) The information listed in paragraph 2 may also be reported on the basis of the reporting requirements under CbC legislation.

Article 1148<sup>2210</sup>*2. Breakdown and attribution of the information*

1) The information referred to in Article 1147 shall be presented using a common template and reporting formats which are machine-readable; the European Commission lays down the template and formats in implementing acts for Directive 2013/34/EU.

2) The report on income tax information shall present the information referred to in Article 1147 separately for each EEA Member State. Where an EEA Member State comprises several tax jurisdictions, the information shall be aggregated at EEA Member State level.

3) The report on income tax information shall also present the information referred to in Article 1147 separately for each tax jurisdiction which, on 1 March of the financial year for which the report is to be drawn up, is deemed to be a tax jurisdiction determined by the Government by ordinance, taking into account the first clause of Article 48c(5)(2) of Directive 2013/34/EU, and shall provide such information separately for each tax jurisdiction which, on 1 March of the financial year for which the report is to be drawn up and on 1 March of the preceding financial year, was deemed to be a tax jurisdiction determined by the Government by ordinance, taking into account the second clause of Article 48c(5)(2)(2) of Directive 2013/34/EU.

4) The report on income tax information shall also present the information referred to in Article 1147 on an aggregated basis for tax jurisdictions other than those referred to in paragraph 3.

5) The information shall be attributed to each relevant tax jurisdiction on the basis of establishment, the existence of a fixed place of business or of a permanent business activity which, given the activities of the group or standalone undertaking, can be subject to income tax in that tax jurisdiction.

6) Where the activities of several affiliated undertakings can be subject to income tax within a single tax jurisdiction, the information attributed to that tax jurisdiction shall represent the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction.

7) Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.

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<sup>2210</sup> Article 1148 inserted by LGBL 2024 No. 170.

Article 1149<sup>2211</sup>*3. Preconditions for omitting information*

1) One or more specific items of information to be disclosed in accordance with Article 1147 may be temporarily omitted from the income tax report where their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates. Any omission shall be clearly indicated in the report together with a duly reasoned explanation regarding the reasons therefor.

2) All information omitted pursuant to paragraph 1 shall be made public in a later report on income tax information, within no more than five years of the date of its original omission.

3) The information pertaining to the tax jurisdictions determined by the Government by ordinance in accordance with Article 1148(3) may never be omitted.

Article 1150<sup>2212</sup>*4. Currency, currency conversion, and reporting format used*

1) The report on income tax information may include, where applicable at group level, an overall narrative providing explanations for any material discrepancies between the amounts disclosed pursuant to Article 1147(2)(7) and (8), taking into account, if appropriate, corresponding amounts concerning previous financial years.

2) The currency used in the report on income tax information shall be the currency in which the consolidated financial statements of the ultimate parent undertaking or the annual financial statements of the standalone undertaking are presented. This report shall be published in the currency used in the financial statements.

3) However, in the case mentioned in Article 1143(2), the currency used in the report on income tax information shall be the currency in which the subsidiary undertaking publishes its annual financial statements.

4) The thresholds referred to in Articles 1143 and 1144 shall be converted to an equivalent amount in the national currency of any relevant

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2211 Article 1149 inserted by LGBl. 2024 No. 170.

2212 Article 1150 inserted by LGBl. 2024 No. 170.

third countries by applying the exchange rate as at 21 December 2021, rounded off to the nearest thousand.

5) The report on income tax information shall specify whether it was prepared in accordance with Article 1147(2) or (4).

#### Article 1151<sup>2213</sup>

##### *III. Publication and accessibility of the report on income tax information*

1) The report on income tax information and the statement mentioned in Article 1144(3) shall be published within 12 months of the balance sheet date of the financial year for which the report is drawn up.

2) The report on income tax information and the statement mentioned in Article 1144(3) shall be made accessible to the public in at least one of the official languages of the EEA Member States, free of charge, no later than 12 months after the balance sheet date of the financial year for which the report is drawn up, on the website of:

1. the undertaking, where Article 1141 applies;
2. the subsidiary undertaking or an affiliated undertaking, where Article 1143 applies; or
3. the branch or the undertaking which opened the branch, or an affiliated undertaking, where Article 1144 applies.

3) The report referred to in Articles 1141 and 1143 to 1146 and, where applicable, the statement referred to in Article 1143(2) and Article 1144(3), shall remain accessible on the relevant website for a minimum of five consecutive years.

#### Article 1152<sup>2214</sup>

##### *IV. Responsibility for drawing up, publishing and making accessible the report on income tax information*

1) The members of the administrative, management and supervisory bodies of the ultimate parent undertakings or the standalone undertakings referred to in Article 1141, acting within the competences assigned to them by law, shall have collective responsibility for ensuring that the report on

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<sup>2213</sup> Article 1151 inserted by LGBl. 2024 No. 170.

<sup>2214</sup> Article 1152 inserted by LGBl. 2024 No. 170.

income tax information is drawn up, published and made accessible in accordance with Articles 1141 to 1151.

2) The members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 1143 that carry out the disclosure formalities for the branches in accordance with Article 1144, acting within the competences assigned to them by law, shall have collective responsibility for ensuring, to the best of their knowledge and ability, that the report on income tax information is drawn up in a manner that is consistent with or in accordance with, as relevant, Article 1141 to 1150, and that it is published and made accessible in accordance with Article 1151.

Article 1153<sup>2215</sup>

*V. Declaration by the auditor*

Where the business report of an undertaking governed by the law of an EEA Member State is required to be audited by one or more auditors or audit firms, the audit certificate shall state whether, for the financial year preceding the financial year for which the business reports under audit were prepared, the undertaking was required under Articles 1141 to 1146 to publish a report on income tax information and, if so, whether the report was published in accordance with Article 1151.

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<sup>2215</sup> Article 1153 inserted by LGBL 2024 No. 170.

Final Part  
**Introductory and transitional provisions**

§ 1

*A. Reference*

Articles 1 to 4 of the transitional provisions of the Property Act shall apply *mutatis mutandis*.

*B. Individuals*

§ 2

*I. Capacity to act*

1) Capacity to act shall in all cases be assessed according to the provisions of the new law.

2) However, anyone who was deemed to have capacity to act under the previous law at the time of entry into force of this Act but would not be deemed to have capacity to act under the provisions of the new law shall be recognised as having capacity to act after that date.

3) Article 12(2) shall not enter into force until a new family law has been adopted.

§ 3

*II. Women*

1) Repealed<sup>2216</sup>

2) Repealed<sup>2217</sup>

3) Repealed<sup>2218</sup>

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2216 § 3(1) repealed by LGBI. 1974 No. 20.

2217 § 3(2) repealed by LGBI. 1974 No. 20.

2218 § 3(3) repealed by LGBI. 1974 No. 20.

4) Repealed<sup>2219</sup>

5) Repealed<sup>2220</sup>

6) Repealed<sup>2221</sup>

7) Persons of the female sex may appear as witnesses in all cases in the same way as persons of the male sex, such as in particular as document witnesses.

8) In particular § 591 of the General Civil Code (ABGB) as amended in accordance with § 2(c) of the Introductory Act on Inheritance Law of 6 April 1846, No. 3877, shall thereby be amended with the proviso that it shall apply to all estates not yet settled with legal effect at the time of entry into force of this Act.

#### § 4

##### *III. Born out of wedlock*<sup>2222</sup>

1) The provision set out in Article 485(3) of this Act shall also be applied in favour of children still living at the time of entry into force whose parents are not married to each other and who have previously been excluded from this right, as well as their descendants.<sup>2223</sup>

2) Until a new inheritance law is enacted, § 754 of the General Civil Code shall read:

"Extramarital blood relatives shall be equated in the maternal relationship with marital blood relatives in inheritance law.

There shall be no right of inheritance in the paternal relationship."

3) This provision shall apply to estates which have not yet been settled with legal effect on the date of the entry into force of this Act.

<sup>2219</sup> § 3(4) repealed by LGBL 1974 No. 20.

<sup>2220</sup> § 3(5) repealed by LGBL 1974 No. 20.

<sup>2221</sup> § 3(6) repealed by LGBL 1974 No. 20.

<sup>2222</sup> § 4 heading amended by LGBL 2014 No. 201.

<sup>2223</sup> § 4(1) amended by LGBL 2014 No. 201.

*IV. Presumption of death*

## § 5

*1. In general*

1) After entry into force of this Act, the declaration of presumed death shall be subject to the provisions of the new law.

2) After entry into force of this Act, declarations of death under the previous law shall have the same effects as the declaration of presumed death under the new law, but the consequences which occurred before that date under the previous law, such as inheritance or dissolution of marriage, shall remain.

3) Proceedings pending at the time of entry into force of the new law shall be restarted in accordance with the provisions of this Act, taking into account the time elapsed, or shall be concluded at the request of the parties concerned in accordance with the previous proceedings and observing the previous time limits.

*2. Effects*

## § 6

*a) Marriage*

1) If one of the spouses is declared presumed dead, the other spouse may enter into a new marriage only if the previous marriage has been dissolved by court order.

2) Dissolution of the marriage may be requested at the same time as the declaration of presumed death or in special proceedings.

3) The same provisions apply to the proceedings as for separation (§ 112 of the General Civil Code).

*b) Inheritance law*

## § 7

*aa) Inheritance from a person presumed dead*

1) If a person is declared presumed dead, the heirs or beneficiaries must provide security for the return of the assets to the person with a better entitlement or to the person presumed dead before the estate is handed over.

2) This security shall be for a period of five years in the case of disappearance in extremely life-threatening circumstances and 15 years in the case of absence without any sign of life, but in no case longer than the date on which the person presumed dead would have reached the age of 100.

3) The five years shall be counted from the date on which the estate is handed over and the 15 years from the last sign of life.

4) If the person presumed dead returns, or if a person with a better entitlement asserts claims, the persons receiving the estate shall return the estate in accordance with the rules of possession.

5) They shall be liable to a person with a better entitlement, if they are in good faith, only during the period of the action for recovery of the inheritance.

## § 8

*bb) Right of inheritance of a person presumed dead*

1) If the life or death of an heir cannot be established at the time of inheritance because the heir is missing, that heir's share shall be placed under official administration.

2) Persons who would have inherited the share of the missing person if the missing person were not available shall have the right to apply to the judge for a declaration of presumed death one year after the disappearance in extremely life-threatening circumstances or five years after the missing person's last sign of life, after that declaration has been executed, for the handing over of the missing person's share.

3) The share shall be handed over in accordance with the provisions governing handing over to the heirs of a person presumed dead.

## § 9

*cc) Relationship of the two cases to each other*

1) If the heirs of the person presumed dead have already received the assets of that person, the person's co-heirs may, if an inheritance accrues to the person presumed dead, invoke this and demand the return of the accrued assets without the need for a new declaration of presumed death.

2) Similarly, the heirs of the person presumed dead may invoke the declaration of presumed death obtained by the person's co-heirs.

## § 10

*dd) Proceedings ex officio*

1) If the assets or share of inheritance of a missing person has been under official administration for 10 years, or if the missing person would have reached the age of 100, the declaration of presumed death shall be carried out *ex officio* at the request of the competent authority.

2) If no entitled persons respond within the period of notice, the assets shall be transferred to the fund for the poor of the home municipality or the home municipality itself or, if the person presumed dead never resided in Liechtenstein or is a foreigner, to the State.<sup>2224</sup>

3) The same duty of restitution shall apply to the person presumed dead and to the better entitled heirs as for the heirs who have received the estate.

§ 11<sup>2225</sup>*V. Adoption*

Repealed

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<sup>2224</sup> § 10(2) amended by LGBl. 1998 No. 27.

<sup>2225</sup> § 11 repealed by LGBl. 1976 No. 40.

§§ 12 to 14<sup>2226</sup>

Repealed

§§ 15 to 21<sup>2227</sup>

Repealed

*IV. Procedure*

§§ 22 to 25<sup>2228</sup>

Repealed

§ 26<sup>2229</sup>

*5. Reference*

Repealed

*V. End of guardianship*

§ 27<sup>2230</sup>

*1. In the case of underage persons and convicts*

Repealed

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2226 §§ 12 to 14 repealed by LGBL 2010 No. 458.

2227 §§ 15 to 21 repealed by LGBL 1988 No. 49.

2228 §§ 22 to 25 repealed by LGBL 2010 No. 458.

2229 § 26 repealed by LGBL 1988 No. 49.

2230 § 27 repealed by LGBL 1988 No. 49.

2. *In other guardianship cases*

§§ 28 to 30<sup>2231</sup>

Repealed

§ 31

*D. Legal persons*

1) Legal persons which have acquired legal personality under the previous law shall retain it under the new law, even if they would not have acquired legal personality under its provisions or only in another legal form.

2) However, existing legal persons for whose formation it is necessary to be entered in the public register in accordance with the provisions of this Act, shall, even if not provided for under the previous law, make up for such entry within ten years of entry into force of the new law and shall not be recognised as legal persons after the expiry of that period without being entered.

3) The Court of Justice shall, in the course of the year preceding the expiry of that period, draw attention to this provision by public announcements.

4) The content of legal personality shall be determined for all legal persons according to the new law, as soon as this Act has entered into force.

5) To the extent that, at the time of entry into force of this Act, a legitimate practice deviating from Article 486(2) exists, it shall be recognised, but may no longer arise.

6) Article 141 shall apply *mutatis mutandis* to legal persons dissolved before entry into force of this Act.

7) Official asset management for foundations in the case of foundations established after entry into force shall take place only if it is permissible under the new law.

8) Where legislation refers to moral persons, moral bodies, corporations, and similar relationships, those terms shall be understood to

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<sup>2231</sup> §§ 28 to 30 repealed by LGBL 2010 No. 458.

mean legal persons, unless otherwise evident from the obvious meaning of a provision.

9) Obtaining a concession (police permit) shall be necessary only where required by law, and the legislative provisions, provisions under articles of association, or other provisions relating to State supervisory activities or a State commissioner or the like shall cease to apply from the entry into force of this Act.

### § 32

#### *E. Companies without legal personality*

1) Companies without legal personality formed before entry into force of this Act shall be assessed in accordance with the old law with regard to their formation and legal status prior to this date and in accordance with the new law after entry into force of this Act.

2) Where the previous law refers to an open commercial company, this shall be understood as a general partnership pursuing a business conducted in a commercial manner under the new law.

3) Whether the terms "company" or "community" used in laws or ordinances up to entry into force of this Act mean a legal person or a company without legal personality or any other community shall be determined in each case.

### § 33

#### *F. Commercial companies and merchants*

1) Where in the previous law the term "commercial company" is used, this shall, unless otherwise evident from the individual provisions, be understood<sup>2232</sup> to mean the general partnership (open commercial company), the limited partnership, the public limited company, and the partnership limited by shares, but where the term may apply to commercial companies formed under the new law, the term shall be understood to mean companies with legal personality and legal persons and companies without legal personality with legal names equivalent thereto.

2) Where other laws or ordinances refer to merchants, tradespersons, or the like, these terms shall in future be understood as those who must be

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<sup>2232</sup> "verstanden" erroneously omitted in the German original.

entered in the Commercial Register in accordance with this Act as a result of operating a trade, manufacturing, or other business conducted in a commercial manner, regardless of whether they conduct commercial transactions on a professional basis, and the companies referred to in paragraph 1 in accordance with the new law.<sup>2233</sup>

#### § 34

##### *G. Representative and trustee*

1) The provisions of this Act on the appointment of representatives shall be applicable to legal persons and general and limited partnerships existing at the time of its entry into force if the conditions for the obligation to appoint apply.

2) The representatives must be appointed within one year of entry into force of this Act at the latest. The Government may, however, reasonably extend this period or order that older undertakings need not appoint a representative.

3) The provisions on the implied trust shall apply in particular to indirect representation, contracts for services in favour of a third party, transfers of ownership by way of security, fiduciary legal transactions relating to execution of an estate, reversionary and substitute succession, reversionary and substitute legacy, and similar legal relationships.

##### *H. Law of obligations*

#### § 35

##### *I. General provisions*

1) The general provisions of the law of obligations within the meaning of this Act and of the Property Act shall be, in the case of persons and undertakings pursuing a business conducted in a commercial manner, primarily those of the Commercial Code on commercial transactions and, secondarily, in all other cases, those of the General Civil Code.

2) Where this Act refers to damage, this shall in all cases include loss of profit.

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<sup>2233</sup> § 33(2) amended by LGBl. 2013 No. 6.

3) In all other respects, the provisions of the Commercial Code shall apply to all undertakings entered in the Commercial Register, unless an exception is made.<sup>2234</sup>

4) In the case of documents such as promissory notes and the like which cannot be invalidated in accordance with the provisions on negotiable securities, the obligor may demand against performance that the beneficiary declares the invalidation and, if necessary, repayment of the debt in a public or certified document.

## *II. Registered power of attorney*

### § 36

#### *1. Commercial and non-commercial registered power of attorney*

1) Anyone who carries on a trade, manufacturing, or other business conducted in a commercial manner or any other trade or business or profession may, by entry in the Commercial Register, appoint persons with registered power of attorney with the authority to carry on the trade or business for the holder and to sign by registered power of attorney or in a similar manner.<sup>2235</sup>

2) Individuals, entities with legal names, or legal persons may be appointed as persons with registered power of attorney.

3) Registration for entry in the Commercial Register, entry, and announcement shall contain:<sup>2236</sup>

1. name, profession, and place of residence or legal name and registered office of the principal and of the person with registered power of attorney;
2. if the registered power of attorney is to be limited only to the branch or otherwise, an indication thereof.

4) The person with registered power of attorney must sign the legal name or name in such a way that the person attaches their own personal signature to the legal name or name, regardless of by whom such name is written or otherwise attached, with an affix indicating the registered power of attorney, such as "by registered power of attorney".

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<sup>2234</sup> § 35(3) amended by LGBL 2013 No. 6.

<sup>2235</sup> § 36(1) amended by LGBL 2013 No. 6.

<sup>2236</sup> § 36(3) introductory phrase amended by LGBL 2013 No. 6.

5) If an entity with a legal name or a legal person is itself a person with registered power of attorney of another entity with a legal name or legal person, the signature shall be made by applying *mutatis mutandis* the provisions laid down under the general provisions for legal persons concerning signatures.

### § 37

#### 2. Scope of power of attorney

1) The person with registered power of attorney shall be deemed to be authorised in relation to *bona fide* third parties to bind the principal by way of reciprocal signatures and to perform in the principal's name all kinds of legal acts which may be connected with the purpose of the principal's trade or business.

2) The person with registered power of attorney shall be authorised to sell and encumber land or rights equivalent to land only if the person with registered power of attorney has been expressly granted this power or if the law so provides.

### § 38

#### 3. Restrictions

1) Registered power of attorney may be restricted to the business of one branch.

2) It may be granted to several persons for joint signature (joint registered power of attorney) with the effect that the signature of one person with registered power of attorney shall not be binding without the required participation of the others.

3) Restrictions on the registered power of attorney other than those provided for by law shall have no legal effect on *bona fide* third parties.

## § 39

*4. Removal*

1) Removal of registered power of attorney must be entered in the Commercial Register, even if it was not entered in the Commercial Register when granted under the old law.<sup>2237</sup>

2) As long as the removal has not taken place and has not been made public, registered power of attorney shall remain in force against *bona fide* third parties.

*III. Law of contracts*

## § 40

*1. In general*

1) The effective clause in contracts may also be agreed expressly in favour of cash payments in Swiss currency, in which case the debtor may not perform by paying in Liechtenstein francs.

2) In livestock trading, unless otherwise agreed, the benefits and risks shall be transferred to the acquirer upon conclusion of the sale transaction.

3) A contract by which one party undertakes to transfer that party's future assets or a fraction of the party's future assets or to encumber them with a usufruct shall be void.

4) Beverage debts and debts arising from the retail sale of alcoholic beverages shall not be enforceable, except for receivables for formal catering and hospitality to accommodated travellers and pensioners.

*2. Performance of contracts for valuable consideration*

## § 41

*a) In general*

The following §§ of the General Civil Code (ABGB) shall read as follows:

1. § 918. If a contract for valuable consideration is not performed by one party at the proper time or place or in the stipulated manner, the other

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<sup>2237</sup> § 39(1) amended by LGBL 2013 No. 6.

party may either demand performance and damages for the delay or declare rescission of the contract, setting a reasonable grace period for performance.

If performance is divisible for both parties, rescission may be declared only with regard to the individual or all outstanding partial performances due to delay of a partial performance.

2. § 919. If performance at a fixed time or within a fixed period of time is required on pain of rescission, the party entitled to rescind must, if that party wishes to insist on performance, notify the other party without delay after the expiry of the period of time; if the party fails to do so, the party may no longer insist on performance at a later date. The same shall apply if the nature of the transaction or the purpose of the performance known to the obligor indicates that the delayed performance or, in the event of a delay in partial performance, the remaining performances are of no interest to the recipient.
3. § 920. If performance is frustrated through the fault of the obligor or by an accident for which the obligor is responsible, the other party may either claim damages for non-performance or rescind the contract. In the event of partial frustration, that other party shall be entitled to rescind the contract if the nature of the transaction or the purpose of the performance known to the obligor indicates that partial performance is of no interest to that party.
4. § 921. Rescission of the contract shall not affect the right to compensation for the damage caused by culpable non-performance. The payment already received shall be returned or compensated in such a way that no party benefits from the damage of the other party.

#### § 42

##### *b) In the case of exchange and purchase contracts*

The following §§ of the General Civil Code (ABGB) shall read as follows:

§ 1047. Exchangers shall be obliged by virtue of the contract to transfer and take possession of the exchanged items of property in accordance with the agreement, with their components and all ancillary property, at the proper time, in the proper place, and in the same condition as they were at the time of the conclusion of the contract.

§ 1052. Any party insisting on early handover must have fulfilled that party's obligation or be prepared to fulfil it. The party obliged to make advance payment may also refuse to perform until the consideration is

effected or secured if it is endangered by poor financial circumstances of the other party, of which the party need not have been aware at the time of conclusion of the contract.

§ 43

*c) Old contracts*

The consequences of the non-performance of contracts for valuable consideration concluded before entry into force of this Act shall be governed by the old law.

§ 44

*3. Liability for auxiliary persons*

1) Any party who has an auxiliary person, such as a housemate, worker, or employee, perform that party's obligation or exercise a right arising from a contractual obligation, even if with authorisation to do so, must compensate the other person for the damage caused by the auxiliary person in the performance of the duties.

2) This liability may be limited or repealed by an agreement made in advance.

3) However, if the person waiving liability is in the service of the other party or if the liability results from the operation of a business licensed by the authorities, the liability may be waived only for slight negligence.

§ 45

*4. Assignment of assets or business*

1) Anyone who takes over an asset or a business with assets and liabilities shall automatically be liable to the creditors from the associated debts as soon as the takeover has been notified to the creditors by the assignee or announced in public bulletins.

2) However, the previous debtor shall still be jointly and severally liable with the new debtor for a period of two years, which begins with the notification or public notice and, in the case of receivables due at a later date, with the due date.

3) This assumption of debt shall *mutatis mutandis* have the same effect as the assumption of a single debt.

## § 46

*5. Unification, conversion of businesses, division of estate, land purchase*

1) Where one business is unified with another by mutual assumption of assets and liabilities, the creditors of the two businesses shall be subject to the effects of the asset transfer and the merged business shall become liable to them for all debts.

2) The same shall apply in the case of a general or limited partnership in relation to the liabilities of the business previously conducted by a single proprietor.

3) These provisions shall be subject to the special provisions concerning the assumption of debt in the case of division of estate and the sale of pledged land.

*IV. Torts*

## § 47

*1. Liability of principals*

1) The principal shall be liable for the damage caused by the principal's employees or workers in the performance of their service or business duties if the principal does not demonstrate that the principal exercised all due care required by the circumstances to prevent damage of this kind or that the damage would have occurred even if the principal had exercised such care.

2) The principal may have recourse to the person who caused the damage to the extent that the latter is liable to pay damages.

§ 48<sup>2238</sup>

Repealed

*J. Registers*

## § 49

*I. Civil Register*

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2238 § 48 repealed by LGBl. 2011 No. 182.

1) Until the new provisions governing the Civil Register are entered into force by the Government, the registers on civil status kept hitherto shall be continued under the old provisions with their previous effects.

2) As long as the marriage register is not governed by law, the establishment and maintenance of the register, the determination of the facts subject to registration and entry and of the persons subject to the registration requirement shall be regulated by ordinance; in that case, the new law governing the Civil Register shall apply.

3) The fees for entry, extracts, etc. to be paid by the parties shall also be determined by ordinance, and until then the old law shall apply.

4) The provisions of the law governing the Civil Register concerning family law institutions, such as those concerning the recognition of paternity and the like, to the extent they have not yet been introduced by law, shall in all other respects apply only after they are introduced by the new family law.<sup>2239</sup>

5) Divorce within the meaning of provisions governing the Civil Register shall correspond to separation of marriage under the previous law.

6) The administrative offices previously entrusted with the keeping of the registers shall remain entitled and obliged to issue certificates of births, marriages, and deaths entered up to the time at which this Act becomes effective, unless the registers have been handed over or demanded.

7) The administration of registers for church purposes shall remain unaffected.

## *II. Public Register*

### § 50

#### *1. In general*

1) Until the Government instructs the new registers to be used, the existing Commercial Register shall continue to be maintained as a replacement for the Public Register, and all entries of facts and circumstances required or permitted under this Act shall be made therein, with formal entries in the registers being left to the discretion of the registrar.

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<sup>2239</sup> § 49(4) amended by LGBL 2014 No. 201.

2) In all other respects, the law governing the Public Register shall enter into force immediately.

3) Unless otherwise ordered by the Government, the facts and circumstances recorded in the previous Commercial Register shall continue to exist without transfer to the new Public Register, with the same effects as if they had been entered in the latter register.

4) Where laws and ordinances refer to the Commercial Register, the Public Register shall replace it, serving as the Commercial Register.

5) Repealed<sup>2240</sup>

## § 51

### *2. Notation of marital property agreements*

1) Pending the adoption of provisions concerning the Register of Marital Property, the following provisions shall replace Article 996:

2) The marital property rights granted to the wife of the owner of a sole proprietorship, with the exception of the owner of a sole proprietorship with limited liability,<sup>2241</sup> a general partner or the partner with unlimited liability in limited partnerships, partnerships limited by units, limited partnerships with equity capital shares, or partnerships limited by shares, must, in order to have legal effect in relation to the creditors of the undertaking, be noted in the Public Register upon registration of the undertaking for entry by one of the participants, whether the marital property agreements have been concluded before entry of the undertaking or afterwards.

3) These rights shall be effective in relation to the aforementioned creditors only from the date of execution of the notations, whether or not they have become aware of them.

4) In the event of insolvency proceedings, the claims of the creditors of the undertaking arising already before the notation in the Public Register shall take precedence over the claims arising from a marital property agreement.<sup>2242</sup>

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<sup>2240</sup> § 50(5) repealed by LGBL 2007 No. 38.

<sup>2241</sup> The provisions on sole proprietorships with limited liability (Articles 834 – 896a) were repealed by the Law of 15 April 1980, LGBL 1980 No. 39.

<sup>2242</sup> § 51(4) amended by LGBL 2020 No. 369.

5) The preceding rules on marital property agreements shall also apply to any amendment of those agreements, whether by the parties or through legal proceedings.

6) The registration for entry in the register and the notation and publication must contain: the date of the contract, surname, first name, status, and place of residence of the wife, and the notation, together with the date of entry.

7) The provisions laid down for a wife shall be applied *mutatis mutandis* if the conditions apply to a husband.

§ 52<sup>2243</sup>

Repealed

§ 53<sup>2244</sup>

Repealed

*M. Penal provisions*

*I. Violation of honour*

§§ 54 to 59<sup>2245</sup>

Repealed

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<sup>2243</sup> § 52 repealed by LGBL 2010 No. 352.

<sup>2244</sup> § 53 repealed by LGBL 2012 No. 265.

<sup>2245</sup> §§ 54 to 59 repealed by LGBL 1988 No. 38.

## § 60

*6. Joint provisions for all violations of honour*

1) If the violation of honour has been published in a newspaper or magazine, it shall be a misdemeanour and, if the applicant so requests, the judgment shall, at the discretion of the court, be published in public bulletins.

2) Repealed<sup>2246</sup>

§ 61<sup>2247</sup>*II. Minor bodily injuries, etc.*

Repealed

§ 62<sup>2248</sup>*III. In the case of sole proprietorships with limited liability*

Repealed

## § 63

*IV. Trustees*

If a settlement shows a shortfall which the actual trustee cannot immediately cover from the trustee's own funds, the trustee shall also be subject to the criminal law provisions on misappropriation of third-party assets.

§ 64<sup>2249</sup>*V. Animal cruelty*

Repealed

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2246 § 60(2) repealed by LGBl. 1988 No. 38.

2247 § 61 repealed by LGBl. 1988 No. 38.

2248 § 62 repealed by LGBl. 1980 No. 39 and LGBl. 1988 No. 38.

2249 § 64 repealed by LGBl. 1936 No. 4.

*VI. Infractions; contraventions*<sup>2250</sup>

## § 65

*1. Civil and Commercial Register*<sup>2251</sup>

1) Anyone who fails to register the facts and circumstances of birth, death, or marriage that must be registered in accordance with the provisions of the law governing the Civil Register may be fined by the registrar with an administrative fine of up to 500 Swiss francs in administrative proceedings, subject to appeal of the decision or decree.

2) If persons of clerical status are registrars, the Government shall be responsible for imposing fines in the first instance, but the registrars are obliged to report the violation.

3) Anyone who wilfully fails to comply with an obligation to register for entry in the Commercial Register shall be punished with an administrative fine of up to 5 000 Swiss francs by the Office of Justice on application or *ex officio* in administrative proceedings. If the perpetrator acts negligently, the administrative fine shall be up to 1 000 Swiss francs.<sup>2252</sup>

4) This fine may be imposed on a recurring basis until either the registration has taken place or evidence has been provided that there is no obligation to register.

5) These provisions are without prejudice to any legal consequences arising in addition from the provisions governing the Commercial Register.<sup>2253</sup>

## § 66

*2. Accounting, auditing, disclosure, retention, and list requirement*<sup>2254</sup>

1) On application or *ex officio* in special non-contentious proceedings, the Court of Justice shall punish with an administrative fine of up to 10 000

2250 Heading preceding § 65 amended by LGBL 2000 No. 279.

2251 § 65 heading amended by LGBL 2013 No. 6.

2252 § 65(3) amended by LGBL 2013 No. 6.

2253 § 65(5) amended by LGBL 2013 No. 6.

2254 § 66 heading amended by LGBL 2024 No. 370.

Swiss francs or, in the case of negligence, an administrative fine of up to 5 000 Swiss francs, anyone who:<sup>2255</sup>

1. fails to comply with the obligation to keep or replace account books and to keep them together with business letters and other business correspondence in any form in accordance with the provisions governing accounting;
2. fails to comply with the obligation to have an audit or review carried out in accordance with the provisions on the audit and review requirement (Articles 1058 to 1059).

2) Where the legal person fails to comply with the disclosure requirement or other obligations under the provisions set out in Articles 1122 to 1130, the legal person shall be punished *ex officio* by the Office of Justice in administrative proceedings with an administrative fine of 1 000 Swiss francs or, in the case of micro-companies (Article 1064(1a)), 500 Swiss francs.<sup>2256</sup>

2a) Anyone who wilfully fails to comply with the obligation under Article 182a(2) to make the account books or records and supporting documents available within a reasonable period of time at the registered office of the legal person shall be punished with an administrative fine of up to 5 000 Swiss francs by the Court of Justice on application or *ex officio* in special non-contentious proceedings. If the perpetrator acts negligently, the administrative fine shall be up to 1 000 Swiss francs. This shall apply *mutatis mutandis* to the trustees of a trust (Article 923(1)).<sup>2257</sup>

2b) Anyone who wilfully fails to comply with their obligations under Article 142(1a), Article 182(3), or Article 247a(1), (2), or (3) or fails to do so in a timely manner, or fails to comply with them in full or correctly in terms of content, shall be punished with an administrative fine of up to 5 000 Swiss francs by the Court of Justice on application or *ex officio* in special non-contentious proceedings. If the perpetrator acts negligently, the administrative fine shall be up to 1 000 Swiss francs.<sup>2258</sup>

3) The administrative fines pursuant to paragraphs 1, 2, 2a, and 2b may be imposed on a recurring basis until either the obligations referred to in

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<sup>2255</sup> § 66(1) amended by LGBL 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

<sup>2256</sup> § 66(2) amended by LGBL 2019 No. 258. Applicable in this version for the first time to financial years commencing after 31 December 2018.

<sup>2257</sup> § 66(2a) inserted by LGBL 2012 No. 124. This provision shall apply from 1 January 2014.

<sup>2258</sup> § 66(2b) inserted by LGBL 2024 No. 370.

paragraph 1, 2, 2a, or 2b have been fulfilled or evidence has been provided that an obligation pursuant to paragraph 1, 2, 2a, or 2b does not exist.<sup>2259</sup>

4) If the obligations referred to in paragraph 1 or 2a are not fulfilled in the business operations of a legal person, the penal provision shall apply to the directors, authorised persons, liquidators, and members of administrative bodies who have not fulfilled the obligation.<sup>2260</sup>

5) If the acts are committed in the business operations of a company without legal personality with a legal name, the penal provision shall apply to the culpable members or responsible third parties.<sup>2261</sup>

6) These provisions are subject to prosecution under criminal law.<sup>2262</sup>

7) These provisions shall apply *mutatis mutandis* when other forms of companies or legal persons permitted under this Act are formed.<sup>2263</sup>

#### § 66a<sup>2264</sup>

##### 3. Declaration requirement

Repealed

#### § 66b

##### 4. Information on correspondence, order forms, and websites<sup>2265</sup>

1) In the event of failure to comply with the obligation to provide certain information on correspondence, order forms, and websites as set out in Article 120a, the legal person or branch shall be punished by the Court of Justice, on application or *ex officio* in special non-contentious proceedings, with an administrative fine of up to 5 000 Swiss francs.<sup>2266</sup>

<sup>2259</sup> § 66(3) amended by LGBL 2024 No. 370.

<sup>2260</sup> § 66(4) amended by LGBL 2019 No. 258. Applicable in this version for the first time to financial years commencing after 31 December 2018.

<sup>2261</sup> § 66(5) amended by LGBL 2000 No. 279.

<sup>2262</sup> § 66(6) amended by LGBL 2000 No. 279.

<sup>2263</sup> § 66(7) amended by LGBL 2000 No. 279.

<sup>2264</sup> § 66a repealed by LGBL 2022 No. 227. The repeal shall apply for the first time to financial years commencing after 31 December 2022.

<sup>2265</sup> § 66b heading inserted by LGBL 2000 No. 279.

<sup>2266</sup> § 66b(1) amended by LGBL 2007 No. 38 and LGBL 2010 No. 454.

2) This administrative fine may be imposed on a recurring basis until a lawful state of affairs is restored.<sup>2267</sup>

§ 66c

*5. Registration, deposit, and declaration requirements for foundations*<sup>2268</sup>

1) Pursuant to a criminal complaint by the Foundation Supervisory Authority, the Court of Justice may punish with an administrative fine of up to 10 000 Swiss francs in special non-contentious proceedings anyone who, as a member of the foundation council:<sup>2269</sup>

1. fails to register a foundation for entry in the Commercial Register in violation of Article 552 § 19(5); or<sup>2270</sup>
2. fails to deposit a notification of formation in violation of Article 552 § 20(1) and (2) or a notification of amendment in violation of Article 552 § 20(3) at the Office of Justice.<sup>2271</sup>

2) The administrative fine referred to in paragraph 1 may be imposed on a recurring basis until a lawful state of affairs is restored.<sup>2272</sup>

3) Anyone who wilfully makes a declaration that is incorrect in content under Article 552 § 20(1) and (2) or Article 552 § 20(3) shall be punished by the Court of Justice with a fine of up to 50 000 Swiss francs for a contravention or, if the fine cannot be recovered, with imprisonment of up to six months. If the perpetrator acts negligently, the Court of Justice shall impose a fine of up to 20 000 for a contravention or, if the fine cannot be recovered, imprisonment of up to three months.<sup>2273</sup>

4) Anyone shall also be punished in accordance with paragraph 3 who, as a lawyer, professional trustee, or holder of an entitlement under Article 180a, wilfully or negligently issues an incorrect confirmation of the information under Article 552 § 20(1) and (2) or Article 552 § 20(3).<sup>2274</sup>

5) These provisions are subject to disciplinary measures.<sup>2275</sup>

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<sup>2267</sup> § 66b(2) inserted by LGBL 2000 No. 279.

<sup>2268</sup> § 66c heading inserted by LGBL 2008 No. 220.

<sup>2269</sup> § 66c(1) inserted by LGBL 2008 No. 220 and amended by LGBL 2010 No. 454.

<sup>2270</sup> § 66c(1)(1) amended by LGBL 2013 No. 6.

<sup>2271</sup> § 66c(1)(2) amended by LGBL 2013 No. 6.

<sup>2272</sup> § 66c(2) inserted by LGBL 2008 No. 220.

<sup>2273</sup> § 66c(3) inserted by LGBL 2008 No. 220.

<sup>2274</sup> § 66c(4) inserted by LGBL 2008 No. 220.

<sup>2275</sup> § 66c(5) inserted by LGBL 2008 No. 220.

§ 66d<sup>2276</sup>6. *Deposit of bearer shares*

1) Pursuant to a criminal complaint by the Office of Justice, the Court of Justice may punish with an administrative fine of up to 10 000 Swiss francs in special non-contentious proceedings anyone who wilfully:

1. as a custodian, violates the obligations to properly maintain the register in accordance with Article 326c(1);
2. as a custodian, issues an incorrect confirmation on the deposit of bearer shares in accordance with Article 326c(6);
3. as a custodian, surrenders bearer shares in violation of Article 326e; or
4. as a person who has performed the audit or review, issues an incorrect confirmation under Article 326i(1) or fails to make a report under Article 326i(2).

2) The administrative fine referred to in paragraph 1 may be imposed on a recurring basis until a lawful state of affairs is restored.

2a) If the custodian was appointed in accordance with Article 326b(3), the administrative fine under paragraph 1 shall be imposed on the legal person in question.<sup>2277</sup>

3) If the perpetrator acts negligently, the administrative fine shall be up to 5 000 Swiss francs.

§ 66e<sup>2278</sup>7. *Maintenance of the share register*

1) On application or *ex officio* in special non-contentious proceedings, the Court of Justice may punish with an administrative fine of up to 10 000 Swiss francs anyone who wilfully, as the responsible governing body of the company:<sup>2279</sup>

1. violates the obligation to properly maintain the share register in accordance with Article 328(1);
2. in violation of Article 329a(1), fails to ensure that a share register maintained electronically can be made readable at all times; or

<sup>2276</sup> § 66d inserted by LGBL 2013 No. 67.

<sup>2277</sup> § 66d(2a) inserted by LGBL 2022 No. 227.

<sup>2278</sup> § 66e inserted by LGBL 2013 No. 328.

<sup>2279</sup> § 66e(1) introductory phrase amended by LGBL 2020 No. 22. Applicable for the first time to financial years commencing on or after 1 January 2020.

3. in violation of Article 329a(2), fails to keep the share register at the registered office of the company.

2) The administrative fine referred to in paragraph 1 may be imposed on a recurring basis until a lawful state of affairs is restored.

3) If the perpetrator acts negligently, the administrative fine shall be up to 5 000 Swiss francs.

§ 66f<sup>2280</sup>

8. *Shareholder engagement in public limited companies listed in the EEA*

Pursuant to a criminal complaint by the Office of Justice, the Court of Justice shall punish with an administrative fine of up to 25 000 Swiss francs in special non-contentious proceedings anyone who:

1. as an intermediary, violates the obligations to transmit information in accordance with Article 367b(2) or (3);
2. as an intermediary or company, violates the obligations to transmit information in accordance with Article 367c(1), (2), (4), or (5);
3. as an intermediary, violates the obligations to facilitate the exercise of shareholder rights in accordance with Article 367d(1) or fails to forward without delay the confirmation referred to in paragraph 4 to the shareholder, the third party nominated by the shareholder, or the next intermediary in the chain;
4. as an intermediary, violates its disclosure obligations set out in Article 367e(1) or violates the prohibition under paragraph 2 against levying discriminatory or disproportionate charges;
5. as an intermediary or company, processes personal data in violation of Article 367f(1) or stores personal data in violation of Article 367f(2) for longer than 12 months;
6. as an institutional investor or asset manager, violates the obligation to develop an engagement policy pursuant to Article 367h(1) or the disclosure obligations set out in Article 367h(1) to (4);
7. as an institutional investor, violates the disclosure obligations set out in Article 367i;
8. as an asset manager, violates the disclosure obligations set out in Article 367k;

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2280 § 66f inserted by LGBL 2021 No. 225.

9. as a proxy advisor, fails to make information publicly available or fails to make it publicly available for at least three years in violation of Article 367l(3), or, in violation of Article 367l(4), fails to provide information or fails to provide it correctly, completely, or in a timely manner;
10. as a company, fails to establish a remuneration policy in accordance with Article 367m(1) to (4), violates the obligations set out in Article 367m(5) in the event of changes thereto, or fails to submit the remuneration policy to a vote by the general meeting in accordance with Article 367n(1);
11. as a company, fails to prepare a remuneration report or prepares an incomplete remuneration report as referred to in Article 367o(1) and (2), fails to submit it to a vote by the general meeting in accordance with Article 367p(1), or fails to make it publicly available for at least 10 years in violation of Article 367q(1);
12. as a company, includes data in the remuneration report in violation of Article 367o(3) or uses such data for purposes other than those specified in Article 367o(4) or continues to make such data publicly available in violation of Article 367o(5) after 10 years from the publication of the remuneration report;
13. as a company, fails to submit a material transaction with a related party to the supervisory board or the general meeting for approval in accordance with Article 367r(1) or, in violation of Article 367r(4) or (7), fails to make an announcement or to make an announcement correctly, completely, or in a timely manner.

## § 67

### *VII. Legal persons and companies with legal names*

To the extent that financial penalties can be imposed by the court or in administrative criminal proceedings, the legal persons and companies with legal names shall also be subject to them in lieu of the culpable individuals, but with the right of recourse to them if necessary.

*M. bis Measures<sup>2281</sup>*

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<sup>2281</sup> Title preceding § 67a inserted by LGBl. 2019 No. 18.

§ 67a<sup>2282</sup>*Prohibition on engaging in activities at a public-interest entity*

1) The Court of Justice shall, in special non-contentious proceedings pursuant to a criminal complaint or *ex officio*, impose a prohibition on engaging in activities at a public-interest entity (Article 1138g) for a term of up to three years against a person who, in the course of their activities in an administrative or supervisory body of such an entity, has committed a gross violation of Article 192 or 347a of this Act or of Articles 16 and 17 of Regulation (EU) No 537/2014.

2) The Court of Justice shall inform the Office of Justice and the FMA of the imposition of a prohibition on engaging in activities pursuant to paragraph 1.

## § 68

*N. Law governing levies*

1. Repealed<sup>2283</sup>
2. Repealed<sup>2284</sup>
3. Repealed<sup>2285</sup>
4. Repealed<sup>2286</sup>
5. Repealed<sup>2287</sup>
6. For the formation and assignment of homesteads, only half of the otherwise prescribed fees, in particular Land Register fees, may be levied if the formation is carried out by Liechtenstein citizens or the assignment is made to them; the Government may grant a total or partial reduction in fees on important grounds.

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2282 § 67a inserted by LGBL 2019 No. 18.

2283 § 68(1) repealed by LGBL 1961 No. 7.

2284 § 68(2) repealed by LGBL 1961 No. 7.

2285 § 68(3) repealed by LGBL 1961 No. 7.

2286 § 68(4) repealed by LGBL 1963 No. 19.

2287 § 68(5) repealed by LGBL 2022 No. 227.

7. This provision shall apply *mutatis mutandis* to the formation or acquisition of sole proprietorships with limited liability<sup>2288</sup> by Liechtenstein citizens and to the fees for entry in the Commercial Register of self-help and small cooperative societies, small insurance associations, associations, and public-benefit institutions and foundations.<sup>2289</sup>
8. Repealed<sup>2290</sup>
9. Repealed<sup>2291</sup>
10. Repealed<sup>2292</sup>
11. Repealed<sup>2293</sup>
12. Repealed<sup>2294</sup>
13. Repealed<sup>2295</sup>
14. Repealed<sup>2296</sup>

### § 69

#### *O. Building regulations, etc.*

- 1) Repealed<sup>2297</sup>

2) In built-up areas, land adjoining public roads, alleys, and squares may be used for the purpose of deposits up to 3 metres from the boundary, unless it is separated by a fence, wall, or other means, otherwise the Government may order the removal in administrative proceedings.

3) The Government is authorised to carry out observations and surveys of Liechtenstein's water resources.

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<sup>2288</sup> The provisions on sole proprietorships with limited liability (Articles 834 – 896a) were repealed by the Law of 15 April 1980, LGBL. 1980 No. 39.

<sup>2289</sup> § 68(7) amended by LGBL. 2013 No. 6.

<sup>2290</sup> § 68(8) repealed by LGBL. 1961 No. 7.

<sup>2291</sup> § 68(9) repealed by LGBL. 1961 No. 7.

<sup>2292</sup> § 68(10) repealed by LGBL. 2010 No. 352.

<sup>2293</sup> § 68(11) repealed by LGBL. 1961 No. 7.

<sup>2294</sup> § 68(12) repealed by LGBL. 1961 No. 7.

<sup>2295</sup> § 68(13) repealed by LGBL. 1961 No. 7.

<sup>2296</sup> § 68(14) repealed by LGBL. 1961 No. 7.

<sup>2297</sup> § 69(1) repealed by LGBL. 1947 No. 44.

## § 70

*P. International choice of law*

1) The domestic authorities are obliged, at the request of other domestic or foreign authorities, to provide those authorities with information on the law existing in Liechtenstein.

2) If an authority is not competent to administer the law in question, it shall forward the request to the competent authority, which shall provide the information.

3) There is no obligation to provide information on tax matters.

4) Repealed<sup>2298</sup>

5) Repealed<sup>2299</sup>

6) Repealed<sup>2300</sup>

## § 71

*Q. Concession requirement. Asset management*

1) Repealed<sup>2301</sup>

2) Repealed<sup>2302</sup>

3) Repealed<sup>2303</sup>

4) The Government may authorise institutions other than the Landesbank to issue mortgage bonds on foreign real estate and, by way of ordinance, may lay down provisions on collateral, trustees, penalties, and to the extent otherwise necessary.

5) The provisions governing mortgage bonds under the Property Act shall apply only to the extent determined by the Government.

6) Repealed<sup>2304</sup>

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2298 § 70(4) repealed by LGBL. 1996 No. 194.

2299 § 70(5) repealed by LGBL. 1996 No. 194.

2300 § 70(6) repealed by LGBL. 1996 No. 194.

2301 § 71(1) repealed by LGBL. 1961 No. 3.

2302 § 71(2) repealed by LGBL. 1961 No. 3.

2303 § 71(3) repealed by LGBL. 1961 No. 3.

2304 § 71(6) repealed by LGBL. 2010 No. 235.

7) Repealed<sup>2305</sup>

§ 72<sup>2306</sup>

*R. Citizenship, etc.*

Repealed

§ 72a

1) To the extent that an affidavit or the like before a domestic authority is required for the exercise or pursuit of the law abroad, the Court of Justice is authorised and obliged in special non-contentious proceedings to accept and certify the affidavit or the like.<sup>2307</sup>

2) Where the circumstances under foreign law so require, confirmation may also be obtained from the Court of Appeal or its president.<sup>2308</sup>

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<sup>2305</sup> § 71(7) repealed by LGBL. 2004 No. 119.

<sup>2306</sup> § 72 repealed by LGBL. 1934 No. 1 and LGBL. 1960 No. 23.

<sup>2307</sup> § 72a(1) inserted by LGBL. 1928 No. 6 and amended by LGBL. 2010 No. 454.

<sup>2308</sup> § 72a(2) inserted by LGBL. 1928 No. 6.

## S. Negotiable securities

### Title 1

#### Registered securities, instruments to order, and bearer securities

#### Section 1

#### General provisions

#### § 73

##### *A. Definition and form of negotiable security*

1) A negotiable security for the purposes of this Act shall be any instrument in which a right is securitised in such a way that the right may not be realised, exercised, or transferred to another without the instrument.

2) To the extent that the provisions on negotiable securities or the nature of individual negotiable securities or the existence of a claim arising from membership do not give rise to a derogation, the provisions on share certificates shall apply *mutatis mutandis* with regard to form.

3) Repealed<sup>2309</sup>

#### § 74

##### *B. Obligations under the negotiable security and the redemption thereof*

1) The obligor is obliged to render performance only against presentation and surrender of the instrument.

2) By rendering the performance due at maturity to the creditor identified in the proper form, the obligor is released from the obligation unless the obligor is guilty of malice or gross negligence.

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<sup>2309</sup> § 73(3) repealed by LGBl. 1950 No. 28.

*C. Transfer of negotiable security*

## § 75

*I. General form*

1) The transfer of any negotiable security conferring title or a limited right *in rem* may always be performed by drawing up a written contract and handing over the negotiable security.

2) Apart from the transfer of the bearer security by surrendering the instrument, this is without prejudice to the cases where the law or the agreement requires the participation of other persons, in particular the obligor, as well as the special effects that can be created in the case of instruments to order only by way of endorsement.

*II. Endorsement*

## § 76

*1. Effect*

1) In connection with the transfer of the endorsed instrument, the endorsement shall, in the case of all assignable securities, to the extent not otherwise indicated by the content or nature of the instrument, and also in the case of instruments without the properties of a negotiable security, have the effect of a declaration of assignment placed on the instrument.

2) An autonomous claim independent of the rights of the endorser with limitation of the objections of the obligor or a liability of the endorser and a recourse of the endorser to the previous endorsers shall result from the endorsement only in the case of negotiable securities for which the law provides for one or other effect of the endorsement.

3) If the full endorsement and surrender of the endorsed instrument is made in the manner referred to in paragraph 1, but only for the purpose of collection, the creation of a limited right *in rem*, or the possible enforcement of claims under the negotiable security in the interest of the endorser or a third party, the legal relationship shall also be subject to the provisions on the implied trust.

## § 77

*2. Form*

1) Endorsement, even where it does not concern an instrument to order, must be done in accordance with the provisions governing bills of exchange.

2) In all cases, the formal requirements for transfer are satisfied once the endorsement is completed and the instrument handed over.

*D. Cancellation*

## § 78

*I. Enforcement*

1) If a negotiable security is lost, the beneficiary of the security at the time it was lost or its loss was discovered may request its cancellation by the court in special non-contentious proceedings.<sup>2310</sup>

2) For this purpose, the applicant must satisfy the judge at the place of residence of the obligor, and in the case of securities on membership of the registered office of the issuer, of the applicant's right to the negotiable security and of the loss or destruction of the instrument.

## § 79

*II. Effect and procedure*

1) As a consequence of cancellation of the instrument, the beneficiary may exercise the beneficiary's right even without the instrument or request the issue of a new instrument at the expense of the beneficiary.

2) On the day on which the application for cancellation is filed with the judge, the period of limitation shall be interrupted in relation to the applicant.

3) In other respects, the provisions governing the individual types of securities apply to the procedure for and effect of cancellation.

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<sup>2310</sup> § 78(1) amended by LGBl. 2010 No. 454.

§ 79a<sup>2311</sup>*III.<sup>2312</sup> Delivery of new instruments in the event of damage or defacement*

If a negotiable security is no longer suitable for circulation as a result of damage or defacement, the beneficiary of the instrument may, provided that the essential content and the distinguishing characteristics of the instrument are still unambiguously recognisable, request the issuer (if applicable the entity with a legal name or the legal person) to deliver a new instrument against surrender of the damaged or defaced instrument and reimbursement of the costs, provided that nothing else arises from the contents of the instrument or the company agreement or the articles of association or the like.

§ 80<sup>2313</sup>*E. Requirement to issue a prospectus*

Repealed

§ 80a<sup>2314</sup>

Repealed

## § 81

*F. Special provisions*

These provisions are subject to the special provisions governing the various types of negotiable securities, such as bills of exchange, cheques, and titles of liens, including mortgage bonds.

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<sup>2311</sup> § 79a inserted by LGBL 1928 No. 6.

<sup>2312</sup> This erroneously reads "g)" instead of "III." in the German original.

<sup>2313</sup> § 80 repealed by LGBL 1997 No. 210.

<sup>2314</sup> § 80a repealed by LGBL 1997 No. 210.

§ 81a<sup>2315</sup>*G. Uncertificated securities*

1) The obligor may issue rights with the same function as negotiable securities (uncertificated securities) or replace fungible negotiable securities with uncertificated securities provided the conditions for issue or the articles of association of the company provide therefor or the beneficiaries have consented thereto.

2) The obligor shall keep a book on the uncertificated securities that the obligor has issued in which details of the number and denomination of the uncertificated securities issued and of the creditors are recorded. The book of uncertificated securities may also be maintained with the use of Trustworthy Technology as defined in the TVTG. It must be organised in such a way that unauthorised interference by the obligor in the rights of the creditors is excluded.

3) The uncertificated securities are created on entry in the book of uncertificated securities and continue to exist only in accordance with such entry.

4) The assignment of uncertificated securities or the creation of limited rights *in rem* thereto is effected by entering the acquirer or the pledgee in the book of uncertificated securities. If the book of uncertificated securities is maintained with the use of Trustworthy Technology as defined in the TVTG, disposal of the uncertificated securities shall be based exclusively on the provisions of the TVTG.

5) Anyone who in good faith acquires uncertificated securities or rights to uncertificated securities from the person entered in the book of uncertificated securities is protected in their acquisition, even if the seller was not authorised to dispose of the uncertificated securities.

6) The obligor is obliged to render performance only to the creditor entered in the book of uncertificated securities. By rendering the performance due at maturity to the creditor entered in the book of uncertificated securities, the obligor is released from the obligation unless the obligor is guilty of malice or gross negligence.

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<sup>2315</sup> § 81a inserted by LGBL 2019 No. 304.

Section 2  
**Registered securities**

§ 82

*A. In general*

- 1) A negotiable security shall be treated as a registered security if it is made out to a named person but is neither made out to order nor legally declared to be an instrument to order.
- 2) Registered securities may be transferred to another only by way of assignment of the right and surrender of the instrument.
- 3) From the assignment, the acquirer receives a personal claim against the assignor for surrender of the instrument, and from the surrender of the instrument, which was made for the purpose of the assignment, a personal claim against the party surrendering the instrument for proper performance of the assignment.

*B. Evidence of creditor's right*

§ 83

*I. Right and duty of the obligor*

- 1) The obligor is obliged to render performance only to the counterparty who is the bearer of the instrument and who can show that they are the person in whose name the instrument is registered or the legal successor of such person.
- 2) Where the obligor renders performance without such evidence, the obligor is not released from the obligation towards a person who can demonstrate entitlement.

§ 84

*II. Reservation of evidence by possession*

- 1) Where the obligor under the registered security has reserved the right to render performance to any bearer of the instrument as the entitled creditor, the obligor is released from the obligation by rendering performance in good faith to such a bearer even if the obligor did not request evidence of the creditor's entitlement.

2) The obligor is not obliged to recognise the holder as the creditor without such evidence.

3) In all other respects, such a negotiable security shall still be subject to the provisions on registered securities.

#### § 85

##### *III. Reassignment of a bearer instrument to a certain name*

1) A bearer instrument may be converted into a registered security only with the consent of the obligor, where such consent must be noted on the instrument itself.

2) In the absence of such a note, a conversation shall have effect only between the creditor who performed the conversion and the creditor's direct legal successor.

#### § 86

##### *C. Cancellation of a registered security*

1) Where no special provision has been made, registered securities are cancelled in accordance with the provisions on the cancellation of bearer securities, with the derogation that the deadline for registration is set at a minimum of three months.

2) The obligor may reserve the right in the instrument to make valid performance even without presentation or cancellation of the instrument, providing the creditor declares the borrower's note void and the debt redeemed by public deed or certified document.

3) The savings bank booklets issued by the Landesbank are declared invalid in accordance with the provisions on registered securities.

## Section 3

**Instruments to order***A. In general*

## § 87

*I. Preconditions*

1) A negotiable security shall be treated as an instrument to order if it is made out to order.

2) A bill of exchange is an instrument to order even if it is not expressly made out to order.

## § 88

*II. Defences of the obligor*

The obligor under an instrument to order may plead only such defences as arise from the existence and contents of the instrument or to which the obligor is directly entitled against the plaintiff.

*B. Bill-like securities*

## § 89

*I. Payment instructions in general*

Where a payment instruction is not designated as a bill of exchange or as a cheque in the text appearing on the instrument itself but is expressly made out to order and satisfies all the other requirements of a bill of exchange, it shall count as a bill of exchange.

## § 90

*II. No duty to accept*

- 1) These payment instructions to order must not be presented for acceptance.
- 2) If it is nevertheless presented but acceptance is refused, the bearer does not have right of recourse.

## § 91

*III. Consequences of acceptance*

- 1) Where, however, the payment instruction to order is accepted voluntarily, the acceptor of the payment instruction shall count as the acceptor of a bill of exchange.
- 2) However, the bearer may not have recourse before maturity if insolvency proceedings have been opened in respect of the assets of the instructed party or if the instructed party has suspended payments or compulsory execution has been levied on the assets of the instructed party without success.<sup>2316</sup>
- 3) Similarly, the bearer may not have recourse before maturity if insolvency proceedings have been opened in respect of the assets of the instructing party.<sup>2317</sup>

## § 92

*IV. No proceedings for bills of exchange*

The provisions of the Code of Civil Procedure concerning the proceedings for disputes involving bills of exchange shall not apply to this payment instruction to order, even to the extent that it concerns the obligation of any acceptor.

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<sup>2316</sup> § 91(2) amended by LGBl. 2020 No. 369.

<sup>2317</sup> § 91(3) repealed by LGBl. 2020 No. 369.

## § 93

*V. Promise to pay to order*

1) Where a promise to pay is not designated as a promissory note in the text appearing on the instrument itself but is expressly made out to order and satisfies all the other requirements of a promissory note, it shall count as a promissory note.

2) However, the provisions governing payment for honour applicable to promissory notes shall not apply to this promise to pay to order.

3) The provisions of the Code of Civil Procedure concerning the proceedings for disputes involving bills of exchange shall not apply.

## § 94

*C. Other endorsable securities*

1) Instruments whereby the signatory undertakes to pay certain sums of money or deliver certain quantities of fungibles with reference to place, time and total amount or which embody transferable rights in *rem*, rights under the law of persons, or membership rights may, if they are expressly made out to order, be transferred by endorsement.

2) These and other endorsable instruments shall be subject to the provisions of the law on bills of exchange governing the form of the endorsement, proof of the bearer's entitlement, cancellation, and the bearer's duty to surrender the instrument.

3) The provisions governing rights of recourse on bills of exchange shall not apply to such instruments.

## Section 4

**Bearer securities**

## § 95

*A. Designation of creditor, bearer securities with premiums*

1) A negotiable security shall be treated as a bearer security if the wording or form of the instrument shows that the current bearer is recognised as the beneficiary.

2) However, also in this case the obligor is not permitted to recognise the bearer as the beneficiary if the bearer is subject to an attachment order served by a court or the police.

3) Bonds made out to bearer (debentures), in which all or some of the creditors are guaranteed a premium in addition to the payment of the prescribed sum of money in such a way that the bonds to be awarded a premium and the amount of their premium can be determined by lot or by another type of random method (bearer securities with premiums), may be issued only with the consent of the Government, and shall otherwise be deemed void and subject to unlimited joint and several liability on the part of the issuers and, to the extent they are at fault, of the<sup>2318</sup> other parties involved for any damage to the bearers caused by the issue.

#### § 96

##### *B. Defences of the obligor*

1) Against a claim deriving from a bearer security, the obligor may plead only such defences as contest the validity of the instrument or arise from the instrument itself and those available to the obligor personally against the respective obligee.

2) The obligor may not plead the defence that the instrument entered circulation against the obligor's will.

3) Against a claim deriving from a bearer coupon, the obligor may, moreover, not plead the defence that the debt principal has been redeemed, but, when redeeming the debt principal, the obligor is entitled to retain an amount corresponding to the interest payable on coupons not yet fallen due which are not handed in with the debt instruments until the period of limitation has expired, unless the coupons not handed in have been cancelled or the amount thereof has been secured.

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<sup>2318</sup> This should read "der" instead of "die" in the German original.

*C. Cancellation**I. For bearer instruments in general*

## § 97

*1. Application*

1) Bearer securities, such as shares, bonds, dividend rights certificates, coupon sheets, subscription warrants for coupon sheets, but not individual coupons, are cancelled in accordance with the following provisions.

2) The applicant must satisfy the judge in the place of residence of the obligor that the applicant possessed and lost the security.

3) Where the bearer of a security with a coupon sheet or subscription warrant has merely lost the coupon sheet or subscription warrant, presentation of the main instrument in question is sufficient to establish grounds for the application.

## § 98

*2. Public call for presentation, time limit*

Where the judge is satisfied that the applicant was in possession of the security but has since lost it, the judge shall issue a public notice calling on the unknown bearer to come forward and present the security within a specified time limit of at least one year commencing on the date of the first public notice, failing which the judge shall declare the security cancelled.

## § 99

*3. Attachment order*

1) At the applicant's request, the issuer of the security may be forbidden to honour the security on presentation in order to avert the danger of double payment.

2) Where the request for cancellation concerns a coupon sheet, the provision governing cancellation of bearer coupons shall apply *mutatis mutandis* to the individual coupons falling due during the proceedings.

§ 100

*4. Form of public notice*

1) The call for presentation must be announced three times in the Official Journal.<sup>2319</sup>

2) It shall be at the judge's discretion to adopt other means of publicising the call for presentation.

§ 101

*5. Registration of the bearer*

1) If the lost bearer security is presented as a result of the public note, the applicant shall be allowed a reasonable period of time to verify the identity and authenticity of the instrument presented and to make any relevant requests, in particular for temporary mandatory injunction in the interest of surrender or criminal proceedings to be initiated by the applicant.

2) If no applications are made within this period which would lead the judge to take further action, the instrument presented must be returned, the attachment order imposed on the issuer must be lifted, and the request for cancellation must be denied.

§ 102

*6. Judicial orders*

1) If the time limit set in the public notice has expired without the lost instrument having been presented, the judge may cancel the instrument or order further measures, depending on the circumstances.

2) Notice of the cancellation of a bearer instrument must be published immediately in the Official Journal, and elsewhere at the judge's discretion.<sup>2320</sup>

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<sup>2319</sup> § 100(1) amended by LGBl. 2015 No. 275.

<sup>2320</sup> § 102(2) amended by LGBl. 2015 No. 275.

3) Following cancellation, the applicant is entitled at the applicant's expense to request the issue of a new instrument and, depending on the circumstances, a new coupon sheet or, if performance is already due, performance of the obligation.

### § 103

#### *II. Coupons in particular*

1) Where individual coupons have been lost, at the request of the beneficiary the judge may order that the amount be deposited with the court at maturity or immediately if the instrument is already due.

2) Where three years have elapsed since the maturity date and no beneficiary has come forward in the interim, the court must then order the amount deposited to be released to the applicant.

### § 104

#### *III. Banknotes and the like*

Banknotes and similar bearer securities issued in large numbers and payable on sight which are intended for circulation as replacement for money and made out in fixed denominations may not be cancelled.

### § 105<sup>2321</sup>

#### *D. Reservation concerning mortgage certificates*

These provisions are subject to the special provisions governing mortgage certificates made out to the bearer.

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<sup>2321</sup> § 105 amended by LGBL 2016 No. 351.

## Section 5

**Cheque**§§ 106 to 119<sup>2322</sup>

Repealed

## Section 6

**Documents of title to goods**

§ 120

*A. Structure of document of title to goods*

Documents of title to goods issued by a warehouse keeper or carrier as negotiable securities must bear:

1. the place and date of issue and the signature of the issuer;
2. the name and address of the issuer;
3. the name and address of the depositor or sender of the goods;
4. an inventory of the stored or despatched goods by description, volume, and identification marks;
5. the fees and remuneration payable or paid in advance;
6. any special agreements between the parties concerning the handling of the goods;
7. the number of duplicates of the document of title to goods, and
8. the persons with power of disposal, with indication of names or to order or as bearer.

§ 121

*B. Warrant*

1) Where one of two or more documents of title to goods is to serve the purpose of establishing a lien, it must be designated as a warrant and in all other respects take the form of a document of title to goods.

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<sup>2322</sup> §§ 106 to 119 repealed by LGBL 1971 No. 51/2.

2) The issue of the warrant must be noted on the other duplicates along with every pledge made, including the claim amount and due date.

## § 122

### *C. Significance of the formal requirements*

1) Bills and certificates issued in respect of stored goods or freight that do not satisfy the formal requirements shall not be recognised as negotiable securities, but are deemed to be merely receipts or other documents in proof.

2) Bills and certificates issued by warehouse keepers without the approval of the Government shall be recognised as negotiable securities, provided they satisfy the legislative formal requirements, but their issuer shall be liable to an administrative fine of up to 1 000 Swiss francs to be imposed by the Government in administrative criminal proceedings for the benefit of the State.<sup>2323</sup>

## Title 2

### **Community of bond creditors**

## § 123

### *A. Preconditions for the community of bond creditors*

1) Where bonds with uniform conditions are offered directly or indirectly for public subscription by a borrower whose domicile or commercial office is in Liechtenstein, the creditors shall, without further formal requirements, form a community of creditors as soon as the bond amount reaches at least 20 000 Swiss francs and the number of bonds issued reaches at least ten.

2) In the case of bonds of less than 20 000 Swiss francs or less than ten bonds issued, a community of creditors shall be formed only under the bond issue conditions or by agreement of all creditors.

3) Where several different issues are offered, the creditors of each issue form a separate community of creditors.

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<sup>2323</sup> § 122(2) amended by LGBl. 1998 No. 27.

4) The bond issue conditions may establish communities of creditors with extensive powers, and the following provisions shall apply on a supplemental basis to such communities of creditors.

### *B. Creditors' meeting*

#### § 124

##### *I. In general*

1) The resolutions of the community of creditors shall be made by the creditors' meeting and shall be valid providing they satisfy the requirements laid down by the law in general or for specific measures.

2) The individual bond creditors are not entitled to assert their rights independently to the extent that valid resolutions on the matters in question have been made by the creditors' meeting.

#### § 125

##### *II. Moratorium*

1) From the date on which the invitation to the creditors' meeting is duly published until the final resolution and conclusion of the approval proceedings, to the extent such proceedings are necessary, all due claims of the bond creditors shall be subject to a stay of enforcement.

2) This rule shall not be deemed a suspension of payments.

3) Where the borrower abuses the right to obtain a stay of enforcement, at the request of one or more bond creditors the stay of enforcement may be lifted by the Court of Justice in special non-contentious proceedings.<sup>2324</sup>

##### *III. Convening*

#### § 126

##### *1. By the borrower*

1) The creditors' meeting shall be convened by the borrower for a reasonable fixed date, stating its purpose.

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<sup>2324</sup> § 125(3) amended by LGBL 2010 No. 454.

2) For creditors whose bonds are registered, the convening shall be carried out by special notification at least eight days in advance.

3) For the other creditors, the convening shall be effected by publication in the Liechtenstein national newspapers and by public announcement three times in the public bulletins specified in the bond issue conditions, whereby the third public announcement must be made at least eight days before the date of the meeting.<sup>2325</sup>

### § 127

#### *2. At the demand of the creditors*

The borrower is obliged to convene the meeting if so requested by bond creditors together holding at least one-twentieth of the bond capital or by the representative of the community in writing with an indication of the purpose of and reasons for the convening of the meeting.

### § 128

#### *3. On the order of a judge*

1) In the event that the borrower fails to comply with the request of the creditors or the representative of the community to convene the creditors' meeting within a reasonable period of time, the judge may, in special non-contentious proceedings, authorise the applicant to convene a creditors' meeting of the applicant's own accord.<sup>2326</sup>

2) Bondholders seeking judicial authorisation to convene the meeting must provide proof of their title.

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<sup>2325</sup> § 126(3) amended by LGBl. 2016 No. 402.

<sup>2326</sup> § 128(1) amended by LGBl. 2010 No. 454.

*IV. Holding the creditors' meeting**1. Participation of creditors*

## § 129

*a) In general*

1) The creditors convening at the creditors' meeting and their representatives must demonstrate their entitlement to participate before the start of the deliberations.

2) A list of participants must be drawn up, indicating their names and places of residence and the amount and numbers of the bonds represented by each participant.

## § 130

*b) Exclusion from participation*

1) Bonds that belong to the borrower may not be represented at the meeting either by the borrower or by a third party and shall not be taken into account when calculating the majority of the outstanding bonds issued.

2) A charge or special lien held by the borrower on bonds shall not preclude the participation of their owner in the meeting.

3) Representation of the bonds of others by the borrower shall not be permitted.

## § 131

*c) Power of attorney*

Representation of creditors in the creditors' meeting shall require a written power of attorney in all cases.

## § 132

*2. Chairing of the meeting*

1) Unless the bond issue conditions specify otherwise, the chair shall be designated by the creditors' meeting.

2) In cases where the meeting is convened on the order of a judge, the chair may be designated by the judge.

3) The agenda for the creditors' meeting must be communicated to the invited persons with the convening itself or at least eight days before the meeting in accordance with the rules established for the convening.

4) Each bondholder must be provided with a copy of the motions on request.

5) No binding resolution can be passed at the creditors' meeting, even unanimously, on items which have not been announced in this way, at least in terms of their essential content, unless the holders of all bond capital in circulation agree.

6) The costs of convening and holding the creditors' meeting shall be borne by the borrower, unless otherwise ordered by the judge.

#### *V. Powers*

##### § 133

##### *1. In general*

1) The creditors' meeting is authorised within the bounds of this Act to take all measures it deems beneficial to safeguard the collective interests of the creditors, in particular as regards any financial difficulties encountered by the borrower.

2) The measures taken shall be binding also on the creditors who do not agree, subject to the official approval and the right of challenge provided for by law.

3) The persons making up a community of creditors must all be equally affected by any measure, unless every disadvantaged creditor expressly agrees to such measures.

4) The ranking of pledgees must not be changed without their consent.

##### § 134

##### *2. Restrictions*

1) The community of creditors may not extend the creditors' rights without the consent of the borrower.

2) Without the creditor's consent, the community of creditors may not require a creditor to make payments that were neither envisaged in the bond issue conditions nor agreed with the creditor when the bonds were issued.

#### *VI. Resolutions of the meeting*

##### § 135

##### *1. In general*

1) The creditors' meeting shall adopt its resolutions by an absolute majority of the votes represented, unless the law stipulates otherwise or the bond issue conditions impose stricter requirements.

2) The majority is determined in all cases according to the nominal value of the represented bond capital.

##### *2. Cases of three-quarters majorities:*

##### § 136

##### *a) In the case of only one community of creditors*

The approval of the representatives of at least three quarters of the bond capital in circulation is required for a valid resolution in connection with the following measures:

1. dismissal of a representative appointed by the creditors' meeting or provided for in the bond issue conditions or the modification of that representative's power of attorney;
2. a moratorium on the payment of interest which has lapsed or is due within one year, which is binding only up to a maximum of five years but which may be renewed;
3. full interest rebate for a maximum of five years, binding and with the possibility of renewal;
4. decrease of the interest rate by up to one-half of the rate envisaged in the bond issue conditions or conversion of a fixed interest rate into a rate dependent on the business results, both measures to last for up to ten years, but both with the option of renewal;
5. extension of the redemption time limit envisaged for a current issue by up to ten years by means of a reduction in the annual payment or an increase in the number of the redemption shares;

6. deferral of the redemption dates for a bond that is already due or will be due within one year, or for partial amounts of such a bond, for a maximum of five years;
7. approval of an early redemption of the bond capital;
8. granting of a priority lien for new capital raised for the issuing company, with preference over an already existing bond issue, and changes to the collateral provided for a bond issue or full or partial waiver of such collateral, to the extent that such measures do not fall within the powers of a representative of the community of creditors;
9. amendment of the provisions governing restrictions on issues of bonds in relation to the equity capital of the borrower;
10. conversion of bonds or parts thereof into preference membership shares, with the consent of the borrower;
11. waiver of the bondholders' claim to capital up to the amount exceeding the highest value of the bonds reached in the last ten years.

#### § 137

##### *b) In the case of several communities of creditors*

1) Where there is more than one community of creditors, the borrower may propose one or more of the measures described in the previous article to the different communities of creditors simultaneously, subject to the proviso that the validity of each measure is conditional on acceptance of all the others.

2) In that case, proposals are deemed accepted where they obtain the consent of persons representing at least three quarters of the bond capital in circulation of all such communities of creditors combined and at the same time are accepted by three quarters of the communities of creditors and, within each community of creditors, no less than a majority of the bond capital in circulation is in favour of the proposal.

#### § 138

##### *3. Approval by the composition authority*

1) Resolutions requiring a three-quarters majority for approval shall be effective and binding also on the bond creditors who did not vote in favour of them only if they have been approved by the Court of Justice

serving as the composition authority in special non-contentious proceedings.<sup>2327</sup>

2) The borrower must submit them within one month of their adoption to the Court of Justice for approval.

3) Approval shall be refused if the provisions governing the convening of the creditors' meeting and its adoption of resolutions were infringed, if a resolution intended to avert financial hardship from the borrower appears not to be necessary, if the collective interests of the creditors are not sufficiently protected, or if the resolution was brought about by dishonest means.

4) The time and date of the hearing shall be published by the judge together with a notice to the bond creditors informing them that they may raise objections in writing or in person at the hearing.

5) The costs of the approval procedure are borne by the borrower.

#### § 139<sup>2328</sup>

##### *4. Moratorium and change of interest and redemption conditions*

An application for a moratorium or a change of the interest and redemption conditions may be made by the borrower and considered by the meeting only on the basis of a statement drawn up as at the date of the creditors' meeting and a balance sheet drawn up as at a date no more than six months prior to the meeting in accordance with standard practice and, where applicable, certified by the auditor as true and fair.

#### § 140

##### *5. Cases of unanimity*

1) More far-reaching encroachments on creditors' rights shall require unanimity of the creditors.

2) However, if the encroachment does not involve increases in creditors' payments, unanimity of the participants in a meeting at which at least three quarters of the bond capital in circulation must be represented shall be sufficient.

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<sup>2327</sup> § 138(1) amended by LGBl. 2010 No. 454.

<sup>2328</sup> § 139 amended by LGBl. 2000 No. 279.

3) If three quarters of the capital is not represented at such a creditors' meeting, the meeting may, by a majority of the votes represented, decide to convene a second creditors' meeting at a date not more than two months later, which may pass a resolution on the same or less far-reaching proposals by unanimous vote if at least half of the bond capital in circulation is represented.

#### § 141

##### *6. Subsequent approval*

1) If a motion in the creditors' meeting does not obtain the necessary votes, but does obtain at least half of the bond capital amount in circulation, the borrower may supplement the missing number of votes by submitting written and certified statements from creditors to the chair of the meeting within two months of the date of the meeting and thereby bring about a valid resolution.

2) Repealed<sup>2329</sup>

#### § 142

##### *7. Authentication of the resolutions*

1) A public document must be drawn up for each resolution, whether validly adopted at the creditors' meeting or obtained by subsequent approval.

2) The list of participants to be drawn up prior to the commencement of the deliberations and, where applicable, a list of creditors who subsequently agree to the resolution, to be drawn up by the notary, shall be included in the public document or attached to it together with evidence of the proper convening of the meeting.

3) in the public document, the numbers of the bonds whose holders or representatives have voted against a proposal approved by a majority must be indicated on request.

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<sup>2329</sup> § 141(2) repealed by LGBl. 2020 No. 369.

## § 143

*8. Communication of the resolutions*

1) Any approved resolution amending the bond issue conditions shall be separately notified to the creditors with registered bonds and announced in the Official Journal and in the public bulletins indicated in the bond issue conditions.<sup>2330</sup>

2) A certified copy of the minutes, as well as, if applicable, the court judgments on any challenge requests made, must be filed with the Commercial Register for the files of the borrower, if the borrower is entered with a legal name in the Commercial Register.<sup>2331</sup>

3) The resolutions in force shall be noted on the bonds where necessary.

## § 144

*9. Challenge to the resolutions*

Bondholders who did not vote for a resolution may demand the rescission of a resolution by the court within one month from the date of the announcement by proving that the resolution was brought about by dishonest means or contrary to the provisions of the law.

*C. Representation of the community*

## § 145

*I. Appointment of representative*

1) The bond issue conditions or the creditors' meeting may designate one or more representatives of the community of creditors who shall have the status of trustee under the rules of the implied trust.

2) Unless otherwise specified, several representatives shall act jointly.

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<sup>2330</sup> § 143(1) amended by LGBl. 2015 No. 275.

<sup>2331</sup> § 143(2) amended by LGBl. 2013 No. 6.

## § 146

*II. Powers of representatives*

1) The representative shall have the powers conferred by the bond issue conditions or by the creditors' meeting.

2) Without further formalities, the representative shall have the right and obligation to:

1. require the borrower to agree to a creditors' meeting as soon as the preconditions are met;
2. execute the resolutions of the creditors' meeting;
3. represent the community in the exercise of the powers conferred upon the representative.

3) To the extent that the representative is authorised to enforce the rights of the creditors, the individual creditor shall be deprived of the authority to independently enforce that creditor's rights.

## § 147

*III. Relationship of the representative to the borrower*

1) As long as the borrower is in arrears with the fulfilment of the borrower's obligations to the bondholders, the creditors' representative is authorised by law to demand from the borrower the information which is of considerable interest to the community.

2) Under the same condition, if a legal person is a borrower, the representative may participate in the deliberations of the supreme body, the administration, and the audit office in an advisory capacity.<sup>2332</sup>

3) The representative shall be invited to all such deliberations and shall be served with all notices given to the members of the administration and of the company concerning the financial situation and the business operations of the debtor undertaking.

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<sup>2332</sup> § 147(2) amended by LGBl. 2000 No. 279.

## § 148

*IV. Status of the representative in the case of bonds secured by pledge*

1) The representative of the borrower appointed for a bond secured by a land charge and the creditor shall be subject to the provisions on the land charge.

2) Like the representative, a pledgee who is appointed with respect to a bond secured by a charge on chattels must also protect the rights of the creditors and of the borrower and owner diligently and impartially.

## § 149

*V. Lapse of authority*

1) The power of attorney granted by the creditors' meeting to a representative may be revoked or modified at any time by a subsequent resolution of the creditors' meeting.

2) On application by a bond creditor, the judge may declare the power of attorney extinguished on important grounds in special non-contentious proceedings.<sup>2333</sup>

3) Where the representative's authority lapses for whatever reason, at the request of a bond creditor or the borrower, the judge shall, in special non-contentious proceedings, order the measures necessary to protect the bond creditors and the borrower as a consequence of the lapse of authority.<sup>2334</sup>

## § 150

*E. Insolvency proceedings in respect of the assets of the borrower<sup>2335</sup>*

1) Where insolvency proceedings are opened in respect of the assets of a bond borrower, a creditors' meeting must be convened without delay, at which an existing representative or a representative appointed by the meeting is granted the necessary instructions and authority to safeguard the rights of all the bond creditors.<sup>2336</sup>

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<sup>2333</sup> § 149(2) amended by LGBL 2010 No. 454.

<sup>2334</sup> § 149(3) amended by LGBL 2010 No. 454.

<sup>2335</sup> § 150 heading amended by LGBL 2020 No. 369.

<sup>2336</sup> § 150(1) amended by LGBL 2020 No. 369.

2) Such a resolution may be adopted by an absolute majority at a meeting at which at least two thirds of the bond capital in circulation is represented.

3) Where no such resolution is made, each bondholder shall represent that bondholder's rights independently.

4) The provisions of this Section shall also apply *mutatis mutandis* to the resolutions concerning the approval of the recovery plan, in such a way that, for the purpose of calculating the majority required for the recovery plan, the entire amount of the bonds of a community of creditors in agreement and all bondholders belonging to it shall be counted as being in agreement.<sup>2337</sup>

#### § 151

##### *F. Protection of the community of creditors*

1) The rights conferred by law on the community of creditors and its representative may be neither excluded nor restricted by the bond issue conditions.

2) This is subject to provisions made in the bond issue conditions whereby more restrictive requirements are placed on the adoption of resolutions by the creditors' meeting.

#### § 152

##### *G. Other communities of creditors*

1) The holders of non-membership securities issued by a borrower or professional trustee with place of residence or registered office in Liechtenstein may, by special written agreement of all accepting holders or by the terms of the issue of such securities, be united in a community of creditors to which the provisions of the community of bond creditors shall apply on a supplemental basis.

2) The provisions on the community of creditors may also be declared applicable to other cases by Government ordinance, provided that the creditors have the same legal position in relation to the borrower.

3) This is subject to the special provisions on profit-sharing certificates and trust certificates.

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<sup>2337</sup> § 150(4) amended by LGBl. 2020 No. 369.

## § 153

*H. Bonds of borrowers under public law*

Bonds issued by the State, municipalities, or by corporate bodies and establishments under public law shall be subject to public law, and the provisions on the community of creditors shall apply to them only to the extent provided for under public law.

## Title 3

**Bills of exchange**§ 154<sup>2338</sup>

Repealed

*T. Repeal and amendment of older provisions*

## § 155

*I. In general*

1) From the date of entry into force of this Act, all conflicting provisions of laws or ordinances shall cease to be in force.

2) The following in particular shall be repealed:

1. all the relevant provisions of the General Civil Code introduced by the Enactment of 18 February 1812, in particular §§ 15 to 43, to the extent that they relate to the areas of law governed herein, §§ 1175 to 1216 and § 1472, to the extent that the latter provision refers to the legal persons governed by this Act in conjunction with § 18 of the law referred to in subparagraph 3 of this article, as well as §§ 175, 248, 269 to 280, 592, 754, 865, 866, 881, 1019, 1277, 1330, and, in part, §§ 1338, 1339, and §§ 21, 174 (in part) and 252 as amended by Article 46(1), (3), and (4) of the Law of 31 August 1922, No. 28, on the Exercise of the Political Rights of the People in National Matters;
2. Articles 2, 4 to 46, 85 to 270, and 300 to 305 of the Commercial Code of 16 September 1865; without prejudice, however, to the Law of 11 January 1923, No. 1, on the National Undertaking "Landeswerk

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<sup>2338</sup> § 154 repealed by LGBI. 1971 No. 51/1.

- Lawena" and the Law of 12 January 1923, No. 5, on the Savings and Loan Bank of the Principality of Liechtenstein;
3. the Introductory Act of the Commercial Code of 16 September 1865, No. 10;
  4. Article 3(1)<sup>2339</sup>(a), (b) to the extent it concerns the right of the wife to become or be a merchant, and point 3(e) of the Law of 21 April 1922, No. 19, on Special Non-Contentious Proceedings;<sup>2340</sup>
  5. §§ 339, 340, and 487 to 496 of the Criminal Code, introduced by the Enactment of 7 November 1859, No. 11746; §§ 297 et seq. of the Criminal Code are amended in particular to the extent they conflict with the provisions of this Act concerning the free formation of associations or otherwise with the rights of free assembly; however, this shall be without prejudice to the Law of 17 October 1922, No. 32, on Impunity for Communications and Reporting;
  6. Articles 126 to 137 of the Final Title of the Property Act of 21 December 1922, No. 4 of 1923;
  7. § 2(f) of the Introductory Act on Inheritance Law of 6 April 1846, No. 3877;
  8. the provisions of the Code of Civil Procedure, to the extent they conflict with the provisions on the compulsory court of arbitration for legal persons and companies without legal personality established under foreign law (Article 630) or on trusts or with other provisions of this Act, in particular with regard to proceedings for disputes involving bills of exchange;
  9. Article 6 of the Finance Act of 22 January 1925, No. 1;
  10. the conflicting provisions of the (Railway) Law of 14 January 1870, No. 1, and the Austrian Railway Concession Act of 14 September 1854 introduced thereby.

3) The time limit of five years set out in Article 17(1)<sup>2341</sup> of the Final Title of the Property Act shall be increased to ten years.

4) Repealed<sup>2342</sup>

5) In civil disputes in which a non-monetary claim is asserted by way of legal action or a counterclaim under the provisions of this Act on corporate bodies, companies without legal personality with legal names, sole

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<sup>2339</sup> This erroneously reads "1" instead of "3" in the German original.

<sup>2340</sup> § 155(2)(4) amended by LGBL. 2010 No. 454.

<sup>2341</sup> This erroneously reads "1" instead of "2" in the German original.

<sup>2342</sup> § 155(4) repealed by LGBL. 2004 No. 41.

proprietorships with limited liability,<sup>2343</sup> or trusts, the decision of the Court of Appeal may in any case be appealed to the Supreme Court.

### § 156

#### *II. By ordinance*

By way of amendment to conflicting provisions in laws or ordinances, the Government shall be empowered to enact, by ordinance, provisions concerning:

1. the cancellation of lost identity documents such as passports and certificates of origin. The provisions of the National Administration Act shall apply on a supplemental basis to the cancellation procedure set out in that ordinance;
2. the limitation of the taking of an oath in judicial and administrative matters in the sense that, in particular in less important matters, such as petty cases, contraventions, and administrative matters, the oath shall be omitted altogether, but otherwise only in important cases, and that the oath may be replaced in all cases by an affirmation to be specified in more detail, the violation of which is subject to the same penal provisions as the violation of the oath;
3. Repealed<sup>2344</sup>

### § 157

#### *U. Final provision*

1) This Act shall be declared non-urgent and shall enter into force on the date of promulgation, except for the provisions relating to the Civil Register in accordance with § 49 and the Commercial Register in accordance with § 50, for which the Government shall determine the date of entry into force.<sup>2345</sup>

2) The provisions relating to the composition agreement or composition proceedings shall enter into force with the rules governing the areas of law concerned.

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<sup>2343</sup> The provisions on sole proprietorships with limited liability (Articles 834 – 896a) were repealed by the Law of 15 April 1980, LGBl. 1980 No. 39.

<sup>2344</sup> § 156(3) repealed by LGBl. 2015 No. 235.

<sup>2345</sup> § 157(1) amended by LGBl. 2013 No. 6.

3) The Government shall be entrusted with execution of this Act; it shall establish an official subject index and the necessary implementing provisions, in particular concerning the Civil Register and the Commercial Register, the obligation to register with the Office of Justice pursuant to Article 946, to the extent this is not already provided for in the individual provisions such as on legal persons and the law governing levies.<sup>2346</sup>

4) The Government is authorised to conclude further treaties and agreements with other countries.

5) This Act shall be without prejudice to current and future international treaties and the right of retaliation (retorsion) against foreigners ordered by the Government at its discretion.

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<sup>2346</sup> § 157(3) amended by LGBl. 2013 No. 6.

**Transitional provisions and entry into force**

**216.0      Law on Persons and Companies (PGR)**

**Liechtenstein Law Gazette**

Year 1963

No. 17

published on 6 June 1963

**Law**  
of 4 June 1963  
amending the Law on Persons and Companies  
of 20 January 1926

...

## Article 5

The legal persons in existence at the time of entry into force of this Act<sup>2347</sup> are obliged to comply with the provision in Article 180a of the Law on Persons and Companies by 30 June 1965, failing which the registrar shall order their removal *ex officio*.

## Article 6

1) The documents submitted for approval within the meaning of paragraph 1 of Article 554 of the Law of 20 January 1926 on Persons and Companies, as amended by the laws of 30 April 1938 and 8 June 1938, as well as the documents executed on the basis of paragraph 3 of the same article, shall be deposited or re-deposited at the register office by 30 June 1965, provided that the foundation or other unregistered legal person concerned still exists on the date of entry into force of this Act.<sup>2348</sup>

2) If the deadline expires without action being taken, the registrar may order dissolution *ex officio*.

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<sup>2347</sup> Entry into force: 6 June 1963.

<sup>2348</sup> Entry into force: 6 June 1963.

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## Liechtenstein Law Gazette

Year 1969

No. 48

published on 19 December 1969

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### Law of 14 November 1969 reducing the Voting Age and the Age of Legal Responsibility and amending Provisions pertaining to Voting Law

...

#### Article 6

Underage persons who have reached the age of 20 before the commencement of effectiveness of the above article shall become legally responsible on the date of entry into force of this Act.<sup>2349</sup> The validity and effects of acts performed by them before that date shall be assessed in accordance with the law hitherto in force.

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<sup>2349</sup> Entry into force: 19 December 1969.

**Liechtenstein Law Gazette**

Year 1972

No. 36

published on 16 June 1972

**Law**  
of 9 May 1972  
amending the Law on Persons and Companies  
of 20 January 1926

...

**V.**

Where laws and ordinance refer to the registrars, civil register offices, and register offices, they shall be replaced by the registrar (Civil Registrar) and the Civil Register Office of the State.

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## Liechtenstein Law Gazette

Year 1980

No. 39

published on 14 June 1980

**Law**  
of 15 April 1980  
amending the Law on Persons and Companies  
and the Trust Law on Trust Enterprises

...

### II. Transitional law

#### § 1

The legal persons and trust enterprises in existence at the time of entry into force of this Act<sup>2350</sup> are obliged to comply with the provision in Article 180a by 31 December 1983, failing which the Public Register Office shall initiate dissolution and liquidation proceedings *ex officio*.

#### § 2

The legal persons and trust enterprises in existence at the time of entry into force of this Act<sup>2351</sup> are obliged to comply with the provisions of Article 192(6) and Article 350, respectively, by 31 December 1983, failing which the Public Register Office shall initiate dissolution and liquidation proceedings *ex officio*.

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<sup>2350</sup> Entry into force: 14 June 1980.

<sup>2351</sup> Entry into force: 14 June 1980.

## § 3

1) The foundations in existence at the time of entry into force of this Act<sup>2352</sup> are obliged to adjust the purpose of the foundation as set out in the articles of association to the provisions of Article 552(1) by 31 December 1983, failing which the Public Register Office shall initiate dissolution and liquidation proceedings *ex officio*.

## § 4

Trust relationships as referred to in Article 897 must, to the extent they have not yet been entered or deposited, be applied for entry in the Public Register by 31 December 1983.

## § 5

Legal persons and trust enterprises already in existence at the time of entry into force of this Act<sup>2353</sup> shall submit the declaration required by Article 1063bis for the first time for the 1983 financial year and, if the financial year does not end on 31 December of a year, for the first time for the financial year ending in 1984.

## § 6

To the extent not otherwise provided by this Act, legal persons and trust enterprises established before entry into force of this Act<sup>2354</sup> shall bring their articles of association into line with the provisions of this Act by 31 December 1983.

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2352 Entry into force: 14 June 1980.

2353 Entry into force: 14 June 1980.

2354 Entry into force: 14 June 1980.

## Liechtenstein Law Gazette

Year 2000

No. 279

published on 22 December 2000

### Law of 26 October 2000 amending the Law on Persons and Companies

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#### II.

##### Transitional provisions

##### § 1

###### *Adjustment of articles of association and share capital*

1) Points 4 and 12 of Article 279(1) and the end of point 1 of Article 280(1) (precise information about any kind of founder's benefits in the articles of association) shall not apply to public limited companies which were already in existence before entry into force of this Act.<sup>2355</sup>

2) Otherwise, at the time of entry into force, existing legal persons must adjust their articles of association to the new provisions within 18 months of the entry into force of this Act.<sup>2356</sup>

3) Public limited companies in existence at the time of entry into force shall, within three years of the entry into force of this Act,<sup>2357</sup> adjust the amount of paid-up share capital to the minimum requirements of Articles 283(3), 284(1) and 288(1).

<sup>2355</sup> Entry into force: 31 December 2000.

<sup>2356</sup> Entry into force: 31 December 2000.

<sup>2357</sup> Entry into force: 31 December 2000.

## § 2

*Change of terminology*

1) Where laws or ordinances refer to "Kontrollstelle" (audit office) within the meaning of Article 192 of the Law on Persons and Companies of 20 January 1926, LGBl. 1926 No. 4, as last amended by LGBl. 1980 No. 39, this shall be replaced by the term "Revisionsstelle" (audit office) within the meaning of Article 191a of this Act.

2) Where laws or ordinances refer to the provisions on commercial accounting, this shall be understood as a reference to Title 20 (Accounting) of the Law on Persons and Companies of 20 January 1926, LGBl. 1926 No. 4, last amended by LGBl. 1998 No. 27, as amended by this Act.

## § 3

*Business qualifications*

A person who, on 31 December 1999, possesses a business qualification recognised by the Government within the meaning of Article 180a, may continue to serve on the board of directors within the meaning of Article 180a for the duration of the continuation of the business qualification for those legal persons of which the person is a member of the administration on 31 December 1999.

## § 4

*Audit office*

The persons and undertakings authorised until the time of entry into force of this Act<sup>2358</sup> pursuant to Article 39a of the Law of 13 November 1968 on Lawyers, Legal Agents, Professional Trustees, Auditors, and Patent Lawyers to perform the function of audit office shall continue to be entitled to the same extent as before.

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<sup>2358</sup> Entry into force: 31 December 2000.

## § 5

*Fixed asset schedule*

If, when applying Article 1070 for the first time, the acquisition or production cost of a fixed asset cannot be determined without unjustified cost or delay, the residual value at the beginning of the financial year may be regarded as the acquisition or production cost. Application of the first sentence shall be disclosed in the notes.

## § 6

*Implementing ordinances*

The Government shall enact the ordinances necessary for implementation of this Act, in particular concerning the exemption for intermediate companies with non-EEA parent companies from the obligation to prepare a consolidated business report (Article 1100(2)) and the level of the thresholds for annual financial statements and consolidated annual financial statements not prepared in Swiss francs (Articles 1064 and 1101).

## § 7

*First application of the provisions*

The provisions of this Act on accounting shall apply for the first time to financial years beginning after 1 January 2001.

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**Liechtenstein Law Gazette**

Year 2003

No. 23

published on 16 January 2003

**Law**

of 22 November 2002

**amending the Law on Persons and Companies**

...

**II.****Transitional provision**

1) Lawyers, legal agents, and auditors who are entitled under the existing law to carry out activities under Article 180a shall continue to be authorised to do so.<sup>2359</sup>

2) Persons who possess a business qualification recognised by the Government on 30 December 2000 may continue to carry out activities under Article 180a for five years from the entry into force of this Act.<sup>2360</sup> Provided that within this period they provide evidence of at least two semesters of relevant training at the level of a university of applied sciences, as determined by the Government by ordinance, they shall be entitled to carry out activities under Article 180a without restriction. If the evidence of training is not provided within this period, the entitlement to carry out activities under Article 180a shall expire.

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<sup>2359</sup> Section II(1) corrected by LGBL 2003 No. 57.

<sup>2360</sup> Entry into force: 1 March 2003.

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## Liechtenstein Law Gazette

Year 2005

No. 257

published on 16 December 2005

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### Law of 20 October 2005 amending the Law on Persons and Companies

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#### II.

##### Transitional provisions

1) Subject to paragraph 2, this Act shall apply for the first time to liquidation proceedings which are opened after its entry into force.<sup>2361</sup>

2) The new law shall apply to the dismissal of liquidators under Article 132(2).

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<sup>2361</sup> Entry into force: 16 December 2005.

**Liechtenstein Law Gazette**

Year 2007

No. 38

published on 21 February 2007

**Law**  
of 13 December 2006  
**amending the Law on Persons and Companies**

...

**II.**  
**Transitional provisions**

The provisions concerning accounting and the audit office shall apply from the first financial year beginning with the entry into force of this Act<sup>2362</sup> or thereafter.

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<sup>2362</sup> Entry into force: 21 February 2007.

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## Liechtenstein Law Gazette

Year 2008

No. 224

published on 26 August 2008

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### Law of 26 June 2008 amending the Law on Persons and Companies

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#### III.

##### Entry into force

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 October 2008, otherwise on the day of its promulgation.

2) It shall apply for the first time to financial years beginning on or after 1 January 2009.

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**Liechtenstein Law Gazette**

Year 2008

No. 220

published on 26 August 2008

**Law**  
of 26 June 2008  
**amending the Law on Persons and Companies**

...

**II.****Transitional provisions**

## Article 1

*Application of new law to existing foundations*

1) The law hitherto in force shall apply to foundations in existence at the time of entry into force of this Act,<sup>2363</sup> unless otherwise provided for below.

2) If for the first time after the entry into force of this Act<sup>1</sup> there is a change to a fact which must be notified to the Office of the Land Register and Public Register in accordance with Article 552 § 20(3), a notification with the contents set out in Article 552 § 20(2) must be submitted by the members of the foundation council. With regard to the duty and power to notify and to certification of the accuracy of the information, Article 552 § 20(1), and with regard to verification of the accuracy, § 21 shall apply *mutatis mutandis*. Article 552 § 20(3) shall apply to all subsequent amendments.

3) If a notification is submitted or has already been submitted in accordance with paragraph 2, surrender to the foundation of the foundation deed and other documents may be requested, where the foundation deed or other documents have been deposited with the Office

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<sup>2363</sup> Entry into force: 1 April 2009.

of the Land Register and Public Register in accordance with Article 554 in the hitherto applicable version.

4) Article 107(4a) and Article 552 §§ 3, 5 to 12, 21, 26, 27, 29, and 31 to 35 shall also apply to foundations formed prior to entry into force of this Act. The members of the foundation council must notify foundations which, in accordance with Article 552 § 29 are supervised by the Foundation Supervisory Authority, to the Foundation Supervisory Authority within 12 months of entry into force of this Act, together with a register extract. Even if a founder has not reserved this right, the founder may set up a controlling body in accordance with Article 552 § 11(2) and (3). If the foundation was formed by an indirect representative (Article 552 § 4(3)), the principal shall be deemed to be the founder; Article 552 § 30(3) shall apply *mutatis mutandis*. If the founder is deceased or legally incompetent, a controlling body may be set up by the foundation council in accordance with point 1 of Article 552 § 11(2) and Article 552 § 11(3). The controlling body must be set up within 12 months of entry into force of this Act. In the case of public-benefit foundations (Article 552 § 2) and private-benefit foundations which conduct business in a commercial manner on the basis of special legislation and need not be entered in the Public Register, each member of the foundation council shall be required to notify the foundation for entry in the Public Register within 12 months of entry into force of this Act; Article 552 § 19 shall apply *mutatis mutandis*.<sup>2364</sup>

5) If a controlling body is set up in accordance with paragraph 4 or an audit office is appointed, the audit in accordance with Article 552 § 11(4) or Article 552 § 27(4) must be performed for the first time by 31 December 2010. The object of the first audit shall be the financial year beginning after 31 December 2008.<sup>2365</sup>

## Article 2

### *Adjustment to the new law*

1) If the formation business of a foundation formed prior to 31 December 2003 does not meet the requirements of point 4 of Article 552 § 16(1), a lawful state of affairs shall be restored in accordance with the following provisions by 31 December 2010.<sup>2366</sup>

<sup>2364</sup> Article 1(4) amended by LGBL 2009 No. 247.

<sup>2365</sup> Article 1(5) amended by LGBL 2009 No. 247.

<sup>2366</sup> Article 2(1) amended by LGBL 2009 No. 247.

2) Even if the founder has not reserved such a right, the founder is entitled to amend the declaration of foundation in such a way that a lawful state of affairs can be restored. If the foundation was formed by an indirect representative (Article 552 § 4(3)), the principal shall be deemed to be the founder; Article 552 § 30(3) shall apply *mutatis mutandis*.

3) If the founder is deceased or legally incompetent, the declaration of foundation may be amended by the foundation council in a manner corresponding to point 4 of Article 552 § 16(1). The amendment by the foundation council shall be permissible only if the will of the founder can be established. Only documents originating with the founder, a direct or indirect representative, or a governing body of the foundation involved in the formation may be used as a means of establishing the will. If the document does not originate with the founder, only those documents may be used which were drawn up before 1 December 2006.

4) The foundation council of all foundations not entered in the Public Register must confirm to the Office of the Land Register and Public Register by express declaration that the foundation documents comply with point 4 of Article 552 § 16(1). This declaration may be made only after a lawful state of affairs has been restored, if applicable. Article 552 § 21 shall apply *mutatis mutandis* to the verification of the accuracy of the declaration.

5) If a lawful state of affairs is not restored by 31 December 2010, the foundation council must adopt a resolution to dissolve the foundation in accordance with Article 552 § 39, which must be notified to the Office of the Land Register and Public Register.<sup>2367</sup>

6) If the notification pursuant to paragraph 5 is not submitted by 1 February 2011, the Office of the Land Register and Public Register shall request the foundation council to submit a declaration pursuant to paragraph 4 within a grace period of six months or to notify the dissolution resolution. If this period also expires unused, the Office of the Land Register and Public Register shall notify the judge, who shall declare the foundation dissolved in special non-contentious proceedings.<sup>2368</sup>

7) If a foundation is dissolved in accordance with paragraph 5 or 6, the Office of the Land Register and Public Register is entitled to demand information from all foundation bodies on the progress of the liquidation. If it turns out that the liquidator is in default in carrying out the liquidation, the judge in special non-contentious proceedings may, upon application by the foundation participants, the Office of the Land Register

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<sup>2367</sup> Article 2(5) amended by LGBL 2009 No. 247.

<sup>2368</sup> Article 2(6) amended by LGBL 2009 No. 247.

and Public Register, or *ex officio*, remove the liquidator from office and appoint another suitable person as liquidator.

### Article 3

#### *Penal provisions*

1) If no notification is permitted in accordance with Article 1(2), § 66c(1) and (2) Final Part shall apply *mutatis mutandis*.

2) Anyone who wilfully makes a declaration as referred to in Article 1(2) or Article 2(4) which is incorrect in content or who wilfully fails to make a notification as referred to in Article 1(4) or who wrongly declares not to be subject to the supervision of the Foundation Supervisory Authority or who, as a lawyer, professional trustee, or holder of an entitlement under Article 180a, wilfully or negligently makes an incorrect certification of the information referred to in Article 1(2) in conjunction with Article 552 § 20(1) PGR shall be punished by the Court of Justice with a fine of up to 50 000 Swiss francs for a contravention or, if the fine cannot be recovered, with imprisonment of up to six months. If the perpetrator acts negligently, the Court of Justice shall impose a fine of up to CHF 20 000 Swiss francs for a contravention or, if the fine cannot be recovered, with imprisonment of up to three months.

3) This article is subject to disciplinary measures.

### Article 4

#### *Application of the new law to existing establishments*

1) Article 107(4a) and Article 552 § 2(4), §§ 26, 27, 29, 31 to 35, 36(1), and 41 shall apply *mutatis mutandis* also to establishments as referred to in Article 551(2) PGR which were formed before entry into force of this Act.<sup>2369</sup>

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<sup>2369</sup> Entry into force: 1 April 2009.

2) The members of the administration of an establishment which is supervised by the Foundation Supervisory Authority in accordance with Article 551(2) in conjunction with Article 552 § 29 shall notify the Foundation Supervisory Authority within 12 months of the entry into force of this Act together with an extract from the register.<sup>2370</sup>

3) Anyone who, as a member of the administration, wilfully or negligently fails to make the notification referred to in paragraph 2 or wrongfully declares not to be subject to the supervision of the Foundation Supervisory Authority shall be punished in accordance with Article 3(2).

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<sup>2370</sup> Article 4(2) amended by LGBL 2009 No. 247.

## Liechtenstein Law Gazette

Year 2011

No. 7

published on 11 January 2011

**Law**  
of 25 November 2010  
**amending the Law on Persons and Companies**

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### II.

#### Transitional provision

The provisions of this Act shall apply from the first financial year beginning on or after the date of entry into force of this Act.<sup>2371</sup>

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<sup>2371</sup> Entry into force: 1 February 2011.

**Liechtenstein Law Gazette**

Year 2012

No. 124

published on 27 April 2012

**Law**  
of 22 March 2012  
**amending the Law on Persons and Companies**

...

**II.**

**Transitional provision**

This Act shall apply for the first time to financial years beginning after 31 December 2013.

...

The following provisions shall apply for the last time to financial years beginning before 1 January 2014:

Article 182a(2)<sup>2372</sup>

2) The member of the administration of a legal person required to keep proper accounts (Article 1045) who fulfils the conditions of Article 180a must ensure that the account books are available for official audits within a reasonable period of time at the registered office of the company.

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<sup>2372</sup> Article 182a(2) amended by LGBL 2008 No. 224.

Article 182b(1)(a)<sup>2373</sup>

- a) as of the end of the preceding financial year, a statement of assets is available; and

Article 251a<sup>2374</sup>2. *Accounting*

The executive board shall keep an account of the income and expenditure as well as the financial situation of the association.

## Article 923(1) and (5)

1) If a schedule of assets for the trust property has not already been prepared, the trustee shall draw up a separate schedule of assets and update it.

5) However, the deed of trust may also provide for the statement of accounts in another way or release the professional trustee from the statement of accounts.

## Article 1045(1)

1) Anyone obliged to have their legal name entered in the Public Register (Article 945) and who conducts a business in a commercial manner (Article 107) is obliged to keep proper accounts.<sup>2375</sup>

## § 66(3) and (4) Final Part

3) The administrative fines pursuant to paragraphs 1 and 2 may be imposed on a recurring basis until either the obligations referred to in paragraph 1 or 2 have been fulfilled or evidence has been provided that an obligation pursuant to paragraph 1 or 2 does not exist.<sup>2376</sup>

4) If the obligations referred to in paragraph 1 or 2 are not fulfilled in the business operations of a legal person, the penal provision shall apply

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<sup>2373</sup> Article 182b(1)(a) inserted by LGBl. 2000 No. 279.

<sup>2374</sup> Article 251a inserted by LGBl. 2007 No. 38.

<sup>2375</sup> Article 1045(1) amended by LGBl. 2003 No. 63.

<sup>2376</sup> § 66(3) Final Part amended by LGBl. 2000 No. 279.

to the directors, authorised persons, liquidators, and members of administrative bodies who have not fulfilled the obligation.<sup>2377</sup>

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<sup>2377</sup> § 66(4) amended by LGBL 2000 No. 279.

## Liechtenstein Law Gazette

Year 2013

No. 67

published on 8 February 2013

### Law of 20 December 2012 amending the Law on Persons and Companies

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#### III.

##### Transitional provisions

###### Article 1

*Bearer shares of public limited companies, partnerships limited by shares,  
or European Companies (SE)*

1) Bearer shares of public limited companies, partnerships limited by shares, or European Companies (SE) issued before entry into force of this Act<sup>2378</sup> shall be deposited with the custodian for the purpose of registration by 1 March 2014, otherwise voting rights shall be excluded.

2) After expiry of the period pursuant to paragraph 1, bearer shares may be deposited with the custodian for the purpose of registration only if the shareholder concerned submits a ruling of the Court of Justice stating that the shareholder is the rightful owner of the bearer shares. The determination of the ownership of the bearer shares, including the time of acquisition of ownership, by the Court of Justice shall be made in special non-contentious proceedings.

3) If a shareholder is registered on the basis of a decision of the Court of Justice in accordance with paragraph 2, the custodian shall pay to the shareholder all dividends or other payments which have been paid out by

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<sup>2378</sup> Entry into force: 1 March 2013.

the company during the period of non-registration, at the expense of the fiduciary account referred to in paragraph 4; the amount referred to in paragraph 4 and the costs of the custodian shall be deducted from the dividends and other payments. Article 316 shall apply.

4) All dividends or other payments which cannot be paid out due to lack of registration as referred to in paragraphs 1 and 2 shall be transferred by the company to the custodian with a deduction of 35% of the income from dividends or other payments. These monies shall be paid into a fiduciary account. Article 326i shall apply *mutatis mutandis* to the maintenance of the fiduciary account.

5) The fiduciary account referred to in paragraph 4 shall be closed by the custodian:

- a) upon the registration of all bearer shares and the settlement of all receivables; or
- b) at the latest on expiry of the period set out in paragraph 6; any credit balance in the account shall be forfeited for the benefit of the State.

6) After 1 March 2024, bearer shares which have not been registered in accordance with paragraphs 1 or 2 shall be declared void by the company; no rights may be asserted in respect of such shares after that date.

7) In the cases referred to in paragraph 6, the general meeting of the company shall, on the application of the administration, adopt a resolution in which the number and amount of the paid-up nominal value of the bearer shares affected by the nullification are recorded. The amount equal to the nominal value or, in the case of non-par value shares, the notional par value of all bearer shares affected by the nullification shall be placed in a reserve. The last sentence of point 4 of Article 358(1) shall apply *mutatis mutandis*.

8) Anyone who, as a custodian, breaches the obligation to maintain the fiduciary account in accordance with paragraphs 4 and 5 shall be punished in accordance with § 66d Final Part.

## Article 2

### *Bearer securities of other legal persons, trust enterprises, and trusts*

Bearer securities of other legal persons, trust enterprises, and trusts which embody membership or subscription rights must be converted into registered securities by 1 March 2014. After that deadline, any unconverted securities must be destroyed by the partnership; no rights may be asserted in respect of such securities.

Article 3

*Share registers*

Share registers established before entry into force of this Act shall be adjusted to the requirements of the new law by 1 March 2014.

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**Liechtenstein Law Gazette**

Year 2016

No. 357

published on 3 November 2016

**Law**  
of 31 August 2016  
**amending the Law on Persons and Companies**

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**III.****Entry into force**

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 January 2017, otherwise on the day after its promulgation.

2) It shall apply for the first time to financial years beginning on or after 1 January 2017.

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## Liechtenstein Law Gazette

Year 2016

No. 402

published on 1 December 2016

### **Law** of 28 September 2016 **amending the Law on Persons and Companies**

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#### **II.**

##### **Transitional provisions**

1) Limited liability companies entered in the Commercial Register at the time of entry into force of this Act<sup>2379</sup> must, if necessary, within two years of the entry into force of this Act, adjust their articles of association and regulations to the new provisions, and in particular ensure that all equity capital contributions are fully paid up or covered by non-cash contributions.

2) Article 1044b shall apply to trusts which, after the entry into force of this Act, are either entered in the Commercial Register or whose originals or certified copies of the deed of formation are deposited with the Office of Justice after the entry into force of this Act (Article 902).

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<sup>2379</sup> Entry into force: 1 January 2017.

**Liechtenstein Law Gazette**

Year 2019

No. 118

published on 29 April 2019

**Law**  
of 27 February 2019  
**amending the Law on Persons and Companies**

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**II.**  
**Entry into force**

This Act shall enter into force at the same time as the Signature and Trust Services Act of 27 February 2019.<sup>2380</sup>

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<sup>2380</sup> Entry into force: 1 July 2019 (LGBL 2019 No. 114).

## Liechtenstein Law Gazette

Year 2019

No. 258

published on 8 November 2019

### Law of 6 September 2019 amending the Law on Persons and Companies

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#### II.

##### Transitional provisions

For companies formed before entry into force of this Act<sup>2381</sup> and which have not provided for the balance sheet date in the articles of association, the calendar year shall be considered the financial year; the balance sheet date shall be entered in the Commercial Register *ex officio* and free of charge.

#### III.

##### Entry into force

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2) Article 977(2), Article 1130(1) and (3), the heading of § 66, and § 66(2) and (4) Final Part shall apply for the first time to financial years beginning after 31 December 2018.

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<sup>2381</sup> Entry into force: 1 January 2020.

**Liechtenstein Law Gazette**

Year 2020

No. 22

published on 29 January 2020

**Law**  
of 4 December 2019  
**amending the Law on Persons and Companies**

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**II.**  
**Transitional provision**

This Act shall apply for the first time to financial years beginning on or after 1 January 2020.

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**Liechtenstein Law Gazette**

Year 2019

No. 18

published on 4 February 2019

**Law**  
of 5 December 2018  
**amending the Law on Persons and Companies**

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**III.****Transitional provisions**

1) Six years after entry into force of Decision of the EEA Joint Committee No 102/2018,<sup>2382</sup> a public-interest entity may no longer grant or renew an audit engagement for a particular auditor or audit firm if the auditor or audit firm has provided statutory audit services to that entity for 20 or more consecutive years up to that time.

2) Nine years after entry into force of Decision of the EEA Joint Committee No 102/2018, a public-interest entity may no longer grant or renew an audit engagement for a particular auditor or audit firm if the auditor or audit firm has provided statutory audit services to that entity for 11 or more but less than 20 consecutive years up to that time.

3) Without prejudice to paragraphs 1 and 2, the statutory audit engagements granted before entry into force of Decision of the EEA Joint Committee No 102/2018 and continuing for up to two years after that time may be carried out until the expiry of the maximum duration referred to in Article 17 of Regulation (EU) No 537/2014. Article 19 (11) and (12) shall apply.

4) The selection procedure referred to in Article 16(3) of Regulation (EU) No 537/2014 shall apply to statutory audit engagements only after

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<sup>2382</sup> Entry into force: 1 January 2021 (LGBL 2020 No. 426).

the expiry of the period referred to in Article 17(1)(2) of Regulation (EU) No 537/2014.

5) The provisions of this Act and of Regulation (EU) No 537/2014 on the conduct of statutory audits and audits of public-interest entities shall apply for the first time to statutory audits for financial years beginning after 31 December 2020.<sup>2383</sup>

6) Article 1139(5) shall apply for the first time to financial years beginning after 31 December 2022. Earlier application is permissible.<sup>2384</sup>

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<sup>2383</sup> Point III(5) amended by LGBL 2020 No. 513.

<sup>2384</sup> Point III(6) amended by LGBL 2020 No. 513.

## Liechtenstein Law Gazette

Year 2021

No. 225

published on 6 July 2021

**Law**  
of 7 May 2021  
**amending the Law on Persons and Companies**

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### III.

#### Entry into force

This Act shall enter into force at the same time as the Decision of the EEA Joint Committee No 235/2020<sup>2385</sup> of 11 December 2020 amending Annex XXII (Company law), but no earlier than 1 August 2021.

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<sup>2385</sup> Entry into force: 1 October 2021 (LGBL 2021 No. 284).

**Liechtenstein Law Gazette**

Year 2022

No. 227

published on 19 July 2022

**Law**  
of 2 June 2022  
**amending the Law on Persons and Companies**

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**III.****Transitional provisions**

1) Limited liability companies registered in the Commercial Register on the date of entry into force of this Act, for which neither an audit office has been appointed nor the review has been waived, must appoint an audit office by 31 December 2022.

2) For claims arising prior to entry into force of this Act, the new period of limitations under Article 226(1) shall apply for the first time one year after its entry into force, to the extent that the claims are not yet time-barred at that date.

**IV.****Entry into force**

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 August 2022, otherwise on the day of its promulgation. Article 135(2) and (4) and Article 138(2) shall enter into force on 1 August 2023.

2) Article 182b and § 66a Final Part shall apply for the first time to financial years commencing after 31 December 2022.

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**Liechtenstein Law Gazette**

Year 2024

No. 170

published on 25 April 2024

**Law**  
of 7 March 2024  
**amending the Law on Persons and Companies**

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**III.****Transitional provisions**

1) Until 6 January 2030, subsidiary undertakings which are subject to sustainability reporting on an individual or group basis and whose parent undertaking has its registered office in a third country may prepare consolidated sustainability reporting, in accordance with the consolidated sustainability reporting requirements (Article 1121), that includes all EEA subsidiary undertakings of such parent undertaking that are subject to the sustainability reporting requirements (Article 1096b et seq. or Article 1121).

2) Until 6 January 2030, the consolidated sustainability reporting referred to in paragraph 1 may include the disclosures laid down in Article 8 of Regulation (EU) 2020/852, covering the activities carried out by all EEA subsidiary undertakings of the parent undertaking referred to in paragraph 1 that are subject to the sustainability reporting requirements (Article 1096b et seq. or Article 1121).

3) The subsidiary undertaking referred to in paragraphs 1 and 2 shall be one of the EEA subsidiary undertakings of the group that generated the greatest turnover in the European Economic Area in at least one of the preceding five financial years, on a consolidated basis where applicable.

4) The consolidated sustainability reporting referred to in paragraphs 1 and 2 shall be published in accordance with Article 1123.

5) For the purpose of the exemption laid down in Articles 1096g and 1121, reporting in accordance with paragraphs 1 and 2 shall be considered to be reporting by a parent undertaking at group level with respect to the undertakings included in the consolidation. Reporting in accordance with paragraph 2 shall be considered to fulfil the conditions referred to in Article 1096g(3)(c)(3) and Article 1121 in conjunction with Article 1096g(3)(c)(3), respectively.

#### IV.

##### Entry into force and applicability

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 July 2024, otherwise on the day of its promulgation.

2) The provisions on sustainability reporting and consolidated sustainability reporting shall be applicable for the first time to financial years beginning on or after 1 January 2024 to:

- a) large companies within the meaning of Article 1064(3) which are public-interest entities as defined in Article 1138g(1) exceeding on their balance sheet dates the average number of 500 employees during the financial year;
- b) public-interest entities as defined in Article 1138g(1) which are parent undertakings of a large group that are obliged to prepare a consolidated business report in accordance with Article 1101(1) and that exceed on their balance sheet date the average number of 500 employees during the financial year on a consolidated basis.

3) The provisions on sustainability reporting and consolidated sustainability reporting shall be applicable for the first time to financial years beginning on or after 1 January 2025 to:

- a) large companies within the meaning of Article 1064(3), other than those referred to in paragraph 2(a);
- b) parent undertakings of a large group which are obliged to prepare a consolidated business report in accordance with Article 1101(1), other than those referred to in paragraph 2(b).

4) The provisions on sustainability reporting and consolidated sustainability reporting shall be applicable for the first time to financial years beginning on or after 1 January 2026 to:

- a) small and medium-sized undertakings within the meaning of Article 1064(1) and (2) which are public-interest entities as defined in Article 1138g(1)(a), with the exception of micro-companies as defined in Article 1064(1a);
  - b) small and non-complex institutions defined in Article 4(1)(145) of Regulation (EU) No 575/2013, provided that they are:
    - 1. large companies within the meaning of Article 1064(3); or
    - 2. small and medium-sized companies within the meaning of Article 1064(1) and (2) which are public-interest entities as defined in Article 1138(1)(a) and which are not micro-undertakings within the meaning of Article 1064(1a);
  - c) captive insurance undertakings as defined in Article 10(1)(13) of the Insurance Supervision Act, provided that they are:
    - 1. large companies within the meaning of Article 1064(3); or
    - 2. small and medium-sized companies within the meaning of Article 1064(1) and (2) which are public-interest entities as defined in Article 1138g(1)(a) and which are not micro-companies within the meaning of Article 1064(1a).
- 5) The provisions on sustainability reporting and consolidated sustainability reporting shall be applicable for the first time to financial years beginning on or after 1 January 2028 to:
- a) subsidiary undertakings whose ultimate parent undertaking has its registered office in a third country (Article 1096i); and
  - b) branches of an undertaking established in a third country (Article 1096i).
- 6) The provisions on income tax reporting (Articles 1140 to 1153) shall be applicable for the first time to financial years beginning on or after the date of entry into force of the decision of the EEA Joint Committee incorporating Directive (EU) 2021/2101.
- 7) Points 1 and 2 of Article 1064(1), points 1 and 2 of Article 1064(1a), points 1 and 2 of Article 1064(2), Article 1101(1)(1)(a) and (b), and Article 1011(1)(2)(a) and (b) shall be applicable for the first time to financial years beginning on or after 1 January 2024.

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**Liechtenstein Law Gazette**

Year 2024

No. 370

published on 29 October 2024

**Law**  
of 5 September 2024  
**amending the Law on Persons and Companies**

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**II.****Transitional provisions**

## Article 1

*Application of new law to existing associations*

1) Associations as referred to in Article 247(2)(3) in existence at the time of entry into force of this Act<sup>2386</sup> are obliged:

1. to have themselves entered in the Commercial Register within 18 months of entry into force of this Act in accordance with Article 247(5), to appoint a representative in accordance with Article 239, and to draw up a list of members in accordance with Article 247a; or
2. to submit an application for exemption from the obligation to be entered pursuant to Article 247(4) to the Office of Justice within the period specified in paragraph 1.

2) If an association as referred to in Article 247(2)(3) is already entered in the Commercial Register at the time of entry into force of this Act, it must submit the statement pursuant to Article 247(5) to the Office of Justice within 18 months of entry into force of this Act, notwithstanding its entry in the Commercial Register.

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<sup>2386</sup> Entry into force: 1 January 2025.

3) Associations as referred to in subparagraphs 2 and 3 of Article 247(2) which are in existence at the time of entry into force of this Act must comply with the obligation set out in Article 180a(1) within 18 months of entry into force of this Act, unless they are exempted in accordance with Article 180a(4).

## Article 2

### *Penal provisions and measures*

1) If the obligations set out in Article 1(1) and (2) are not complied with or not complied with in a timely manner, or if they are not complied with in full or correctly in terms of content, § 66(2b) and (3) of the Final Part shall apply *mutatis mutandis*.

2) If the obligation set out in Article 1(3) is not complied with or not complied with in a timely manner, Article 971(1)(3) shall apply *mutatis mutandis*.

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