

THE ORGANISATION FOR THE HARMONISATION  
OF BUSINESS LAW IN AFRICA

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**UNIFORM ACT RELATING TO  
COMMERCIAL COMPANIES AND ECONOMIC  
INTEREST GROUP**

*Translation*

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## **UNIFORM ACT RELATING TO COMMERCIAL COMPANIES AND ECONOMIC INTEREST GROUP**

**The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),**

Mindful of the Treaty on the Harmonization of Business Law in Africa, in particular Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;

Mindful of the report of the OHADA Permanent Secretariat and the observations of the Contracting States;

Mindful of the opinion of the Common Court of Justice and Arbitration dated 7 April 1997;

The Contracting States present have deliberated upon and unanimously adopted the Uniform Act set out below:

### **PRELIMINARY CHAPTER SCOPE OF THE PROVISIONS OF THIS UNIFORM ACT**

**Article 1:**

Every commercial company, including those in which the State or a corporate body governed by public law is a partner, whose registered office is located on the territory of one of the Contracting States to the Treaty on the Harmonization of Business Law in Africa (hereinafter referred to as "Contracting States") shall be subject to the provisions of this Uniform Act.

All economic interest groups shall equally be subject to the provisions of this Uniform Act.

Besides, commercial companies and economic interest groups shall be subject to the laws which are not contrary to the provisions of this Uniform Act applicable in the Contracting States of their registered office.

**Article 2:**

The provisions of this Uniform Act are mandatory, except in cases where the Act explicitly authorizes a sole partner or the partners of a company to substitute contractual provisions between them for those of this Uniform Act or to supplement the provisions of this Uniform Act with their own provisions.

**Article 3:**

Any persons, whatever their nationality, wishing to engage in a commercial activity in the form of a company on the territory of one of the Contracting States, shall choose a form of company which suits the activity envisaged from among those provided for by this Uniform Act.

The persons referred to in the preceding paragraph may also elect, under the conditions provided for by this Uniform Act, to form an economic interest group.

**PART I  
GENERAL PROVISIONS GOVERNING COMMERCIAL COMPANIES**

**BOOK I  
FORMATION OF A COMMERCIAL COMPANY**

**TITLE 1  
DEFINITION OF THE COMPANY**

**Article 4:**

A commercial company shall be formed by two or more persons who agree, by contract, to assign assets in cash or in kind to an activity for the purpose of sharing profits or benefiting from savings that may derive therefrom. The partners of the company shall accept to bear losses under the conditions stipulated in this Uniform Act.

A commercial company shall be formed in the common interest of the partners.

**Article 5:**

A commercial company may also be created, as provided by this Uniform Act, by a single person, referred to a "sole proprietor", on the basis of a written document.

**Article 6:**

The commercial nature of a company shall be determined by its form or object.

Private Companies, Sleeping Partnerships, private limited companies and public limited companies are commercial companies by virtue of their form, irrespective of their object.

**TITLE 2  
CAPACITY TO BE A PARTNER**

**Article 7:**

Any natural person or corporate body may be a partner in a commercial company where he is not subject to any prohibition, incapacity or incompatibility as defined notably in the Uniform Act Relating to General Commercial Law.

**Article 8:**

Minors and legally incapacitated persons may not be partners in a company where their liability for the company's debts exceeds their contributions.

**Article 9:**

A husband and wife may not be partners in a company in which they shall be indefinitely or jointly and severally liable for the company's debts.

**TITLE 3  
ARTICLES OF ASSOCIATION**

**CHAPTER I  
FORM OF THE ARTICLES OF ASSOCIATION**

**Article 10:**

The Articles of Association shall be established by a notarial deed or by any other instrument that ensures legal validity in the State of the company's registered office. Such instrument, together with a certification of the writing and signatures of all the parties, shall be deposited as originals in a notary's office. They may be amended only by the same procedure.

**Article 11:**

Where the Articles of Association are drawn up in a private document, as many original copies shall be established as shall be needed to deposit one copy in the company's registered office and to fulfil all the required formalities. A copy of the Articles of Association on plain unheaded paper shall be given to each partner. However, in the case of Private Companies and Sleeping partnerships, one original copy shall be given to each partner.

**Article 12:**

The Articles of Association shall either be a partnership deed, in the case where there are several partners, or a unilateral deed of intent, in the case of a sole proprietor.

## CHAPTER 2 CONTENTS OF THE ARTICLES OF ASSOCIATION - MANDATORY INFORMATION

**Article 13:**

The Articles of Association shall contain the following information:

- (1) the form of the company;
- (2) the name of the company, followed by its acronym where necessary;
- (3) the nature and field of the company's activity which constitute its object;
- (4) the company's registered office;
- (5) its duration;
- (6) the identity of contributors in cash and, for each of them, the amount of their contribution and the number and value of the shares handed over in exchange for each contribution;
- (7) the identity of contributors in kind, the nature and value of the contribution made by each of them, the number and value of the shares handed over in exchange for each contribution;
- (8) the identity of persons enjoying special benefits and the nature of such benefits;
- (9) the amount of the registered capital;
- (10) the number and value of shares issued, stating, where necessary, the various classes of shares;
- (11) the provisions relating to the distribution of profits, the constitution of reserves and the distribution of the bonus after liquidation;
- (12) the rules governing the functioning of the

## CHAPTER 3 COMPANY NAME

**Article 14:**

Every company shall have a name which shall be mentioned in its Articles of Association.

**Article 15:**

Unless otherwise provided for in this Uniform Act, the name of one or more partners or former partners may be included in the company name.

**Article 16:**

A company may not take the name of another company which is already registered in the Trade and Personal Property Credit Register.

**Article 17:**

The company name shall appear on all deeds and documents from the company to third parties, especially letters, bills, notices and various publications. It shall be preceded or followed immediately by an indication of the form of the company, the amount of its registered capital, the address of its registered office and its registration number in the Trade and Personal Property Credit Register.

**Article 18:**

The company name may be changed under the conditions stipulated in this Uniform Act for amending the Articles of Association for each form of company.

#### **CHAPTER 4 OBJECT OF THE COMPANY**

**Article 19:**

Every company shall have an object which shall constitute the company's activity and which shall be identified and described in the Articles of Association..

**Article 20:**

Every company shall have a lawful object.

**Article 21:**

Where the company is engaged in a regulated activity, it shall comply with the special regulations governing such activity.

**Article 22:**

The company's object may be changed under the conditions stipulated in this Uniform Act for amending the Articles of Association for each company.

#### **CHAPTER 5 REGISTERED OFFICE**

**Article 23:**

Every company shall have a registered office which shall be indicated in the Articles of Association.

**Article 24:**

Partners shall decide on the location of the registered office either at the company's principal place of activity, or at the place where its administrative and financial services are concentrated.

**Article 25:**

The registered office may not consist solely in a postal address. It shall be localized by an address and or a specific and adequate geographic indication.

**Article 26:**

Third parties may rely on the statutory registered office but it may not be relied upon by the company as against them where the real registered office is located elsewhere.

**Article 27:**

The registered office may be changed under the conditions stipulated in this Uniform Act for amending the Articles of Association for each form of company. However, it may be

transferred to a different location in the same town by a simple decision of the company's management or administration.

## **CHAPTER 6 DURATION - EXTENSION**

### **Section 1. Duration**

**Article 28:**

Every company shall be set up for a duration which shall be indicated in the Articles of Association.

The duration of the company may not exceed ninety-nine years.

**Article 29:**

The existence of a company shall begin on the date on which it is entered in the Trade and Personal Property Credit Register, unless otherwise provided by this Uniform Act.

**Article 30:**

The expiry of the term shall entail the automatic dissolution of the company, unless an extension has been decided upon the conditions laid down in Articles 32 et seq. of this Uniform Act.

**Article 31:**

The duration of the company may be changed under the conditions laid down in this Uniform Act for the amendment of the Articles of Association for each form of company.

### **Section 2. Extension**

**Article 32:**

The existence of a company may be extended one or more times.

**Article 33:**

The extension of the duration of the company shall be done under the conditions laid down in this Uniform Act for the amendment of the Articles of Association for each form of company.

**Article 34:**

The extension of the duration of a company shall not entail the creation of a new legal entity.

**Article 35:**

The partners shall be consulted at least one year before the date of expiry of the company to decide whether or not to extend the duration of the company.

**Article 36:**

Failing this, any partner may request the president of the competent court within whose jurisdiction the registered office is located to designate, by summary proceedings, a legal representative to initiate the consultation provided for in the preceding article.

## **CHAPTER 7 CONTRIBUTIONS**

### **Section 1. General provisions**

**Article 37:**

Each partner shall contribute to the capital of the company.

Each partner shall owe the company what he has pledged to contribute in cash or in kind.

**Article 38:**

In return for their contribution, the partners shall receive shares issued by the company, as defined in Article 51 of this Uniform Act.

**Article 39:**

The provisions of this chapter shall apply to contributions made during the existence of the company, at the time of an increase of capital.

### **Section 2. Types of contributions**

**Article 40:**

Each partner may contribute to the company:

- 1) money, as a contribution in cash;
- 2) services, as a supply of labour;
- 3) rights on movable or immovable, tangible or intangible property, as a contribution in kind.

Any other contribution shall be forbidden.

### **Section 3. Realization of Contributions in cash**

**Article 41:**

Contributions in cash shall be effected by the partner transferring to the company the ownership of the amount of money that he has pledged to contribute.

Unless otherwise provided in this Uniform Act, contributions in cash shall be fully paid up at the time of formation of the company.

**Article 42:**

The only cash contributions that shall be considered as fully paid up are those over which the company has acquired ownership and which are fully and finally placed in its coffers.

**Article 43:**

In case of a delay in payment, the balance due to the company shall automatically bear interest at the official rate from the date on which the payment was due, without prejudice to the payment of damages, if any.

**Article 44:**

Contributions in cash at the time of an increase of capital of a company may, unless forbidden by the Articles of Association, be realized through off-set with an unquestionable, liquid and due claim on the company.

### **Section 4. Realization of Contributions in kind**

**Article 45:**

Contributions in kind shall be made by the transfer of real or personal rights in the property contributed and the effective conveyance to the company of the property to which those rights are attached.

Contributions in kind shall be fully paid up at the time of formation of the company.

**Article 46:**

Where the contribution is in the form of property, the contributor shall stand security for the company as a vendor for the buyer.

**Article 47:**

Where the contribution is in the form of a leasehold, the contributor shall stand security for the company like a lessor for the lessee. However, where the contribution is in the form of interchangeable goods or any other property which normally needs to be renewed during the existence of the company, the contract shall transfer ownership of the property to the company, on condition that it gives an equal quantity, quality and value in return. In that case, the contributor shall stand security for the company under the conditions provided in the preceding article.

**Article 48:**

Contribution by property or a right subject to publication before it may be relied upon as against third parties may be published before the company is registered. The retroactive effect of this formality can only begin from the date the company is registered.

**Article 49:**

The partners shall evaluate the contributions in kind.

In the cases provided for by this Uniform Act, such evaluation shall be checked by a contributions assessor.

**Article 50:**

The Articles of Association shall make provision for the evaluation of contributions in kind, under the conditions laid down in this Uniform Act.

## **CHAPTER 8 COMPANY SHARES**

### **Section 1. Principle**

**Article 51:**

A company shall issue shares in return for its partner's contributions. Such shares shall represent the partners' rights and shall be referred to as shares in joint-stock companies, and stocks in the other companies.

### **Section 2. Nature**

**Article 52:**

Company shares shall be personal property.

### **Section 3. Rights and obligations attached to shares**

**Article 53:**

Company shares shall confer on their holders the following rights and obligations:

- (1) a right to a share of the company's profits whenever they are distributed;
- (2) a right to the company's net assets when shared following the dissolution of the company or where the company's share capital is reduced;
- (3) where necessary, the obligation to share in the company's losses under the conditions laid down for each form of company;
- (4) the right to participate in and vote on the collective decisions of the partners, unless otherwise provided by this Uniform Act for certain classes of shares.

**Article 54:**

Unless otherwise provided in the Articles of Association, the rights and obligations of each partner as stipulated in Article 53 of this Uniform Act shall be proportional to the amount of his contributions, whether such contributions were made during the formation of the company or during the existence of the company.

However, provisions attributing all of the company's profits to a partner, or exonerating a partner from all liability for losses, as well as those excluding a partner from sharing in the profits or charging all losses to one partner shall be deemed to be unwritten.

**Article 55:**

The rights referred to in Article 53 of this Uniform Act shall be exercised under the conditions laid down for each form of company. Such rights may only be suspended or cancelled by express provisions of this Uniform Act.

**Section 4. Face value****Article 56:**

The shares issued by a company shall have the same face value

**Section 5. Negotiability - Transferability****Article 57:**

Company stocks shall be transferable. Shares shall be transferable or negotiable

**Article 58:**

Public limited companies shall issue negotiable shares.

It shall be forbidden for companies other than those referred to in paragraph one of this article to issue such shares, under penalty of the contracts signed or the shares issued being null and void. It shall also be forbidden for such companies to underwrite the issue of negotiable instruments, under penalty of such underwriting being null and void.

**Article 59:**

Where there is provision for a partner's rights to be transferred or redeemed by the company, the value of such rights shall be determined, where the parties fail to agree, by an expert designated either by both parties or, failing that, by order of the competent court through summary proceedings.

**Section 6. Sole ownership of shares****Article 60:**

In the case of companies in which sole proprietorship is not allowed by this Uniform Act, the ownership of all the shares by a single person shall not entail the automatic dissolution of the company. Any party concerned may petition the president of the competent court for such dissolution where the situation is not regularized within a period of one year. The court may grant the company a maximum period of six months to regularize the situation. It may not order the dissolution where, on the date of ruling on the merits of the case, the situation has been regularized.

## CHAPTER 9 REGISTERED CAPITAL

### Section 1. General provisions

**Article 61:**

Every company shall have a registered capital which shall be indicated in its Articles of Association, in accordance with the provisions of this Uniform Act.

**Article 62:**

The registered capital shall represent the amount of capital contributions made by the partners to the company, plus, where necessary, capitalization of reserves, profits or issue premiums.

**Article 63:**

In return for the contributions, the company shall allot to each contributor, shares of a value equal to the value of his contributions.

In return for the capitalization of reserves, profits and issue premiums, the company shall issue shares or raise the face value of existing shares. These two procedures may be carried out concurrently.

**Article 64:**

The registered capital shall be divided into shares or stocks, depending on the form of the company.

### Section 2. Amount of the registered capital

**Article 65:**

The amount of the registered capital shall be freely determined by the partners.

However, this Uniform Act may fix a minimum registered capital according to the form or object of the company.

**Article 66:**

Where the capital of the company being formed is less than the minimum amount fixed by this Uniform Act, the company may not be validly formed.

Where, after being formed, the company's capital drops to an amount below the minimum fixed by this Uniform Act for that form of company, the company shall be dissolved, unless the capital is raised to an amount at least equal to the fixed minimum amount, under the conditions stipulated by this Uniform Act.

### Section 3. Modification of the capital

**Article 67:**

The registered capital shall be fixed. However, it may be increased or reduced under the conditions laid down by this Uniform Act for the amendment of the Articles of Association of each form of company.

**Article 68:**

The registered capital may be increased where new contributions are made to the company or where reserves, profits and issued premiums are capitalized.

**Article 69:**

The registered capital may be reduced under the conditions laid down by this Uniform Act, by refunding part of the partners' contributions or by imputing losses to the company.

**Article 70:**

Where this Uniform Act authorizes the reduction of capital by the refund of part of the partners' contributions, this may be done either by a cash refund or by allotment of assets.

**Article 71:**

Reduction of capital shall be subject to the conditions stipulated in Articles 65 and 66 of this Uniform Act.

## **CHAPTER 10 AMENDMENT OF THE ARTICLES OF ASSOCIATION**

**Article 72:**

The Articles of Association may be amended under the conditions stipulated by this Uniform Act for each form of company.

A partner's commitments may, under no circumstances, be increased without his consent.

## **CHAPTER 11 DECLARATION OF REGULARITY AND CONFORMITY OR NOTARIAL STATEMENT OF SUBSCRIPTION AND PAYMENT**

**Article 73:**

The founders and first members of the management organs of the company, directors and managing directors shall deposit at the Trade and Personal Property Credit Register a declaration in which they describe all the actions carried out towards the regular formation of the company and by which they affirm that such formation has been carried out in conformity with this Uniform Act.

This document shall be referred to as the "declaration of regularity and conformity". It shall be presented under penalty of rejection of the application for registration of the company in the Trade and Personal Property Credit Register.

The declaration shall be signed by its authors. However, it may be signed by one of the said persons or several of them provided they are empowered to do so.

**Article 74:**

The provisions of the preceding article shall not apply where a notarial statement of subscription and payment has been drawn up and deposited under the conditions stipulated by this Uniform Act and by the Uniform Act relating to General Commercial Law.

## **CHAPTER 12 NON-COMPLIANCE WITH FORMALITIES - RESPONSIBILITIES**

**Article 75:**

Where the Articles of Association do not contain all the information stipulated by this Uniform Act or where a formality prescribed by this Act for the formation of the company is neglected overlooked or is improperly fulfilled, any interested party may petition the competent court within whose area of jurisdiction the company's registered office is located to order, under financial compulsion, the proper formation of the company. The public prosecutor may also initiate action to the same end.

**Article 76:**

The provisions of Articles 73 and 74 of this Uniform Act shall apply in the case of amendment of the Articles of Association.

**Article 77:**

The action for regularization shall lapse after a period of three years from the date of registration of the company or from the date of publication of the deed amending its Articles of Association.

**Article 78:**

The founders, as well as the first members of the management organs of the company, directors or managing director shall be jointly and severally liable for torts deriving either from the omission of a mandatory detail in the Articles of Association, or from the omission or improper fulfilment of a prescribed formality in the formation of the company.

**Article 79:**

In the event of amendment of the Articles of Association, the members of the management organs, directors or managing directors in office at the time shall incur the same liabilities as those laid down in the preceding article.

**Article 80:**

The liability action provided in Articles 78 and 79 of this Uniform Act shall lapse after five years from the date of registration of the company or of publication of the act to amend the Articles of Association, as the case may be.

## TITLE 4 PUBLIC CALLS FOR CAPITAL

### CHAPTER 1 SCOPE OF PUBLIC CALLS FOR CAPITAL

**Article 81:**

The following shall be deemed to be making a public call for capital:

- companies whose shares are listed on the stock exchange of a Contracting State, from the date of registration of such shares;
- companies which, in order to offer any type of shares to the public in a Contracting State, resort to credit establishments or stock brokers, or use any form of publicity or canvassing.

There shall equally be a public call for capital where the shares are distributed beyond a radius of one hundred (100) persons. In determining this figure, each company or collective bodies investing transferable securities shall be considered as a single entity.

**Article 82:**

It shall be forbidden for companies not authorized by this Uniform Act to launch public calls for capital by registering their securities on the stock exchange of a Contracting State or by investing their shares as part of an issue.

**Article 83:**

The share offer referred to in Article 81 of this Uniform Act shall mean the investment of shares either in the form of an issue or a transfer.

**Article 84:**

A company whose registered office is located in a Contracting State may invest its shares in one or more other Contracting States by making public offers. In such case, it shall be subject to the provisions of Articles 81 to 96 of this Uniform Act in the Contracting State of its registered office and in said other Contracting States.

Where the public offer of shares is not made by the issuer, the company making the offer shall be subject to the provisions of Articles 81 to 96 of this Uniform Act in the Contracting State of the issuer and in the other Contracting States where the public offer is made.

**Article 85:**

Where a company whose registered office is located in one Contracting State launches a public issue in another Contracting State, one or more credit establishments in that other Contracting State shall guarantee the proper performance of the operation where the total amount of the offer is more than fifty million (50 000 000) CFA francs.

Such a company shall, in any case, be required to have financial backing for the operation from one or more credit establishments in that other Contracting State.

Where the total amount of the operation exceeds 50,000,000 (fifty million) CFA francs, the company shall designate, from the list of auditors in that other Contracting State, one or more auditors to verify the financial statements. The auditor(s) shall sign the information document provided in Article 86 of this Uniform Act, amended or supplemented, as the case may be, in accordance with the provisions of Article 90 of this Uniform Act.

## CHAPTER 2 INFORMATION DOCUMENT

**Article 86:**

Any company which makes public calls for capital shall, first of all, publish in the Contracting State of the registered office of the issuer and, where necessary, in every other Contracting State where the call for capital is launched, a document aimed at informing the public and dealing with the organization, financial situation, activity and prospects of the issuer as well as the rights attached to the securities being offered to the public.

**Article 87:**

Where a company makes public calls for capital in a Contracting State other than that of its registered office, the information document presented to the authorities referred to in Article 90 of this Uniform Act shall contain information specific to the market of that Contracting State.

Such information shall, in particular, deal with the income tax schedule, the establishments which provide financial backing to the issuer in that Contracting State, and the manner of publication of notices intended for investors.

The information document shall contain a detailed presentation of the financial guarantors referred to in Article 85 of this Uniform Act, who, in turn, shall provide the same information as the company whose securities are being offered, with the exception of information relating to the shares to be offered to the public.

**Article 88:**

Some information may not be included in the information document where:

- (1) such information is of lesser importance and is unlikely to influence the appraisal of the assets, financial situation, performance or prospects of the issuer;
- (2) disclosure of such information is contrary to public interest;

- (3) disclosure of such information may cause serious harm to the issuer and where failure to publish same would not mislead the public;
- (4) the person making the offer is not the issuer and does not have access to such information.

**Article 89:**

The investment memorandum may refer to any other information document approved by the authorities referred to in Article 90 of this Uniform Act less than one year before where the said document was drawn up for securities of the same category and contains the latest approved annual financial statements of the issuer and all the information required under Articles 87 and 88 of this Uniform Act.

The approved investment memorandum shall then be supplemented by an operation memorandum comprising:

- (1) information on the shares offered;
- (2) any accounting data published after the initial approval;
- (3) data on new significant events likely to influence the evaluation of the shares being offered.

**Article 90:**

The draft information document shall be submitted for the approval of the stock exchange control authority in the Contracting State of the issuer's registered office and, where necessary, in the other Contracting States in which the public calls for capital are made. Where there is no such authority, it shall be submitted to the minister in charge of finance of the Contracting States for endorsement.

The said authorities shall ensure that the operation does not contain any irregularities and does not entail acts contrary to the interests of investors in the Contracting States of the issuer's registered office and, where necessary, in the other Contracting States in which the public call is made.

The authorities shall indicate the statements to be corrected or details to be included. They may also request explanations or justification, particularly as concerns the situation, activity and performance of the company. They may request that the auditors carry out further investigations at the expense of the company, or a review by an independent expert designated with their approval, where they feel the auditors are not diligent enough.

They may request that a warning drafted by them be included in the information document. They may also ask for any appropriate guarantees in pursuance of Article 85 of this Uniform Act.

The authorities referred to in this article shall grant the approval provided for in paragraph one within a period of one month following the date of acknowledgement of receipt of the information document. This time limit may be extended to two months where the authorities request further investigations. The acknowledgement of receipt of the information document shall be issued on the day the document is received.

Where the stock exchange control authority or, failing this, the minister in charge of finance decides not to grant the approval, the company shall be notified of the reasons therefor within the same time limit.

**Article 91:**

Approval shall not be granted where the demands made by the stock exchange control authority or, failing this, the minister in charge of finance of the Contracting State of the issuer's registered office and, where necessary, of the other Contracting States in which the public calls for capital are not met, or where the operation entails acts contrary to the

interests of the investors in the Contracting State of the registered office or, where necessary, of the other Contracting States where the public call is made.

**Article 92:**

Where important new events likely to affect the evaluation of the public issue occur between the date of approval and the beginning of the planned operation, the issuer or the initiator of the offer shall draw up an additional updated document which, before circulation, shall be submitted for approval to the stock exchange control authority or, failing this, the minister in charge of finance of the Contracting State of the issuer's registered office and, where necessary, of the other Contracting States in which the public issue is launched.

**Article 93:**

The information document shall be effectively circulated in the following forms in the Contracting State of the issuer's registered office and, where necessary, in the other Contracting States where the public call is made:

- 1) publication in newspapers empowered to publish legal
- 2) placement of a brochure at the disposal of any person wishing to consult it at the registered office of the issuer and in the institutions providing financial backing for the securities; a copy of the document shall be sent free of charge to any interested y.

**Article 94:**

Advertisements of the operation shall mention the existence of the approved information document and how to obtain e.

**Article 95:**

An information document shall not be required where:

- (1) the offer is intended for persons within the framework of their professional activities;
  - (2) the total amount of the offer is less than fifty million (50,000,000) CFA francs;
  - (3) the offer concerns shares or stock of collective bodies investing transferable securities other than closed-end ones;
- the offer is intended as transferable securities in return for contributions made during a merger or as partial contributions of
- (4) ; the issue concerns capital stock allotted freely during the payment of dividend or capitalization of
  - (5) ; the transferable securities offered come from the exercise of a right over transferable securities whose issue gave rise to the drawing up of an information document;
  - (6) the transferable securities are issued as a substitute for shares in the same company and their issue does not entail an increase of capital by the issuer.

**Article 96:**

The provisions of Articles 81 to 96 of this Uniform Act shall apply to any offer of security by public calls for capital, except the investment of securities by each Contracting State on its territory.

## TITLE 5 REGISTRATION - LEGAL PERSONALITY

### CHAPTER 1 GENERAL PROVISIONS

**Article 97:**

With the exception of Sleeping partnerships, all companies shall be registered in the Trade and Personal Property Credit Register.

**Article 98:**

All companies shall have a legal personality with effect from the date of registration in the Trade and Personal Property Credit Register, unless otherwise provided for in this Uniform Act.

**Article 99:**

The regular transformation of a company from one form of company into another shall not entail the creation of a new legal entity. The same shall apply to an extension of the existence of a company or any other amendments of the Articles of Association.

**CHAPTER 2**  
**COMPANIES UNDER FORMATION AND FULLY FORMED**  
**BUT UNREGISTERED COMPANIES**

**Section 1. Definitions**

**Article 100:**

A company shall be deemed to be under formation where it has not yet been incorporated.

**Article 101:**

A company shall be deemed to be formed from the date of signature of its Articles of Association.

Prior to its registration, the existence of the company shall not be demurrable to third parties. However, third parties may avail themselves of the existence of the company.

**Article 102:**

All persons who actively participate in transactions leading to the formation of a company shall be deemed to be founders thereof.

Their role shall begin with the first transactions or with the performance of the initial acts for the purpose of setting up the company. It shall end on the date on which the Articles of Association are signed by all the partners or the sole proprietor.

**Article 103:**

The founders of a company shall be domiciled on the territory of one of the Contracting States.

Such domicile shall not consist solely in the possession of a postal address. It shall comprise an address or specific and adequate geographic indications.

**Article 104:**

From the date of signature of the Articles of Association, company executives shall take over from the founders. Company executives shall act on behalf of the company already formed but not yet entered in the Trade and Personal Property Credit Register.

The powers and obligations of company executives shall be defined in accordance with the provisions of this Uniform Act and, where necessary, by the Articles of Association.

**Article 105:**

Between the date on which a company is formed and that on which it is entered in the Trade and Personal Property Credit Register, relations among the partners shall be governed by the Partnership deed and by general rules of law in matters of contracts and obligations.

**Section 2. Commitments made on behalf the company**  
**under formation prior to its incorporation**

**Article 106:**

Acts done and commitments entered into by the founders on behalf of a company under formation, before it is incorporated, shall be brought to the attention of the partners before signature of the Articles of Association where the company does not make a public call for capital during the initial meeting of shareholders, where the contrary applies.

Such acts and commitments shall be detailed in a statement referred to as "Statement of acts done and commitments made on behalf of the company under formation", with

indications, for each of them, of the nature and extent of the company's liabilities should it decide to take them over.

**Article 107:**

In the case of companies formed without a constituent meeting, the statement of acts and commitments referred to in Article 106 above shall be appended to the Articles of Association. Where the partners sign the Articles of Association and the statement, the company shall be deemed to have taken over the contracts and commitments described in the statement with effect from the date the company is entered in the Trade and Personal Property Credit Register.

**Article 108:**

Acts done and commitments entered into on behalf of the company during its formation may also be taken over by the company after its incorporation provided they are approved at an ordinary meeting of shareholders, under the conditions laid down by this Uniform Act for each form of company, unless otherwise provided for by the Articles of Association. The meeting shall be fully informed of the nature and scope of each of the acts and commitments being proposed for take-over by the company. The persons who signed such acts and commitments shall not vote and their votes shall not be taken into account in determining the quorum and the majority.

**Article 109:**

In the case of a company formed by a constituent meeting, the take-over of pre-incorporation acts and commitments shall be the subject of a special resolution taken during the constituent meeting, under the conditions laid down by this Uniform Act.

**Article 110:**

Acts and commitments taken over by a duly constituted and registered company shall be deemed to have been made by the company from the origin.

Acts and commitments not taken over by the company under the conditions laid down by this Uniform Act shall not be binding on the company and the persons who made them shall have unlimited liability for the obligations they entail.

**Section 3. Commitments made on behalf of a fully formed company prior to its registration**

**Article 111:**

The partners may, in the Articles of Association or in a separate deed, grant powers to one or more company executives, depending on the case, to enter into commitments on behalf of the company which, though fully formed, has not yet been entered in the Trade and Personal Property Credit Register, provided that such commitments are defined and their scope specified in the terms of reference. The subsequent registration of the company in the Trade and Personal Property Credit Register shall entail the taking over of such commitments.

**Article 112:**

Any acts done beyond the scope of their terms of reference or are unrelated to such terms may be taken over by the company provided they have been approved by an ordinary meeting of shareholders under the conditions laid down by this Uniform Act for each type of company, unless otherwise provided by the Articles of Association. The partners involved in such acts shall not be entitled to vote and their votes shall not be taken into account for determining the quorum and the majority.

**Article 113:**

The provisions of Article 110 of this Uniform Act shall apply.

### CHAPTER 3 UNREGISTERED COMPANIES

**Article 114:**

Notwithstanding the preceding provisions, the partners may agree not to register the company which shall then be referred to as "Sleeping partnership". It shall not have a legal personality.

Sleeping partnership shall be governed by the provisions of Articles 854 et seq. of this Uniform Act.

**Article 115:**

Where, contrary to the provisions of this Uniform Act, the Articles of Association or, where necessary, the unilateral deed of intent is not established in writing and, consequently, that the company cannot be registered, the company shall be referred to as a "de facto company". It shall not have a legal personality.

A de facto company shall be governed by the provisions of Articles 864 et seq. of this Uniform Act.

### CHAPTER 4 BRANCHES

**Article 116:**

A branch shall be a commercial, industrial or service-providing establishment which belongs to a company or a natural person and which has been granted a certain degree of autonomy in its management.

**Article 117:**

The branch shall not have a separate legal personality distinct from that of the parent company or the natural person who owns it.

The rights and obligations arising from its activities or its existence shall be part of the estate of the company or the natural person who owns it.

**Article 118:**

The branch may be an establishment of a foreign company or natural person. Subject to international agreements or laws to the contrary, the branch shall be governed by the law of the Contracting State in which it is located.

**Article 119:**

The branch shall be registered in the Trade and Personal Property Credit Register in accordance with the provisions organizing the said register.

**Article 120:**

Where the branch is owned by a foreigner, it shall be attached to a company in existence or to be created, governed by the laws of one of the Contracting States not later than two years after the branch is set up, unless this obligation is waived by order of the minister in charge of trade in the Contracting State in which the branch is located.

**BOOK 2**  
**FUNCTIONING OF A COMMERCIAL COMPANY**

**TITLE 1**  
**POWERS OF COMPANY EXECUTIVES**  
**GENERAL PRINCIPLES**

**Article 121:**

Members of the management organs of the company, directors and managing directors shall, within the limits provided by this Uniform Act for each form of company, have full powers to commit the company with respect to third parties without having to show proof of a special instrument granting such powers. Any limitation of their legal powers by the Articles of Association shall not be demurrable to third parties.

**Article 122:**

The company shall be bound by the acts of its managers, directors and administrators which are unrelated to the company's object, unless it can prove that the third party was aware of this fact, or that, given the circumstances, the third party could not have overlooked it; publication of the Articles of Association shall not alone suffice to constitute such proof.

**Article 123:**

With respect to relations between partners and subject to specific legal provisions for each form of company, the Articles of Association may limit the powers of managers, directors and administrators.

Such limitations shall not be demurrable to third parties acting in good faith.

**Article 124:**

The appointment, dismissal or resignation of company executives shall be published in the Trade and Personal Property Credit Register.

**TITLE 2**  
**JOINT DECISIONS - GENERAL PRINCIPLES**

**Article 125:**

Unless otherwise provided by this Uniform Act, each partner shall have a right to participate in taking joint decisions. Any contrary provisions in the Articles of Association shall be deemed to be unwritten.

**Article 126:**

A partner may be represented by an authorized person under conditions laid down by this Uniform Act and, where necessary, by the Articles of Association. Unless otherwise provided by this Uniform Act, such powers of attorney may be granted only to another partner.

This Uniform Act or the Articles of Association may restrict the number of partners and the number of votes an authorized person may represent.

**Article 127:**

Unless otherwise provided by the Articles of Association, joint owners of shares or stocks shall be represented by a single authorized person chosen from among the joint owners. Where there is disagreement, the authorized person shall, at the request of the earliest petitioner, be appointed by the competent court within whose jurisdiction the registered office is located.

**Article 128:**

Unless otherwise provided by the Articles of Association, where a share or stock is encumbered by usufruct, voting rights shall be exercised by the bare owner, except in the case of decisions on the sharing of profits where the voting rights are reserved for the beneficiary.

**Article 129:**

The voting rights of each partner shall be proportional to the company shares he holds, unless otherwise provided by this Uniform Act.

**Article 130:**

Joint decisions may be annulled for undue use of the majority powers and may commit the partners who voted for them vis-à-vis the minority shareholders.

There shall be undue use of the majority powers when the majority shareholders vote in favour of a decision which serves solely their interests, goes contrary to the interests of the minority shareholders, and cannot be justified in terms of the company's interests.

**Article 131:**

Minority partners may be liable in the event of undue use of minority powers.

There shall be undue use of minority powers where, in voting, minority shareholders object to decisions which are necessary for the company's interests and cannot show any legitimate interest in doing so.

**Article 132:**

There shall be two kinds of joint decisions: ordinary decisions and extraordinary decisions. Joint decisions shall be taken in accordance with conditions of form and substance provided for each form of company.

**Article 133:**

Under the conditions specified for each form of company, joint decisions may be reached either at a general meeting or by correspondence.

**Article 134:**

Meetings of partners shall be recorded in minutes which shall indicate the time and place of the meeting, the full names of the partners in attendance, the agenda of the meeting, documents and reports tabled for discussion, a summary of the discussions, the text of resolutions put to the vote and the outcome of such voting. The minutes shall be signed under the conditions provided by this Uniform Act for each form of company.

In case of a written consultation, mention shall be made of that fact in the minutes to which shall be appended the reply of each partner and which shall be signed in accordance with the conditions laid down by this Uniform Act for each form of company.

**Article 135:**

Unless otherwise provided in this Uniform Act, the minutes referred to in Article 134 above shall be entered in a special register kept at the registered office and shall be numbered and initialled by the competent judicial authority.

However, minutes may be recorded in serially numbered loose sheets of paper initialled as provided in the preceding paragraph and bearing the seal of the authority who initialled them. Once a sheet has been used, even partially, it shall be attached to the other used sheets. It shall be forbidden to add, expunge or invert the order of used sheets.

**Article 136:**

Minutes shall be filed at the company's registered office. Copies or extracts of minutes of partners' meetings shall be duly certified by the company's legal representative, or where there are several, by only one of them.

**TITLE 3**  
**ANNUAL SUMMARY FINANCIAL STATEMENTS**  
**ALLOCATION OF EARNINGS**

**CHAPTER 1**  
**ANNUAL SUMMARY FINANCIAL STATEMENTS**

**Section 1. Principle**

**Article 137:**

At the end of each financial year, the manager, the board of directors or the managing director, as the case may be, shall prepare and adopt summary financial statements in accordance with the provisions of the Uniform Act governing the organization and harmonization of accounting systems.

**Section 2. Approval of annual summary financial statements**

**Article 138:**

The manager, board of directors or the managing director, as the case may be, shall prepare a management report in which he shall describe the situation of the company during the past financial year, prospects for continued company activity, the evolution of the cash situation and the financing plan.

**Article 139:**

The following shall be appended to the annual summary financial statements:

- (1) a statement on sureties, securities and guarantees granted by the company;
- (2) a statement of the secured debts offered by the company.

**Article 140:**

Annual summary financial statements and the management report of public limited companies and, where necessary, of private limited companies shall be forwarded to auditors at least forty-five days before the date of the ordinary general meeting.

These documents shall be tabled before the general meeting of the company which shall examine the annual summary financial statements at a session which must hold within six months from the end of the financial year.

**Article 141:**

Any changes in the presentation of summary financial statements or in the methods of evaluation, depreciation or provision in conformity with accounting rules and regulations shall be indicated in the management report and, where necessary, in the auditor's report.

**CHAPTER 2**  
**RESERVES - DISTRIBUTABLE PROFITS**

**Article 142:**

The general meeting shall decide on the appropriation of income in compliance with the provisions of the law and of the Articles of Association.

It shall make the necessary allocations for the legal reserve and for statutory reserves.

**Article 143:**

The distributable profits shall be the income of the trading year, to which shall be added income brought forward less past losses and appropriations for reserves in accordance with the provisions of the law or of the Articles of Association.

The general meeting may, under the conditions set forth in the Articles of Association, decide to distribute all or part of the company's reserve funds, provided such reserves are not classified undistributable by the law or the Articles of Association. In such case, the general meeting shall specify the reserve items from which funds shall be drawn.

Except in the case of reduction of capital, no distribution of reserves to partners may be authorized where the equity capital is or may be following such distribution, lower than the capital plus reserves which may not be distributed according to the law or the Articles of Association.

### **CHAPTER 3 DIVIDENDS**

**Article 144:**

After approving the summary financial statements and ascertaining the availability of distributable funds, the general meeting shall also determine:

- appropriations for optional reserves, where necessary;
- the part of the profits to be allotted to shares and to stocks, as the case may be;
- the amount to be carried forward, if any.

The amount of the profits allotted to each share or stock shall be referred to as dividend.

Any dividend distributed in violation of the rules set forth in this article shall be fictitious.

**Article 145:**

The Articles of Association may allow the allotment of a first dividend to be paid on company stocks where the general meeting establishes the existence of distributable profits, provided that such profits are sufficient to cover such payments. Dividend shall be calculated as interest on the amount of paid-up shares.

**Article 146:**

The conditions for the payment of dividends shall be laid down by the general meeting. The general meeting may delegate such power to the manager, the chairman and managing director, the general manager or the managing director, as the case may be.

Notwithstanding the above provision, the payment of dividend shall be done within a maximum period of nine months following the end of the financial year. This deadline may be extended by the president of the competent court.

### **CHAPTER 4 DISPUTES BETWEEN PARTNERS OR BETWEEN ONE OR MORE PARTNERS AND THE COMPANY**

**Article 147:**

Any dispute between partners or between one or more partners and the company shall be brought before a competent court of law.

**Article 148:**

The dispute may be referred for arbitration either through an arbitration clause, which may be statutory or not, or by compromise.

Where the parties so decide, the arbitrator or the arbitration tribunal, as the case may be, may pass a ruling as conciliator and without appeal.

**Article 149:**

The arbitration shall be regulated by the provisions of the Uniform Act on arbitration.

## TITLE 4 ALERT PROCEDURE

### CHAPTER 1 ALERT BY THE AUDITOR

#### Section 1. Companies other than public limited companies

**Article 150:**

In companies other than public limited liability companies, the auditor may, by hand delivered letter against a receipt, or by registered letter with a request for acknowledgement of receipt, ask for explanations from the manager who shall be bound to respond, in accordance with the conditions and within the time limits set forth in the following articles, in respect of any matter likely to jeopardize the continued operation of the company and which the auditor noticed while examining documents forwarded to him or those he had access to in the performance of his duties.

**Article 151:**

The manager shall reply by hand-delivered letter against a receipt or by registered mail with a request for acknowledgement of receipt, within one month after receiving the auditor's request. In his reply, the manager shall give an analysis of the situation and specify, where necessary the measures envisaged.

**Article 152:**

In case of failure to comply with the provisions of Article 151 above, or where, in spite of the decisions taken, the auditor establishes that the continued operation of the company is still in jeopardy, he shall prepare a special report on the situation.

He may request, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, that such special report be circulated to partners, or that it be tabled at the next general meeting. In such case, the manager shall circulate the said special report within eight days from the date of receipt of the auditor's request.

#### Section 2. Public Limited companies

**Article 153:**

In a public limited company, the auditor may, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, ask for explanations from the chairman of the board of directors the chairman and managing director or managing director, as the case may be, who shall be bound to reply under the conditions and within the time limits set forth in Article 154 below, on any matter likely to jeopardize the continued operation of the company and which the auditor noticed while examining documents forwarded to him or those to which he had access in the course of performing his duties.

**Article 154:**

The chairman of the board of directors, the chairman and managing director or the managing director, as the case may be, shall reply by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, within one month after receiving the auditor's request. In his reply he shall give an analysis of the situation and specify, where necessary, the measures envisaged.

**Article 155:**

Where there is no reply or where the reply is unsatisfactory, the auditor shall ask the chairman of the board of directors or the chairman and managing director as the case may be to convene a meeting of the board or the managing director to give an opinion on the matters raised.

The invitation referred to in the preceding paragraph shall be in the form of a hand-delivered letter against a receipt or registered letter with a request for acknowledgement of receipt dispatched within fifteen days after receiving the reply of the chairman of the board of directors, the chairman and managing director, or the managing director, as the case may be, or the observation that there is no reply within the time limits provided in the preceding article.

The chairman of the board of directors or the chairman and managing director, as the case may be, shall, within fifteen days from the date of receipt of the auditor's letter, convene the board of directors to decide on the matters raised within one month following receipt of the auditor's letter. The auditor shall be invited to the meeting of the board of directors. Where the company is administered by a managing director, he shall, within the same time limit, invite the auditor to a meeting at which he shall give his opinion on the matters raised.

An extract of the minutes of the board of directors' meeting or of the meeting with the managing director, as the case may be, shall be forwarded to the auditor within one month following the meeting.

**Article 156:**

In case of failure to comply with the provisions of the preceding article, or where, in spite of the decisions taken, the auditor establishes that the continued operation of the company is still in jeopardy, he shall prepare a special report which shall be presented at the next general meeting or, in case of an emergency, at a general meeting of shareholders which the auditor himself shall convene to submit his findings if he fails to obtain the convening of the meeting by the board of directors or the managing director, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

Where the auditor convenes such a meeting, he shall prepare the agenda and may, for decisive reasons, choose a place for the meeting other than that provided in the Articles of Association. He shall, in a report presented at the meeting, explain why he convened the meeting

## **CHAPTER 2 ALERT BY THE PARTNERS**

### **Section 1. Companies other than public limited companies**

**Article 157:**

In companies other than public limited companies, any partner who is not a manager may, two times a year, send written questions to the manager on any matters likely to jeopardize the continued operation of the company.

The manager shall reply to such questions in writing within one month, in accordance with the preceding paragraph. He shall forward copies of such questions and his reply within the same time limit to the auditor, if there is one.

## **Section 2. Public limited companies**

### **Article 158:**

In a public limited company, any shareholder may, two times per year, question the chairman of the board of directors, the chairman and managing director or the managing director, as the case may be, on matters likely to jeopardize the continued operation of the company. The reply shall be forwarded to the auditor.

The chairman of the board of directors, the chairman and managing director or the managing director, as the case may be, shall, within one month, reply to the question(s) in writing, in pursuance of the provisions of the preceding paragraph. He shall forward a copy of the question(s) and his reply to the auditor within the same time limit.

## **TITLE 5 MANAGEMENT EVALUATION**

### **Article 159:**

One or more partners holding at least one-fifth of the company's authorized capital may, either individually or as a group formed in any manner, petition to the president of the competent court of the registered office of the company to designate one or more experts to make a report on one or more management operations.

### **Article 160:**

Where such a request is granted, the judge shall determine the scope of the mission and the extent of the powers of the experts. The experts' fees shall be borne by the company. The report shall be forwarded to the applicant and to the management, supervisory and administrative structures of the company.

## **BOOK 3 THE CIVIL LIABILITY OF COMPANY EXECUTIVES**

### **TITLE 1 INDIVIDUAL SUITS**

### **Article 161:**

Without prejudice to subsequent liability of the company, each company executive shall be individually liable to third parties for torts committed in the performance of his duties.

Where several company executives are involved in the commission of the tort, they shall be jointly and severally liable to third parties. However, as concerns the relations among the executives, the commercial court shall determine the share to be borne by each of them in apportioning damages to be paid.

### **Article 162:**

An individual suit shall be an action for damages for an injury suffered by a third party or by a partner, where the latter suffers injury distinct from that which might be suffered by the company as a result of torts committed individually or collectively by company executives in the performance of their duties.

Such action shall be instituted by the person who suffered the injury.

**Article 163:**

The filing of an individual suit shall not bar a partner or several partners from instituting an action in the interest of the company for damages for injury the company might have suffered.

**Article 164:**

The competent court handling such action shall be the one within whose jurisdiction the registered office of the company is located.

Individual suits shall lapse after three years following the commission of the wrong, or following its disclosure where the wrong was hidden. For felonies, the prescription shall be ten years.

## TITLE 2 ACTIONS IN THE INTEREST OF THE COMPANY

**Article 165:**

Each company executive shall be individually liable to the company for torts committed in the performance of his duties.

Where several company executives are party to the same wrongs, the commercial court shall determine the share to be borne by each executive in apportioning damages payable under the conditions provided by this Uniform Act for each form of company.

**Article 166:**

Actions in the interest of the company is action for damages suffered by the company as a result of a tort committed by a company executive or executives in the performance of their duties.

Such action shall be instituted by the company executives under the conditions provided by this Uniform Act for each form of company.

**Article 167:**

One or more partners may institute action in the interest of the company of after serving a formal notice to the competent bodies to which they fail to react within a time limit of thirty days. The applicants have ability to sue for damages for injury suffered by the company. In the event of a sentence, damages shall be awarded to the company.

**Article 168:**

Any clause in the Articles of Association which subjects the institution of action in the interest of the company to the prior notification or authorization of the general assembly, the company's management, supervisory or administrative structures, or which prescribes in advance a renunciation of the right to such action shall be deemed to be unwritten. This provision shall not bar a partner or partners who have instituted action from reaching an arrangement with the person or persons against whom action has been brought for the purpose of settling the dispute.

**Article 169:**

No decision of the meeting of partners, or of the company's management, supervisory or administrative structure may extinguish a civil liability action brought against company executives for a tort committed in the performance of their duties.

**Article 170:**

The court before which the action shall be brought shall be one within whose jurisdiction the registered office of the company is situated. An action in the interest of the company shall be

barred after three years following commission of the tort, or following its disclosure where the tort was hidden. For felonies, the prescription shall be ten years.

**Article 171:**

Charges and fees resulting from an action in the interest of the company shall be borne by the company where the action is brought by one or several partners.

**Article 172:**

Institution of an action in the interest of the company shall not bar a partner from bringing action against the company for damages for an injury he might have personally suffered.

**BOOK 4  
LEGAL LINKS BETWEEN COMPANIES**

**TITLE 1  
CONSORTIUMS**

**Article 173:**

A consortium is a group formed by companies bound to one another by various relations which allow one of them to control the others.

**Article 174:**

To have control over a company shall mean to effectively hold decision-making power within the company.

**Article 175:**

A natural person or corporate body shall be deemed to have control over a company where:

- (1) he (it) holds, directly or indirectly or through an intermediary, more than half of the company's voting rights;
- (2) he (it) has more than half of the company's voting rights by virtue of an agreement or agreements with other partners of the company.

**TITLE 2  
INVESTING IN ANOTHER COMPANY**

**Article 176:**

Where a company holds not less than 10% of the capital of another company, the former shall, under this Uniform Act, be deemed to hold equity participation in the latter.

**Article 177:**

A public limited company or private limited company shall not hold shares or stocks in a company which holds more than 10% of its capital.

Failing agreement between the companies concerned to regularize the situation, the company with the lower share in the capital of the other shall relinquish its shares or stocks. Where both companies hold equal fractions of each other's capital, each company shall reduce its own interest in the other to not more than 10%.

The shares or stocks to be transferred shall lose their voting rights and payment of dividends attached thereto until they have been effectively transferred.

**Article 178:**

Where a company other than a public limited company or a private limited company has amongst its partners a public limited company or private limited company with more than 10% of its capital, the former shall not hold shares and stocks in the latter.

In the event that the holdings of the public limited company or private limited company in the company is equal to or less than 10%, it shall not hold more than 10% of the capital of the public limited company or private limited company.

In the two cases provided under this article, where a company other than a public limited company or a private limited company already holds shares in the said public limited company or private limited company, it shall relinquish them. The shares or company stocks to be transferred shall lose their voting rights and payment of dividends attached thereto until they are effectively transferred.

### TITLE 3 PARENT COMPANY AND SUBSIDIARY

**Article 179:**

A company shall be the parent company of another where the former holds more than half the capital of the latter.

The latter shall be the subsidiary of the former.

**Article 180:**

A company shall be the joint subsidiary of several parent companies where its capital is owned by the said parent companies which shall:

- (1) own separately, directly or indirectly through corporate bodies, a sufficient proportion of the joint subsidiary company's capital to warrant that no extraordinary decision be taken without their approval.;
- (2) take part in the management of the joint subsidiary company.

### BOOK 5 TRANSFORMATION OF A COMMERCIAL COMPANY

**Article 181:**

The transformation of a company shall be an operation whereby the company changes its legal form by decision of its partners.

The normal transformation of a company shall not result in the creation of a new corporate body. It shall merely constitute an amendment of the Articles of Association and shall be subject to the same conditions of form and time limits as the company, subject to the provisions below.

Nevertheless, the transformation of a company in which the partners' liability is limited to their contributions into one in which their liability is unlimited shall be decided upon unanimously by the partners. All provisions to the contrary shall be deemed to be unwritten.

**Article 182:**

The transformation shall take effect from the day the decision to record it is taken. However, it may only be invoked against third parties after compliance with the publication formalities provided in Article 265 of this Uniform Act.

Transformation shall have no retrospective effect.

**Article 183:**

The transformation of the company shall not entail the closing of accounts where it occurs in the course of the fiscal year, unless otherwise decided by the partners.

The summary financial statements of the fiscal year during which the transformation took place shall be adopted and approved according to the rules governing the new legal form of the company. The same shall apply to the sharing of profits.

**Article 184:**

The transformation decision shall put an end to the powers of the administrative or management organs of the company.

Persons who were members of such organs may claim damages for the transformation, or the cancellation thereof only where such transformation was decided with the sole aim of infringing their rights.

**Article 185:**

The management report shall be prepared by the former and the new management organs, each for its own management period.

**Article 186:**

The rights and obligations contracted by the company under its old form shall remain valid under its new form. The same shall apply to guarantees, unless otherwise provided in the instrument providing the guarantees.

In case of transformation of a company in which the partners' liability is unlimited into one in which their liability is limited to their shares, creditors whose claims are prior to such transformation shall maintain their rights over the company and the partners.

**Article 187:**

The transformation of a company shall not terminate the duties of the auditor where the new corporate form requires the appointment of an auditor.

However, where such an appointment is not required, the auditor's duties shall end with the transformation, unless the partners decide otherwise.

The auditor whose duties end pursuant to the provisions paragraph two of this article shall nevertheless report on his activities for the period between the beginning of the financial year and the date of cessation of his duties to the meeting of shareholders convened to adjudicate on the accounts of the fiscal year during which the transformation took place.

**Article 188:**

Where, after transformation, the company no longer has any of the corporate forms provided in this Uniform Act, it shall lose its legal personality where it engages in any commercial activity.

**BOOK 6**  
**MERGER-SCISSION**  
**PARTIAL TRANSFER OF ASSETS**

**Article 189:**

A merger shall be the operation whereby two companies merge to form a single company either by creating a new company or by one company acquiring the other.

A company, even under liquidation, may be acquired by another company or may participate in the incorporation of a new company through a merger.

A merger shall entail the universal transfer to the acquiring company or the new company, of the assets of the company or companies which cease to exist as a result of merger.

**Article 190:**

A scission shall be the operation whereby the assets of a company are shared among several existing or new companies.

A company may transfer its assets through a scission to existing or new companies.

A scission shall entail the universal transfer to existing or new companies of the assets of the company which ceases to exist as a result of the scission.

**Article 191:**

A merger or scission shall entail the dissolution without liquidation of the disappearing companies, and the universal transfer to the beneficiary companies of their assets in the state in which they are on the date of wrapping up of the operation. The operation shall simultaneously lead to the acquisition by partners of the disappearing companies of the status of partner in the beneficiary companies under conditions laid down in the merger or scission contract.

The partners may eventually receive, in exchange for their contributions, a complementary financial payment which shall not exceed ten per cent of the exchange value of the shares or stocks allotted them.

However, shares or stocks in the beneficiary company may not be exchanged for the shares or stocks of the disappearing company when such shares or stocks are held either by:

- (1) the beneficiary company or a person acting in his own name but on behalf of the said company; or
- (2) the dissolved company or a person acting in his own name but on behalf of the said company.

**Article 192:**

A merger or a scission shall take effect:

- (1) in case of the creation of one or more new companies, on the date of registration of the new company or of the last of the companies in the Trade and Personal Property Credit Register; each of the new companies shall be formed according to the rules governing the form of company adopted.
- (2) in other cases, on the date of the last general meeting which approved the operation, unless the contract provides that the operation shall take effect on another date, which shall not be later than the closing date of the current fiscal year of the beneficiary company or companies, or earlier than the closing date of the last fiscal year of the company or companies transferring their assets.

**Article 193:**

All the companies involved in a merger or a scission operation shall prepare a draft merger or scission document which shall be adopted by the board of directors, the managing director or the manager(s), as the case may be, of each of the companies involved in the operation.

The said document shall contain the following information:

- (1) the form, name and registered office of all the participating companies;
- (2) the reasons and terms of the merger or scission;
- (3) a description and an evaluation of the assets and liabilities to be transferred to the acquiring or new companies;
- (4) the terms of transfer of the shares or stocks and the date from which such shares or stocks give entitlement to profits, as well as any special conditions relating to such entitlement, and the date from which the operations of the acquired or split company

shall be considered completed from the accounting standpoint by the companies receiving the contributions;

- (5) the dates on which the accounts of the companies concerned which were used to establish the terms of the operation were adopted;
- (6) the report on the exchange of company entitlements and, where necessary, the amount of the cash adjustment;
- (7) the projected amount of the merger or scission bonus;
- (8) the rights other than shares, the rights granted to partners having special rights, as well as special benefits, where necessary.

**Article 194:**

The draft merger or scission document shall be deposited at the registry of the commercial court of the registered offices of the said companies and shall be the subject of a notice from each of the companies involved in the operation published in a newspaper empowered to publish legal notices.

Such notice shall contain the following information:

- (1) for each of the companies involved in the operation, the company name followed, where necessary, by its acronym, the form, registered office address, the amount of registered capital and the registration numbers in the Trade and Personal Property Credit Register;
- (2) the company name followed, where necessary, by its acronym, the form, registered office address and the amount of the registered capital of the new company or companies which will emerge from the operation or the capital of existing companies;
- (3) an evaluation of the assets and liabilities to be transferred to the acquiring or new companies;
- (4) the report on the exchange of company entitlements;
- (5) the projected amount of the merger or scission bonus.

The deposit at the registry and publication provided for in this article shall take place not later than one month prior to the date of the first general meeting convened to decide on the operation.

**Article 195:**

The partial transfer of assets shall be an operation whereby a company transfers an autonomous branch of activity to a pre-existing or future company. The company transferring the assets shall not cease to exist as a result of such a transfer. Partial transfer of assets shall be subject to the rules governing scissions.

**Article 196 :**

Unless otherwise provided for in this Uniform Act, mergers, scissions and partial transfers of assets may take place between companies of different forms.

**Article 197 :**

Such transactions shall be decided, for each of the companies concerned, under the conditions stipulated for amendment of the Articles of Association and according to the procedures laid down for increase of capital and dissolution of a company.

However, where the proposed transaction leads to an increase in the commitments of the partners or shareholders of one or more companies involved, it may only be decided unanimously by the said partners or shareholders.

**Article 198 :**

Under penalty of being declared null and void, the companies taking part in a merger, scission or partial transfer of assets shall be required to deposit at the court registry a statement in which they review all the actions taken towards the conclusion of the transaction

and by which they affirm that the transaction was carried out in conformity with this Uniform Act.

**Article 199 :**

The merger, scission and partial transfer of assets may concern companies whose registered office is not located in the territory of one and the same Contracting State. In such case, each company concerned shall be subject to the provisions of this Uniform Act in the Contracting State of its registered office.

**BOOK 7  
DISSOLUTION - LIQUIDATION  
OF A COMMERCIAL COMPANY**

**TITLE 1  
DISSOLUTION OF THE COMPANY**

**CHAPTER 1  
CAUSES OF DISSOLUTION**

**Article 200 :**

A company shall come to an end :

- (1) on the expiry of the period for which it was formed ;
- (2) on the realization or extinction of its object ;
- (3) on the annulment of the company's partnership deed ;
- (4) on the decision of the partners under the conditions provided for amending the Articles of Association ;
- (5) upon its premature dissolution pronounced by the competent court at the request of a partner for justified reasons, notably in the case of non-performance by a partner of his obligations or misunderstanding between partners hampering the normal functioning of the company ;
- (6) through a court judgement ordering the liquidation of the company's assets ;
- (7) for any other reason provided by the Articles of Association.

**CHAPTER 2  
EFFECTS OF DISSOLUTION**

**Article 201 :**

Dissolution of a company shall have an effect on third parties only with effect from its publication in the Trade and Personal Property Credit Register.

Dissolution of a multi-partner company shall as of right entail liquidation of the company.

The legal personality of the company shall continue to exist for liquidation purposes until the liquidation procedure is completed.

Dissolution of a company in which all the shares are held by one person shall entail a total transmission of the assets and liabilities of the company to such person without resorting to liquidation. Creditors may object to the liquidation before the competent court within a period of thirty days following its publication. The court shall reject the objection or order the settlement of debts or the provision of guarantees if the company offers any and if they are deemed sufficient. The transmission of the assets and liabilities and the winding up of the company shall be effective only after the expiry of the time limit for objection or where the objection has been declared inadmissible or if the settlement of debts has been effected or guarantees provided.

**Article 202 :**

The dissolution shall be published through a notice in a newspaper empowered to publish legal notices of the place of the registered office by depositing the acts or reports deciding or recording the dissolution at the court registry and by an amendment of the entry in the Trade and Personal Property Credit Register.

**TITLE 2  
LIQUIDATION OF  
A COMMERCIAL COMPANY**

**CHAPTER 1  
GENERAL PROVISIONS**

**Article 203 :**

The provisions of this chapter shall apply where liquidation of the company is effected out of court in accordance with the Articles of Association.

They shall equally apply where liquidation is ordered by a court decision.

However, they shall not apply where liquidation is effected within the framework of the provisions of the Uniform Act relating to the collective proceedings for the wiping up of debts.

**Article 204 :**

The company shall be under liquidation as soon as it is dissolved for any reason whatsoever.

The words « company under liquidation » as well as the name(s) of the liquidator(s) shall be included in all the acts and documents issued by the company to third parties, in particular on all letters, invoices, notices and various publications.

**Article 205 :**

The company shall continue to exist as a corporate body for the purpose of liquidation until publication of completion of the liquidation process.

**Article 206 :**

Where liquidation is decided upon by the partners, one or more liquidators shall be appointed :

- (1) unanimously by the partners in case of a private company ;
- (2) unanimously by the general partners and by the majority capital of partners in case of a sleeping partnership ;
- (3) by the majority capital of partners in case of a private limited company ;
- (4) under the quorum and majority conditions provided for extraordinary general meetings in case of a public limited company.

**Article 207 :**

The liquidator may be chosen from among the partners or third parties. The liquidator may be a corporate body.

**Article 208 :**

Where the partners are unable to appoint a liquidator, he may be designated by a court decision at the request of any interested party as provided for under Articles 226 and 227 of this Uniform Act.

**Article 209 :**

Unless otherwise provided for by the appointment act, where several liquidators are appointed, they may exercise their duties separately.

However, they shall prepare and present a joint report.

**Article 210 :**

The fees of the liquidator shall be fixed by decision of the partners or of the court designating him.

**Article 211 :**

The liquidator may be dismissed and replaced in accordance with the conditions provided for his appointment.

However, any partner may petition to the court for the dismissal of the liquidator where such petition has legitimate grounds.

**Article 212 :**

The act appointing the liquidator shall be published according to the conditions and time limits stipulated in Article 266 of this Uniform Act.

The appointment and dismissal of the liquidator shall be demurrable to third parties only with effect from the date of publication.

Neither the company nor third parties shall rely on irregularity of the appointment or dismissal of the liquidator to evade from their commitments once such act has been duly published.

**Article 213 :**

Except upon the unanimous consent of the partners, the transfer of all or part of the assets of a company under liquidation to a person who has had in the company the capacity of partner in name, active partner, manager, member of the board of directors, managing director or auditor may not take place except with the authorization of the competent court, the liquidator and the auditor after having been heard.

**Article 214 :**

It shall be forbidden to transfer all or part of the assets of a company under liquidation to the liquidator, his employees or their spouses, ascendants or descendants.

**Article 215 :**

The transfer of all the assets of a company or the assignment of the assets to another company, notably through a merger, shall be authorized :

- (1) in private companies, unanimously by the partners ;
- (2) in limited sleeping partnerships, unanimously by the general partners and by the majority capital of limited partners ;
- (3) in private limited companies, by the majority required to amend the Articles of Association ;
- (4) in public limited companies, under the conditions of quorum and majority required for extraordinary general meetings.

**Article 216 :**

The liquidation shall be closed within a period of three years from the date of dissolution of the company.

Failing this, the public prosecutor's office or any interested party may bring an action before the competent court within whose jurisdiction the registered office of the company is located for the liquidation of the company or, where the liquidation has started, for it to be completed.

**Article 217 :**

The partners shall be convened at the end of the liquidation to take a decision on the final accounts, the discharge of the liquidator in respect of the performance of his duties and of the terms of reference and to record the close of the liquidation.

Failing this, any partner may petition to the president of the competent court, ruling in summary proceedings, to designate a representative to convene the members.

**Article 218 :**

Where the meeting to close liquidation provided for in the preceding article fails to take decision or where it refuses to approve the liquidator's accounts, the competent court shall rule on the accounts and, where necessary, on the close of the liquidation in place of the meeting or partners, at the request of the liquidator or any interested party.

In such case, the liquidator shall submit his accounts at the registry of the commercial court where any interested party may examine them and obtain a copy thereof at his expense.

**Article 219 :**

The final accounts drawn up by the liquidator shall be deposited at the registry of the court in charge of commercial matters, as an annex in the Trade and Personal Property Credit Register.

The decision of the meeting of partners on the liquidation accounts, the discharge of the liquidator in respect of the performance of his duties and of the terms of reference, or, failing this, the court decision referred to in the preceding article shall be appended to the Trade and Personal Property Credit Register.

**Article 220 :**

Upon justification of compliance with the formalities provided for in the preceding article, the liquidator shall request the removal of the company from the Trade and Personal Property Credit Register within a period of one month from the date of publication of the close of liquidation.

**Article 221 :**

The liquidator shall be liable to the company as well as third parties for the actionable wrongs resulting from any errors made by him in the exercise of his duties.

Liability action by the company or an individual against the liquidator shall lapse within a period of three years from the date of commission of the actionable wrong, or, where it was hidden, from the date of its disclosure.

However, where the act amounts to a felony, the action shall lapse within a period of ten years.

**Article 222 :**

Any action against partners who are not liquidators or their surviving spouses, next-of-kin or assigns shall lapse within a period of five years from the date of publication of the company's dissolution in the Trade and Personal Property Credit Register.

## CHAPTER 2 PROVISIONS SPECIFIC TO COURT-ORDERED LIQUIDATION

### **Article 223 :**

In the absence of clauses in the Articles of Association or an express agreement between the parties, the liquidation of the dissolved company shall be carried out in accordance with the provisions of this chapter, without prejudice to the provisions of the preceding chapter.

Furthermore, a competent court through in summary proceedings may order that the liquidation shall be carried out under the same conditions at the request of :

- (1) the majority of members in private companies ;
- (2) partners representing not less than one-tenth of the capital in the other forms of companies having legal personality ;
- (3) the company's creditors ;
- (4) the representative of the bondholders' group.

The partners may agree that the provisions of Articles 224 to 241 of this Uniform Act shall be applicable where they decide on the liquidation of the company out of court.

### **Article 224 :**

The powers of the board of directors, the managing director or the executives shall end with effect from the court decision ordering the liquidation of the company.

### **Article 225 :**

The dissolution of the company shall not put an end to the duties of the auditor.

### **Article 226 :**

The court decision ordering the liquidation of the company shall designate one or more liquidators.

### **Article 227 :**

The duration of the liquidator's mandate may not exceed three years, renewable by court decision at the request of the liquidator.

In his application for renewal, the liquidator shall state the reason why the liquidation has not been closed, the measures he intends to take and the time needed to complete the liquidation.

### **Article 228 :**

Within a period of six months from the date of his appointment, the liquidator shall convene a meeting of partners where he shall give a report on the assets and liabilities of the company, his execution of the liquidation exercise and the time needed to complete the exercise and shall also where necessary, request any authorizations he may need.

The meeting shall take decisions under the conditions of quorum and majority provided for in this Uniform Act, for each form of company, for the amendment of the Articles of Association.

The period within which the liquidator shall draw up his report may, at his request, be extended to twelve months by court decision.

Failing this, the meeting shall be convened by a court-appointed representative at the request of any interested party.

**Article 229 :**

Where it has been impossible for the general meeting to hold or to reach a decision, the liquidator shall petition to the court for the necessary authorizations to bring about the liquidation.

**Article 230 :**

The liquidator shall represent the company which he shall commit for all liquidation proceedings.

He shall have the widest powers possible to realize the assets, even out of court.

Any restrictions to these powers in the Articles of Association or in the appointment deed shall not binding on third parties.

**Article 231 :**

The liquidator shall be empowered to pay creditors and share the balance available among the partners.

He may not pursue any ongoing affairs or start new ones for the purposes of the liquidation unless he has been so authorized by a court decision.

**Article 232 :**

Within three months following the close of each fiscal year, the liquidator shall draw up annual summary financial statements from the inventory made of various components of the assets and liabilities existing on that date and a written report in which he shall give an account of the liquidation exercise during the just-ended fiscal year.

**Article 233 :**

Except in the case of a waiver by the president of the competent court through in summary proceedings, the liquidator shall convene, according to the procedure laid down in the Articles of Association, at least once a year and within a period of six months following the close of the fiscal year, a meeting of the partners which shall decide on the annual summary financial statements, grant the necessary authorizations and, as the case may be, renew the mandate of office of the auditor.

Where the meeting has not taken place, the written report of the liquidator shall be deposited at the registry of the commercial court.

**Article 234 :**

During the liquidation period, the members may receive the company documents under the same conditions as before.

**Article 235 :**

The decisions referred to in Article 233 of this Uniform Act shall be taken :

- (1) unanimously by the partners in private companies ;
- (2) unanimously by the general partners and by the majority capital of partners in sleeping partnerships ;
- (3) by majority capital of partners in private limited companies ;
- (4) under the conditions of quorum and majority required for extraordinary general meetings in public limited companies.

Where the required majority cannot be reached, the president of the competent court shall decide through summary proceedings at the request of the liquidator or any interested party.

Where the decision entails amendment of the Articles of Association, it shall be taken under the conditions laid down by this Uniform Act for each form of company.

Partners who are liquidators shall take part in the vote.

**Article 236 :**

Where the company continues in business, the liquidator shall convene a meeting of partners under the conditions provided for in Article 233 of this Uniform Act. Failing this, any interested party may request for the convening of the meeting by the auditor or a representative designated by the president of the competent court through summary proceedings.

**Article 237 :**

Unless otherwise provided in the Articles of Association, the sharing of shareholders' equity subsisting after reimbursement of the face value of shares or company stocks shall be done among partners in the same proportions as their shares in the registered capital.

**Article 238 :**

Any decision to share funds shall be published in the newspaper empowered to publish legal notices in which the publication provided under Article 266 of this Uniform Act was made. The decision shall be notified individually to the holders of registered shares.

**Article 239 :**

The sums allocated for sharing among the partners and creditors shall be deposited within a period of fifteen days following the decision to share the funds, in an account opened in a bank domiciled in the Contracting State of the registered office in the name of the company under liquidation.

Where there are many liquidators, the sums may be signed out by one liquidator under his responsibility.

**Article 240 :**

Where the sums allotted to the creditors or partners have not been paid out, they shall be deposited upon the expiry of a period of one year following the close of the liquidation in a receiver's account opened in the Public Treasury.

**Article 241 :**

The liquidator shall, subject to the rights of the creditors, decide on the advisability of distributing available funds in the course of the liquidation.

Where formal notice to the liquidator to share the funds remains unheeded, any interested party may petition to the president of the competent court through summary proceedings to rule on the appropriateness of sharing of funds in the course of liquidation.

**BOOK 8  
NULLITY OF A COMPANY  
AND COMPANY ACTS**

**Article 242 :**

Nullity of a company or of all acts, decisions or deliberations amending the Articles of Association may only result from an express provision of this Uniform Act or from the laws governing the nullity of contracts in general and the Articles of Association of companies in particular.

Incomplete stating of the information which should be included in the Articles of Association shall not entail nullity of the company.

**Article 243 :**

Nullity of private limited companies and public limited companies, may not arise from lack of consent or from incapacity of a partner, unless such incapacity affects all the founding partners.

**Article 244 :**

Nullity of all acts, decisions or deliberations not amending the company's Articles of Association may only arise from a mandatory provision of this Uniform Act, the laws governing contracts or the company's Articles of Association.

**Article 245 :**

In sleeping partnerships or private companies, compliance with the formalities of publication shall be compulsory under penalty of nullity of the company, acts, decisions or deliberations, as the case may be, with no possibility for the members and the company to rely on the cause of the nullity as against third parties.

However, the court shall have the option not to pronounce the nullity of the company where no fraud has been recorded.

**Article 246 :**

An action for nullity shall be extinguished where the cause of nullity has ceased to exist on the day the court gives a ruling on the merits of the case at first instance, unless such nullity is based on the unlawfully nature of the company's object.

**Article 247 :**

The court before which an action for nullity is brought may, even automatically, fix a time limit to enable the nullity to be repaired. It may not pronounce the nullity in less than two months after the date of the writ bringing the action.

Where, in order to repair a nullity, a meeting must be convened and where the normal convening of such meeting is justified, the court shall, by judgment, grant the time needed for the partners to take a decision.

Where, on the expiry of the time limit provided for under the preceding paragraphs, no decision has been taken, the court shall give a ruling at the behest of the earliest petitioner.

**Article 248 :**

In case of nullity of the company or its acts, decisions or deliberations founded on lack of consent or incapacity of a partner and where the nullity may be regularized, any person having an interest therein may give formal notice to the legally incapable partner or to the one whose consent has been vitiated to regularize or take action for annulment within a time limit of six months under penalty of foreclosure.

The formal notification shall be made through an extra-judicial act, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt. Notice thereof shall be given to the company.

**Article 249 :**

The company or a partner thereof may submit to the court before which the action is brought within the time limit laid down in the preceding article any measure likely to obviate the applicant's interest, notably by the redemption of its or his corporate rights.

In such case, the court may either pronounce the annulment or make the proposed measures obligatory where they were previously adopted by the company under the conditions laid down for amendment of the Articles of Association.

The partner whose rights are the subject of redemption shall not take part in the vote.

**Article 250 :**

Where annulment of the acts, decisions or deliberations of the company is founded on the breach of publication regulations, any person interested in regularization may, by extra-judicial act, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, give notice to the company to regularize within a period of thirty days following such notice.

Failing regularization within the time limit, any interested party may petition the president of the competent court through proceedings to designate an agent to comply with the formality.

**Article 251 :**

Action for nullity of the company shall lapse after three years following registration of the company or publication of the instrument amending its Articles of Association unless the nullity is founded on the unlawfulness of the company's object, subject to the foreclosure referred to in Article 248 of this Uniform Act.

An action for annulment of the acts, decisions or deliberations of the company shall be barred at the end of three years from the day when the nullity was incurred, save where the nullity is founded on the unlawfulness of the object of the company and subject to the foreclosure referred to in Article 248 of this Uniform Act.

However, action for annulment of a merger or a scission shall lapse after six months from the date of the last entry in the Trade and Personal Property Credit Register necessitated by the merger or scission transaction.

**Article 252 :**

Opposition by a third party to the decisions pronouncing the nullity of a company shall only be entertained within a period of six months following publication of the said decisions in a newspaper empowered to publish legal notices at the seat of the court.

**Article 253 :**

Where nullity of the company is pronounced, it shall put an end to the execution of the contract but shall have no retrospective effect. The company shall be dissolved forthwith and in the case of multi-partner companies, liquidation shall follow.

**Article 254 :**

The decision pronouncing the annulment of a merger or a scission shall be published within one month from the day when the decision became final.

It shall have no effect on obligations on or in respect of the companies to which the asset(s) are transferred between the date of entry into force of the merger or scission and the date of publication of the decision pronouncing the annulment.

In case of a merger, the companies which took part in the transaction shall be jointly and severally liable for the execution of the obligations mentioned in the preceding paragraph to be borne by the acquiring company.

The same shall apply, in case of a scission, to the company being split, for the obligations of the companies to which the assets are transferred.

Each of the companies to which the assets are transferred shall be liable for the obligations to be borne by it between the date of entry into force of the scission and the date of publication of the decision pronouncing the annulment.

**Article 255 :**

Neither the company nor its members may rely on a nullity as against third parties acting in good faith.

However, nullity based on lack of consent or incapacity may be relied on, even against a third party acting in good faith, by a legally incapacitated person or his legal representative or by the person whose consent was vitiated.

**Article 256 :**

The partners and company executives to whom the nullity is attributed may be declared jointly and severally liable for any damage suffered by third parties by the nullity of the company.

The vicarious liability action founded on the nullity of the company or of the acts and deliberations subsequent to its formation shall be barred at the end of three years from the day when the annulment decision became final.

The removal of the cause of the nullity shall not bar the institution of a civil responsibility action for damages caused by the defect in the company, the acts or deliberations. Such action shall lapse after three years from the day when the nullity was repaired.

## **BOOK 9 FORMALITIES - PUBLICATION**

### **TITLE 1 GENERAL PROVISIONS**

**Article 257 :**

Shall be empowered to publish announcements, on the one hand, the Official Gazette and newspapers empowered by the competent authorities to publish them, and on the other hand, national news dailies in the Contracting State of the registered office of the company which show evidence of effective sales through subscriptions, depositaries or vendors, under the following additional conditions :

- (1) that they have been appearing for more than six months ;
- (2) that they are distributed nationwide.

**Article 258 :**

Publication by deposit of deeds or documents shall be done at the registry of the commercial court of the place of the registered office of the company.

**Article 259 :**

Publication formalities shall be carried out at the behest and under the responsibility of the legal representatives of the companies.

Where the publication formality not concerning the formation of a company or the amendment of its Articles of Association has been omitted or has been improperly done and the company has not regularized the situation within a period of one month from the date of formal notice addressed to it, any interested party may petition the president of the competent court through summary proceedings to designate an authorized agent to comply with the publication formality.

**Article 260 :**

In all cases where this Uniform Act provides that the decision shall be by decree of the president of the competent court through summary proceedings, a copy of the said order shall be deposited at the court registry and appended to the company's file and entered in the Trade and Personal Property Credit Register.

## TITLE 2 FORMALITIES FOR THE FORMATION OF A COMPANY

**Article 261 :**

Where the formalities for the formation of a company have been accomplished within a period of fifteen days following registration, a notice shall be inserted in a newspaper empowered to publish legal notices in the Contracting State of the registered office of the company.

**Article 262 :**

The notice, signed by the notary who received the company's Articles of Association or by the founder(s) shall include the following information :

- (1) the name of the company, followed, as the case may be, by its acronym ;
- (2) the form of the company ;
- (3) the amount of the registered capital ;
- (4) the address of the registered office ;
- (5) a summary of the company's object ;
- (6) the duration of the company ;
- (7) the amount of cash contributions ;
- (8) a brief description and an evaluation of contributions in kind ;
- (9) the usual full name and domicile of the partners with unlimited liability for the company's debts ;
- (10) the full names and domicile of the first executives and the first auditors ;
- (11) the references of the deposit at the court registry of the incorporation documents ;
- (12) the references of the registration in the Trade and Personal Property Credit Register ;
- (13) where necessary, the effective or proposed date of commencement of business.

For public limited companies, the notice shall also include :

- (1) the number and face value of shares issued for cash ;
- (2) the number and face value of shares allotted in remuneration of each contribution in kind ;
- (3) the amount of the paid-up capital, where the capital is not fully paid up ;
- (4) the provisions of the Articles relating to the building up of reserves and the sharing of profits and bonus after liquidation ;
- (5) any special benefits provided for ;
- (6) the conditions of admission to shareholders' meetings and of the exercise of voting rights, notably conditions relating to the granting of double voting rights ;
- (7) as the case may be, the existence of provisions relating to the approval of transferees of shares and the designation of the structure empowered to rule on applications for approval.

## TITLE 3 FORMALITIES FOR THE AMENDMENT OF THE ARTICLES OF ASSOCIATION

**Article 263 :**

Where one of the details of the notice provided for in Article 262 of this Uniform Act is rendered null and void following an amendment of the Articles of Association or of all the acts, deliberations or decisions of the meetings of the company or of its structures, the amendment shall be inserted in the form of a notice in a newspaper empowered to publish legal notices in the Contracting State of the registered office of the company.

The said notice, signed by the notary who received or drafted the instrument amending the Articles of Association or by the sole proprietor or the partners, shall include the following :

- (1) the name of the company, followed, where necessary, by its acronym ;
- (2) the form of the company ;
- (3) the amount of the registered capital ;
- (4) the address of its registered office ;
- (5) the registration number in the Trade and Personal Property Credit Register ;
- (6) the title, date, number of issue and place of publication of the newspaper in which the notices provided for in the two preceding articles were published ;
- (7) an indication of the amendments made.

**Article 264 :**

In case of increase or reduction of capital, apart from the insertion referred to in Article 263 of this Uniform Act, the following formalities shall be complied with :

- (1) deposit at the registry of the court in charge of commercial matters of the place of the registered office of a certified true copy of the deliberations of the meeting which decided on or authorized the increase or reduction of capital, within one month from the holding of the said meeting ;
- (2) deposit, where necessary, of the decision of the board of directors, the managing director or the manager who effected the increase of capital ;
- (3) deposit at the court registry of a certified true copy of the notarial statement of subscription and payment appended to the Trade and Personal Property Credit Registry.

**TITLE 4  
FORMALITIES FOR THE TRANSFORMATION  
OF A COMPANY**

**Article 265 :**

The transformation decision shall give rise to :

- (1) an insertion in a newspaper empowered to publish legal notices in the Contracting State of the registered office and, as the case may be, in the Contracting States where a public call for capital is made ;
- (2) deposit at the registry of the court in charge of commercial matters of the Contracting State of the registered office of two copies of the minutes of the meeting which decided on the transformation and of the decision to appoint the members of new organs of the company ;
- (3) an entry of the amendments in the Trade and Personal Property Credit Register.

The new Articles of Association, the declaration of regularity and conformity and, as the case may be, two copies of the report of the auditor responsible for assessing the value of the company's assets shall equally be deposited at the court registry.

Notice of the transformation shall be deposited at the office in charge of mortgages where the company is owner of one or more buildings subject to the publication of landed property transactions.

## TITLE 5 FORMALITIES FOR THE LIQUIDATION OF A COMPANY

### **Article 266 :**

The instrument appointing the liquidators, whatever its form, shall be published within one month from the date of the appointment in a newspaper empowered to publish legal notices in the Contracting State of the registered office.

It shall include the following information :

- (1) the name of the company and, where necessary, its acronym ;
- (2) the form of the company, followed by the words « company under liquidation » ;
- (3) the amount of the registered capital ;
- (4) the address of the registered office ;
- (5) the registration number in Trade and Personal Property Credit Register ;
- (6) the cause of liquidation ;
- (7) the common name and domicile of the liquidator(s) ;
- (8) where necessary, limitations to their powers ;
- (9) the place where correspondence should be sent and the place where deeds and documents concerning the liquidation should be notified ;
- (10) the court in charge of commercial matters whose registry shall be the depositary of the deeds and documents relating to the liquidation to be appended in the Trade and Personal Property Credit Registry.

At the behest of the liquidator, the same details shall be brought to the notice of holders of registered shares and bonds by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

### **Article 267 :**

During the liquidation of the company, the liquidator shall be responsible for complying with the formalities of publication incumbent on the legal representatives of the companies.

### **Article 268 :**

The notice of close of liquidation, signed by the liquidator, shall be published at the behest of the liquidator in the newspaper wherein his appointment was published or, failing this, in a newspaper empowered to publish legal notices.

It shall include the information referred to in Article 266 paragraphs (1), (2), (3), (4), (5) and (7) of this Uniform Act as well as :

- (1) the date and place of the session of the closing meeting, where the liquidation accounts were approved by it or the date of the decision of the competent court sitting and ruling in place of the meeting, as well as an indication of the court which pronounced it ;
- (2) an indication of the registry of the court in charge of commercial matters where the liquidators' accounts are deposited.

## TITLE 6 SPECIAL FORMALITIES RELATING TO PUBLIC LIMITED COMPANIES

### **Article 269 :**

Public limited companies shall be required to deposit at the registry of the court, for annexation to the Trade and Personal Property Credit Register, within one month following approval by the general meeting of shareholders, the summary financial statements, namely

the balance-sheet, the income statement, the statement of source and expenditure of funds and annexed statement of the just-ended financial year.

Where approval of these documents is refused, a copy of the decision of the meeting shall be deposited within the same time limit.

**PART 2**  
**SPECIAL PROVISIONS RELATING**  
**TO COMMERCIAL COMPANIES**

**BOOK 1**  
**PRIVATE COMPANIES**

**TITLE 1**  
**GENERAL PROVISIONS**

**Article 270 :**

A private company shall be a company in which all the partners are traders and have unlimited liability, for the company's debts.

**Article 271 :**

The company's creditors may bring an action against a partner for the payment of private company's debts only 60 days at least after unsuccessfully notifying the company of such claim through an extra-judicial act.

This time limit may be extended by order of the president of the competent through summary proceedings without such extension exceeding 30 days.

**Article 272 :**

The partnership shall be known by a company name which shall be immediately preceded or followed by the word «Private company» or by the abbreviation «P.C.», written in legible characters.

**Article 273 :**

The registered capital shall be broken down into shares of the same face value.

**Article 274 :**

The private company shares may be transferred only with the unanimous consent of the partners.

All provisions to the contrary shall be deemed to be unwritten.

Where the partners fail to reach unanimity, the transfer shall not take place, but the company's Articles of Association may make provision for a redemption procedure to enable the transferring partner to withdraw.

**Article 275 :**

The transfer of shares shall be evidenced in writing.

It may be relied upon as against the company only after the fulfilment of one of the following formalities :

- (1) notification to the company of the transfer by means of a bailiff's writ ;
- (2) acceptance of the transfer by the company in a notarial deed ;
- (3) deposit of the original of the transfer deed at the registered office against issuance by the manager of an attestation of deposit.

It shall not be binding on a third party except after compliance with the above formalities and after publication by way of an annexed deposit in the Trade and Personal Property Credit Register.

## **TITLE 2 MANAGEMENT**

### **CHAPTER 1 APPOINTMENT OF MANAGER**

**Article 276 :**

The Articles of Association shall organize the management of the company.

They may appoint one or more managers who may be partners or not, natural persons or corporate bodies, or provide for such appointment in a subsequent instrument.

Where the manager is a corporate body, its officials shall be subject to the same conditions and obligations and shall incur the same civil and criminal liability as if they were managers on their own account, notwithstanding the joint and several liability of the corporate body they are managing.

Where the management is not organized by the Articles of Association, all the partners shall be deemed to be managers.

### **CHAPTER 2 MANAGER'S POWERS**

**Article 277 :**

Where the manager's powers are not defined by the Articles of Associations, the manager may, in his relations with partners, perform all acts of management in the company's interest. In the event of several managers, each shall have the same powers as if he were the sole manager of the company, save the right to object to any transaction before it is concluded.

In his relations with third parties, the manager shall commit the company by acts falling within the company's objects.

In the event of several managers, each of them shall have the same powers as if he were the sole manager of the company.

Any objection made by a manager to the action of another manager shall have no effect with respect to third parties, unless it is established that they were aware of such objection.

The provisions of the Articles of Association limiting the powers of managers resulting from this article shall not be demurrable to third parties.

### **CHAPTER 3 REMUNERATION OF THE MANAGER**

**Article 278 :**

Unless otherwise provided by the Articles of Association or by a meeting of partners, the manager's remuneration shall be determined by the majority in number and capital of the partners.

Where the manager whose remuneration is being determined is also a partner, the decision shall be taken by the majority in number and capital of the other partners.

#### **CHAPTER 4 DISMISSAL OF THE MANAGER**

**Article 279 :**

Where all the partners are managers or where a partner is appointed manager by the Articles of Association, the dismissal of one of them shall be effected only by unanimous decision of the other partners.

The dismissal shall engender dissolution of the company, unless its continuation in business is provided for in the Articles of Association or the other partners unanimously decide to continue.

**Article 280 :**

The managing partner dismissed may decide to withdraw from the company by applying for the refund of his rights in the company whose value shall be determined, failing an agreement between the parties, by an expert appointed by the competent court through summary proceedings.

A manager who is not appointed by the Articles of Association, whether or not he be a partner, may be dismissed by decision of the majority in number and in capital of the other partners.

Where the manager whose dismissal is submitted to the vote is himself a partner, the decision shall be taken by the majority in number and capital of the other partners.

**Article 281 :**

Where the manager is dismissed for no just reasons, such dismissal may give rise to the payment of damages.

**Article 282 :**

Any clause contrary to the provisions of the two preceding articles shall be deemed to be unwritten.

#### **TITLE 3 COLLECTIVE DECISIONS**

**Article 283 :**

Any decision not falling within the powers of the managers shall be taken unanimously by the partners.

However, the Articles of Association may provide that certain decisions shall be taken by a majority which they shall determine.

**Article 284 :**

Collective decisions shall be taken at a general meeting or by written consultation where a general meeting is not requested by one of the partners.

**Article 285 :**

The Articles of Association shall define the rules relating to the consultation procedure, quorums and majorities.

**Article 286 :**

Where decisions are taken in a general meeting, such general meeting shall be convened by the manager(s) at least fifteen days before the meeting by hand-delivered letter against a receipt or by registered letter with request for acknowledgement of receipt.

The convening notice shall indicate the date, venue and agenda of the meeting.

Any improperly convened meeting may be annulled. However, the action for annulment shall be inadmissible where all the partners were present or represented.

**Article 287 :**

The minutes shall be signed by each of the partners present.

In the event of written consultation, mention thereof shall be made in the minutes to which shall be attached the response of each partner which shall be signed by the managers.

#### **TITLE 4 ANNUAL GENERAL MEETING**

**Article 288 :**

Each year, within a period of six months following the close of the fiscal year, an annual general meeting shall be held during which the management report, the inventory and the summary financial statements drawn up by the managers shall be submitted to the meeting of partners for approval.

To this end, the documents referred to in the preceding paragraph, the proposed draft resolutions and, where necessary, the auditor's report shall be sent to the partners at least fifteen days before the date of the meeting. Any decision taken in violation of the provisions of this paragraph may be annulled.

The annual general meeting shall not validly hold unless a majority of the partners representing half of the registered capital are present. It shall be presided over by the partner who himself has or as a representative holds the greatest number of partnership shares.

Any clause contrary to the provisions of this article shall be deemed to be unwritten.

#### **TITLE 5 CONTROL BY PARTNERS**

**Article 289 :**

Notwithstanding the above right of communication in respect of the annual general meeting, the floor members shall have the right to consult at the registered office, twice a year, all books and accounting documents as well as the minutes of meetings and collective decisions. They shall have the right to make copies thereof at their expense.

They shall inform the managers of their intention to exercise this right at least fifteen days beforehand by a hand-delivered letter against a receipt or by registered letter with request for acknowledgement of receipt, by telex or telefax.

They shall have the right to seek the assistance of a professional accountant or an auditor at their expense.

## TITLE 6 TERMINATION OF A PRIVATE COMPANY

### **Article 290 :**

A private company shall terminate upon the death of one partner. However, the Articles of Association may provide that the private company shall continue either among surviving partners or among surviving partners and the rightful claimants or successors of the deceased partner with or without the approval of the surviving partners.

Where it is provided that the private company shall continue only among surviving partners, or where the latter fail to accept the rightful claimants or successors of the deceased partner, or where they accept only some of them, the surviving partners shall buy back from the rightful claimants or successors of the deceased partner, or from those who were not approved, their partnership shares.

In the event of continuation and where one or more of the rightful claimants or successors of the deceased partner are dependent minors, the latter's liability for the company's debts shall be up to the limit of their inherited shares.

Moreover, the company shall, within one year of the death, be transformed into a sleeping partnership in which the minor will become a sleeping partner. Otherwise the private company shall be dissolved.

### **Article 291 :**

The private company shall also be dissolved when judgment to liquidate property, declare bankruptcy, or forbid the exercise of a commercial activity has been passed in respect of a partner, unless the company's Articles of Association provide for continuation or the other partners unanimously decide in favour of continuation.

### **Article 292 :**

In case of refusal to approve the rightful claimants or successors or of the withdrawal of a partner, the value of partnership entitlements to be refunded to those concerned shall be fixed in accordance with the provisions of Article 59 of this Uniform Act.

In the cases provided for in the preceding paragraph where the partners have to redeem the partnership shares, the partners shall be indefinitely and jointly and severally bound, for the payment of the shares.

## BOOK 2 SLEEPING PARTNERSHIP

### TITLE 1 GENERAL PROVISIONS

### **Article 293 :**

A sleeping partnership is a partnership in which one or more partners are indefinitely, jointly and severally liable for the company's debts, referred to as «active partners», coexist with one or more partners liable for the company's debts up to the limit of their shares, referred to as « sleeping partners » and whose capital is broken down into partnership shares.

### **Article 294 :**

A sleeping partnership shall be referred to by a name which shall be immediately preceded or followed by the words « sleeping partnership » or by the abbreviation « S.P. »

The name of a sleeping partner shall under no circumstances be included in the partnership name, otherwise the latter shall be liable for the debts of the partnership without limit.

**Article 295 :**

The Articles of Association of the sleeping partnership shall include the following information:

- (1) the amount or value of all the partners' contributions ;
- (2) the fraction of this amount or value belonging to each active or sleeping partner ;
- (3) the overall share of the active partners and the share of each sleeping partner in the profit-sharing or in the bonus after liquidation.

**Article 296 :**

Partnership shares may be transferred only with the consent of all the partners.

However, the Articles of Association may stipulate :

- (1) that the shares held by the sleeping partners shall be freely transferable between partners ;
- (2) that the shares held by sleeping partners may be transferred to third parties outside the sleeping partnership with the consent of all the active partners and by a majority in number and capital of the sleeping partners ;
- (3) that an active partner may transfer part of his shares to a sleeping partner or to a third party outside the partnership with the consent of all the active partners and the majority in number and capital of the sleeping partners.

**Article 297 :**

The transfer of shares shall be recorded in a written document.

It may be binding on the company only after the following formalities have been fulfilled :

- (1) notification to the company of the transfer by means of a bailiff's writ ;
- (2) acceptance of the transfer by the company in a notarial deed ;
- (3) deposit of the original transfer deed at the registered office against an attestation of deposit issued by the manager.

The transfer of shares may be demurrable to third parties only after the fulfilment of the above formalities and after publication by entry in the Trade and Personal Property Credit Register.

## TITLE 2 MANAGEMENT

**Article 298 :**

A sleeping partnership shall be managed by all the active partners unless otherwise provided by the Articles of Association which may appoint one or more managers from among the active partners, or provide for the appointment of such manager(s) by a subsequent instrument, under the same conditions and with the same powers as in a partnership.

**Article 299 :**

A sleeping partner(s) may not perform any act of external management, even by virtue of a power of attorney.

**Article 300 :**

In the event of violation of the prohibition mentioned in the preceding article, the sleeping partner(s) shall, be indefinitely, jointly and severally liable with the active partners for the company's debts and commitments resulting from any administrative acts performed by them.

Depending on the number and gravity of these acts, they may be liable for all commitments of the company or only for a few.

**Article 301 :**

Opinions and advice as well as acts of control and supervision shall not commit the sleeping partners.

### TITLE 3 COLLECTIVE DECISIONS

**Article 302 :**

All decisions beyond the powers of the managers shall be taken collectively by the partners.

The Articles of Association shall organize collective decision-making by the partners, especially as regards the procedure of consultation either by means of meetings or by writing, quorums, and majorities.

However, the meeting of all the partners shall be automatic where requested by a active partner or by one-quarter, in number and capital, of the sleeping partners.

**Article 303 :**

Where decisions are taken in a general meeting, the said meeting shall be convened by the manager or one of the managers at least fifteen days before the meeting is held, by hand-delivered letter against a receipt or by registered letter with request for acknowledgement of receipt, by telex or by telefax.

The convening notice shall indicate the date, venue and agenda of the meeting.

Any general meeting convened improperly may be annulled. However, the action for annulment shall be inadmissible where all the partners were present or represented.

**Article 304 :**

The minutes shall be signed by each of the partners present.

In the event of written consultation, mention thereof shall be made in the minutes signed by the managers to which shall be appended the response of each partner.

**Article 305 :**

Any amendments to the Articles of Association may be decided with the consent of all the active partners and the majority, in number and capital, of the sleeping partners.

Any clauses stipulating stricter majority conditions shall be deemed to be unwritten.

### TITLE 4 ANNUAL GENERAL MEETING

**Article 306 :**

Each year, within six months following the close of the fiscal year, an annual general meeting shall be held during which the management report, the inventory and the summary financial statements drawn up by the managers shall be submitted to the meeting of partners for approval.

To this end, the documents referred to above, the proposed draft resolutions and, where need be, the auditor's report, shall be forwarded to the partners at least fifteen days before the meeting. Any meeting which holds in violation of the provisions of this paragraph may be annulled.

The annual general meeting shall validly hold only where it is attended by a majority of the partners representing half of the registered capital. The said meeting shall be presided over by the partner representing, in his own capacity or as proxy, the majority of shares.

Any clause contrary to the provisions of this article shall be deemed to be unwritten.

## **TITLE 5 CONTROL BY PARTNERS**

### **Article 307 :**

Sleeping partners and active partners who are not managers shall have the right, twice a year, of access to the company's books and documents and to ask questions in writing on the management of the partnership. Answers to the questions shall also be in writing.

## **TITLE 6 DISSOLUTION OF THE SLEEPING PARTNERSHIP**

### **Article 308 :**

The sleeping partnership shall continue in spite of the death of a sleeping partner. Where there is provision that despite the death of one of the active partners, the company shall continue with his rightful claimants, the latter shall become sleeping partners where they are dependent minors.

Where the deceased partner was the sole active partner and where his rightful claimants are dependent minors, he shall be replaced with a new active partner or the company shall be transformed within one year with effect from his death.

Failing this, the company shall be dissolved as of right on the expiry of the period mentioned in the preceding paragraph.

## **BOOK 3 PRIVATE LIMITED COMPANY**

### **TITLE 1 FORMATION OF A PRIVATE LIMITED COMPANY**

#### **CHAPTER 1 DEFINITION OF A PRIVATE LIMITED COMPANY**

### **Article 309 :**

A private limited company shall be a company in which the partners are liable for the company's debts up to the limit of their contributions and their rights are represented by company shares.

It may be formed by a natural person or a corporate body, or by two or more natural persons or corporate bodies.

### **Article 310 :**

It shall be referred to by a company name which must be immediately preceded or followed by the words "private limited company » or the abbreviation « Ltd » written in legible characters.

## CHAPTER 2 SUBSTANTIVE CONDITIONS

### Section 1. Registered capital

**Article 311 :**

The registered capital of a private limited liability company shall be at least one million (1 000 000) CFA francs. It shall be divided into equal shares whose face value may not be less than five thousand (5 000) CFA francs.

### Section 2. Evaluation of contributions in kind

**Article 312 :**

The Articles of Association shall contain the evaluation of each contribution in kind and a stipulation of special benefits.

The evaluation shall be carried out by a shares auditor where the value of the contribution or the benefits in question, or the value of the overall contributions or benefits in question is more than five million (5 000 000) CFA francs.

The shares auditor who shall be chosen from a list of auditors following the procedure laid down in Article 694 et seq. of this Uniform Act, shall be unanimously designated by the future partners or, failing this, by the president of the competent court, at the request of all or one of the company's founders.

The shares auditor shall draw up a report to be appended to the Articles of Association.

In the absence of an evaluation made by a shares auditor or where such evaluation is disregarded, the partners shall, indefinitely, jointly and severally liable for the evaluation made of the contributions in kind and the special benefits stipulated for a period of five years.

The obligation to provide guarantees shall concern only the value of contributions at the time the capital is being constituted or increased and not the maintenance of the said value.

### Section 3. Deposit and release of funds

**Article 313 :**

Funds derived from the payment for shares shall be immediately deposited by the founder, against a receipt, in a bank account opened in the name of the company being formed or in a notary's office.

**Article 314 :**

The payment and deposit of funds shall be recorded by a notary within the jurisdiction of the court of the registered office by means of a notarial statement of subscription and payment indicating the list of subscribers with their full name and domicile, for natural persons, and company name, legal status and registered office, for corporate bodies, as well as the banks where those concerned are domiciled, where necessary, and the amounts paid by each of them.

The funds thus deposited shall be unavailable until the day of registration of the company in the Trade and Personal Property Credit Register. With effect from that day, they shall be put at the disposal of the managers duly appointed by the Articles of Association or by a subsequent instrument.

In the event where the company is not registered in the Trade and Personal Property Credit Register within a period of six months from the initial deposit of the funds at the bank or at a notary's office, the investors may either individually or collectively through an agent, request

the president of the competent court to authorize withdrawal of the amount of their contributions.

### **CHAPTER 3 CONDITIONS OF FORM**

#### **Article 315 :**

The partner(s) shall, under penalty of annulment of the company, participate in the Memorandum of Association in person or through their authorized agent with special powers.

#### **Article 316 :**

The initial managers and the partners responsible for the nullity of the company shall be jointly and severally liable towards the other partners and third parties for the damage resulting from the nullity.

Liability action shall be barred at the end of three years with effect from the date when the annulment decision became final.

## **TITLE 2 FUNCTIONING OF A PRIVATE LIMITED COMPANY**

### **CHAPTER 1 TRANSACTIONS RELATING TO COMPANY SHARES**

#### **Section 1. Transfer of company shares**

##### **Sub-section 1. Share transfers inter vivos**

##### **Paragraph 1. Form of transfer**

#### **Article 317 :**

The transfer of company shares inter vivos shall be established in a written document.

Such transfer may be binding on the company only after compliance with one of the following formalities :

- (1) notification of the transfer to the company by extra-judicial act ;
- (2) acceptance of the transfer by the company in a notarial deed ;
- (3) deposit of an original copy of the transfer agreement at the company's registered office against an attestation of deposit issued by the manager.

The transfer shall be demurrable to third parties only after compliance with one of the above formalities, amendment of the Articles of Association and publication in the Trade and Personal Property Credit Register.

##### **Paragraph 2. Terms of transfer**

##### **Sub-paragraph 1. Transfer between partners**

#### **Article 318 :**

The Articles of Association shall freely define the conditions for the transfer of company shares between partners. Failing this, share transfers between partners shall be free.

The Articles of Association may also define the conditions for the transfer of company shares between spouses, ascendants and descendants. Failing this, shares shall be freely transferable between the persons concerned.

### **Sub-paragraph 2. Transfer to third parties**

#### **Article 319 :**

The Articles of Association shall freely define the conditions for the transfer of company shares against payment to third parties outside the company. Failing this, the transfer shall be possible only with the consent of the majority of non-transferor partners holding three-quarters of the company shares, excluding the shares of the transferor partner.

The transferor partner shall notify the company and each of the other partners of his plan to transfer shares.

Where the company does not make known its decision within a period of three months from the date of the last of the notifications provided for in the above paragraph, its consent to the transfer shall be deemed to be granted.

Where the company refuses to consent to the transfer, the partners shall be liable, indefinitely, jointly and severally liable, within a period of three months following notification of the refusal to the transferor partner, to acquire the shares at a price which, failing an agreement between the parties, shall be fixed by an expert appointed by the president of the competent court, at the request of the earliest party.

The three-month period stipulated above may be extended once only by order of the president of the competent court, provided that such an extension shall not exceed twenty days. In such case, the sums due shall bear interest at the legal rate.

The company may also, with the consent of the transferor partner, decide within the same time limit to reduce the amount of the registered capital by the face value of the shares of the said partner and buy back such shares at a price fixed by mutual agreement between the parties or determined as provided for in paragraph 4 of this article.

#### **Article 320 :**

Where, upon expiry of the time limit set in the preceding article, none of the solutions provided for in paragraphs 4 and 5 of the said article are implemented, the transferor partner may freely carry out the transfer initially planned or, where he deems it preferable, abandon the transfer and keep his shares.

### **Sub-section 2. Transfer due to death**

#### **Article 321 :**

The Articles of Association may provide that in case of the death of a partner, one or more of his rightful claimants or a successor may become partners only after they have been approved under the conditions laid down by the Articles of Association.

Under penalty of nullity of such provision, the time limit granted the company for the approval shall not be longer than that provided for in Articles 319 and 320 of this Uniform Act and the required majority may not be more than the one provided for in Article 319.

The approval decision shall be notified to each of the interested heirs or successor concerned by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

In case of refusal of approval, the provisions of Articles 318 and 319 of this Uniform Act shall apply and where no solution provided for under this article is implemented within the

prescribed time limits, the approval shall be deemed to be granted. The same shall apply where no notification has been sent to the persons concerned.

## **Section 2. Pledging of company shares**

### **Article 322 :**

Where the company consents to a plan to pledge company shares under the conditions governing the transfer of shares to third parties, such consent shall imply the approval of the transferee in case of the compulsory liquidation of regularly pledged company shares, unless the company prefers, after the transfer, to immediately redeem the said shares in order to reduce its capital.

In order to implement the provisions of the above paragraph and for the pledge to be demurrable to third parties, the pledging of shares may be established by notarial deed or by private deed notified to the company and published in the Trade and Personal Property Credit Register.

## **CHAPTER 2 MANAGEMENT**

### **Section 1. Organization of management**

#### **Sub-section 1. Appointment of managers**

### **Article 323 :**

A private limited company shall be managed by one or more natural persons, whether or not they are partners of the company.

They shall be appointed by the partners in the Articles of Association or in a subsequent instrument. In the latter case, unless a provision in the Articles of Association requires a stronger majority, the decision shall be taken by a majority of the partners holding more than half of the registered capital.

#### **Sub-section 2. Term of office**

### **Article 324 :**

In the absence of provisions in the Articles of Association, the manager(s) shall be appointed for four years. Their term of office shall be renewable.

#### **Sub-section 3. Remuneration**

### **Article 325 :**

The duties of manager shall be gratuitous or shall be remunerated under the conditions laid down in the Articles of Association or in a collective decision of the partners.

The determination of the remuneration shall not be subject to the scheme of regulated agreements provided for in Articles 350 et seq. of this Uniform Act.

#### **Sub-section 4 : Removal from office**

### **Article 326 :**

Manager(s) appointed in the Articles of Association or not may be removed from office by decision of the partners representing more than half of the company shares. Any provisions to the contrary shall be deemed to be unwritten. Where such removal from office is decided without any just reason, it may give rise to the payment of damages.

Besides, the manager may be dismissed by the commercial court within whose jurisdiction the company's registered office is located, for a just reason at the request of any partner.

### **Sub-section 5. Resignation**

#### **Article 327 :**

The manager(s) may freely resign. However, where such resignation is not justified, the company may bring legal action to repair the damage suffered by it.

### **Section 2. Powers of managers**

#### **Article 328 :**

In relations between partners and where the Articles of Association do not define the duties of the manager, the latter may perform all management acts in the interest of the company.

Where there are several managers, they shall separately hold the powers provided for in this article, save the right for each of them to object to a transaction before it is concluded.

The objection by one manager to the acts of another manager shall have no effect on third parties, unless it is established that they had knowledge thereof.

#### **Article 329 :**

In his relations with third parties, the manager shall be vested with the widest powers to act under all circumstances on behalf of the company, subject to the powers which this Uniform Act expressly confers on partners.

The company shall be bound, even by those acts of the manager which do not fall within the scope of the company's objects, unless it can prove that the third party knew that the acts were not within the scope of such objects or that he could not have been unaware of the fact under the circumstances, with the understanding that the mere publication of the Articles of Association shall not constitute such proof.

The provisions in the Articles of Association limiting the powers of managers which result from this article shall not be demurrable to third parties.

### **Section 3. Liability of managers**

#### **Article 330 :**

The managers shall be liable, severally or jointly and severally, as the case may be, to the company or third parties for violations of legal or statutory provisions applicable to private limited companies, or for violations of the Articles of Association, or for mistakes made during their management.

Where several managers jointly took part in the same acts, the court in charge of commercial matters shall determine the contribution of each in the repair of the damage.

#### **Article 331 :**

Apart from legal action for damages suffered by individuals, partners representing one-quarter of the partners and one-quarter of company shares may, individually or as a group, bring an action suit in the company's interest against the manager.

The plaintiffs shall be empowered to seek redress for the whole damage suffered by the company for which damages may be awarded where necessary.

Any clause in the Articles of Association subjecting action in the company's interest to the prior opinion or authorization of the general meeting or which entails renunciation of such action in advance shall be deemed to be unwritten.

No decision of the general meeting shall have the effect of extinguishing a liability suit against managers for wrongs committed during the performance of their duties.

**Article 332 :**

The action suits provided for in the two preceding articles shall be barred after a period of three years from the date of commission of the tort or, where it was concealed, from the date of disclosure thereof.

However, where the act amounts to a felony, action shall be barred after a period of ten years.

**CHAPTER 3  
COLLECTIVE DECISIONS OF THE PARTNERS**

**Section 1. Organization of collective decisions**

**Sub-section 1. General principles**

**Paragraph 1. Conditions**

**Article 333 :**

Collective decisions shall be taken at general meetings.

However, the Articles of Association may provide that all or some decisions shall be taken by written consultation of the partners, except in the case of the annual general meeting.

**Paragraph 2. Representation of the partners**

**Article 334 :**

Each partner shall have the right to participate in decision-making and shall have a number of votes equal to the number of company shares that he holds. Where there is a sole proprietor, he alone shall take decisions falling within the competence of the general meeting.

A partner may be represented by a spouse, unless the company is a partnership comprising the couple.

Except where there are only two partners, a partner may be represented by another partner. He may be represented by another person only where this is allowed by the Articles of Association.

**Article 335 :**

The authority given to another partner or to a third party shall be valid for only one meeting or for several successive meetings having the same agenda.

**Article 336 :**

A partner may not vote through a proxy for part of his shares and in person for the other part.

All provisions repugnant to the provisions of Articles 334 and 335 of this Uniform Act and to those of this article shall be deemed to be unwritten.

**Sub-section 2. Convening of general meetings**

### **Paragraph 1. Right to convene meetings**

#### **Article 337 :**

Partners shall be convened to meetings by the manager or, failing this, by the auditor where there is one.

One or more partners holding half of the company's shares, or one-quarter of the company's shares, where they represent at least one-quarter of the partners, may request the convening of a meeting.

Furthermore, any partner may petition the court for the designation of an authorized agent responsible for convening a meeting and drawing up its agenda.

### **Paragraph 2. Conditions for convening of meetings**

#### **Article 338 :**

Partners shall be convened at least fifteen days before the general meeting by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

Under penalty of nullity, the letter of invitation shall indicate the agenda.

In the case where the holding of the general meeting is requested by the partners, the manager shall convene the meeting with an agenda proposed by the requesting partners.

The partners who shall be convened under the conditions and within the time limits provided for in the first paragraph of this article, shall be placed in a situation where they can exercise the right of communication provided for in Article 345 of this Uniform Act.

### **Paragraph 3. Sanctions for improper convening of meetings**

#### **Article 339 :**

Any meeting convened improperly may be annulled. However, the action for annulment shall be inadmissible where all the partners were present or represented.

### **Sub-section 3. Consultations in writing**

#### **Article 340 :**

In the case of consultations in writing, the text of the proposed draft resolutions as well as the documents necessary for the information of the partners shall be forwarded to each of them under the same conditions as those provided for in Article 338, paragraph 1 of this Uniform Act.

The partners shall have a minimum period of fifteen days from the date of reception of the draft resolutions to express their opinion.

### **Sub-section 4. Chairing of meetings**

#### **Article 341 :**

The general meeting of partners shall be chaired by the manager or one of the managers. Where none of the managers is a partner, the meeting shall be presided over by a partner, present and consenting, who holds the majority of company shares and, in case of equality, by the eldest member.

### **Sub-section 5. Minutes of meetings**

**Article 342 :**

The deliberations of general meetings shall be recorded in the minutes indicating the time and venue of the meeting, the full names of the partners present, the documents and reports tabled for discussion, a summary of the proceedings, the text of the resolutions put to the vote and the result of the vote.

The minutes shall be signed by each of the partners present.

In case of consultation in writing, mention shall be made thereof in the minutes which shall be signed by the manager(s) and to which shall be appended the response of each of the partners.

**Article 343 :**

Copies or extracts of the minutes of the partners' deliberations shall be validly certified by a single manager.

**Section 2. Partners' rights****Sub-section 1. Principle****Article 344 :**

The partners shall have the right to be permanently informed on the affairs of the company. Prior to the holding of general meetings, they shall have the right of communication.

**Sub-section 2. Right of communication****Article 345 :**

With regard to the annual general meeting, the right of communication shall concern the summary financial statements of the fiscal year and the management report prepared by the manager, the text of the proposed resolutions and, where necessary, the auditor's general report as well as the auditor's special report relating to agreements signed between the company and a manager or partner.

The right of communication shall be exercised during the fifteen days preceding the holding of the general meeting.

From the date of communication of the above documents, any partner shall have the right to ask written questions which the manager shall be bound to answer during the general meeting.

With regard to meetings other than the annual general meeting, the right of communication shall concern the text of the proposed resolutions, the manager's report and, where necessary, the auditor's report.

All decisions taken in violation of the provisions of this article may be annulled.

A partner may, at any time, also obtain copies of the documents listed in paragraph one of this article for the last three fiscal years. Similarly, any partner who is not a manager may, twice in a fiscal year, ask written questions to the manager on any event likely to undermine the continuity of the company. The manager's answer shall be forwarded to the auditor.

Any clause repugnant to the provisions of this article shall be deemed to be unwritten.

**Sub-section 3. Right to dividend**

**Article 346 :**

Profit-sharing shall be done in accordance with the Articles of Association, subject to the mandatory provisions common to all companies.

Under penalty of annulment of all decisions to the contrary to at least one-tenth of the profits of the fiscal year from which have been deducted past losses, where necessary, shall be deposited in a reserve fund known as « legal reserve ». This appropriation shall cease to be obligatory when the reserve attains one-fifth of the registered capital of the company.

Dividends not corresponding to real profits shared to partners may be recovered from them.

The recovery action shall be barred at the end of a period of three years from the date of commencement of distribution of the dividends.

**Section 3. Ordinary collective decisions****Article 347 :**

Ordinary collective decisions shall be those taken to review the summary financial statements of the previous financial year, to authorize management to carry out the transactions for which the Articles of Association provided for prior approval by the partners, to appoint or replace managers and, where necessary, the auditor, to approve agreements between the company and one of its managers or partners and, in general, to decide on all matters that do not entail amendment of the Articles of Association.

Where the company is a sole proprietorship, the provisions of Articles 558 to 561 of the Uniform Act, excluding those of the second paragraphs of Articles 558 and 559 below, shall apply. The provisions of this Chapter which are not repugnant hereto shall also apply.

**Sub-section 1. The annual ordinary general meeting****Paragraph 1. Periodicity****Article 348 :**

The annual ordinary general meeting shall hold within six months from the close of the fiscal year. The managers may apply to the president of the competent court for this time limit to be extended.

**Paragraph 2. Rules governing voting by the partners****Article 349 :**

In ordinary meetings or in ordinary written consultations, decisions shall be adopted by one or more partners representing more than half of the capital.

Failure to attain this majority, and unless otherwise stipulated by the Articles of Association, the partners shall once more be convened or consulted, as the case may be, and decisions shall be taken by a majority vote notwithstanding the share of the capital represented.

However, in all cases, managers may not be dismissed unless by an absolute majority.

## **Sub-section 2. Agreements between the company and one of its managers or partners.**

### **Paragraph 1. Regulated agreements**

#### **Article 350 :**

The ordinary general meeting shall decide on agreements concluded directly or through a third party between the company and one of its managers or partners.

To this end, the manager(s) or the auditor, where there is one, shall present a report on the agreements concluded directly or through a third party between the company and one of its managers or partners to the annual ordinary general meeting or attach the said report to documents sent to partners.

The same shall apply to :

- agreements concluded with a separate company whose proprietor is also a manager or partner in the private limited company ;
- agreements concluded with a company in which one partner with unlimited liability, a manager, director, general manager or secretary general is simultaneously manager or partner in the private limited company.

#### **Article 351 :**

Where there is an auditor, the manager shall notify him of the agreements referred to in the preceding article within a period of one month from the date of conclusion of the said agreements.

Where the implementation of agreements concluded during previous fiscal years has been carried over to the last fiscal year, the auditor shall be informed of the situation within a period of one month following the close of the financial year.

#### **Article 352 :**

Authorization shall not be needed from the ordinary general meeting where the agreements concern routine transactions concluded under normal conditions.

Routine transactions shall mean the transactions usually carried out by a company as part of its activities.

Normal conditions shall mean the conditions that the company in question applies for similar agreements or, possibly, those applied by companies in the same sector.

#### **Article 353 :**

The report presented by the manager or the auditor, where there is one, shall include :

- (1) a list of the agreements submitted for the approval of the meeting ;
- (2) the identity of the parties to the agreement and the names of the managers or partners concerned ;
- (3) the nature and object of the agreements ;
- (4) the main terms of these agreements, particularly the prices or rates applicable, the discounts and commissions allowed, the deadlines for payment granted, the stipulated interest rates, guarantees given and, as the case may be, all other information that may enlighten the partners on the need to conclude the agreements examined ;
- (5) the volume of materials supplied, services provided or amounts of settlements made or received during the fiscal year while executing agreements concluded during previous fiscal years and carried over to the last fiscal year.

**Article 354 :**

The ordinary general meeting shall decide on the agreements as provided for under Articles 348 and 349 of this Uniform Act.

The partner concerned shall not take part in the voting during the deliberations on the agreement, and his votes shall not count in determining the majority.

**Article 355 :**

The agreements not approved by the general meeting shall still have effect. It shall be the responsibility of the contracting manager or partner, individually or jointly, as the case may be, to bear the consequences of the agreement that may be detrimental to the company.

Civil liability action shall be instituted within three years from the date of conclusion of the agreement or, where it has been concealed, from its disclosure.

Where the company is a sole proprietorship and the agreement has been concluded with the sole proprietor, this fact shall merely be entered in the record of deliberations.

**Paragraph 2. Prohibited agreements****Article 356 :**

It shall be prohibited, under penalty of nullity of the contract, for natural persons who are managers or partners, under any form whatsoever, to contract loans from the company, obtain an overdraft on a current account or otherwise from the company, or make the company endorse or guarantee their commitments towards third parties.

This prohibition shall also apply to spouses, ascendants and descendants of the persons referred to in the first paragraph of this article, including any through which these persons act.

**Section 4 : Extraordinary collective decisions****Article 357 :**

Extraordinary collective decisions shall have as object the amendment of the Articles of Association.

Where the company is a sole proprietorship, the provisions of Articles 558 to 561 of this Uniform Act shall apply, save those of the second paragraphs of Articles 558 and 559. The provisions of this chapter which are not repugnant hereto shall also apply.

**Sub-section 1. General rules relating to voting by partners.****Paragraph 1. Principle****Article 358 :**

Amendments to the Articles of Association shall be decided by partners representing at least three-quarters of the registered capital. Any clause repugnant hereto shall be deemed to be unwritten.

**Paragraph 2. Exceptions****Article 359 :**

A unanimous decision shall be required in the following cases :

- (1) increasing the commitments of partners ;
- (2) transforming the company into a private company ;
- (3) transferring the company's registered office to a State other than a Contracting State.

**Sub-section 2. Decisions relating to a variation of capital.****Paragraph 1. Increase of capital****Article 360 :**

Notwithstanding the provisions of Article 358 of this Uniform Act, the decision to increase capital through the capitalization of profits or reserves shall be taken by the partners controlling at least half of the share capital

**Article 361 :**

Where the capital is increased by shares issued for cash, the funds derived from the subscription shall be deposited at the bank or at a notary's office in conformity with the provisions applicable during the formation of a company.

The funds derived from the issue may be made available to the manager where he gives the depositary bank or notary a certificate from the Trade and Personal Property Credit Register showing that the modification following the increase of capital has been recorded.

**Article 362 :**

Where the increase in capital has not been effected within six months from the initial deposit of funds derived from the issues, any subscriber may apply to the president of the competent court for authorization to withdraw the funds either personally or through an agent representing the subscribers collectively for refund to the subscribers.

**Article 363 :**

Where the increase of capital has been effected either partially or wholly by contributions in kind, the partners shall designate a shares auditor where the value of each contribution or each special benefit received, or the value of total contributions or total special benefits exceeds five million (5 000 000) CFA francs.

The shares auditor shall be designated under the same conditions as for the formation of the company.

The shares auditor may also be appointed by the president of the competent court at the request of any partner, irrespective of the number of shares the said partner controls.

He shall draw up a report on the assessment of the assets and special benefits as was made by the contributor and the company. The report shall be submitted to the meeting charged with deciding on the increase of capital.

**Article 364 :**

The contributor in kind shall not take part in the vote to decide the approval of his contribution. His shares shall not be taken into account for the determination of the quorum or the majority.

**Article 365 :**

In the absence of an assessment made by a shares auditor or where such assessment is disregarded, the partners shall be liable under the conditions laid down in Article 312 of this Uniform Act.

However, the meeting shall not reduce the value of contributions or of special benefits except by unanimous decision of the subscribers and with the express consent of the contributor or the beneficiary mentioned in the minutes. Failing this, there shall be no increase of capital.

## Paragraph 2. Reduction of capital

### Article 366 :

In no case shall the reduction of capital affect the equality between partners.

### Article 367 :

Capital reduction may be achieved by reducing the face value of shares or by reducing the number of shares.

Where there is an auditor, he shall be informed of the intended reduction of capital within thirty days prior to the holding of the extraordinary general meeting.

He shall present his appraisal of the causes and conditions of the reduction to the meeting.

In the case of written consultation, the intended reduction of capital shall be notified to the partners under the same conditions as those laid down in Article 340 above.

It shall be forbidden for the company to purchase its own shares.

However, the meeting which decided the reduction of capital not arising from losses may authorize the manager to purchase a specific number of shares to cancel them.

### Article 368 :

The reduction shall not have the effect of reducing capital below the legal minimum, unless the same meeting decides to make a corresponding increase in capital to raise it to at least the legal level.

### Article 369 :

In the event of infringement of the provisions of Article 368 of this Uniform Act, any interested party may, after giving the company's representatives formal notice to redress the situation, institute action for the company to be wound up.

The action shall be extinguished where the grounds for winding up cease to exist by the date the court is ruling on the merits of the case.

### Article 370 :

Where the meeting approves a reduction of capital not arising from losses, creditors with claims dating before the time the minutes of the deliberations were deposited at the Trade and Personal Property Credit Register may object to the reduction of capital within a period of one month with effect from the date of deposit.

The objection shall be notified to the company by an extra-judicial act. The president of the court may dismiss the objection or order the claims to be reimbursed, or the guarantees to be provided, where the company offers any and they are deemed adequate.

The capital reduction operations may not begin during the period of time allowed for objection.

## Paragraph 3. Variation of shareholders' equity

### Article 371 :

Should the losses recorded in the summary financial statements cause the shareholders' equity in the company to fall below half of the registered capital, the manager or the auditor, as the case may be, shall, within a period of four months following the approval of the

accounts that revealed the losses, consult the partners on the advisability of calling for a premature winding up of the company.

**Article 372 :**

Where the company is not wound up, it shall, within a period of two years following the close of the fiscal year showing a deficit, re-constitute its shareholders' equity up to a level where it is at least half of the registered capital.

Failing this, it shall reduce its capital by an amount at least equal to the amount of losses which could not be charged to the reserves, provided that the reduction of capital shall not result in reducing the capital below the legal level.

**Article 373 :**

Where the managers or the auditor cannot cause a decision to be taken, or where the partners could not validly deliberate, any interested party may petition the competent court to pronounce the dissolution of the company.

The same shall apply where the shareholders' equity is not reconstituted within the prescribed time limit.

The action shall be extinguished where the grounds for winding up the company have ceased to exist by the date the competent court is ruling on the merits of the case.

### **Sub-section 3. Transformation of the company**

**Article 374 :**

A private limited company may be transformed into another type of company.

The transformation shall not give rise to a new corporate body.

The company may not be effectively transformed unless, at the time of the proposed transformation, the shareholders' equity in the private limited company is at least equal to its registered capital and where the company has drawn up the balance-sheets for its first two fiscal years and they have them approved by the partners.

**Article 375 :**

The company may not be transformed unless on the basis of an auditor's report certifying, under his responsibility, that the conditions laid down in Article 374 of this Uniform Act have been fulfilled.

Where there is no auditor, the manager shall choose one under the conditions laid down in Articles 694 et seq. of this Uniform Act.

Any transformation carried out contrary to these provisions shall be null and void.

## **CHAPTER 4 AUDIT OF THE COMPANY**

### **Section 1. Appointment of an auditor**

#### **Sub-section 1. Companies concerned**

**Article 376 :**

Private limited companies whose registered capital exceeds ten million (10 000 000) CFA francs or which fulfil either of the following two conditions :

- (1) the annual turnover exceeds two hundred and fifty million (250 000 000) CFA francs ;  
(2) the permanent staff exceeds 50 persons,  
shall be required to designate at least one auditor.

For other private limited companies which do not fulfil these criteria, the appointment of an auditor shall be optional. However, the appointment of the auditor may be requested before the court by one or more partners controlling at least one-tenth (1/10) of the registered capital.

### **Sub-section 2. The auditor**

#### **Article 377 :**

The auditor shall be chosen under the conditions laid down in Articles 694 et seq. of this Uniform Act.

### **Sub-section 3. Incompatibilities**

#### **Article 378 :**

The following persons may not be appointed auditor :

- (1) managers and their spouses ;
- (2) contributors in kind and persons having special benefits ;
- (3) persons receiving from the company or from its managers periodic payments of any type, as well as their spouses.

### **Sub-section 4. Term of office of the auditor**

#### **Article 379 :**

The auditor shall be appointed for three fiscal years by one or several partners controlling more than half of the registered capital.

Where this majority is not obtained and unless otherwise stipulated by the Articles of Association, the auditor shall be chosen by a majority vote, irrespective the share capital represented.

### **Sub-section 5. Penalties attendant on appointment or working conditions**

#### **Article 380 :**

Deliberations conducted without the due appointment of an auditor or on the report of an auditor who has been appointed or has remained in office contrary to the provisions of Article 379 of this Uniform Act shall be null and void.

Action for annulment shall be extinguished where the deliberations have been formally approved by a meeting upon the report of a duly appointed auditor.

### **Section 2. Conditions governing the performance of the duties of auditor**

#### **Article 381 :**

The provisions relating to the powers, duties, obligations, liability, dismissal and remuneration of the auditor shall be specified in a specific instrument governing the profession of auditor.

### TITLE 3 MERGER-SCISSION

**Article 382 :**

The provisions of Articles 672, 676, 679, 688 and 689 of this Uniform Act shall apply to mergers or scissions of private limited companies for the benefit of the same type of companies.

Where the operation is realized contributions to existing private limited companies, the provisions of Article 676 of this Uniform Act shall also apply.

**Article 383 :**

Where the merger is realized by contributions to a new private limited company, the new company may be formed with the contributions of the merging companies alone.

Where the scissions involves contributions to new private limited companies, the new companies may be incorporated with the contributions of the split company alone. In this case, and where the shares of each of the new companies are distributed to the partners of the split company proportionately to their shares in the said company, there shall be no need for the report referred to in Article 672 of this Uniform Act to be drawn up.

In the cases provided for in the two preceding paragraphs, the partners of the disappearing companies may act as of right as founders of the new companies and shall proceed in accordance with the provisions of this Book.

### TITLE 4 DISSOLUTION OF A PRIVATE LIMITED COMPANY

**Article 384 :**

A private limited company may be dissolved for the same reasons applicable to all companies.

A private limited company shall not be dissolved where one of the partners has been banned, is bankrupt or incapacitated.

Unless otherwise stipulated by the Articles of Association, it shall not be dissolved following the death of a partner.

**BOOK 4  
PUBLIC LIMITED COMPANY**

**TITLE I  
GENERAL PROVISIONS**

**SUB-TITLE I  
FORMATION OF A PUBLIC  
LIMITED COMPANY**

**CHAPTER 1  
GENERAL**

**Section 1 : Definition**

**Article 385:**

A public limited company shall be a company in which the liability of each shareholder for the debts of the company is limited to the amount of shares he has taken and his rights are represented by shares.

A public limited company may have only a single shareholder.

**Article 386:**

A public limited company shall be known by a company name which shall immediately be preceded or followed in legible characters by the words: "public limited company" or the abbreviation: "plc" and the method of administration of the company as provided for in Article 414 below.

**Section 2 : Authorized capital**

**Article 387:**

The minimum authorized capital shall be fixed at ten million (10,000,000) CFA francs. It shall be divided into shares of a face value of not less than ten thousand (10,000) CFA francs.

**Article 388:**

The capital of a public limited company shall be fully subscribed before the date of signature of its Articles of Association or holding of the constituent general meeting.

**Article 389:**

At least one quarter of the face value of shares representing contributions in cash shall be paid up during capital subscription.

The rest shall be paid up within a period of not more than three years from the date of registration of the company in the Trade and Personal Property Credit Register, in accordance with the terms and conditions laid down by the Articles of Association or by a decision of the board of directors or of the managing director.

Shares representing contributions in cash which have not been fully paid up shall be registered shares.

As long as the capital is not fully paid up, the company may neither increase its capital, unless such increase of capital is by contributions in kind, nor issue bonds.

**CHAPTER 2****FORMATION WITHOUT CONTRIBUTION IN KIND  
AND WITHOUT STIPULATION OF SPECIAL BENEFITS****Section 1 : Preparation of allotment letters****Article 390:**

Subscription for shares representing contributions in cash shall be established by an allotment letter prepared by the founders of the company or by one of them and dated and signed by the subscriber or by his authorized agent who shall write out entirely in letters the number of shares subscribed.

**Article 391:**

The allotment letter shall be prepared in two original copies, one of which shall be for the company being formed and the other for the notary responsible for drawing up the statement of subscription and payment.

**Article 392:**

The allotment letter shall set out:

- 1) the name of the company to be formed, followed, where necessary, by its acronym;
- 2) the form of the company;
- 3) the amount of the authorized capital to be subscribed, stating the share of capital represented by contributions in kind and the share to be subscribed in cash;
- 4) the address of the registered office;
- 5) the number of shares issued and their face value, indicating, where necessary, the various categories of shares created;
- 6) the terms and conditions of issue of shares subscribed in cash;
- 7) the name or business name and address of the subscriber and the number of shares subscribed and the payments made;
- 8) the indication of the depository in charge of keeping the funds until the company is registered in the Trade and Personal Property Credit Register;
- 9) the indication of the notary in charge of drawing up the statement of subscription and payment;
- 10) the indication of handing over to the subscriber of a copy of the allotment letter.

**Section 2 : Deposit of funds and notarial statement  
of subscription and payment****Article 393:**

Funds derived from subscription for shares issued for cash shall be deposited by the persons who received them, on behalf of the company being formed, either with a notary or in a special account opened in the name of the company at a bank domiciled in the Contracting State of the registered office of the company being formed.

The funds shall be deposited within eight days following the receipt thereof.

The depositor shall hand over to the bank, at the time of depositing the funds, a list showing the identity of the subscribers and indicating, for each of them, the amount of money paid.

The depository shall be bound, until the funds are withdrawn, to communicate the list referred to in paragraph 3 above to every subscriber who, after showing proof of his subscription, so requests. The applicant may study the list and obtain, at his expense, delivery of a copy thereof.

The depositary shall give to the depositor a certificate of deposit attesting the deposit of the funds.

**Article 394:**

On presentation of allotment letters and, where necessary, a certificate issued by the depositary attesting the deposit of funds, the notary shall state in the act he shall draw up, referred to "notarial statement of subscription and payment," that the amount of subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount paid corresponds to the total sums of money deposited in his chambers or, where necessary, appearing on the certificate referred to above. The certificate issued by the depositary shall be appended to the notarial statement of subscription and payment.

The notary shall make the statement available to subscribers who may examine it and obtain a copy thereof in his chambers.

### **Section 3 : Drawing up of the Articles of Association**

**Article 395:**

The Articles of Association shall be drawn up in accordance with the provisions of Article 10 of this Uniform Act.

**Article 396:**

The Articles of Association shall be signed by all the subscribers personally or by an authorized agent specially empowered for the purpose, after the statement of subscription and payment has been drawn up.

**Article 397:**

The Articles of Association shall contain the information provided for in Article 13, with the exception of item 6, above. They shall, in addition, mention:

- 1) the chosen method of administration and management;
- 2) as the case may be, either the full name, address, profession and nationality of natural persons who are members of the first board of directors of the company or permanent representatives of corporate bodies that are members of the board of directors, or the full name, address, profession and nationality of the managing director and of the first auditor and his alternate;
- 3) the business name, the amount of capital and the form of corporate bodies that are members of the board of directors;
- 4) the form of shares issued;
- 5) provisions relating to the composition, functioning and powers of the organs of the company;
- 6) where necessary, restrictions to the free negotiability and to the free transfer of shares, as well as the terms of approval and pre-emption of shares.

### **Section 4 : Withdrawal of funds**

**Article 398:**

The withdrawal of funds derived from subscriptions in cash may take place only after registration of the company in the Trade and Personal Property Credit Register.

Withdrawal shall be effected, depending on the case, by the chairman and managing director, the general manager or the managing director, on presentation to the depositary of the certificate issued by the court Registry attesting the registration of the company in the Trade and Personal Property Credit Register.

Any subscriber may, six months after payment of funds, bring an action before the president of the competent court sitting in chambers for the appointment of an agent responsible for withdrawing the funds to give back to the subscribers, subject to the deduction of his distribution costs where, on that date, the company is not registered.

## CHAPTER 3

### FORMATION WITH CONTRIBUTION IN KIND AND/OR STIPULATION OF SPECIAL BENEFITS

#### Section 1 : Principle

##### **Article 399 :**

The formation of public limited companies shall, in addition to the provisions of the preceding chapter which are not to the contrary, be subject to the provisions of this chapter in case of contribution in kind and/or stipulation of special benefits.

#### Section 2 : Intervention of shares auditor

##### **Article 400:**

Contribution in kind and/or special benefits shall be evaluated by a shares auditor.

The shares auditor, who shall be chosen from the list of auditors according to the procedure laid down in Articles 694 et seq. of this Uniform Act, shall be designated unanimously by the future partners of the company or, failing this, by the president of the competent court, at the request of the founders of the company or of one of them.

##### **Article 401:**

The shares auditor shall be responsible for drawing up a report describing each of the contributions and/or special benefits, showing their value, stating the method of evaluation chosen and the reasons for the choice, and asserting that the value of the contributions and/or special benefits corresponds to at least the face value of the shares to be issued.

##### **Article 402:**

The shares auditor shall, in the accomplishment of his task, enlist the assistance of one or more experts of his choice. The fees of these experts shall be borne by the company, unless otherwise provided for in the Articles of Association.

##### **Article 403:**

The shares auditor's report shall be deposited at the address of the registered office at least three days before the date of the constituent general meeting.

It shall be made available to the subscribers who may examine it or obtain a complete or partial copy thereof at their expense.

#### Section 3 : Constituent general meeting

##### **Article 404:**

The constituent general meeting shall be convened by the founders after the notarial statement of subscription and payment of funds has been drawn up.

Notice of the meeting shall be by hand delivered letter against acknowledgement of receipt or by registered letter with request for advice of delivery, indicating the agenda, venue, date and time of the meeting.

Notice of the meeting shall be addressed to each subscriber at least fifteen days before the date of the meeting.

**Article 405:**

The proceedings of the meeting shall only be valid where the subscribers present or represented hold at least half of the shares issued. Where the quorum is not met, a second invitation shall be addressed to the subscribers no later than six days before the date fixed for the meeting.

On the second invitation, the proceedings of the meeting shall be valid only where the subscribers present or represented hold at least one quarter of the shares issued. Where this latter quorum is not met, the meeting shall be held within two months from the date fixed in the second invitation. The subscribers shall be convened at least six days before the date of the meeting.

On the third invitation, the proceedings of the meeting shall be valid only where the quorum conditions referred to in the second paragraph above are met.

**Article 406:**

Decisions of the meeting shall be taken by a two-thirds majority of the votes of the subscribers present or represented, subject to the provisions of Articles 409 and 410 paragraph 2 of this Uniform Act.

Blank votes shall not be taken into consideration in computing the majority.

**Article 407:**

The holding of the meeting shall be subject to the provisions of Article 529 et seq. of this Uniform Act that are not repugnant hereto, in particular as concerns the constitution of its bureau and the rules of representation and participation in the meeting.

It shall be presided over by the shareholder with the highest number of shares or, failing this, by the oldest shareholder.

**Article 408:**

Each contribution in kind and each special benefit shall be the object of a special vote by the meeting.

The meeting shall approve or disapprove the shares auditor's report on the evaluation of contributions in kind and the grant of special benefits.

The shares of the contributor or of the beneficiary of special benefits, even where he is also a cash subscriber, shall not be taken into account when computing the quorum and the majority and the contributor or the beneficiary of special benefits shall not vote either by himself or as authorized agent.

**Article 409:**

The meeting shall reduce the value of contributions in kind or of special benefits only unanimously by the subscribers and with the express consent of the contributor or the beneficiary.

The consent of the contributor or of the beneficiary shall be mentioned in the minutes where the value given the goods contributed or the special benefits provided for is different from the value adopted by the shares auditor. The shareholders and the directors or the managing director, as the case may be, shall be jointly liable vis-à-vis third parties for a period of five years for the value given the contributions and/or the special benefits.

**Article 410:**

Furthermore, the constituent general meeting shall:

- 1) ascertain that the capital is fully subscribed and that the shares are paid up under the conditions laid down in Articles 388 and 389 of this Uniform Act;
- 2) adopt the Articles of Association of the company which it shall amend only unanimously by all the subscribers;
- 3) appoint the first directors or managing director, as the case may be, as well as the first auditor;
- 4) take a decision on the acts done on behalf of the company being formed, in accordance with the provisions of Article 106 of this Uniform Act, upon a report drawn up by the founders;
- 5) give, where necessary, authority to one or more members of the board of directors or to the managing director, as the case may be, to enter into commitments on behalf of the company before its registration in the Trade and Personal Property Credit Register, under the conditions laid down in Article 111 of this Uniform Act.

**Article 411:**

The minutes of the meeting shall indicate the date and venue of the meeting, the type of meeting, the method of convening it, the agenda, the quorum, the resolutions put to vote and, where necessary, the quorum and voting conditions for each resolution and the result of voting for each of them.

The minutes shall be signed, as the case may be, by the session Chairman and by one other member, or by the sole member, and shall be filed at the registered office, together with the attendance sheet and its appendices.

They shall indicate, where necessary, the acceptance of their appointments by the first members of the board of directors or by the managing director, as the case may be, as well as by the first auditor.

**Article 412:**

Any constituent general meeting irregularly convened shall be cancelled under the conditions laid down in Articles 242 et seq. of this Uniform Act.

However, no action for nullity of the meeting shall be admissible where all the shareholders were present or represented.

**Article 413:**

The founders of the company responsible for the nullity of the constituent general meeting and the directors or the managing director, as the case may be, in office at the time when the nullity was pronounced may be declared jointly liable for damage suffered by third parties as a result of the nullity of the company.

**SUB-TITLE 2  
ADMINISTRATION AND MANAGEMENT OF A PUBLIC  
LIMITED COMPANY**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 414:**

The method of administration of each public limited company shall be clearly defined by its Articles of Association which shall choose between:

- a public limited company with a board of directors; or

- a public limited company with a managing director.

A public limited company may, during its life, change at any time its method of administration and management.

The decision shall be taken by an extraordinary general meeting of shareholders which shall amend the Articles of Association accordingly.

The amendments shall be entered in the Trade and Personal Property Credit Register.

## **CHAPTER 2 PUBLIC LIMITED COMPANY WITH BOARD OF DIRECTORS**

### **Article 415:**

A public limited company with a board of directors shall be managed either by a chairman and managing director or by a chairman of the board of directors and a general manager.

### **Section 1 : Board of directors**

#### **Sub-Section 1 : Composition of board of directors**

#### **Paragraph 1 : Number and appointment of directors**

### **Article 416:**

A public limited company may be administered by a board of directors comprising not less than three and not more than twelve members.

### **Article 417:**

Not more than one-third of the members of the board shall be non shareholders of the company.

Directors who are not shareholders of the company shall be subject to the provisions of Articles 416 to 434 of this Uniform Act.

### **Article 418:**

The number of directors of a public limited company may be temporarily exceeded, in case of a merger with one or more companies, by up to the total number of directors who have been in office for more than six months in the companies merged; the number of directors shall however not exceed twenty-four.

Directors who are dead, dismissed or who have resigned may not be replaced and new directors may not be appointed, save during a new merger and as long as the number of directors in office has not been reduced to twelve.

### **Article 419:**

The first directors shall be designated by the Articles of Association or, where necessary, by the constituent general meeting.

During the existence of the company, the directors shall be nominated by the ordinary general meeting.

However, in case of a merger, an extraordinary general meeting may appoint new directors.

Any appointment in violation of the provisions of this article shall be null and void.

## **Paragraph 2 : Term of office of directors**

### **Article 420:**

The term of office of directors shall be freely fixed by the Articles of Association, but shall not exceed six years in case of appointment during the existence of the company and two years in case of nomination by the Articles of Association or by the constituent general meeting.

## **Paragraph 3 : Nomination of the permanent representative of a corporate body that is member of the board of directors and his term of office**

### **Article 421:**

A corporate body may be appointed director. It shall, on its appointment, nominate, by hand-delivered letter with acknowledgement of receipt or by registered letter with acknowledgement of receipt addressed to the company, a permanent representative for his term of office. Although the permanent representative so nominated is not personally a director of the company, he shall be subject to the same conditions and obligations and shall incur the same civil and criminal liabilities as if he were director in his own name, without prejudice to the joint and several liability of the corporate body that he represents.

A permanent representative may or not be a shareholder of the company.

### **Article 422:**

The permanent representative shall perform his duties during the term of office of the corporate body that he represents.

The corporate body shall, each time its term of office is renewed, state whether it maintains the same physical person as its permanent representative or nominate, on the spot, another permanent representative.

### **Article 423:**

Where a corporate body terminates the appointment of its permanent representative, it shall be bound to immediately notify the company, by hand-delivered letter with acknowledgement of receipt or by registered letter with acknowledgement of receipt delivery, of such termination as well as of the identity of his new permanent representative.

The same shall apply in the event of death or resignation of the permanent representative or for any reason that may prevent him from performing his duties.

## **Paragraph 4: Elections**

### **Article 424:**

The conditions for the election of directors shall be freely laid down in the Articles of Association which may provide for the distribution of the offices of director according to the categories of shares. However, and subject to the provisions of this Uniform Act, such distribution shall neither deprive the shareholders of their eligibility to the board of directors nor a category of shares of its representation on the board.

The directors shall be eligible for re-election unless otherwise provided for in the Articles of Association.

Any appointment made in violation of the provisions of this article shall be null and void.

### **Article 425:**

A natural person who is director in his own name or permanent representative of a corporate body that is director shall not at the same time be a member of more than five boards of

directors of public limited companies having their registered office on the territory of the same Contracting State.

Any natural person who, on taking up a new term of office, infringes the provisions of the preceding paragraph shall, within a period of three months following his appointment, resign from one of the boards of directors.

At the expiry of this deadline, he shall be deemed to have given up the new term of office and shall refund all remuneration received in whatever form, without the validity of proceedings in which he took part being called into question.

**Article 426:**

Unless otherwise provided for in the Articles of Association, a worker of a company may be appointed director where his contract of employment corresponds to an effective job. Likewise, a director may conclude a contract of employment with the company where such contract corresponds to an effective job. In this case, the contract shall be subject to the provisions of Articles 438 et seq. of this Uniform Act

**Article 427:**

The appointment of directors shall be registered in the Trade and Personal Property Credit Register.

The nomination of a permanent representative shall be subject to the same registration formalities as if he were a director in his own name.

**Article 428:**

Decisions taken by an irregularly constituted board of directors shall be null and void. They shall be disposed of in accordance with the provisions of Articles 242 et seq. of this Uniform Act.

**Paragraph 5 : Vacancy on the board of directors**

**Article 429:**

In the event of one or more vacancies in the board of directors due to death or resignation, the board may co-opt, between two meetings, new directors.

Where the number of directors is below the statutory minimum or where the number of directors who are shareholders of the company is less than two-thirds of the members of the board, the board of directors shall, within a period of three months following the vacancy, appoint new directors to complete the number. Decisions taken by the board during this period shall be valid.

Where the number of directors falls below the legal minimum, the remaining directors shall immediately convene an ordinary general meeting to complete the number of members of the board of directors.

Where the board fails to make the required appointments, or to convene a general meeting for this purpose, any party concerned may, by petition addressed to the president of the competent court, request the nomination of an agent charged with convening an ordinary general meeting to make the appointments provided for in this article or to ratify them.

The vacancy and appointments of new directors shall only take effect after the session of the board of directors held for this purpose.

Appointments by the board of directors of new directors shall be submitted to the very next ordinary general meeting for ratification.

Where the ordinary general meeting refuses to ratify the new appointments, the decisions of the board of directors shall nevertheless be valid and shall have all their effects with respect to third parties.

### **Paragraph 6 : Remuneration**

#### **Article 430:**

The directors may not, apart from the sums of money paid them under a contract of employment, receive, for their duties, any remuneration, whether or not permanent, other than those referred to in Articles 431 and 432 of this Uniform Act.

The provisions of this article shall not apply to dividends that are regularly shared among shareholders.

Any statutory clause to the contrary shall be considered unwritten. Similarly, any decision to the contrary shall be null and void.

#### **Article 431:**

The ordinary general meeting may grant the directors, as remuneration for their activities, a fixed annual duty allowance which it shall freely determine.

Directors who are shareholders shall take part in voting by the meeting and their shares shall be taken into account in computing the quorum and the majority.

Unless otherwise provided for in the Articles of Association, the board of directors shall freely share the duty allowances among its members.

#### **Article 432:**

The board of directors may also grant its members special remuneration for the missions and tasks entrusted to them, or authorize the reimbursement of travel and subsistence costs and expenses incurred in the interest of the company, subject to the provisions of Articles 438 et seq. of this Uniform Act.

Such remuneration and costs shall be the object of a special report of the auditor to the meeting.

### **Paragraph 7 : End of the duties of director**

#### **Article 433:**

Save in the case of resignation, dismissal or death, the duties of the directors shall end at the close of the ordinary general meeting held in the year during which their term of office expires to adjudicate upon the accounts of the fiscal year.

The directors may be dismissed at any time by the ordinary general meeting.

#### **Article 434:**

The resignation or dismissal of a director shall be entered in the Trade and Personal Property Credit Register.

### **Sub-section 2 : Powers of the board of directors**

#### **Paragraph 1 : Scope**

#### **Article 435:**

The board of directors shall have the widest powers to act in all circumstances on behalf of the company.

It shall exercise its powers within the limits of the objects of the company and subject to those expressly conferred by this Uniform Act to meetings of shareholders.

The board of directors shall, in particular:

- 1) define the company's objectives and guidelines for its administration;
- 2) control, on a permanent basis, the management of the chairman and managing director or of the general manager, depending on the method of management adopted;
- 3) adopt the accounts of each fiscal year.

The provisions of the Articles of Association or the decisions of the general meeting restricting the powers of the board of directors shall not be demurrable to third parties.

**Article 436:**

The decisions of the board of directors, including those that do not relate to the objects of the company, shall be binding on the company in its relations with third parties, under the conditions and within the limits stipulated in Article 122 of this Uniform Act.

**Article 437:**

The board of directors may entrust to one or more of its members any special tasks for one or more specific objects.

**Paragraph 2 : Regulated agreements**

**Article 438 :**

All agreements between a public limited company and any of its directors, general managers or assistant general managers shall be subject to the prior authorization of the board of directors.

The same shall apply to agreements indirectly involving a director or general manager or assistant general manager, or in which he deals with the company through a third party.

Agreements between a company and an enterprise or a corporate body shall also be subject to the prior authorization of the board of directors where one of the directors or a general manager or an assistant general manager of the company is owner of the enterprise or a partner indefinitely liable, manager, director, managing director, assistant managing director, general manager or assistant general manager of the contracting corporate body.

**Article 439:**

Authorization shall not be necessary where the agreements concern ordinary transactions concluded under normal conditions.

Ordinary transactions shall be transactions habitually carried out by a company as part of its activities.

Normal conditions shall be conditions that are applied, for similar agreements, not only by the company in question, but also by the other companies in the same sector of activity.

**Article 440:**

The director concerned shall be bound to inform the board of directors as soon as he is aware of an agreement subject to authorization. He shall not take part in voting on the authorization applied for.

The chairman of the board of directors or the chairman and managing director shall inform the auditor, within one month following their conclusion, of all agreements authorized by the

board of directors and shall submit them for the approval of the ordinary general meeting adjudicating on the accounts of the past fiscal year.

The auditor shall submit a special report on these agreements to the ordinary general meeting which shall give a decision on the report and approve or disapprove the agreements authorized.

The report shall contain a list of agreements submitted for the approval of the ordinary general meeting, the name of the directors concerned, the nature and object of the agreements, their essential terms notably an indication of the price or rates in force, rebates or commissions granted, securities provided and, where necessary, any other information that would enable shareholders assess the interest in concluding the agreements examined. It shall also make mention of the quantity of supplies delivered and services rendered, as well as the sums of money paid or received during the fiscal year, in implementation of the agreements referred to in the third paragraph of this article.

The party concerned shall not take part in voting and his shares shall not be taken into consideration when computing the quorum and the majority.

Where the implementation of the agreements concluded and authorized during preceding fiscal years is continued during the last fiscal year, the auditor shall be informed of such situation within one month following the close of the fiscal year.

**Article 441:**

The auditor shall be responsible for ensuring compliance with the provisions of Articles 438 to 448 of this Uniform Act and shall denounce any infringement thereof in his report to the general meeting.

**Article 442:**

The auditor shall prepare and submit the special report provided for by Articles 438 and 448 of this Uniform Act to the registered office of the company no later than fifteen days before the session of the ordinary general meeting.

**Article 443:**

Agreements approved or disapproved by the ordinary general meeting shall have their effects with respect to co-contractors and third parties except where such agreements are cancelled for fraud.

However and even where there is no fraud, the harmful consequences on the company of agreements disapproved by the general meeting may be borne by the director concerned and, eventually, by the other members of the board of directors.

**Article 444:**

Without prejudice to the liability of the director concerned, the agreements referred to in Article 438 of this Uniform Act which are concluded without the prior authorization of the board of directors shall be cancelled where they have had harmful consequences on the company.

**Article 445:**

Action for cancellation shall lapse after three years following the date of conclusion of the agreement. However, where the agreement had been concealed, the time limit shall start running from the day the agreement was uncovered.

**Article 446:**

Action for cancellation may be instituted by the organs of the company or by any shareholder acting individually.

**Article 447:**

The nullity may be avoided by a special vote of the ordinary general meeting upon a special report by the auditor stating the reasons why the authorization procedure was not followed.

The director or the general manager concerned shall not take part in the voting and his shares shall not be taken into consideration in computing the quorum and the majority.

**Article 448:**

The provisions of Articles 438 to 448 of this Uniform Act shall be applicable to the general manager and the assistant general manager.

**Paragraph 3 : Securities, guarantees and sureties**

**Article 449:**

Securities, guarantees, sureties and on-demand sureties given by the company for commitments entered into by third parties shall be the object of prior authorization of the board of directors.

The board of directors may authorize the chairman and managing director or the general manager, as the case may be, to give securities, guarantees, sureties and on-demand sureties for a total amount to be fixed by the Board.

The authorization may also fix, per commitment, an amount above which the security, guarantee, surety or on-demand surety of the company may not be given.

Where a commitment exceeds either of the amounts so fixed, the authorization of the board of directors shall be required in each case.

The duration of the authorization provided for in the preceding paragraph shall not be more than one year no matter the duration of the commitments for which security, guarantee or surety has been given.

Notwithstanding the provisions of the preceding paragraphs, the chairman and managing director or the general manager, as the case may be, may be authorized to give, with respect to tax and customs services, securities, guarantees, sureties or on-demand sureties of an unlimited amount on behalf of the company.

The chairman and managing director or the general manager, according to the circumstances, may delegate his powers in pursuance of the preceding paragraphs.

Where the securities, guarantees, sureties or on-demand sureties have been given for a total amount exceeding the maximum fixed for the current period, it shall not affect third parties who are unaware of this fact unless the amount of the commitment in question alone exceeds one of the maximum fixed by decision of the board of directors taken in pursuance of the provisions of this article.

**Paragraph 4 : Forbidden agreements**

**Article 450:**

Directors, general managers and assistant general managers, as well as their spouse, ascendants or descendants and through other third parties shall, under penalty of the agreement being declared null and void, be forbidden to contract, in any form whatsoever, loans from the company, to have it grant them a current account overdraft or otherwise, and

to have the company provide security or guarantee for their commitments towards third parties.

This prohibition shall not apply to corporate bodies that are members of the board of directors. However, their permanent representative, when acting in his personal interest, shall also be subject to the provisions of the first paragraph of this article.

Where the company runs a banking or financial institution, such prohibition shall not apply to ordinary transactions concluded under normal terms.

### **Paragraph 5 : Other powers of the board of directors**

#### **Article 451:**

The board of directors may decide to transfer the registered office of the company to a different place within the territory of the same Contracting State and amend the Articles of Association accordingly, subject to ratification of the decision by the very next ordinary general meeting. Such decision shall entail powers to amend the Articles of Association. The registration formalities referred to in Articles 263 and 264 of this Uniform Act shall be applicable to the decision.

Where the transfer of the registered office is not ratified by the general meeting, the decision of the board of directors shall be void. New publicity formalities shall therefore be performed in order to inform third parties of the return to the former registered office.

#### **Article 452:**

The board of directors shall adopt the summary financial statements and the progress report of the company which shall be submitted to the ordinary general meeting for approval.

### **Sub-section 3 : Functioning of the board of directors**

#### **Paragraph I : Convening and proceedings of the board of directors**

#### **Article 453:**

The Articles of Association shall, subject to the provisions of this Uniform Act, lay down the rules governing the convening and the proceedings of the board of directors.

The board of directors shall, on the invitation of its chairman, meet as often as possible.

However, where the board of directors has not met for more than two months, it may be convened by at least one third of its members who shall indicate the session's agenda.

The proceedings of the board of directors shall only be valid if all its members were duly invited to the meeting.

#### **Article 454:**

The proceedings of the board of directors shall be valid only where at least half of its members are present. Any clause to the contrary shall be deemed unwritten.

Decisions of the board of directors shall be taken by a majority of the members present or represented, unless the Articles of Association provide for a higher majority. In case of a tie, the session chairman shall have the casting vote, unless otherwise provided for in the Articles of Association.

Any decision taken in violation of the provisions of this article shall be null and void.

**Article 455:**

Directors as well as any person invited to take part in meetings of the board of directors shall be bound by secrecy regarding information of a confidential nature considered as such by the session chairman.

**Article 456:**

Except where there is a clause to the contrary in the Articles of Association, a director may give, by letter, telex or telefax, a power of attorney to another director to represent him at a session of the board of directors.

Each director shall have, during the same session, only one single power of attorney.

The provisions of this article shall be applicable to permanent representatives of corporate bodies.

**Article 457:**

Sessions of the board of directors shall be presided over by the chairman of the board of directors.

Where the chairman of the board of directors is unable to attend, sessions of the board shall be chaired by the director with the highest number of shares or, in case of equality, by the oldest director, unless otherwise provided for by the Articles of Association.

**Paragraph 2 : Report of the board of directors****Article 458:**

Minutes of the proceedings of the board of directors shall be entered in a special register kept at the registered office of the company. It shall be numbered and initialled by the judge of the competent court.

However, minutes may be taken on loose-leaves which shall be numbered serially, initialled under the conditions laid down in the preceding paragraph and stamped by the authority that initialled them. Once a leaf has been filled, even partially, it shall be attached to the previously used leaves.

Any addition, removal, substitution or inversion of leaves is forbidden.

The minutes shall mention the date and venue of the board meeting and shall indicate the name of the directors present, represented or absent and not represented.

They shall equally mention the presence or absence of persons invited to the meeting of the board of directors by virtue of a legal provision and the presence of any other person who attended all or part of the meeting.

**Article 459:**

Minutes of the board of directors shall be certified as true by the session chairman and by at least one director.

Where the session chairman is unable to attend, they shall be signed by at least two directors.

**Article 460:**

Copies of or extracts from minutes of the board of directors shall be validly certified by the board chairman, the general manager or, failing this, by an attorney- in-fact duly appointed to do so.

Where the company is being wound up, the copies of or extracts from the minutes shall be validly certified by the liquidator.

**Article 461:**

Minutes of the deliberations of the board of directors shall be authentic until the contrary is proved.

The production of a copy of or an extract from these minutes shall be sufficient proof of the number of directors in office as well as their presence or their representation at a session of the board of directors.

**Section 2 : Chairman and Managing Director**

**Paragraph 1 : Appointment and term of office**

**Article 462:**

The board of directors shall appoint a chairman and managing director from among its members.

Under penalty of his appointment being declared null, the chairman and managing director shall be a natural person.

**Article 463:**

The term of office of the chairman and managing director shall not exceed his term of office as director.

The chairman and managing director's mandate shall be renewable.

**Article 464:**

No person shall hold simultaneously more than three offices as chairman and managing director of public limited companies having their registered office on the territory of the same Contracting State.

Likewise, a term of office as chairman and managing director shall not be held concurrently with more than two appointments as managing director or general manager of public limited companies having their registered office on the territory of the same Contracting State.

The provisions of paragraphs 2 and 3 of Article 425 of this Uniform Act relating to the plurality of offices as director shall be applicable to the chairman and managing director.

**Paragraph 2 : Duties and remuneration of the chairman and managing director**

**Article 465:**

The chairman and managing director shall preside over the meetings of the board of directors and the general meetings of shareholders.

He shall ensure the general management of the company and represent same in its relations with third parties.

He shall, for the performance of his duties, be given the widest possible powers which he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on the general meetings or specially reserved for the board of directors by the laws and regulations in force.

The company shall, in its relations with third parties, be bound even by the acts of the chairman and managing director which do not fall within the scope of the objects of the

company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of general meetings or of the board of directors restricting the powers of the chairman and managing director shall not be demurrable to third parties acting in good faith.

**Article 466:**

The chairman and managing director may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

**Article 467:**

The terms and amount of remuneration of the chairman and managing director shall be determined by the board of directors under the conditions laid down in Article 430 of this Uniform Act.

Benefits in kind granted him, where necessary, shall be fixed in the same manner as for his remuneration.

The chairman and managing director shall receive no other remuneration from the company.

**Paragraph 3 : Impediment and dismissal of the chairman  
and managing director**

**Article 468:**

In the event of the chairman and managing director being temporarily prevented from attending to his duties, the board of directors may delegate the duties of chairman and managing director to another director.

In the case of death, resignation or dismissal of the chairman and managing director, the board shall appoint a new chairman and managing director or delegate the duties of chairman and managing director to a director.

**Article 469:**

The chairman and managing director may be dismissed at any time by the board of directors.

**Paragraph 4 : Assistant managing director**

**Article 470:**

The board of directors may, on the proposal of the chairman and managing director, appoint one or more natural persons to assist the chairman and managing director as assistant managing director.

**Article 471:**

The board of directors shall freely fix the term of office of the assistant managing director. Where he is a director, his term of office shall not exceed his term of office as director.

The mandate of the assistant managing director shall be renewable.

**Article 472:**

The board of directors shall, in agreement with the chairman and managing director, determine the scope of powers to be delegated to the assistant managing director.

The assistant managing director shall, in his relations with third parties, have the same powers as those of the chairman and managing director. He shall commit the responsibility of the company by his acts, including those which do not fall within the scope of the objects of

the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of the board of directors or of general meetings restricting the powers of the assistant managing director shall not be demurrable to third parties.

**Article 473:**

The assistant managing director may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

**Article 474:**

The terms and the amount of the assistant managing director's remuneration shall be determined by the board of directors which appoints him.

**Article 475:**

The board of directors may, in agreement with the chairman and managing director, dismiss the assistant managing director at any time.

**Article 476:**

The appointment of the assistant managing director shall normally end at the expiry of his term of office.

However, in the case of death, resignation or dismissal of the chairman and managing director, the assistant managing director shall stay in office until a new chairman and managing director is appointed, unless otherwise decided by the board of directors.

**Section 3. Chairman of the board of directors  
and general manager**

**Sub-Section 1 : Chairman of the board of directors**

**Paragraph 1 : Appointment and term of office of the chairman  
of the board of directors**

**Article 477:**

The board of directors shall appoint a chairman from among its members. He shall be a natural person.

**Article 478:**

The mandate of the chairman of the board of directors shall not exceed his term of office as director.

The term of office of the chairman of the board of directors shall be renewable.

**Article 479:**

No person shall hold simultaneously more than three offices as chairman of the board of directors of public limited liability companies having their registered office on the territory of the same Contracting State.

Likewise, an office as chairman of the board of directors shall not be held concurrently with more than two appointments as managing director or general manager of public limited companies having their registered office on the territory of the same Contracting State.

The provisions of paragraphs two and three of Article 425 of this Uniform Act relating to the plurality of offices as director shall be applicable to the chairman of the board of directors.

## **Paragraph 2. Duties and remuneration of the chairman of the board of directors**

### **Article 480:**

The chairman of the board of directors shall preside over the meetings of the board of directors and the general meetings of shareholders.

He shall ensure that the board of directors assures control of the management of the company entrusted to the general manager. The chairman of the board of directors shall, at any period of the year, carry out the verifications that he deems necessary and may request all the documents that he considers relevant for the accomplishment of his mission to be submitted to him.

### **Article 481:**

The chairman of the board of directors may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

### **Article 482:**

The board of directors shall determine the terms and amount of remuneration of its chairman, under the conditions laid down in Article 430 of this Uniform Act.

Benefits in kind granted him, where necessary, shall be fixed in the same manner as for his remuneration.

## **Paragraph 3 : Impediment and dismissal of the chairman of the board of directors**

### **Article 483:**

In the event of the chairman being temporarily prevented from attending to his duties, the board of directors may delegate the duties of chairman to one of its members.

In the case of death, resignation or dismissal of the chairman, the board of directors shall appoint a new chairman or delegate the duties of chairmen to a director.

### **Article 484:**

The board of directors may dismiss its chairman at any time. Any provision to the contrary shall be deemed unwritten.

## **Sub-section 2 : General Manager**

### **Paragraph 1 : Appointment and term of office of the general manager**

#### **Article 485:**

The board of directors shall appoint, from among its members or outside, a general manager who shall be a natural person.

The board of directors may, on the proposal of the general manager, appoint one or more natural persons to assist the general manager in the capacity of assistant general manager, under the conditions laid down in Articles 471 to 476 of this Uniform Act.

#### **Article 486:**

The board of directors shall freely fix the term of office of the general manager.

The general manager's mandate shall be renewable.

## **Paragraph 2 : Duties and remuneration of the general manager**

### **Article 487:**

The general manager shall ensure the general management of the company. He shall represent the company in its relations with third parties.

He shall, for the performance of his duties, be given the widest possible powers which he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred to the general meetings or specially reserved for the board of directors by the laws and regulations in force.

### **Article 488:**

The company shall, in its relations with third parties, be bound by even the acts of the general manager which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of general meetings or of the board of directors restricting the powers of the general manager shall not be demurrable to third parties acting in good faith.

### **Article 489:**

The general manager may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

### **Article 490:**

The terms and the amount of the remuneration of the general manager shall be determined by the board of directors which appoints him.

Benefits in kind granted him, where necessary, shall be fixed in the same manner as for his remuneration.

## **Paragraph 3 : Impediment and dismissal of the general manager**

### **Article 491:**

In the event of the general manager being temporarily or permanently prevented from attending to his duties, the board of directors shall immediately replace him by appointing, on the proposal of its chairman, a new general manager.

### **Article 492:**

The general manager may be dismissed at any time by the board of directors.

### **Article 493:**

Except in the case of death, resignation or dismissal, the appointment of the general manager shall normally end at the expiry of his term of office.

## **CHAPTER 3 PUBLIC LIMITED COMPANY WITH MANAGING DIRECTOR**

### **Section 1 : General provisions**

### **Article 494:**

Public limited liability companies with not more than three shareholders may not form a board of directors and may appoint a managing director who shall be responsible for administering

and managing the company. In this case, the provisions of the first paragraph of Article 417 shall not apply.

## **Section 2 : Appointment and mandate of the managing director**

### **Article 495:**

The first managing director shall be designated by the Articles of Association or appointed by the constituent general meeting.

During the existence of the company, the managing director shall be appointed by the ordinary general meeting. He shall be chosen from among the shareholders or outside.

### **Article 496:**

The term of office of the managing director shall be freely determined by Articles of Association. It shall not be more than six years in the case of appointment during the existence of the company and two years in the case of designation by the Articles of Association or appointment by the constituent general meeting. His mandate shall be renewable.

### **Article 497:**

No person shall hold simultaneously more than three offices as managing director of public limited companies having their registered office on the territory of the same Contracting State.

Likewise, an office as managing director shall not be held concurrently with more than two appointments as chairman and managing director or general manager of public limited companies having their registered office on the territory of the same Contracting State.

A director who, on appointment to a new office, infringes the provisions of the first and second paragraphs of this article shall, within three months of his appointment, resign from one of his offices.

He shall, at the expiry of this deadline, be deemed to have resigned from his new office and shall refund all remuneration received, in any form whatsoever, without the validity of decisions taken by him being called into question because of such resignation.

## **Section 3 : Duties and remuneration of the managing director**

### **Article 498:**

The managing director shall be responsible for ensuring the administration and general management of the company. He shall represent the company in its relations with third parties.

He shall convene and preside over general meetings of shareholders.

He shall be given the widest possible powers to act in all circumstances on behalf of the company, which powers he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on general meetings of shareholders by this Uniform Act and, where appropriate, by the Articles of Association.

The company shall, in its relations with third parties, be bound even by the acts of the managing director which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association or the resolutions of the general meeting of shareholders restricting the powers of the managing director shall not be demurrable to third parties acting in good faith.

**Article 499:**

The managing director may be bound to the company by a contract of employment, on condition that such contract corresponds to an effective job.

The contract of employment shall be subject to prior authorization by the general meeting of shareholders.

**Article 500:**

The managing director shall not, apart from the sums of money paid him under a contract of employment, receive for his duties remuneration, permanent or otherwise, other than that referred to in Article 501 of this Uniform Act.

Any statutory clause to the contrary shall be deemed unwritten. Likewise, any decision to the contrary taken by the general meeting of shareholders shall be null and void.

**Article 501:**

The ordinary general meeting of shareholders may grant the managing director a fixed annual duty allowance as remuneration for his activities.

The meeting may also grant the managing director special remuneration for missions and tasks entrusted to him, or authorize the reimbursement of travel and subsistence costs and expenses incurred in the interest of the company.

Benefits in kind granted him, where necessary, shall be fixed in the same manner as for his remuneration.

#### **Section 4 : Regulated agreements**

**Article 502:**

The managing director shall submit to the ordinary general meeting of shareholders adjudicating on the summary financial statements of the past fiscal year a report on the agreements he has concluded with the company, directly or indirectly, or through third parties and on the agreements signed with a corporate body of which he is the owner, a partner indefinitely liable or, in general, the manager.

The provisions of this article shall not be applicable to agreements relating to ordinary transactions concluded under normal terms as described in Article 439 above.

**Article 503:**

The managing director shall inform the auditor of the said agreements within a period of one month following the conclusion thereof and, in any case, no later than fifteen days before the date of the annual ordinary general meeting of shareholders.

The auditor shall submit a report on these agreements to the ordinary general meeting of shareholders.

The report shall mention the number of agreements submitted for the approval of the meeting, state the type of agreements, mention the products or services that are the object of the agreements, their essential terms, notably an indication of the prices and rates imposed, rebates or commissions granted, sureties given and, where appropriate, all other information that would enable the shareholders to assess the interest in concluding the agreements.

**Article 504:**

Agreements approved or disapproved by the general meeting shall have all their effects with regard to co-contractors and third parties.

However, any prejudicial consequences of agreements disapproved by the general meeting on the company may be borne by the managing director.

**Article 505:**

The provisions of Articles 502 and 503 of this Uniform Act shall not apply where the managing director is the sole shareholder of the public limited company.

The provisions of Articles 502 to 504 of his Uniform Act shall be applicable to the managing director and the assistant managing director.

**Section 5 : Securities, guarantees and sureties****Article 506:**

Securities, guarantees, sureties or on-demand sureties given by the managing director or by the assistant managing director shall be demurrable to the company only where they were authorized in advance by the ordinary general meeting of shareholders either as a general or special measure.

However, such restriction shall not apply to securities, guarantees and sureties given by the managing director or by the assistant managing director acting on behalf of the company, to customs and taxation services.

**Section 6 : Forbidden agreements****Article 507:**

The managing director or the assistant managing director, as well as their spouses, ascendants, descendants and by third parties shall, under penalty of the agreement being declared null and void, be forbidden to contract, in any form whatsoever, loans from the company, to have it grant them a current account overdraft or otherwise, as well as to have the company provide security or guarantee for their commitments towards third parties.

However, where the company is a banking or financial institution it may grant its managing director or its assistant managing director, in whatever form, a loan, a current account overdraft or otherwise, a security, a guarantee or any other surety where the agreements relate to ordinary transactions concluded under normal terms.

**Section 7 : Impediment and dismissal of the managing director****Article 508:**

In the even of the managing director being temporarily prevented from attending to his duties, they shall be performed temporarily by the assistant managing director. Where an assistant managing director has not been appointed, the duties of the managing director shall be performed temporarily by any person that the ordinary general meeting of shareholders deems appropriate to appoint.

In the case of death or resignation of the managing director, his duties shall be performed by the assistant managing director until the appointment, by the very next ordinary general meeting of shareholders, of a new managing director.

**Article 509:**

The managing director may be dismissed at any time by the general meeting of shareholders. Any clause to the contrary shall be deemed unwritten.

**Section 8 : Assistant managing director****Article 510:**

The general meeting of shareholders may, on the proposal of the managing director, appoint one or more natural persons to assist the managing director as assistant managing director.

**Article 511:**

The meeting shall freely fix the term of office of the assistant managing director.

The mandate of the assistant managing director shall be renewable.

**Article 512:**

The general meeting of shareholders shall, in agreement with the managing director, determine the powers to be delegated to the assistant managing director.

Statutory clauses or decisions of the general meeting of shareholders restricting the powers of the assistant managing director shall not be demurrable to third parties.

**Article 513:**

The assistant managing director may be bound to the company by a contract of employment, on condition that such employment is effective.

The contract of employment shall be submitted to the ordinary general meeting of shareholders for prior authorization.

**Article 514:**

The terms and amount of the remuneration of the assistant managing director as well as the benefits in kind to be granted him shall be determined by the ordinary general meeting of shareholders.

**Article 515:**

The ordinary general meeting of shareholders may, on the proposal of the managing director, dismiss the assistant managing director at any time.

**SUB-TITLE 3  
GENERAL MEETINGS****CHAPTER I  
RULES COMMON TO ALL MEETINGS  
OF SHAREHOLDERS****Section 1: Convening of the meeting****Article 516:**

The meeting of shareholders shall be convened by the board of directors or by the managing director, as the case may be.

Failing this, it may be convened:

- 1) by the auditor, after he has, in vain, requested the board of directors or the managing director, as the case may be, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception, to

convene the meeting. Where the auditor convenes a meeting, he shall determine the agenda and may, for vital reasons, choose a venue for the meeting other than the one, if any, provided for by the Articles of Association. He shall state the reasons for the invitation in a report read to the meeting;

- 2) by an agent appointed by the president of the competent court giving a summary judgment, at the request of either any party concerned in the case of an emergency or of one or more shareholders representing at least one-tenth of the company's capital in the case of a general meeting or one-tenth of the shares of the category concerned in the case of a special meeting;
- 3) by the liquidator.

**Article 517:**

Except otherwise provided for in the Articles of Association, meetings of shareholders shall be held at the registered office of the company or at any other place on the territory of the Contracting State of the registered office.

**Article 518:**

Subject to the provisions of this article, the Articles of Association of the company shall lay down the rules of convening meetings of shareholders.

Meetings shall be convened by a convening notice which shall be inserted in a newspaper empowered to publish legal notices.

Where all the shares are registered, the insertion provided for in the preceding paragraph may be replaced by an invitation, at the expense of the company, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception. The invitation shall include the agenda of the meeting.

Shareholders shall receive or be informed of the invitation no later than fifteen days before the date of the meeting in the case of a first invitation and, where necessary, no later than six days before the date of the meeting for subsequent invitations.

Where the meeting is convened by an agent appointed by the court, the judge may fix a different deadline.

**Article 519:**

The convening notice shall indicate the name of the company followed, where appropriate, by its acronym, form and authorized capital, the address of its registered office, its registration number in the Trade and Personal Property Credit Register, the day, time and venue of the meeting, as well as the nature (ordinary, extraordinary or special) and the agenda of the meeting.

The notice shall, where necessary, indicate where bearer shares or the certificate of deposit of the said shares are to be deposited in order to give entitlement to participate in the meeting, as well as the date on which such deposit shall be effected.

Co-owners of joint shares, legal owners and beneficiaries of shares shall be convened according to the forms mentioned above.

Any meeting irregularly convened may be cancelled. However, action for cancellation instituted under the conditions laid down in Article 246 of this Uniform Act shall not be admissible where all the shareholders were present or represented.

**Article 520:**

The agenda of the meeting shall be prepared by the party convening the meeting.

However, where the meeting is convened by an agent appointed by the court, the agenda shall be prepared by the president of the competent court that appointed him.

Also, one or more shareholders may request the inclusion of a draft resolution in the agenda of the general meeting of shareholders where they represent:

- 1) 5% of the company's capital, where such capital is less than one thousand million (1,000,000,000) CFA francs;
- 2) 3% of the company's capital, where such capital is between one thousand million (1,000,000,000) and two thousand million (2,000,000,000) CFA francs.
- 3) 0.5% of the capital, where the capital is more than two thousand million (2,000,000,000) CFA francs.

The request shall include:

- 1) the draft resolution together with a short explanatory statement;
- 2) proof of ownership or representation of the percentage of capital stipulated in this article;
- 3) where the draft resolution concerns the presentation of a candidate for the post of director or managing director, the information stipulated in Article 523 of this Uniform Act.

**Article 521:**

Draft resolutions shall be addressed to the registered office of the company by hand-delivered letter with acknowledgement of receipt, by registered letter with notification of reception, by telex or by telexfax at least ten days before the date of the general meeting for them to be submitted to the vote of the meeting.

The proceedings of the general meeting shall be null and void where the draft resolutions forwarded in accordance with the provisions of this article are not submitted to the vote of the meeting.

**Article 522:**

The general meeting of shareholders shall not consider an issue not included in its agenda.

However, it may, during an ordinary session, dismiss one or more members of the board of directors or, where necessary, the managing director or the assistant managing director and replace them.

**Article 523:**

Where the agenda of the general meeting of shareholders concerns the presentation of candidates for the post of director or managing director, as the case may be, mention shall be made of their identity, their professional profile and their professional activities during the past five years.

**Article 524:**

The agenda of the meeting shall not be amended on the second invitation or, where necessary, for extraordinary general meetings, on the third invitation.

## **Section 2 : Communication of documents**

**Article 525:**

Concerning the annual ordinary general meeting, every shareholder shall have the right by himself or through the agent designated to represent him at the meeting, to examine at the registered office:

- 1) the inventory, summary financial statement and the list of directors of the company where a board of directors has been put in place;
- 2) reports of the auditor and of the board of directors or the managing director submitted to the meeting;

- 3) where necessary, the explanatory statement of resolutions proposed, as well as information concerning candidates for the board of directors or for the post of managing director;
- 4) the list of shareholders;
- 5) the sum total, certified by the auditor, of remuneration paid to the ten or five best remunerated managers and workers, depending on whether or not the company employs more than two hundred workers.

Except for the inventory, the shareholder's right to examine the documents referred to above shall entail the right to have copies of the documents at his expense. The right to examine the said documents shall be exercised within fifteen days preceding the date of the meeting.

With regard to meetings other than the annual ordinary general meeting, the right to examine documents shall concern the text of resolutions proposed, the report of the board of directors or of the managing director, as the case may be, and, where necessary, the report of the auditor or the liquidator.

**Article 526:**

In addition, every shareholder may at any time examine and receive a copy of:

- 1) the company's documents referred to in the preceding article concerning the last three fiscal years;
- 2) minutes and attendance lists of meetings held during the last three years;
- 3) any other documents, where the Articles of Association so provide.

Likewise, every partner of the company may, twice every fiscal year, forward written questions to the chairman and managing director, the general manager or the managing director on all issues likely to undermine the running of the company.

The answer to these questions shall be communicated to the auditor.

**Article 527:**

The right to communication provided for in Articles 525 and 526 of this Uniform Act shall also be exercised by each of the co-owners of joint shares and the legal owner and beneficiary of shares.

**Article 528:**

Where the company refuses to communicate all or part of the documents referred to in Articles 525 and 526 of this Uniform Act, the president of the competent court shall, upon an action instituted by the shareholder, give a summary judgment on such refusal.

The president of the competent court may order the company, under financial compulsion, to communicate the documents to the shareholder, under the conditions laid down in Articles 525 and 526 of this Uniform Act.

### **Section 3 : Holding of the general meeting**

**Article 529:**

The general meeting of shareholders shall be presided over as the case may be, by the chairman and managing director, the chairman of the board of directors or the managing director or, in their absence and unless there be a statutory provision to the contrary, by the member having or representing the highest number of shares or, in the case of equality, by the oldest member.

**Article 530:**

The two shareholders representing the highest number of shares by themselves or as agents shall be appointed scrutineers, subject to their acceptance.

**Article 531:**

A secretary shall be appointed by the meeting to take down the minutes of the proceedings. He may be chosen from among members who are not shareholders.

**Article 532:**

An attendance list shall be kept at each meeting. It shall contain the following information:

- 1) the full name and domicile of each shareholder present or represented, the number of shares that he holds as well as the number of votes attaching to the shares;
- 2) the full name and domicile of each authorized agent, the number of shares that he represents as well as the number of votes attaching to the shares;

**Article 533:**

The attendance list shall be signed by the shareholders present and by the agents at the beginning of the session. Powers of attorney shall be appended to the attendance list at the end of the meeting.

**Article 534:**

The scrutineers shall be responsible for certifying the attendance list.

**Article 535:**

The minutes of the proceedings of the meeting shall mention the date and venue of the meeting, the nature of the meeting, the method of convening it, the agenda, the composition of the bureau, the quorum, the text of the resolutions submitted to the vote of the meeting and the result of voting for each resolution, the documents and reports presented to the meeting and a summary of the proceedings.

The minutes shall be signed by the members of the bureau and kept at the registered office together with the attendance list and its appendices, in accordance with the provisions of Article 135 of this Uniform Act.

**Article 536:**

The copies of or extracts from minutes of meetings shall be validly certified, according to the circumstances, by the chairman and managing director, by the chairman of the board of directors, by the managing director or by any other person duly authorized to do so.

In the case of liquidation, they shall be certified by one liquidator only.

**Article 537:**

The following may attend general meetings:

- the shareholders or their representatives, under the conditions laid down in this Uniform Act or in accordance with the provisions of the Articles of Association;
- any person authorized to attend by a legal provision or by a provision of the Articles of Association of the company.

Persons who are not members of the company may also attend general meetings where they are authorized to do so by the president of the competent court, by decision of the bureau of the general meeting or by the general meeting itself.

**Section 4 : Representation of shareholders and voting rights**

**Article 538:**

Any shareholder may be represented by an attorney of his choice.

Any shareholder may receive powers from other shareholders to represent them at a general meeting, without any restriction other than those resulting from legal or statutory provisions fixing the number of votes that the same person may have in his own name and as agent.

The power of attorney shall bear:

- 1) the full name and domicile as well as the number of shares and the agent's voting rights;
- 2) an indication of the type of meeting for which the power of attorney is given;
- 3) the signature of the agent preceded by the indication "Good for power of attorney " and the date of the power of attorney.

The power of attorney shall be given for one meeting only. It may however be given for two meetings, one ordinary and the other extraordinary, held on the same day or within a period of seven days.

A power of attorney given for a meeting shall be valid for successive meetings convened with the same agenda.

Clauses contrary to the provisions of the preceding paragraphs shall be deemed unwritten.

**Article 539:**

Directors who are not shareholders may attend all meetings of shareholders in an advisory capacity.

**Article 540:**

Voting rights attached to a secured share shall be exercised by the owner of the share. A mortgagee shall, at the request of his debtor and at the latter's expense, deposit the shares he holds as security where they are bearer shares.

The depositing of the shares shall be carried out under the conditions laid down in Article 541 of this Uniform Act.

**Article 541:**

The right to attend meetings may be subject to the prior entry of shareholders in the company's registered shares register, to the depositing of bearer shares at a place specified by the convening notice or to the production of a certificate of deposit of bearer shares issued by the banking or financial institution that is depositary of the said shares.

The registration of shareholders, depositing of shares or the production of a certificate of deposit shall be done no later than five days before the holding of the general meeting.

**Article 542:**

Shares redeemed by the company in accordance with the provisions of Articles 639 et seq. of this Uniform Act shall have no voting rights attached to them. They shall not be taken into account when calculating the quorum.

**Article 543:**

Voting rights attached to capital shares or dividend shares shall be proportional to the percentage of the capital that they represent and each share shall give entitlement to one vote.

However, the Articles of Association may restrict the number of votes which each shareholder shall have in the meetings, provided that such restriction is imposed on all the shares without distinction of category.

**Article 544:**

The Articles of Association or a subsequent meeting may grant all fully paid-up shares, which have been entered in the registered shares register for at least two years in the name of a shareholder, voting rights twice those granted to the other shares, considering the quota of the registered capital that they represent.

Furthermore, in the case of an increase of capital by the incorporation of reserves, profits or issue premiums, double voting rights may be granted to registered shares given free of charge as soon as they are issued to a shareholder in proportion to the old shares for which he enjoyed such voting rights.

**Articles 545:**

Any share converted into a bearer share or transferred as property shall lose the double voting rights that may be attached to it.

However, transfer as a result of succession, dissolution of the joint estate of husband and wife or disposition inter vivos in favour of one spouse or one parent shall be capable of inheritance not entail the loss of acquired voting rights.

A merger of the company shall have no effect on double voting rights which may be exercised within the acquiring company where its Articles of Association so provide.

## CHAPTER 2 ORDINARY GENERAL MEETING

### Section 1 : Powers

**Article 546:**

The ordinary general meeting of shareholders shall take all decisions apart from those that are expressly reserved by Article 551 of this Uniform Act for extraordinary general meeting of shareholders and by Article 555 of this Uniform Act for special meetings of shareholders.

It shall in particular be empowered to:

- 1) adjudicate on summary financial statements of the fiscal year;
- 2) decide on the allocation of income; under penalty of any decision to the contrary being declared null and void, an allowance equal to at least one-tenth of the fiscal year's profits after deduction, where necessary, of previous losses, shall be allocated for the formation of a reserve fund referred to as "legal reserve". Such allowance shall no longer be compulsory where the reserve fund amounts to one-fifth of the company's registered capital;
- 3) appoint the members of the board of directors or the managing director and, where necessary, the assistant managing director, as well as the auditor;
- 4) approve or refuse to approve agreements concluded between the company's managers and the company;
- 5) issue bonds;
- 6) approve the auditor's report provided for by Article 547 of this Uniform Act.

**Article 547:**

Where the company buys, within a period of two years following its registration, property belonging to a shareholder at a cost of not less than 5,000,000 (five million) CFA francs, the auditor shall, at the request of the chairman and managing director, the chairman of the board of directors or the managing director, according to the circumstances, draw up a report

on the value of the property. The report shall be submitted to the very next ordinary general meeting for approval.

The report shall describe the property to be bought, indicate the criteria used in fixing the price and assess the relevance of such criteria.

The auditor shall draw up the report and deposit same at the registered office of the company at least fifteen days before the date of the ordinary general meeting.

The general meeting shall take a decision on the evaluation of the property under penalty of the sale being declared null and void. The seller shall not take part either personally or as an agent in the vote of the resolution on the sale, and his shares shall not be taken into account in calculating the quorum and the majority.

## **Section 2: Meeting, quorum and majority**

### **Article 548:**

The ordinary general meeting of shareholders shall hold at least once a year within a period of six months following the close of the fiscal year, subject to the extension of this deadline by a court decision.

The Articles of Association may require a minimum number of shares, which shall not be more than ten, for entitlement to attend ordinary general meetings.

Several shareholders may come together to obtain the minimum number of shares provided for by the Articles of Association and be represented by one of them.

### **Article 549:**

The proceedings of the ordinary general meeting shall be valid on the first invitation only where the shareholders present or represented hold at least one quarter of the company's shares with voting rights.

On the second invitation, no quorum shall be required.

### **Article 550:**

The decisions of the ordinary general meeting shall be taken by a majority of the votes cast. In the case of voting, blank votes shall not be taken into account.

## **CHAPTER 3 EXTRAORDINARY GENERAL MEETING**

### **Section 1 : Powers**

#### **Article 551:**

The extraordinary general meeting of shareholders shall alone be empowered to amend all the provisions of the Articles of Association of the company.

Any clause to the contrary shall be deemed unwritten.

The extraordinary general meeting shall also be empowered to:

- 1) authorize mergers, scissions, transformations and partial contributions of assets;
- 2) transfer the registered office to any other town of the Contracting State where it is located or to the territory of another Contracting State;
- 3) winding up the company prematurely or extend the duration of its life.

However, the extraordinary general meeting may increase the commitments of shareholders above their contributions only with the consent of each shareholder.

## **Section 2: Meeting, quorum and majority**

### **Article 552:**

Any shareholder may attend extraordinary general meetings without limitation of votes.

Any clause to the contrary shall be deemed unwritten.

### **Article 553:**

The proceedings of an extraordinary general meeting shall be valid only where the shareholders present or represented hold at least half of the company's shares, on the first invitation and one quarter of the shares, on the second invitation.

Where the quorum is not met, the meeting may be convened a third time within a period of not more than two months from the date fixed by the second invitation. The quorum shall remain fixed at one quarter of the shares.

### **Article 554:**

The decisions of the extraordinary general meeting shall be taken by a two-thirds majority of the votes cast.

In the event of voting, blank votes shall not be taken into account

The decision to transfer the registered office of the company to the territory of another Contracting State shall be taken unanimously by the members present or represented.

## **CHAPTER 4 SPECIAL MEETING**

### **Section 1 : Powers**

#### **Article 555:**

The special meeting shall bring together holders of shares of a given category.

The special meeting shall approve or disapprove the decision of general meetings where such decisions modify the rights of its members.

The decision of a general meeting to modify the rights relating to a category of shares shall be final only after approval by the special meeting of shareholders of that category.

### **Section 2 : Meeting, quorum and majority**

#### **Article 556:**

The proceedings of a special meeting shall be valid only where the shareholders present or represented hold at least half of the company's shares, on the first invitation, and one quarter of the shares, on the second invitation.

Where the last quorum is not met, the meeting shall hold within a period of two months from the date fixed by the second invitation. The quorum shall remain fixed at one quarter of shareholders present or represented holding at least one quarter of the company's shares.

#### **Article 557:**

The decisions of the special meeting shall be taken by a two-thirds majority of the votes cast.

Blank votes shall not be taken into account.

## **CHAPTER 5 SPECIAL CASE OF A PUBLIC LIMITED COMPANY WITH A SINGLE SHAREHOLDER**

### **Article 558:**

Where a public limited company has only one shareholder, the decisions to be taken at a meeting, be they decisions falling within the jurisdiction of the extraordinary general meeting or those falling within the jurisdiction of the ordinary general meeting, shall be taken by that shareholder.

The provisions of Articles 516 to 577 of this Uniform Act that are not contrary to the provisions of this article shall apply.

### **Article 559:**

The single shareholder shall, within a period of six months following the close of the fiscal year, take all the decisions falling within the jurisdiction of the annual ordinary general meeting.

The decisions shall be taken upon the reports of the managing director and of the auditor who attend general meetings in accordance with the provisions of Article 721 of this Uniform Act.

### **Article 560:**

Decisions taken by the single shareholder shall be in the form of minutes which shall be filed in the records of the company.

### **Article 561:**

All decisions taken by the single shareholder which would have been published in a newspaper carrying legal notices if they had been taken by a general meeting shall be published in the same manner.

## **SUB-TITLE 4. VARIATION OF CAPITAL**

### **CHAPTER I. GENERAL PROVISIONS**

#### **Section 1. Conditions for increase of capital**

### **Article 562:**

The registered capital of a company shall be increased either by issuing new shares or by increasing the face value of existing shares.

The new shares shall be paid up either in cash, or by set-off with unquestionable, liquid and due claims on the company, or incorporation of reserves, profits or issue premiums, or by contributions in kind.

The increase of capital by raising the face value of shares shall be ordered only with the unanimous consent of shareholders, save where it is effected by incorporation of reserves, profits or issue premiums.

### **Article 563:**

The new shares shall be issued either at their face value or at such value plus an issue premium.

**Article 564:**

Only the extraordinary general meeting shall be competent to decide or, where necessary, authorize an increase of capital upon a report of the board of directors or of the managing director, as the case may be, and upon a report of the auditor.

**Article 565:**

Where an increase of capital is made by incorporation of reserves, profits or issue premiums, the general meeting shall reach a decision under the quorum and majority conditions laid down in Articles 549 and 550 of this Uniform Act concerning ordinary general meetings.

**Article 566:**

The right to bonus shares as well as rights equivalent to fractional shares that shareholders may claim due to an increase of capital by incorporation of reserves, profits or issue premiums shall be negotiable and transferable.

However, the extraordinary general meeting may, under the quorum and majority conditions laid down in Article 565 of this Uniform Act, expressly order that rights equivalent to fractional shares shall not be negotiable and that the corresponding shares shall be sold.

Proceeds of the sale shall be allocated to the holders of the fractional shares no later than thirty days after the date of entry against their name of the whole number of shares allotted.

**Article 567:**

The general meeting may authorize the board of directors or the managing director, as the case may be, to determine the terms of sale of rights equivalent to fractional shares.

**Article 568:**

The general meeting may delegate to the board of directors or to the managing director, as the case may be, the necessary powers to increase the capital one or more times, to lay down all or part of the conditions for such increase and ensure that it is effected and to amend the Articles of Association accordingly.

**Article 569:**

Any clause to the contrary granting the board of directors or the managing director, as the case may be, the power to order an increase of capital shall be deemed to be unwritten.

**Article 570:**

The report of the board of directors or of the managing director, as the case may be, shall contain all relevant information on the reasons for the increase of capital proposed and on the situation of the company since the beginning of the current fiscal year and, where the ordinary general meeting which is to adjudicate on the accounts of the company has not yet held, during the previous fiscal year.

**Article 571:**

The increase of capital shall be effected within a period of three years following the general meeting that ordered or authorized it.

The increase of capital shall be deemed effected from the day the notarial statement of subscription and payment is drawn up.

**Article 572:**

The capital shall be fully paid up before any issue of new shares to be paid up in cash, under penalty of the operation being declared null and void.

## Section 2. Pre-emptive right of subscription

### Article 573:

Shares shall carry a pre-emptive right of subscription for increases of capital.

Shareholders shall, proportionately to the amount of their shares, have a pre-emptive right of subscription for shares issued for cash for an increase of capital. This right shall be irreducible.

Any clause to the contrary shall be deemed to be unwritten.

### Article 574:

During subscription, a pre-emptive right of subscription shall be negotiable where it is detached from the shares which are themselves negotiable.

Otherwise, such right shall be transferable under the same conditions as for the share.

### Article 575:

The shareholders shall, where the general meeting so expressly decides, also have a pre-emptive right to apply for excess new shares for which they would not have applied as of right.

### Article 576:

Excess shares shall be allotted to shareholders who subscribed for a number of shares higher than the number of new shares they would have subscribed for as of right. In any case they shall not be allotted more shares than they applied for.

### Article 577:

The period of time allowed shareholders to exercise their pre-emptive right of subscription shall not be less than twenty days. Time shall start running from the date of commencement of subscription.

### Article 578:

The abovementioned period shall end as soon as all applications as of right for new shares and, where necessary, applications for excess shares have been filed or as soon as the increase of capital has been fully subscribed after renunciation of their right of subscription by the shareholders who have not subscribed for shares.

### Article 579:

Where applications as of right for new shares and, where necessary, applications for excess shares have not covered the total increase of capital:

- 1) the amount of the capital increase may be limited to the amount of subscriptions made provided that such amount is at least  $\frac{3}{4}$  of the increase provided by the general meeting which ordered or authorized the increase of capital and that such option was expressly provided for by the meeting during the issue;
- 2) the shares not subscribed may be freely allotted, in whole or in part, unless otherwise decided by the meeting;
- 3) the shares not subscribed for may be offered to the public in whole or in part where the meeting expressly provides for such possibility.

### Article 580:

The board of directors or the managing director, as the case may be, may use, in the order which it shall determine, the options provided for in Article 579 of this Uniform Act or some of them only.

The increase of capital shall not be made where, after exercising these options, the amount of subscriptions received does not cover the totality of the increase of capital or, in the case provided for in paragraph 1) of Article 579 of this Uniform Act,  $\frac{3}{4}$  of such increase.

However, the board of directors or the managing director, as the case may be, may on its own initiative and in all the cases, limit the increase of capital to the amount reached where the shares subscribed represent 97% of the increase of capital.

Any decision of the board of directors to the contrary shall be deemed unwritten.

### **Paragraph 1. Usufruct**

#### **Article 581:**

Where the old shares have a usufruct attached to them, the beneficiary and the bare owner of the shares may freely determine the conditions for the exercise of the pre-emptive right of subscription for and allotment of the new shares.

Where the parties fail to reach an agreement, the provisions of Articles 582 to 585 of this Uniform Act shall apply.

These provisions shall also apply, where the parties fail to act, in the case of allotment of bonus share.

#### **Article 582:**

The beneficiary shall be entitled to the pre-emptive right of subscription attached to the old shares.

Where the bare owner sells his rights of subscription, the proceeds of the sale or the property acquired as a result of the re-investment of such money shall be subject to the usufruct.

#### **Article 583:**

Where the bare owner fails to exercise his pre-emptive right of subscription, the beneficiary may take his place and subscribe for the new shares or sell the rights of subscription.

Where the beneficiary sells the rights of subscription, the bare owner may demand that the proceeds of the sale be re-invested. The property so acquired shall be subject to the usufruct.

#### **Article 584:**

The bare owner of shares shall, vis-à-vis the beneficiary, be considered as having failed to exercise the pre-emptive right of subscription for the new shares issued by the company where he has neither subscribed for new shares nor sold the rights of subscription at least eight days before the expiry of the deadline for subscription accorded to shareholders.

#### **Article 585:**

The new shares shall belong to the bare owner for ownership without usufruct and to the beneficiary for the usufruct. However, in case of payment of funds by the bare owner or the beneficiary to make or complete a subscription, the new shares shall belong to the bare owner and to the beneficiary only up to the amount of the rights of subscription; the excess of the new shares shall belong, as freehold, to the party who paid the funds.

## Paragraph 2. Withdrawal of pre-emptive right of subscription

### Article 586:

The general meeting which orders or authorizes an increase of capital may withdraw the pre-emptive right of subscription of one or more beneficiaries designated by name for all of the increase of capital or for one or more portions of such increase.

### Article 587:

The beneficiaries, where they are shareholders, shall not take part in the vote neither by themselves nor as agents and their shares shall not be taken into consideration when calculating the quorum and the majority.

## Section 3. Issue price and report

### Article 588:

The price of issue of new shares or the conditions governing the determination of such price shall be laid down by the extraordinary general meeting upon the report of the board of directors or the managing director as the case may be, and that of the auditor.

### Article 589:

The report of the board of directors or by the managing director provided for in Article 588 of this Uniform Act shall specify:

- 1) the maximum amount of and the reasons for the proposed increase of capital;
- 2) the reasons for the proposal to withdraw the pre-emptive right of subscription;
- 3) the name of persons allotted new shares, the number of shares allotted to each of them and the issue price together with the reason therefor.

### Article 590:

Where all the conditions of increase of capital are determined by the meeting, the report referred to in Article 588 of this Uniform Act shall also mention the impact of the proposed issue on the situation of shareholders, in particular as concerns its share of the shareholders' equity at the close of the last fiscal year.

Where the close of the fiscal year precedes the planned operation by more than six months, such impact shall be appraised upon the production of a mid-term financial report on the last six months prepared using the same methods and in the same form as the annual balance-sheet.

### Article 591:

The auditor shall express his opinion on the proposal to withdraw the pre-emptive right of subscription, on the choice of data for calculating the issue price and on its amount, as well as on the impact of the issue on the situation of shareholders in relation to the company's equity.

He shall verify and certify the accuracy of data from the company's accounts on which his opinion is based.

### Article 592:

Where the general meeting has delegated its powers under the conditions stipulated in Article 568 of this Uniform Act, the board of directors or the managing director, as the case may be, shall draw up, when exercising its powers, an additional report describing the final conditions of the operation defined in accordance with the powers conferred by the meeting. The report shall also comprise the data provided for in Article 589 of this Uniform Act.

The auditor shall verify in particular that the conditions of the operation are in conformity with the powers conferred by the meeting and the information provided to the latter. He shall also express his opinion on the choice of information for the calculation of the issue price and on

the final amount of the price, as well as on the impact of the issue on the financial situation of the shareholder in particular as concerns his share of the company's equity at the close of the last fiscal year.

These additional reports shall immediately be placed at the disposal of shareholders at the registered office within fifteen days following the date of the board of directors' meeting or the decision of the managing director and notified to them at the very next meeting.

#### **Section 4. Renunciation of the pre-emptive right of subscription**

##### **Article 593:**

Shareholders may individually renounce their pre-emptive right of subscription in favour of designated persons. They may also renounce such right without mentioning any beneficiaries.

##### **Article 594:**

A shareholder who renounces his pre-emptive right of subscription shall inform the company by hand-delivered letter against acknowledgement of receipt or by registered letter with notification of reception before the expiry of the period of subscription.

##### **Article 595:**

Renunciation without indication of beneficiaries shall be accompanied, as concerns bearer shares, by corresponding coupons or a certificate issued by the depositary of the shares establishing the shareholder's renunciation of his right.

Renunciation in favour of designated beneficiaries shall be accompanied by the acceptance of the said beneficiaries.

##### **Article 596:**

New shares renounced by a shareholder without indication of beneficiaries may be subscribed for as excess shares under the conditions laid down in Article 576 of this Uniform Act or, where necessary, allotted to the shareholders or offered to the public under the conditions laid down in Article 579 of this Uniform Act.

However, where such renunciation has been notified to the company no later than on the date of the decision to increase the capital, the corresponding shares shall be placed at the disposal of other shareholders to enable them to apply as of right for new shares and, where necessary, for excess shares.

##### **Article 597:**

Where the shareholder renounces to subscribe for the increase of capital in favour of designated persons, his rights of subscription for new shares and, where necessary, for excess shares shall be transferred to the latter.

#### **Section 5. Publicity prior to subscription**

##### **Article 598:**

Shareholders shall be informed about the issue of new shares and the conditions of subscription therefor by a notice containing inter alia the following information:

- 1) the company name and, where necessary, its acronym;
- 2) the form of the company;
- 3) the amount of the registered capital;
- 4) the registered office address;
- 5) the registration number of the company in the Trade and Personal Property Credit Register;
- 6) the number and the face value of the shares and the amount of increase of capital;

- 7) the price of issue of the shares to be subscribed for and the global amount of the issue premium, where necessary;
- 8) the place and dates of commencement and close of subscription;
- 9) the existence, for shareholders, of a pre-emptive right of subscription;
- 10) the sum of money immediately payable per subscribed share;
- 11) mention of the bank or the notary to receive the funds;
- 12) where necessary, a brief description of the evaluation and the method of remuneration of contributions in kind to the increase of capital, with an indication of the provisional nature of such evaluation and method of remuneration.

**Article 599:**

Shareholders shall be informed of the notice provided for in Article 598 by hand-delivered letter against acknowledgement of receipt or by registered letter with notification of reception at least six days before the date of subscription begins at the instance, as the case may be, of agents of the board of directors, the managing director or any other person authorized to do so.

**Article 600:**

Where the general meeting has decided to abolish shareholders' pre-emptive right of subscription, the provisions of Article 598 of this Uniform Act shall not apply.

**Section 6. Preparation of an allotment letter****Article 601:**

A subscription contract shall be established by an allotment letter prepared in two copies, one of which shall be for the company and the other for the notary responsible for drawing up the statement of subscription and payment.

**Article 602:**

The allotment letter shall be dated and signed by the subscriber or his authorized agent who shall write out entirely in letters the number of shares subscribed. A copy of the allotment letter written out on a loose-leaf shall be handed over to him.

**Article 603:**

The allotment letter shall set out:

- 1) the name of the company followed, where necessary, by its acronym;
- 2) the form of the company;
- 3) the amount of the authorized capital;
- 4) the address of the registered office;
- 5) the registration number of the company in the Trade and Personal Property Credit Register;
- 6) the amount and conditions of increase of capital; the face value of shares and the issue price;
- 7) where necessary, the amount to be subscribed for shares issued for cash and the amount paid up by contributions in kind;
- 8) the name or company name and address of the person receiving the funds;
- 9) the full name and domicile of the subscriber and the number of shares subscribed;
- 10) an indication of the bank or the notary responsible for receiving the funds;
- 11) mention of the notary responsible for drawing up the statement of subscription and payment;
- 12) mention of handing over to the subscriber a copy of the allotment letter.

## Section 7. Paying up of shares

### Article 604:

At least a quarter of the face value of shares subscribed to in cash and, where necessary, the full issue premium shall be compulsorily paid up during subscription.

### Article 605:

The rest shall be paid up in one or more instalments on demand by the board of directors or the managing director, as the case may be, within a period of three years from the day of increase of capital.

### Article 606:

Shares subscribed to in cash entailing both cash payments and incorporation of reserves, profits or issue premiums shall be fully paid up during subscription.

### Article 607:

Funds derived from subscription for shares issued for cash shall be deposited by the company executives, on behalf of the company, in a bank domiciled in the Contracting State of the registered office or in the chambers of a notary.

The funds shall be deposited within a period of eight days following the receipt thereof.

### Article 608:

The depositor shall hand over to the bank or, where necessary, to the notary, at the time of depositing the funds, a list showing the identity of the subscribers and indicating, for each of them, the amount of money paid.

### Article 609:

The depositary shall be bound, until the funds are withdrawn, to communicate the said list to any subscriber who, after showing proof of his subscription, so requests.

The applicant may examine the list and obtain, at his expense, a copy thereof.

### Article 610:

The depositary shall issue the depositor a certificate attesting the deposit of funds.

### Article 611:

Where shares are paid up by set-off of claims on the company, such claims shall be the object of a statement of accounts prepared, as the case may be, by the board of directors or by the managing director and certified as true by the auditor.

## Section 8. Notarial statement of subscription and payment

### Article 612:

Subscriptions and payments shall be established by a statement by the managers of the company made in a document certified by a notary referred to as "notarial statement of subscription and payment".

### Article 613:

On presentation of allotment letters and, where necessary, a certificate issued by the depositary attesting the deposit of funds, the notary shall state in the act he draws up that the amount for subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount of payments declared by the company executives corresponds to the amount of money deposited at his chambers or, where necessary, appearing on the certificate referred to above. The certificate issued by the depositary shall be appended to the notarial statement of subscription and payment.

The notary shall make the statement available to subscribers who may examine it and obtain a copy thereof in his chambers.

**Article 614:**

Where the increase of capital is made by set-off with unquestionable, liquid and due claims, the notary shall ascertain that the shares issued for cash have been paid up on presentation of the statement of accounts certified by the auditor referred to in Article 611 of this Uniform Act. The statement shall be appended to the notarial statement of subscription and payment.

**Section 9. Withdrawal of funds**

**Article 615:**

The withdrawal of funds derived from subscription in cash may take place only after the increase of capital has been carried out.

Withdrawal shall be effected by an authorized agent of the company, on presentation to the depositary of the notarial statement of subscription and payment.

**Article 616:**

The increase of capital by issue of shares to be paid up in cash shall be considered effected on the date the notarial statement of subscription and payment is drawn up.

**Article 617:**

Any subscriber may, six months after the payment of funds, bring an action before the president of the competent court sitting in chambers for the appointment of an agent responsible for withdrawing the funds to refund to the subscribers, subject to the deduction of his distribution costs where, on that date, the increase of capital has not been effected.

**Article 618:**

The increase of capital shall be published under the conditions stipulated in Article 264 of this Uniform Act.

**CHAPTER 2**

**SPECIAL PROVISIONS RELATING TO INCREASES OF CAPITAL  
BY CONTRIBUTIONS IN KIND AND/OR BY SPECIAL BENEFITS**

**Article 619:**

Contributions in kind and/or special benefits shall be evaluated by a shares auditor appointed by the president of the competent court of the place of the registered office at the request of the board of directors or the managing director, as the case may be.

**Article 620:**

The shares auditor shall be subject to the incompatibilities provided for in Articles 697 and 698 of this Uniform Act. He may be the auditor of the company.

**Article 621:**

The shares auditor shall be responsible for assessing the value of contributions in kind and special benefits.

He may be assisted in the performance of his task by one or more experts of his choice.

The experts' fees shall be borne by the company.

**Article 622:**

The shares auditor's report shall be deposited at least eight days before the date of the extraordinary general meeting at the registered office and shall be made available to shareholders who may study it and obtain, at their expense, a complete or partial copy thereof.

It shall also be deposited, within the same time limit, at the registry of the court in charge of commercial matters of the place of the registered office.

**Article 623:**

The shares of the contributor or the beneficiary shall not be taken into account in the calculation of the quorum and the majority when the extraordinary general meeting is reaching a decision on the approval of a contribution in kind or the grant of a special benefit.

The contributor or the beneficiary shall not be entitled to vote either by himself or as an agent.

**Article 624:**

Where the meeting approves the evaluation of contributions and the grant of special benefits, it shall ascertain that the increase of capital has been effected.

**Article 625:**

Where the meeting reduces the evaluation of contributions or the remuneration of special benefits, the express approval of the modifications by the contributors, the beneficiaries or their agents duly authorized to do so shall be necessary.

Failing this, the increase of capital shall not be effected.

**Article 626:**

Initial shares shall be fully paid up as soon as they are issued.

### CHAPTER 3. REDUCTION OF CAPITAL

**Article 627:**

The registered capital of a company shall be reduced by decreasing either the face value or the number of shares.

**Article 628:**

The reduction of capital shall be authorized or ordered by the extraordinary general meeting which may delegate all the necessary powers to the board of directors or the managing director, as the case may be, to effect the reduction.

The meeting shall, under no circumstances, undermine the equality of shareholders, except with the express consent of the disadvantaged shareholders.

**Article 629:**

The draft instrument on the reduction of capital shall be communicated to the auditor at least forty-five days before the date of the extraordinary general meeting which shall order or authorize the reduction of capital.

**Article 630:**

The auditor shall table before the extraordinary general meeting a report in which he shall set out his assessment of the reasons for and condition of the reduction of capital.

**Article 631:**

Where the board of directors or the managing director, as the case may be, carries out the reduction of capital upon delegation of powers by the general meeting, he shall draw up a report thereon which shall be subject to publicity and shall amend the Articles of Association of the company accordingly.

**Article 632:**

The creditors of the company may not object to the reduction of capital where it is justified by losses.

**Article 633:**

Creditors of the company with claim prior to the depositing at the registry of the court in charge of commercial matters the minutes of the proceedings of the general meeting which ordered or authorized the reduction of capital as well as debenture holders, may object to the reduction of the capital of the company where such reduction is not justified by losses.

**Article 634:**

The time limit for lodging objection by creditors to the reduction of capital shall be thirty days from the date of depositing at the registry of the minutes of the proceedings of the general meeting which ordered or authorized the reduction of capital.

**Article 635:**

The objection shall be lodged by an extrajudicial act and brought before the competent court giving summary judgment.

**Article 636:**

The capital reduction operations may not commence during the period of objection, or where necessary, before a court judgement at first instance is given on the objection.

**Article 637:**

Where the objection is admitted, the capital reduction procedure shall be suspended until the claims are reimbursed or until guarantees are provided for the creditors where the company offers such guarantees and where they are considered adequate.

**Article 638:**

The reduction of capital shall be subject to publicity formalities as provided for in Article 264 of this Uniform Act.

## CHAPTER 4 SUBSCRIPTION - PURCHASE

### ACCEPTANCE BY THE COMPANY OF ITS OWN SHARES AS SECURITY

**Article 639:**

Subscription to or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company, shall be forbidden. Similarly, the company may not grant advances or loans or provide security for subscription to or purchase of its own shares by a third party.

However, the ordinary general meeting which has ordered a reduction of capital not justified by losses may authorize the board of directors or the managing director, as the case may be, to buy a specific number of shares with a view to cancelling them.

The founders or, in the case of an increase of capital, the members of the board of directors or the managing director shall be bound, under the conditions laid down in Articles 738 and

740 of this Uniform Act, to pay up the shares subscribed to or acquired by the company in violation of the provisions of the first paragraph of this article.

Similarly, where shares are subscribed to or acquired by a person acting in his own name but on behalf of the company, such person shall be bound to pay up the shares jointly with the founders or, as the case may be, the members of the board of directors or the managing director. The subscriber shall also be considered as having subscribed to shares on his own account.

**Article 640:**

The provisions of the first paragraph of Article 639 of this Uniform Act notwithstanding, the extraordinary general meeting may authorize the board of directors or the managing director, as the case may be, to acquire a specific number of shares in order to allot them to workers of the company. In such case, the shares shall be allotted within a period of one month from the date of their acquisition.

The company may not hold, directly or through a person acting in his own name but on behalf of the company, more than ten per cent of the total number of its own shares.

The shares acquired shall be registered and fully paid up at the time of acquisition.

The founders or, in the case of an increase of capital, the members of the board of directors or the managing director shall be bound, under the conditions laid down in Articles 738 and 740 of this Uniform Act, to pay up the shares subscribed to or acquired by the company in pursuance of the provisions of the first paragraph of this article.

Similarly, where shares are subscribed to or acquired by a person acting in his own name but on behalf of the company, such person shall be bound to pay up the shares jointly with the founders or, as the case may be, the members of the board of directors or the managing director. The subscriber shall also be considered as having subscribed to shares on his own account.

The acquisition of shares may not lead to the reduction of the shareholders' equity to an amount lower than the amount of the capital plus non-allocated reserves.

Shares held by the company shall not give entitlement to dividend.

**Article 641:**

The provisions of Article 639 of this Uniform Act shall not be applicable to shares fully paid up acquired by a universal transfer of assets or by a decision of a court.

However, the shares shall be transferred within two years following the date of subscription or acquisition thereof; after this time limit they shall be cancelled.

**Article 642:**

The acceptance of the company's own shares as security, directly or through a person acting in his own name but on behalf of the company, shall be forbidden.

The shares accepted by the company as security shall be refunded to their owner within a period of one year. The shares shall be refunded within a period of two years where the transfer of the security to the company is the result of a universal transfer of assets or a decision of a court; failing this, the security contract shall be automatically void.

The prohibition provided for in this article shall not apply to the ordinary transactions of credit enterprises.

**Article 643:**

Where the company decides to purchase its own shares with a view to cancelling them and reducing its capital by the same amount, it shall make the purchase offer to all the shareholders.

For this purpose, it shall insert in a newspaper empowered to publish legal notices of the place of the registered office of the company a notice containing the following information:

- 1) the name of the company;
- 2) the form of the company;
- 3) the address of the registered office;
- 4) the amount of the registered capital;
- 5) the number of shares to be purchased;
- 6) the price offered per share;
- 7) the method of payment;
- 8) the period of offer. The period of offer may not be less than thirty days from the date of insertion of the notice in the newspaper;
- 9) place of acceptance of offer.

**Article 644:**

Where all the shares are registered, the notice provided for in Article 643 of this Uniform Act may be replaced by a notification containing the same information addressed to each shareholder by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception. The cost of notification shall be borne by the company.

**Article 645:**

Where the shares offered for purchase exceed the number of shares to be purchased, the number of shares offered by each shareholder selling shares shall be reduced proportionately to the number of shares owned or held by him.

**Article 646:**

Where the shares offered for purchase are fewer than the number of shares to be bought, the registered capital shall be reduced to the amount of shares bought.

However, the board of directors or the managing director, as the case may be, may decide to repeat the operation under the conditions laid down in Articles 643 and 644 of this Uniform Act until the number of shares initially fixed is completely sold, on condition that the operation is repeated within the period stipulated by the general meeting that authorized the reduction of capital.

**Article 647:**

The provisions of Articles 643 and 646 of this Uniform Act shall not apply where the general meeting has authorized, in a bid to facilitate an increase of capital, a merger or a scission, the board of directors or the managing director, as the case may be, to buy a large number of shares representing not more than 1% of the amount of registered capital with a view to cancelling them.

Likewise, these provisions shall not apply in case of redemption by the company of shares whose transferee has not been approved.

The auditor shall express his opinion on the advisability and conditions of the planned purchase of shares in his report on the projected operation.

**Article 648:**

Where a usufruct is attached to the shares, the purchase offer shall be to the bare owner. However, the purchase of shares shall be final only where the beneficiary has expressly consented to the transaction.

Except otherwise agreed upon between the bare owner and the beneficiary, the purchase price of the shares shall be shared between them proportionately to the value of their respective rights to the shares.

**Article 649:**

The shares purchased by the company which issued them in order to effect a reduction of capital shall be cancelled within a period of fifteen days following the expiry of the period of the purchase offer mentioned in the notice provided for in Article 643 of this Uniform Act.

Where the purchase is made in order to facilitate an increase of capital, a merger or a scission, the time limit provided for the cancellation of the shares shall run from the day the shares were purchased. Shares acquired or held by the company in violation of the provisions of Articles 639 and 640 of this Uniform Act shall be cancelled within a period of fifteen days from the date of their acquisition or, where necessary, at the expiry of the period of one year referred to in the first paragraph of Article 640 above.

**Article 650:**

The cancellation of bearer shares shall be established by the indication "cancelled" made on the share.

Where the shares are registered, the same indication shall be made on the company's registered shares as well as on the registered shares certificate and on the counterfoil of the register from which the certificate was extracted, where necessary.

## CHAPTER 5. REDEMPTION OF CAPITAL

### Section 1. Conditions of redemption

**Article 651:**

Redemption of capital is the operation by which the company reimburses the shareholders all or part of the face value of their shares, as an advance on the proceeds of the future liquidation of the company.

**Article 652:**

The redemption of capital shall be ordered by the ordinary general meeting where it is provided for in the Articles of Association.

Where there is no provision in the Articles of Association to this effect, it shall be ordered by the extraordinary general meeting.

**Article 653:**

Shares may be totally or partially redeemed. Shares totally redeemed are referred to as dividend shares.

**Article 654:**

Redemption shall be effected by equal reimbursement for each share of the same category and shall not lead to the reduction of capital

**Article 655:**

The sums of money used for the reimbursement of shares shall be deducted from profits or withdrawn from the non-statutory reserves.

The money may not be withdrawn from the legal reserve or, except otherwise decided by the extraordinary general meeting, from the statutory reserves.

The reimbursement of shares may not lead to the reduction of shareholders' equity to an amount lower than the amount of the authorized capital plus reserves that the law or the Articles of Association do not permit to be distributed.

## **Section 2. Rights attached to redeemed shares and conversion of redeemed shares into capital shares**

### **Article 656:**

Shares totally or partially redeemed shall retain all their rights with the exception, however, of the right to the first dividend provided for in Article 145 of this Uniform Act and the reimbursement of the face value of shares which they shall lose proportionately.

### **Article 657:**

The extraordinary general meeting may decide to convert redeemed shares totally or partially into capital shares.

The conversion decision shall be taken under the quorum and majority conditions laid down for the amendment of the Articles of Association.

### **Article 658:**

The conversion of shares shall be effected by a compulsory deduction, up to the redeemed amount of shares to be converted, from the portion of profits of one or more fiscal years allocated to these shares after payment, for partially redeemed shares, of the first dividend or the interest accruing from the shares.

Similarly, the extraordinary general meeting may authorize the shareholders, under the same conditions, to pay back to the company the amount of their shares redeemed plus, where necessary, the first dividend or the statutory interest for the past period of the current fiscal year and, eventually, of the preceding fiscal year.

### **Article 659:**

The decisions provided for in Article 658 of this Uniform Act shall be submitted for ratification by the special meetings of each of the categories of shareholders having the same rights.

### **Article 660:**

The sums of money deducted from the profits or paid by the shareholders in pursuance of Article 658 of this Uniform Act shall be paid into a reserve account.

Where the shares are totally redeemed, a reserve account shall be opened for each of the categories of shares totally redeemed.

### **Article 661:**

The conversion shall be effected where the amount of a reserve account constituted by deductions from the profits of the company is equivalent to the amount of shares redeemed or of the corresponding category of shares.

The board of directors or the managing director, as the case may be, shall be empowered to make the necessary amendments to the clauses of the Articles of Association in so far as the said amendments correspond materially to the results of the operation.

### **Article 662:**

Where the conversion is carried out by payments made by shareholders, the board of directors or the managing director, as the case may be, shall be empowered to make, no later than at the close of each fiscal year, amendments to the Articles of Association corresponding to the conversions made during the said fiscal year.

**Article 663:**

Partially redeemed shares whose conversion into capital shares has been ordered shall be entitled, for each fiscal year and until such conversion is carried out, to the first dividend or to the interest in lieu thereof calculated on the basis of the amount of the shares paid up but not redeemed.

Furthermore, totally or partially redeemed shares whose conversion has been ordered by deductions from the company's profits shall, for each fiscal year and until the conversion is finally carried out, be entitled to the first dividend calculated on the basis of the amount, at the close of the preceding fiscal year, of the corresponding reserve account.

## SUB-TITLE 5 VARIATION OF SHAREHOLDERS' EQUITY

**Article 664:**

Where, owing to losses recorded in the summary financial statements, the shareholders' equity of the company falls below half of the company's authorized capital, the board of directors or the managing director, as the case may be, shall be bound, within four months following the approval of the accounts that showed the losses, to convene the extraordinary general meeting to take a decision as to whether or not the company should be wound up prematurely.

**Article 665:**

Where the winding up of the company is not ordered, the company shall be bound, no later than at the close of the second fiscal year following the one during which the losses were recorded, to reduce its capital by an amount at least equal to the amount of the losses that have not been charged to the reserves where, within such time limit, the shareholders' equity has not been reconstituted up to a value at least equal to half of the registered capital.

**Article 666:**

The decision of the extraordinary general meeting shall be deposited at the registry of the court responsible for commercial matters of the place of the registered office and entered in the Trade and Personal Property Credit Register.

The decision shall be published in a newspaper empowered to publish legal notices of the place of the registered office.

**Article 667:**

Where the session of the meeting does not hold and where the meeting fails to deliberate validly upon the last invitation, any party concerned may bring an action before the court for the winding up of the company.

Similarly, any party concerned may petition the court for the winding up of the company where the provisions of Article 665 of this Uniform Act have not been applied.

**Article 668:**

The competent court before which an action is brought for the winding up of the company may grant the company a maximum period of six months to regularize the situation.

The court shall not order the winding up of a company where such regularization is made on the day it is examining the case on its merits.

**Article 669:**

The provisions of Articles 664 to 668 of this Uniform Act shall not apply to companies under legal redress or under liquidation of property.

**SUB-TITLE 6**  
**MERGER, SCISSION AND TRANSFORMATION**

**CHAPTER I. MERGER AND SCISSION**

**Section 1. Merger**

**Article 670:**

The transactions referred to in Articles 189 to 199 of this Uniform Act which are carried out solely between public limited companies shall be subject to the provisions of this chapter.

**Article 671:**

The merger shall be ordered by the extraordinary general meeting of each of the companies taking part in the transaction.

The merger shall, where necessary, be subject, in each of the companies taking part in the transaction, to ratification by the special meetings of shareholders referred to in Article 555 of this Uniform Act.

The board of directors of each of the companies participating in the transaction shall draw up a report which shall be placed at the disposal of the shareholders.

The report shall explain and justify the project in detail from a legal and economic standpoint, in particular concerning the exchange ratio of shares and the evaluation methods used which shall be the same for the companies concerned as well as the specific difficulties of evaluation, if any.

**Article 672:**

One or more merger auditors appointed by the president of the competent court shall be responsible for preparing a written report on the terms of the merger.

They may obtain all the relevant documents from each company and carry out all necessary verifications. They shall be subject, with respect to the participating companies, to the incompatibilities provided for in Article 698 of this Uniform Act.

The merger auditor(s) shall ascertain that the relative values given to the shares of the companies participating in the transaction are fair and reasonable and that the exchange ratio is equitable. The report(s) of the merger auditors shall be placed at the disposal of shareholders. They shall mention:

- 1) the method(s) of determination of the proposed exchange ratio;
- 2) whether this or these method(s) are adequate in the case in point and the values to which each of these methods leads; an opinion shall be expressed on the relative importance given this or these method(s) in the determination of the value adopted;
- 3) specific evaluation difficulties, if any.

**Article 673:**

Merger or scission auditor(s) shall be appointed and they shall perform their task under the conditions laid down in Article 619 et seq. of this Uniform Act.

Where only one report is established for the whole transaction, the auditor(s) shall be appointed at the joint request of all the participating companies.

**Article 674:**

Any public limited company participating in a merger or scission transaction shall place the following documents at the disposal of its shareholders at the registered office at least fifteen

days before the date of the general meeting to take a decision on the proposed merger or scission:

- 1) the proposed merger or scission;
- 2) the reports referred to in Articles 671 and 672 of this Uniform Act;
- 3) the summary financial statements approved by the general meetings as well as the management reports of the last three fiscal years of the companies participating in the transaction;
- 4) an accounting report drawn up using the same methods and according to the same presentation as the last annual balance-sheet adopted on a date which, where the last summary financial statements are on a fiscal year the close of which precedes by more than six months the date of the proposed merger or scission, shall precede by less than three months the date of the proposal.

Any shareholder may obtain at his expense, on a mere request, a complete or partial copy of the documents referred to above.

**Article 675:**

The extraordinary general meeting of the company acquiring the others shall take a decision on the approval of contributions in kind, in accordance with the provisions of Articles 619 et seq. of this Uniform Act.

**Article 676:**

Where, from the time of deposit at the registry of the court in charge of commercial matters of the proposed merger up to the time the transaction is carried out, the company acquiring the others permanently holds all the capital of the acquired company or companies, there shall be no need for the approval of the merger by the extraordinary general meeting of the acquired companies or for the preparation of the reports referred to in Articles 671 and 672 of this Uniform Act.

**Article 677:**

Where the merger is realized by the setting up of a new company, such company may be formed without other contributions apart from those of the merging companies.

In any case, the draft Articles of Association of the new company shall be approved by the extraordinary general meeting of each of the disappearing companies. The approval of the transaction by the general meeting of the new company shall not be necessary.

**Article 678:**

The proposed merger shall be submitted to the meetings of debenture holders, unless the said debenture holders are offered the possibility of reimbursement of their debentures on a mere request by them.

Where debentures are reimbursable on a mere request, the acquiring company shall become the debtor of the debenture holders of the acquired company.

The offer of reimbursement of debentures on a mere request by debenture holders provided for above shall be published in a newspaper empowered to publish legal notices of the Contracting State.

Any debenture holder who has not applied for reimbursement within the time limit fixed shall retain his status in the acquiring company, under the conditions laid down by the merger contract.

**Article 679:**

The acquiring company shall be the debtor of the creditors, who are not debenture holders, of the acquired company instead of the latter, without such substitution entailing a novation on their part.

The creditors, who are not debenture holders, of the companies participating in the merger transaction, including the lessors of premises hired by the acquired companies, whose claim is prior to the publicity given the proposed merger may lodge objection to the proposal within a period of thirty days from the date of such publicity before the competent court.

The president of the competent court shall reject the objection or order either the reimbursement of the debts or the provision of guarantees where the company can offer such guarantees and where they are considered adequate.

Failing reimbursement of the debts or provision of the guarantees ordered, the merger shall not have effect vis-à-vis this creditor.

The objection lodged by a creditor may not lead to the suspension of the merger transaction.

**Article 680:**

The provisions of Article 679 of the Uniform Act shall not prevent the implementation of agreements authorizing a creditor to demand the immediate reimbursement of his claim in the case of a merger of the debtor company with another company.

**Article 681:**

The proposed merger shall not be submitted to the meetings of debenture holders of the acquiring company.

However, the general meeting of debenture holders may authorize the representatives of the general body of the debenture holders to object to the merger under the conditions and effects provided for in Articles 679 and 680 of this Uniform Act.

**Article 682:**

The objection of a creditor to the merger or the scission under the conditions laid down in Articles 679 and 681 of this Uniform Act shall be lodged within a period of thirty days from the date of the insertion prescribed by Article 265 of this Uniform Act.

**Article 683:**

The objection of the representatives of the general body of the debenture holders to the merger or scission provided for in Article 681 of this Uniform Act shall be lodged within the same period.

## Section 2. Scission

**Article 684:**

The provisions of Articles 670 to 683 of this Uniform Act shall apply to a scission.

**Article 685:**

Where the scission shall be carried out by contribution to new public limited companies, each of the new companies may be formed without any other contribution apart from the contribution of the split company.

In this case and where the shares of each of the new companies are allotted to the shareholders of the split company proportionately to their rights in the capital of the company, it shall not be necessary to draw up the report referred to in Article 672 of this Uniform Act.

In any case, the draft Articles of Association of the new companies shall be approved by the extraordinary general meeting of the split company.

There shall be no need for the approval of the transaction by the general meeting of each of the new companies.

**Article 686:**

The proposed scission shall be submitted to the meetings of the debenture holders of the split company, unless the possibility of reimbursement of debenture stocks on a mere request on their part is offered them.

Where reimbursement by a mere request is possible, the companies receiving contributions resulting from the scission shall be joint debtors of the debenture holders who apply for reimbursement.

**Articles 687:**

The proposed scission shall not be submitted to the meetings of shareholders of the companies to which the property has been transferred. However, the meeting of debenture holders may authorize the representatives of the general body of the debenture holders to object to the scission, under the conditions and the effects laid down in Article 681 of this Uniform Act.

**Article 688:**

The beneficiary companies of the contributions resulting from the scission shall be the joint debtors of the debenture holders and the creditors who are not debenture holders of the split company, instead of the latter, without such substitution entailing a novation on their part.

**Article 689:**

The provisions of Article 688 of this Uniform Act notwithstanding, it may be stipulated that the companies receiving contributions resulting from the scission shall be liable only for part of the liabilities of the split company to be borne by them severally.

In this case, the creditors who are not debenture holders of the participating companies may object to the scission, under the conditions and the effects stipulated in Article 679 paragraph 2 et seq. of this Uniform Act.

## CHAPTER 2 TRANSFORMATION

**Article 690:**

Any public limited company may be transformed into another form of company where, at the time of transformation, it has been incorporated for at least two years and where it has drawn up the balance sheet of its first two fiscal years of operation and has had them approved by its shareholders.

**Article 691:**

The decision to transform the company shall be taken upon a report of the auditor of the company.

The report shall attest that the company's net assets are at least equal to its registered capital.

The transformation shall, where necessary, be submitted for approval by the meeting of debenture holders.

The transformation decision shall be subject to publicity, under the conditions laid down in Articles 263 and 265 of this Uniform Act for the amendment of the Articles of Association.

**Article 692:**

The transformation of a public limited company into a partnership shall be ordered unanimously by the shareholders. In this case, Articles 690 and 691 of this Uniform Act shall not apply.

**Article 693:**

The transformation of a public limited company into a private limited company shall be ordered under the conditions laid down for the amendment of the Articles of Association of companies of that form.

**SUB-TITLE 7  
AUDIT OF PUBLIC LIMITED COMPANIES**

**CHAPTER I  
CHOICE OF AUDITOR AND HIS ALTERNATE**

**Article 694:**

Each public limited company shall be audited by one or more auditors.

The duties of auditor shall be performed by natural persons or by companies incorporated by natural persons, under one of the forms provided for by this Uniform Act.

**Article 695:**

Where there exists an association of chartered accountants in the Contracting State of the registered office of the company to be audited, only the chartered accountants approved by the association of chartered accountants may perform the duties of auditor.

**Article 696:**

Where there is no association of chartered accountants, only the chartered accountants entered before hand on a list drawn up by a committee holding at a Court of Appeals in the Contracting State of the registered office of the company to be audited may perform the duties of auditor.

The committee shall comprise four members as follows:

- 1) a judge at the Court of Appeals who shall chair the committee and shall have the casting vote;
- 2) a lecturer of law, economics or management;
- 3) a judge at the competent court hearing commercial matters;
- 4) a representative of the Public Treasury.

**Article 697:**

The duties of auditor shall be incompatible with:

- 1) any activity or act of a nature to compromise his independence;
- 2) any paid job. However, an auditor may give a course of instruction relating to the exercise of his profession or take up a paid job with an auditor or a chartered accountant;
- 3) any commercial activity, whether such activity is carried on directly or by a third person.

**Article 698:**

The following may not be auditors:

- 1) the founders, contributors, beneficiaries of special benefits, managers of the company or of its subsidiaries, as well as their spouse;

- 2) the relatives and connections, up to the fourth degree inclusive, of the persons referred to in paragraph 1) of this article;
- 3) the managers of companies holding one-tenth of the company's capital or in which the latter holds one-tenth of the capital, as well as their spouse;
- 4) the persons who, directly or indirectly or through third parties, receive either from the persons figuring in paragraph 1) of this article or from any company referred to in paragraph 3) of this article, a salary or any remuneration for a permanent activity other than that of auditor; the same shall apply to the spouses of the said persons;
- 5) auditors' companies one of whose members, shareholders or managers is in one of the situations referred to in the preceding paragraphs;
- 6) auditors' companies one of whose managers, members or shareholders performing the duties of auditor has a spouse who is in one of the situations referred to in paragraph 5) of this article.

**Article 699:**

An auditor may not be appointed director, managing director, assistant managing director, general manager or assistant general manager of the companies which he audits less than five years after cessation of his duties as auditor of the said companies.

The same prohibition shall be applicable to the members of an auditors' company.

He may not, during the same period, perform the duties of auditor in the companies holding one-tenth of the capital of the company audited by him or in the companies in which the company audited by him holds one-tenth of the capital after cessation of his duties as auditor of the said companies.

**Article 700:**

Persons who have been directors, managing directors, assistant managing directors, general managers or assistant general managers, managers or workers of a company may not be appointed auditors of the company less than five years after cessation of their duties in the said company.

They may not, during the same period, be appointed auditors in the companies holding 10% of the capital of the company in which they were performing their duties or in the companies in which the latter hold 10% of the capital after cessation of their duties.

The prohibition provided for in this article for the persons mentioned in the first paragraph of the article shall apply to auditors' companies of which the said persons are members, shareholders or managers.

**Article 701:**

Decisions taken in the absence of duly appointed substantive auditors or on the report of the substantive auditors appointed or on duty contrary to the provisions of Articles 694 to 700 of this Uniform Act shall be null and void.

The action for nullity shall cease where the said decision are expressly confirmed by a general meeting, upon the report of the duly appointed auditors.

## CHAPTER 2 APPOINTMENT OF THE AUDITOR AND HIS ALTERNATE

**Article 702:**

Public limited companies which do not launch a public issue shall be bound to appoint an auditor and an alternate auditor.

Public limited companies which launch a public issue shall be bound to appoint at least two auditors and two alternate auditors.

**Article 703:**

The first auditor and his alternate shall be designated in the Articles of Association or appointed by the constituent general meeting.

During the existence of the company, the auditor and his alternate shall be appointed by the ordinary general meeting.

**Article 704:**

The term of office of the auditor designated in the Articles of Association or appointed by the constituent general meeting shall be two fiscal years.

Where he is appointed by the ordinary general meeting, his term of office shall be six years.

**Article 705:**

The mandate of the auditor shall expire at the end of the general meeting that adjudicates either on the accounts of the second fiscal year where he is designated in the Articles of Association or appointed by the constituent general meeting, or on the accounts of the sixth fiscal year where he is appointed by the ordinary general meeting.

**Article 706:**

An auditor appointed by the meeting of shareholders in replacement of another auditor shall hold office until the expiry of the mandate of his predecessor.

**Article 707:**

Where, at the expiry of the mandate of an auditor, it is proposed to the meeting not to renew his mandate, the auditor may, at his request, be heard by the meeting.

**Article 708:**

Where the meeting fails to elect a substantive auditor or his alternate any shareholder may bring action before the president of the competent court sitting in chambers for the designation of an auditor - substantive or alternate - with the president of the board of directors, the chairman and managing director or the managing director duly summoned to the proceedings.

The mandate thus conferred on the auditor shall expire when the general meeting appoints an auditor.

**Article 709:**

Where the meeting fails to renew the mandate of an auditor or to replace him at the expiry of his mandate and, except where the auditor expressly declines the appointment, his mandate shall be extended until the very next annual ordinary general meeting.

## CHAPTER 3 TASK OF THE AUDITOR

### Section I. Obligations of the auditor

**Article 710:**

The auditor shall certify that the summary financial statements are regular and accurate and give a fair image of the result of operations of the past fiscal year as well as the financial situation and the estate of the company at the end of the said fiscal year.

**Article 711:**

The auditor shall declare in his report to the ordinary general meeting:

- to have certified the regularity and accuracy of the summary financial statement;
- or to have expressed reservations in his certification or to have refused such certification specifying the reasons for such reservations or refusal.

**Article 712:**

The permanent task of the auditor shall, excluding any interference in the management of the company, be to audit the assets and the accounting documents of the company and to check compliance of its accounting operations with the rules in force.

**Article 713:**

The auditor shall verify the accuracy and the agreement with the summary financial statements of the information given in the management report of the board of directors or of the managing director, as the case may be, and in the documents on the financial situation and the summary financial statements of the company addressed to the shareholders.

He shall set out his observations in his report to the annual general meeting.

**Article 714:**

Lastly, the auditor shall ascertain that the equality of the members of the company is respected, in particular that all the shares of the same category have the same rights.

**Article 715:**

The auditor shall prepare a report in which he shall inform the board of directors or the managing director of:

- 1) the audits and verifications that he carried out and the various investigations that he conducted as well as their results;
- 2) the items of the balance-sheet and other accounting documents to which amendments have been made, making all the relevant observations on the evaluation methods used in the preparation of the said documents;
- 3) the irregularities and inaccuracies which he discovered;
- 4) the conclusions of the above observations and amendments on the results of the fiscal year compared to those of the past fiscal year.

The report shall be made available to the chairman of the board of directors or the managing director before the meeting of the board of directors or the decision of the managing director who adopts the accounts of the fiscal year.

**Article 716:**

The auditor shall report to the very next general meeting on the irregularities and inaccuracies he discovered in the performance of his task.

In addition, he shall disclose to the public prosecutor's office any offence he discovers in the performance of his task, without committing himself by such disclosure.

**Article 717:**

The auditor as well as his assistants shall, subject to the provisions of Article 716 of this Uniform Act, be bound to professional secrecy regarding the facts, acts and information they have knowledge of in the performance of their duties.

## **Section 2. Rights of the auditor**

**Article 718:**

The auditor shall, at any time of the year, carry out any verifications and audits which he deems appropriate and may have placed before him, on the spot, all documents he

considers relevant to the performance of his task, in particular all contracts, books, accounting documents and minutes registers.

The auditor may, in conducting such audits and verifications, enlist, under his responsibility, the assistance or representation of any experts or collaborators of his choice whom he shall make known by name to the company. The experts or collaborators so chosen shall have the same rights of investigation as those of the auditor .

The investigations referred to in this article may be conducted at the company as well as at the parent companies or subsidiaries within the meaning of Articles 178 to 180 of this Uniform Act.

**Article 719:**

Where many auditors are appointed, they may carry out their investigations and audits separately but they shall draw up a joint report.

In case of disagreement among the auditors, the report shall indicate the different opinions expressed.

**Article 720:**

The auditor may also collect all the relevant information for the performance of his task from third parties who carried out transactions on behalf of the company. However, this right of information may not cover the communication of documents, contracts and other documents of any nature kept by third parties, unless the auditor is authorized to obtain such contracts and documents by a decision of the president of the competent court giving a summary judgment.

Professional secrecy may not be relied upon against an auditor save by auxiliary officers of justice.

**Article 721:**

The auditor shall compulsorily be convened to all meetings of shareholders, no later than at the time of convening the shareholders themselves, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

**Article 722:**

The auditor shall compulsorily be convened to the meeting, as the case may be, of the board of directors or of the managing director adopting the accounts of the fiscal year, as well as, where necessary, to any other meeting of the board or of the managing director.

The invitation shall be forwarded to the auditor no later than at the time of convening the members of the board of directors or, where the company is managed by a managing director, at least three days before the meeting by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

**Article 723:**

The fees of the auditor shall be borne by the company.

The amount of the fees shall be fixed globally, no matter the number of auditors who shall share the fees among themselves.

**Article 724:**

Travel and subsistence expenses incurred by the auditors in the discharge of their duties shall be borne by the company.

Likewise, the company may grant the auditor a special remuneration where he:

- 1) carries out an additional professional activity, on behalf of the company, abroad;
- 2) carries out special audits of accounts of companies in which the audited company holds a share or intends to hold a share;
- 3) performs temporary tasks entrusted to him by the company at the request of a public authority.

#### **CHAPTER 4 LIABILITY OF THE AUDITOR**

**Article 725:**

The auditor shall be liable, to both the company and third parties, for the torts, and negligences of which he is guilty in the exercise of his duties.

However, his responsibility may not be committed for information he gives or the facts divulged by him in the performance of his task, in accordance with the provisions of Article 153 of this Uniform Act.

**Article 726:**

The auditor shall not be liable for damages resulting from by offences committed by the members of the board of directors or by the managing director, as the case may be, unless, where he has knowledge of them, he fails to disclose them in his report to the general meeting.

**Article 727:**

Liability action against the auditor shall lapse after a period of three years from the date of commission of the tort or, where such tort was hidden, from the date of its discovery.

Where such deed is described as a felony, the action shall lapse after a period of ten years.

#### **CHAPTER 5 TEMPORARY OR PERMANENT IMPEDIMENT OF THE AUDITOR**

**Article 728:**

In case of the impediment, resignation or death of the auditor, his duties shall be performed by the alternate auditor until the auditor is available or, where he is permanently absent, until the expiry of the mandate of the indisposed auditor.

Where the impediment ceases, the indisposed auditor shall resume duty after the next ordinary general meeting which approves the accounts.

**Article 729:**

Where the alternate auditor is called upon to perform the duties of the substantive auditor, a new alternate shall be appointed during the very next ordinary general meeting. The mandate of the alternate so appointed shall expire automatically when the indisposed auditor resumes duty.

**Article 730:**

The public prosecutor's office may bring an action before the court for objection entered against auditors appointed by the ordinary general meeting.

Where the court accedes to its request, a new auditor shall be appointed by the court. He shall hold office until the assumption of duty by the auditor to be appointed by the meeting of shareholders.

**Article 731:**

One or more shareholders representing at least one-tenth of the company's capital, the board of directors or the managing director, as the case may be, the ordinary general meeting or the public prosecutor's office may bring an action before the court for the dismissal of the auditor in case of misconduct on his part or impediment.

**Article 732:**

The action for objection to or the dismissal of the auditor shall be brought before the president of the competent court who shall give a summary judgment.

The writ shall be issued against the auditor and the company.

The action for objection to the auditor shall be lodged within a period of 30 days from the date of the general meeting which appointed the auditor.

**Article 733:**

Where the action is initiated by the public prosecutor's office, it shall be lodged in the form of a petition. Parties other than the representative of the public prosecutor's office shall be summoned at the instance of the court registrar by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

**Article 734:**

The time limit for lodging an appeal against the decision of the president of the competent court shall be 15 days from the date of notification of the said decision to the parties.

## SUB-TITLE 8 WINDING-UP OF PUBLIC LIMITED LIABILITY COMPANIES

**Article 735:**

The provisions of Articles 736 and 737 of this Uniform Act shall not apply to companies under legal redress or liquidation of property.

**Article 736:**

A public limited company shall be wound up for reasons common to all companies under the conditions and effects stipulated in Articles 200 to 202 of this Uniform Act. A public limited company shall also be wound up in case of partial loss of its assets under the conditions laid down in Articles 664 to 668 of this Uniform Act.

**Article 737:**

Shareholders may pronounce the premature winding up of the company.

The decision shall be taken at the extraordinary general meeting of shareholders.

## SUB-TITLE 9 CIVIL LIABILITY

### CHAPTER I LIABILITY OF FOUNDERS

**Article 738:**

The founders of the company who are responsible for the nullity of the company and the directors or managing director in office at the time when the nullity of the company occurred may be declared jointly and severally liable for damage suffered by shareholders or third parties as a result of the nullity of the company.

Shareholders whose contributions or benefits have not been audited and approved may also be jointly and severally liable.

**Article 739:**

Action for liability on grounds of nullity of the company shall lapse under the conditions laid down in Article 256 of this Uniform Act.

### CHAPTER 2 LIABILITY OF DIRECTORS

**Article 740:**

The directors or the managing director, according to the circumstances, shall be severally or jointly liable to the company or to third parties either for offences against the laws and regulations applicable to public limited companies or for violation of the provisions of the Articles of Association or for offences committed in their management.

Where many directors took part in the commission of the same acts, the competent court shall determine the contribution of each of them in the award of the damages.

**Article 741:**

Besides the action for the award of personal damages, the shareholders may, either individually or collectively, institute proceedings in the company's interest against the directors or the managing director, as the case may be.

The shareholders may, where they represent at least one-twentieth of the registered capital, entrust, in their common interest and at their expense, one or more shareholders to represent them in sustaining and defending the action in the company's interest both at the time of institution and defence.

The withdrawal of one or more of the said shareholders in the course of the action either voluntarily or because of loss of their status as shareholders shall have no effect on the continuation of the said action.

The plaintiffs shall be competent to institute proceedings for the award of damages for all damages suffered by the company to which, where necessary, damages can be awarded.

**Article 742:**

Any clause of the Articles of Association subjecting the institution of the action in the company's interest to a prior notice or to the authorization of the general meeting, or imposing in advance renunciation of the institution of such action shall be considered as unwritten.

No decision of the general meeting may extinguish an action against the directors or the managing director, as the case may be, for an offence committed in the performance of their duties.

**Article 743:**

An action against the directors or the managing director, both in the company's interest and individual interest, shall lapse after three years from the date of commission of the tort or, where it was hidden, from the date of disclosure thereof. However, where the act is termed crime, the action shall lapse after ten years.

## TITLE 2 TRANSFERABLE SECURITIES

### CHAPTER I COMMON PROVISIONS

#### Section 1. Definition

**Article 744:**

Public limited companies shall issue transferable securities whose form, scheme and characteristics shall be listed in this Title.

Transferable securities shall confer similar rights per category and shall give access directly or indirectly to a percentage of the capital of the issuing company or to a general claim on its property. They shall be joint with respect to the issuing company.

The issue of partnership or founder's shares shall be forbidden.

#### Section 2. Form of securities

**Article 745:**

Shares and bonds shall either be negotiable instruments or registered securities whether they are issued against contributions in kind or contributions in cash.

However, the form of registered securities only may be imposed by the provisions of this Uniform Act or by the Articles of Association.

**Article 746:**

The owner of securities which are part of an issue comprising negotiable instruments shall have the option, notwithstanding any clause to the contrary, to convert his negotiable instruments into registered securities and vice-versa.

**Section 3. Pledging of securities****Article 747:**

Subject to the provisions of Articles 772 and 773 of this Uniform Act, the pledging of transferable securities put on account shall be carried out, with respect to both the issuing corporate body and third parties, by a statement dated and signed by the holder of the securities. The statement shall contain the amount of money due as well as the amount and nature of the securities pledged.

The secured bonds shall be transferred into a special account opened in the name of the holder of the securities and kept by the issuing corporate body or the financial broker, as the case may be.

A certificate of pledge shall be issued to the pledgee.

In case of a joinder of actions for wiping up of accounts payable of the financial broker who keeps the account, the holders of the securities put in the account shall have all their rights transferred into an account kept by another financial broker or by the issuing corporate body.

The competent court shall be informed of such transfer. Where the entries in the account are insufficient, the holders of the securities shall make a declaration thereof to the representatives of the creditors for their rights to be complemented.

The pledging of registered securities provided for in Article 764 1) below shall be carried out by registration in the transfer registers of the company. The same shall apply in the case of sequestration of goods.

**CHAPTER 2  
PROVISIONS RELATING TO SHARES****Section 1. Different forms of shares****Article 748:**

Shares issued for cash shall be shares whose amount is paid up in cash or by set-off of unquestionable, liquid and due claims on the company, shares which are issued following the incorporation of reserves, profits or issue premiums and shares whose amount is made up in part of an incorporation of reserves, profits or issue premiums and in part of an issue for cash. Shares issued for cash shall be fully paid up during subscription.

All the other shares shall be initial shares.

**Article 749:**

A share issued for cash shall be a registered share until it is fully paid up.

An initial share shall be convertible into a bearer bond only after a period of two years.

**Article 750 :**

The face value of shares or share denominations may not be lower than ten thousand (10 000) CFA francs.

## Section 2. Rights attached to shares

### Paragraph 1. Voting rights

**Article 751 :**

Each share shall have voting rights proportional to the fraction of capital it represents and shall give right to at least one vote.

**Article 752 :**

A voting right twice the right conferred on other shares may, in view of the fraction of capital represented, be conferred by the Articles of Association or the extraordinary general meeting on fully paid-up registered shares where there is justification that the shares have been registered for at least two years in the name of the same shareholder.

Similarly, where share capital has been increased through capitalization of reserves, profits or share premiums, double voting rights may, from the time of issue, be conferred on registered shares freely allotted to a shareholder in proportion to the number of his old shares which already enjoy this right.

**Article 753 :**

Any share converted into a bearer share shall lose the double voting right.

### Paragraph 2. Right to dividend

**Article 754 :**

Each share shall have a right to dividend proportional to the fraction of capital it represents. The Articles of Association or the extraordinary general meeting may grant shares a right to the first dividend.

**Article 755 :**

Notwithstanding the provisions of Article 754 of this Uniform Act, during the formation of a company or during its existence, preference shares may be launched. Such shares shall have priority rights in relation to all the other shares. These benefits may be notably a bigger share in the profits or bonus after liquidation, a preferential right to profits and cumulative dividends.

**Article 756 :**

Notwithstanding any clause to the contrary in the Articles of Association of the issuing company, the totality of interest, dividends or other periodic revenue accruing to shares for a specific company fiscal year shall be paid in a lump-sum.

The date of payment of the lump-sum shall be fixed by the general meeting of shareholders. The general meeting may, however, request the board of directors to fix the said date.

### Paragraph 3. Pre-emptive right of subscription.

**Article 757 :**

Shareholders shall have proportionately to the amount of their shares, a pre-emptive right of subscription for shares issued for cash in order to increase capital.

This right shall be negotiable under the same conditions as the share itself during the subscription period.

**Article 758 :**

The application of the provisions of Article 757 of this Uniform Act may only be set aside by the general meeting sitting under the conditions of quorum and majority of an extraordinary meeting, and the deliberations shall not be valid unless the board of directors or the

managing director, as the case may be, indicates in their report to the general meeting the reasons behind the increase of capital and the persons to whom the new shares shall be allotted, together with the number of shares allotted to each person, the issue price and the basis on which such price was determined.

### Section 3. Negotiability of shares

#### Article 759 :

Shares shall be negotiable only after registration of the company in the Trade and Personal Property Credit Register or registration of the statement of amendment following an increase of capital.

#### Article 760 :

Negotiation of a promise of shares shall be forbidden unless it concerns shares still to be launched in case of an increase of capital for a company whose existing shares are already registered on the securities list of a stock exchange of one or more Contracting States. In such case, negotiation shall not be valid unless it is conditioned on the realization of the increase of capital. Failing an express statement, this condition shall be presumed.

#### Article 761 :

Shares issued for cash shall not be negotiable until they have been fully paid up.

#### Article 762 :

Shares shall remain negotiable after the winding up of the company and until the close of liquidation.

#### Article 763 :

The winding up of a company or of a share issue shall not imply nullity of the negotiations which took place before the decision to dissolve, where the form of the shares is in order. However, a purchaser may take action against the vendor on the guarantee.

### Section 4. Transfer of shares.

#### Article 764 :

In principle, shares shall be freely transferable. The transfer of shares shall be carried out according to the following procedure :

(1) for companies not launching a public issue :

- by transfer on the registers of the company, for registered shares; the holder's rights result from the single registration on the company's registers ;
- by simple delivery for bearer shares. The bearer of the share shall be deemed to be the owner ;

(2) for companies launching a public issue :

- besides the above procedure whether for registered or bearer shares, the shares may be represented by registration in an account opened in the name of their proprietor and held either by the issuing company or a financial intermediary approved by the Minister in charge of the Economy and Finance. In such case the transfer shall take place by transfer from one account to another.

## Section 5. Limitations to the transfer of shares.

### Article 765 :

Notwithstanding the principle of free transferability stated in Article 764 of this Uniform Act, the Articles of Association may lay down certain limitations to the transfer of shares under the following conditions :

- (1) the limitation clauses shall not be valid in a company unless all its shares are registered ;
- (2) the Articles of Association may provide that the transfer of shares to a third party who is an outsider to the company either free of charge or for payment shall be subject to approval by the board of directors or the ordinary general meeting of shareholders ;
- (3) limitations to the transfer of shares may not operate in case of succession, liquidation of the community of property between spouses or of transfer to a spouse or an ascendant or a descendant.

### Article 766 :

Where approval is given by the meeting, the transferor shall not take part in the vote and his shares shall be deducted when calculating the quorum and the majority. The same shall apply where the transferor is a director, and the approval is given by the board of directors.

### Article 767 :

Where an approval clause is applicable, the transferor shall attach to his application for approval addressed to the company by hand-delivered letter against a receipt, or by registered letter with a request for acknowledgement of receipt, by telex or fax, the full name, capacity and address of the proposed transferee, the number of shares earmarked for transfer and the price offered.

### Article 768 :

Approval shall result from notification or from failure to reply within a time limit of three months from the date of the application.

### Article 769 :

Where the company does not approve the proposed transferee, the board of directors or the managing director, as the case may be, shall, within a period of three months from notification of the refusal, cause the shares to be acquired by a shareholder, a third party, or, with the consent of the transferor, by the company with a view to a reduction of capital.

### Article 770 :

Failing an agreement between the parties, the transfer price shall be determined by an expert designated by the president of the competent court at the request of the earliest petitioner.

### Article 771 :

Where at the expiry of the three-month period, the purchase has not taken place, the approval shall be deemed to be granted. However, where an expert has been designated by the president of the competent court to fix the price, the time limit may be extended for a period not exceeding three months by the court which designated the expert.

## Section 6. Pledging of shares

### Article 772 :

Where the company has given its consent for a plan to pledge shares, such consent shall mean approval of the transferee in case of compulsory sale of the pledged shares, unless the company prefers to buy back the shares without delay with a view to reducing its capital.

A plan to pledge shares shall not be invoked against the company unless it was approved by the organ designated for that purpose by the Articles of Association to approve the transfer of shares.

**Article 773 :**

The pledging plan shall first have been sent to the company by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, by telex or fax, stating the full name and the number of shares to be pledged.

Agreement shall result from acceptance of the pledge notified in the same form as the application for approval of the pledge, or from failure to reply within the time limit of three months from the date of the application.

### **Section 7. Failure to pay up shares**

**Article 774 :**

At least one quarter of the value of shares shall be paid up on subscription ; the balance shall be paid up as the board of directors makes calls within a maximum period of three years from the date of subscription.

**Article 775 :**

In case of non-payment of the balance on the shares that have not been fully paid up at the time fixed by the board of directors or the managing director, as the case may be, the company shall send a formal notice to the defaulting shareholder by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

One month after such formal notice has gone unheeded, the company shall on its own initiative take charge of the sale of the shares. With effect from the same date, shares for which the amount owed has not been paid shall cease to give right to votes in shareholders' meetings and shall be deducted when calculating the quorum and the majority.

Upon the expiry of the time limit of one month, the right to dividend and the pre-emptive right of subscription to increases of capital attaching to such shares shall be suspended until the sums owed are paid.

**Article 776 :**

In the case referred to in Article 775, paragraph 2 of this Uniform Act, the sale of quoted shares shall take place on the stock exchange, whereas the sale of unquoted shares shall take place at a public auction conducted by a stockbroker or a notary.

Before carrying out the sale referred to in the preceding paragraph, the company shall publish in a newspaper empowered to publish legal notices, thirty days following the formal notice provided for in Article 775 of this Uniform Act, the number of the shares on sale. The company shall notify the debtor and, where necessary, his co-debtors of the sale by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt bearing an indication of the date and number of the newspaper in which publication was made. The actual sale of shares may not take place less than 15 (fifteen) days after the despatch of the hand-delivered letter against a receipt or the registered letter with acknowledgement of receipt.

The defaulting shareholder shall remain debtor or benefit from the balance. The defaulting shareholder shall foot any costs incurred by the company in carrying out the sale.

**Article 777 :**

The defaulting shareholder, successive transferees and subscribers shall be jointly and severally liable for the unpaid amount of the share.

The company may take action against them before or after the sale, or at the same time, to obtain the sum owed and a refund of the costs incurred.

Any person who pays off the company shall be entitled to take action for the entire sum against successive holders of the share. The final charge on the debt shall fall to the last of such holders.

### **Section 8. Redemption of shares**

#### **Article 778 :**

Redemption of shares by the casting of lots shall be forbidden notwithstanding any legislative, statutory or contractual provisions to the contrary.

## **CHAPTER 3 PROVISIONS RELATING TO BONDS**

### **Section 1. General provisions**

#### **Paragraph 1. Definition.**

#### **Article 779 :**

Bonds shall be negotiable instruments which, for one and the same issue, shall confer the same rights to a claim for the same face value.

#### **Paragraph 2. Conditions of issue.**

#### **Article 780 :**

The issue of bonds shall only be allowed for public limited companies and economic interest groups made up of public limited companies, which have existed for two years and have drawn up two balance-sheets duly approved by the shareholders.

#### **Article 781 :**

The issue of bonds shall be forbidden for companies whose capital is not fully paid up.

#### **Article 782 :**

The issue of lottery bonds shall be forbidden.

#### **Article 783 :**

The general meeting of shareholders shall have the sole prerogative to decide on or authorize the issue of bonds. It may delegate to the board of directors or the managing director, as the case may be, the necessary powers to issue bonds in one or more instalments within a period of two years and to lay down the conditions thereof.

#### **Article 784 :**

Any bonds redeemed by the issuing company and bought back shall be cancelled and may not be re-floated.

### **Paragraph 3. Group of bondholders**

#### **Article 785 :**

Holders of bonds issued at the same time shall as of right be grouped together to defend their interests in an organization having legal personality. However, where bonds are issued successively and a clause in each contract of issue so provides, the company may bring together bondholders having identical rights into a single group.

#### **Article 786 :**

The group shall be represented, according to the decision taken by the general meeting of bondholders which elected them, by one to three representatives.

**Article 787 :**

The mandate of representative of the group may be conferred only on natural persons or corporate bodies resident in the Contracting State of the head office of the debtor company.

The following may not be chosen to represent the group :

- (1) the debtor company ;
- (2) companies having a share in the debtor company ;
- (3) companies which have guaranteed all or part of the commitments of the debtor company ;
- (4) managers or directors of the debtor company or of any company having a share in its capital, as well as their ascendants, descendants or spouses ;
- (5) employees of the companies referred to above ;
- (6) the auditor of the companies referred to above ;
- (7) persons who have forfeited their right to direct, administer or manage a company in any capacity whatsoever.

**Article 788 :**

In emergency cases, representatives of the group may be designated by the president of the competent court at the request of any interested party.

**Article 789 :**

Representatives of the group may be removed from their duties by the general meeting of bondholders.

**Article 790 :**

Representatives of the group shall, unless otherwise restricted by the general meeting of bondholders, have the power to carry out in the name of the group and of all the bondholders any acts of management to defend the common interests of the bondholders.

**Article 791 :**

Representatives of the group may not interfere in the management of the company. They may take part in the meetings of shareholders but in an advisory capacity. They shall have the right to be served any documents available to shareholders and in the same conditions as the shareholders.

**Article 792 :**

In case of liquidation of the property or judicial redress of the company, the representatives of the group of bondholders shall be competent to act in the company's name. Under the liabilities column of the liquidation of the property or judicial redress of the company, they shall declare for all the bondholders of the group the amount of the capital and interest owed by the company to the bondholders of the group.

They shall not be required to produce the titles of the bondholders of the group to justify their declaration. In case of difficulty, any bondholder may petition the president of the competent court to appoint an attorney-in-fact to make the said declaration and represent the group.

**Article 793 :**

In case of closure because of insufficient assets, the group representative or designated management representative shall recover the rights of the bondholders.

The costs incurred in representing the bondholders during the process of liquidation of assets or judicial redress of the company shall be borne by the company and shall be considered as receivership expenses.

**Article 794 :**

Remuneration of the group representatives shall be determined by the general meeting or by the contract of loan. It shall be borne by the debtor company.

Where the said remuneration is not fixed, or where the amount is challenged, it shall be determined by the president of the competent court.

**Section 2. General meeting of bondholders.****Paragraph 1. Convening.****Article 795 :**

The general meeting of bondholders of the same group may meet at any time.

**Article 796 :**

The general meeting shall be convened by the representatives of the group of bondholders or, where necessary, by the board of directors or the managing director, as the case may be, or by the liquidator during a liquidation.

The general meeting may also be convened at the request of bondholders representing at least one-thirtieth of bonds by group representatives or by an attorney-in-fact designated by the president of the competent court.

**Article 797 :**

The convening of the meeting of bondholders shall be done under the same conditions of form and time limit as for shareholders' meetings. The same shall apply for communicating to bondholders the draft resolutions to be proposed and the reports to be presented at the meeting.

**Paragraph 2. Compulsory information****Article 798 :**

The convening notice to the meeting shall include the following information :

- (1) an indication of the loan subscribed to by the bondholders for which the group is convened ;
- (2) the full name and domicile of the person who took the initiative to convene the meeting and the capacity in which he is acting ;
- (3) where necessary, the date of the court decision designating the representative responsible for convening the meeting.

**Article 799 :**

Any meeting convened irregularly may be annulled. However, the action for annulment shall not be entertained where all the bondholders of the group concerned are present or represented.

**Paragraph 3. Agenda****Article 800 :**

The agenda shall be drawn up by the convenor. However, one or more bondholders representing at least one-thirtieth of the company's bonds shall have the option of requesting that draft resolutions be included on the agenda.

The draft resolutions shall be included on the agenda and submitted to the meeting by the chairman for approval.

The meeting may not deliberate on any matter which is not included on the agenda.

On the second invitation, the agenda may not be amended.

#### **Paragraph 4. Representation.**

##### **Article 801 :**

Every bondholder shall be entitled to participate in the meeting or to be represented by any person of his choice.

Persons who may not represent the group by virtue of Article 787 of this Uniform Act may not represent bondholders in the meeting.

#### **Paragraph 5. Conduct of meetings**

##### **Article 802 :**

The meeting shall be presided over by a representative of the group. Where there are several representatives and there is disagreement among them, the meeting shall be presided over by a bondholder in attendance representing the highest number of bonds.

Where the meeting is convened by an attorney-in-fact, it shall be presided over by him.

The rules governing the conduct of shareholders' meetings shall apply, where appropriate, to bondholders' meetings.

##### **Article 803 :**

The ordinary meeting of bondholders shall deliberate on the appointment of the group's representatives, their term of office, a determination, where necessary, of their remuneration, their replacement, their convening and any other measure intended to ensure the defence of bondholders and the execution of the loan contract, on the management expenditure that such measures could incur and, in general, on all measures of a protective or administrative nature.

##### **Article 804 :**

The extraordinary meeting of bondholders shall deliberate on every recommendation likely to modify the loan contract, in particular the following :

- (1) the change of object or form of the company ;
- (2) its merger or scission ;
- (3) any proposal of compromise or settlement of rights in dispute or rights which have been the subject of a court decision ;
- (4) the total or partial modification of guarantees or extension of due date ;
- (5) change of registered office ;
- (6) winding up of the company.

#### **Paragraph 6. Voting rights**

##### **Article 805 :**

Voting rights attached to bonds shall be proportionate to the fraction of the amount of the loan which they represent.

Each bond shall give right to at least one vote.

Bondholders may vote by correspondence under the same conditions and form as shareholders in shareholders' meetings.

**Article 806 :**

A company holding at least 10% of the capital of the debtor company may not vote during the meeting using the bonds it holds.

**Article 807 :**

In case of dismemberment of ownership of the bonds, the voting right shall belong to the bare owner, unless otherwise provided by the parties.

**Paragraph 7. Decisions of the meeting****Article 808 :**

The meetings may neither increase the responsibility of bondholders nor practise unequal treatment between bonds of the same issue.

**Article 809 :**

Failing approval by the general meeting of bondholders of the proposals made by the company relating to an alteration of its form or objects, the company may proceed to redeem the bonds before implementing the change of its form and objects.

**Article 810 :**

Where the general meeting of bondholders fails to approve the company's proposals regarding its scission or split, the company may proceed further and the bondholders shall maintain their title as bondholders in the acquiring company or in the new company arising from the merger or in the companies arising from the scission, as the case may be.

Where the company decides to ignore the refusal of approval by the general assembly of bondholders, the chairman and managing director, the general manager or the managing director, as the case may be, shall inform the representative of the bondholders' group thereof by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

The group of bondholders may lodge an objection to the merger or scission with the president of the competent court.

The said president shall reject the objection or order a refund of the bonds or a provision of guarantees if the acquiring company or the company being split offers any which are deemed to be sufficient.

**Article 811 :**

In case of winding up of the company without any threat of merger or split, refund of the bonds shall be immediately due.

**Article 812 :**

Legal redress of the company shall not put an end to the functioning or the role of the general assembly of bondholders.

**Paragraph 8. Individual bondholders' rights****Article 813 :**

Bondholders may not exercise individual control over the company's transactions or be sent company documents.

They shall have the right, at their own expense, to obtain from the company a copy of the report and attendance lists of bondholders' meetings of the group to which they belong.

**Article 814 :**

In the absence of special clauses in the contract of loan, the company may not force the bondholders to accept a prepayment of the bonds.

### **Paragraph 9. Guarantees granted to bonds.**

#### **Article 815 :**

The general meeting of shareholders which decides to issue bonds may decide that the bonds will be secured.

The meeting shall determine what securities to offer or shall delegate to the board of directors or the managing director, as the case may be, the power to determine it.

#### **Article 816 :**

The securities shall be formed by the company before issue in a special deed for the benefit of the group of bondholders being formed.

The formalities of publishing the securities shall be complied with before any subscription of bonds takes place.

#### **Article 817 :**

The acceptance of the guarantee shall be evidenced only by subscription. It shall be retroactive on the date of registration for securities subject to registration and on the date of their subscription for the other securities.

#### **Article 818 :**

Within a period of six months from the opening of subscription, the result of the subscription shall be recorded in a notarial deed at the instance of the legal representative of the company.

Within a period of thirty days from the date of preparation of the deed, the results of the subscription shall be entered on the margin of the guarantee.

Where the issue of bonds is not realized because there is little or no subscription, the registration shall be cancelled.

#### **Article 819 :**

Renewal of the security shall be done at the expense of the company, under the responsibility of its legal representatives.

The representatives of the group shall be responsible for ensuring compliance with the provisions relating to renewal of registration.

#### **Article 820 :**

Release of the mortgage may only be done by the group's representatives and on condition that the loan has been repaid in full and that all the interest has been paid.

In addition, it shall be necessary for the representatives to be expressly authorized to release the mortgage by the general assembly of bondholders of the group.

#### **Article 821 :**

Any guarantees provided after the issue of bonds shall be conferred by the legal representatives of the company either upon the authorization of the ordinary general meeting of shareholders or, where the articles so provide, by the board of directors or the managing director.

They shall be expressly accepted by the group.

## CHAPTER 4 OTHER TRANSFERABLE SECURITIES

**Article 822 :**

During the issue of securities representing claims on the issuing company or giving right to subscribe or acquire a transferable security representing claims, it may be provided that the said transferable securities shall only be redeemed after the other creditors have been paid off, excluding holders of equity-type loans.

### TITLE 3 PROVISIONS SPECIFIC TO PUBLIC LIMITED COMPANIES CALLING FOR PUBLIC CAPITAL

#### CHAPTER 1 GENERAL PROVISIONS

**Article 823 :**

Without prejudice to the provisions which may govern the stock exchange and the acceptance of transferable securities on the exchange, incorporated companies or those in the process of calling a public capital by way of prospectus shall fall under the general rules governing public limited companies and the special provisions of this title.

The provisions of this title shall override the general provisions governing the form of public limited companies in case of incompatibility between the two sets of rules.

**Article 824 :**

The minimum capital of a company whose shares are listed on the stock exchange of one or more Contracting States or one calling for public capital for the sale of its shares in one or more Contracting States shall be one hundred million (100 000 000) CFA francs.

The registered capital may not be lower than the amount stipulated in the preceding paragraph unless the company changes into another form of company.

In case of failure to comply with the provisions of this article, any interested party may petition the court for the winding up of the company. Such winding up may not be pronounced where, on the day the court is ruling on the merits of the case, the matter has been regularized.

#### CHAPTER 2 FORMATION OF A COMPANY

**Article 825 :**

The founders shall publish, before the start of application for shares, a prospectus in newspapers empowered to publish legal notices in the Contracting State of the registered office of the company and, as the case may be, in the Contracting States where a call for the capital is made.

**Article 826 :**

The prospectus referred to in the preceding article shall bear the following details :

- (1) the name of the company being formed, followed, where necessary, by its acronym ;
- (2) the form of the company ;
- (3) the registered capital ;
- (4) the company's object ;

- (5) the address of the registered office ;
- (6) the duration of the company ;
- (7) the number of shares subscribed to, for cash and the amount immediately due comprising, as the case may be, the agio on issue;
- (8) the face value of the shares to be issued, with a distinction made, where necessary, between each category of shares ;
- (9) a summary description of contributions in kind, their total valuation and their mode of remuneration, with an indication of the provisional nature of the said evaluation and the mode of remuneration ;
- (10) the special benefits stipulated in the draft Articles of Association in the interest of any person ;
- (11) the conditions of admittance to shareholders' meetings and of exercising the voting rights with an indication, where necessary, of the provisions relating to the granting of the double voting right ;
- (12) where necessary, the clauses relating to the approval of transferees of shares ;
- (13) the provisions relating to the sharing of profits, the building up of reserves and the sharing of the bonus after liquidation ;
- (14) the full name and address of the domicile of the notary or the corporate name and registered office of the bank in which the funds from the subscription shall be deposited ;
- (15) the time limit open for subscriptions with an indication of the possibility of early closing in case the full subscriptions are made before the expiry of the said time limit ;
- (16) the procedure for convening the constituent general meeting.

The prospectus shall be signed by the founders and it shall indicate :

- (1) in case of natural persons, their usual full name, domicile and nationality ;
- (2) in case of corporate bodies, their name, form, registered office and, as the case may be, the amount of the registered capital.

**Article 827 :**

To inform the public about the forthcoming issue of shares, circulars shall be written reproducing the details of the prospectus provided for in Article 826 of this Uniform Act.

The circulars shall make mention of the insertion of the prospectus in the newspapers empowered to publish legal notices where the said prospectus has been published. They shall make reference to the publication number of the prospectus in the newspapers.

The circulars shall, in addition, make known the plans of the founders regarding the application of funds derived from the payments of the shares subscribed.

Posters and notices in newspapers shall reproduce the same information or at least extracts from such information with reference to the prospectus and an indication of the number of the newspapers empowered to publish legal notices in which the prospectus was published.

## **CHAPTER 3 FUNCTIONING OF THE COMPANY**

### **Section 1. Administration of the company.**

**Article 828 :**

Companies calling for public capital in order to sell their shares in one or more Contracting States or whose shares are listed on the stock exchange of one or more Contracting States shall be bound to have a board of directors.

**Article 829 :**

The board of directors of the companies referred to in Articles 828 to 853 of this Uniform Act shall, as of necessity, comprise at least three members and at most fifteen members where its shares are listed on the stock exchange.

However, in case of a merger involving one or more companies whose shares are quoted on the stock exchange of one or more Contracting States, the number fifteen may be exceeded to include the total number of directors in office for more than six months in the merged companies, but without exceeding twenty.

They shall neither appoint new directors nor replace directors who are deceased, dismissed or have resigned shall be replaced as long as the number of directors has not been reduced to fifteen where the shares of the company are quoted on the stock exchange of one or more Contracting States.

Where a company quoted on the stock exchange of one or more Contracting States is struck off from those stock exchanges, the number of directors shall be reduced to twelve as soon as possible.

Within the various limits fixed above, the number of directors shall be freely determined in the Articles of Association.

**Article 830 :**

The chairman and managing director, the general manager of a company whose shares are quoted on the stock exchange of one Contracting State and the natural persons or corporate bodies performing the duties of director in the company shall be required, within the time limit fixed in the second paragraph of this article, to obtain registered status for the shares belonging to them proper or those belonging to their unemancipated minor children issued by the company itself, by its subsidiaries, by the company of which it is a subsidiary or by the other subsidiaries of such company, where the shares are quoted on the stock exchange of one or more Contracting States.

The time limit referred to in the preceding paragraph shall be one month from the date on which the persons concerned acquire the capacity in which they are subject to the provisions stipulated by the preceding paragraph. The time limit shall be twenty days from the date of entry into possession where the persons concerned acquire the shares referred to in the first paragraph of this article.

The preceding provision shall apply to the permanent representatives of corporate bodies performing the duties of director in the companies whose shares are quoted on the stock exchange of one or more Contracting States as well as to the spouses, who are not separated from bed and board, of all the persons referred to in this article.

Failure to obtain the registered status for the shares, the persons concerned shall deposit them in a bank or with a stock broker.

**Section 2. Shareholders' meetings****Article 831 :**

Before the meeting of shareholders, companies calling for public capital to sell their shares or whose shares are registered in one or more Contracting States shall be required to publish in newspapers empowered to publish legal notices of the Contracting State hosting the registered office and, where necessary, of the other Contracting States where a public call for capital issue is made, a notice bearing :

- (1) the commercial name followed, where necessary, by the acronym of the company ;
- (2) the form of the company ;
- (3) the amount of its capital ;

- (4) the address of its registered office ;
- (5) the agenda of the meeting ;
- (6) the text of the draft resolutions which shall be presented to the assembly by the board of directors ;
- (7) the place where the shares should be deposited ;
- (8) except where the company sends out to shareholders a form for voting by correspondence, the places and conditions under which the said forms may be obtained.

### **Section 3. Modification of registered capital**

#### **Article 832 :**

Shareholders and investors shall be informed of the issue of new share and the conditions thereof either by a notice inserted in the prospectus published in newspapers empowered to publish legal notices in the Contracting State of the head office and, as the case may be, of the other Contracting States in which a call for public capital is made or by hand-delivered letter against a receipt or by registered letter with a request for advice of delivery where the shares of the company are registered.

#### **Article 833 :**

The prospectus bearing the company's seal, and the hand-delivered letter against a receipt or by registered letter with a request for advice of delivery shall contain the following information :

- (1) the name of the company followed, if need be, by its acronym ;
- (2) the form of the company ;
- (3) a summary of the company's objects ;
- (4) the amount of the registered capital ;
- (5) the address of the registered office ;
- (6) the registration number of the company in the Trade and Personal Property Credit Register ;
- (7) the normal expiry date of the company ;
- (8) the amount of increase of capital ;
- (9) the dates of commencement and close of subscription ;
- (10) the full name or commercial name, the address of domicile or registered office of the depositary ;
- (11) the categories of shares issued and their characteristics ;
- (12) the face value of the shares to be subscribed for in cash and, where necessary, the amount of the agio on issue;
- (13) the amount immediately due per share subscribed ;
- (14) the existence for the benefit of shareholders of the pre-emptive right of subscription to new shares as well as the conditions for exercising the said right ;
- (15) the special benefits stipulated by the Articles of Association in favour of any person ;
- (16) as the case may be, the statutory clauses restricting the free transfer of shares ;
- (17) the provisions relating to the sharing of profits, the building up of reserves and the sharing of bonus after liquidation ;
- (18) the unredeemed amount of the other bonds issued before and the guarantees covering them ;
- (19) the amount at the time of issue of the bond issues guaranteed by the company and, where appropriate, the guaranteed fraction of the said issues ;
- (20) where necessary, a summary description, assessment and mode of remuneration of contributions in kind within the increase of capital, with an indication of the provisional nature of the assessment and mode of remuneration.

#### **Article 834 :**

A copy of the last balance-sheet, certified true by the legal representative of the company, shall be published in the annex to the prospectus referred to in Article 833 of this Uniform

Act. Where the last balance-sheet has been published in a newspaper empowered to publish legal notices, a copy of the said balance-sheet may be replaced with an indication of the reference to the previous publication. Where a balance-sheet has not yet been drawn up, the prospectus shall so indicate.

**Article 835 :**

The circulars informing the public about the issue of shares shall reproduce the details of the prospectus referred to in Article 833 of this Uniform Act and shall contain a mention that the said prospectus has been inserted in newspapers empowered to publish legal notices together with the reference number in which it was published.

The notices and posters in the newspapers shall reproduce the same information or at least an extract from such information with reference to the prospectus and an indication of the newspapers empowered to publish legal notices in which it was published.

**Article 836 :**

An increase of capital by public call which takes place less than two years after the formation of a company without such public call shall be preceded, under the conditions laid down in Article 619 et seq. of this Uniform Act, by an audit of the assets and liabilities and, where necessary, of the special benefits granted.

**Article 837 :**

A public call without pre-emptive right of subscription to new shares which confer on their holders the same rights as old shares shall be subject to the following conditions:

- (1) the call shall be realized within a period of three years from the date of the meeting which authorized it ;
- (2) for companies whose shares are listed on the stock exchange, the call price shall be at least equal to the average price recorded for those shares for twenty consecutive days chosen from the forty days preceding the day call begins, after adjusting the average to take into account the difference in the date of enjoyment;
- (3) for companies other than those referred to in paragraph (2) of this article, the issue price shall, at the company's choice, with account being taken of the difference in the date of enjoyment, be at least equal to the part of stockholders' equity per share as deduced from the last balance-sheet approved by the date of issue, or at a price fixed by an expert designated by the competent court giving a summary judgment.

**Article 838 :**

A public call without pre-emptive right of subscription to new shares which do not confer on their holders the same rights as old shares shall be subject to the following conditions :

- (1) the call shall be realized within a period of two years from the date of the general meeting which authorized it ;
- (2) the issue price or conditions for fixing such price shall be determined by the extraordinary general meeting upon the report of the board of directors and the special report of the auditor.

Where the issue is not realized on the date of the annual general meeting following the decision, an extraordinary general meeting shall decide, upon the report of the board of directors and the special report of the auditors, on the maintenance or adjustment of the issue price or on the conditions for determining such price, failing which, the decision of the first meeting shall lapse.

**Article 839 :**

The general meeting which decides on the increase of capital may, in the interest of one or more persons designated by name or not, cancel the pre-emptive right of subscription.

Beneficiaries of this provision may not, under penalty of the decision being declared void, take part in the vote. The required quorum and majority shall be calculated after deducting the shares they own.

The issue price or the conditions for fixing such price shall be determined by the extraordinary general meeting upon the report of the board of directors and the auditor.

**Article 840 :**

An increase of capital shall be deemed to have been carried out where one or more credit establishments, within the meaning of the law regulating banking activities, irrevocably guarantee its successful end. Payment of the paid-up fraction of the face value and of the totality of the agio on issue shall take place no later than the thirty-fifth day following the expiry of the time limit for subscription.

**Section 4. Investment of bonds**

**Article 841 :**

Where an investment of bonds is carried out by public issue in one or more Contracting States, the issuing company shall fulfil in the Contracting States before the opening of subscription and prior to any other publicity measures, the formalities specified in Articles 842 to 844 of this Uniform Act.

**Article 842 :**

The company shall publish in newspapers empowered to publish legal notices a prospectus bearing the following information :

- (1) the name of the company followed, where necessary, by its acronym ;
- (2) the form of the company ;
- (3) the address of the registered office ;
- (4) the amount of the registered capital ;
- (5) the company's registration number in the Trade and Personal Property Credit Register ;
- (6) a summary of the company's objects ;
- (7) the normal expiry date of the company ;
- (8) the undepreciated amount of bonds issued earlier and the guarantees attached to them ;
- (9) the amount, during the issue, of the bond issues guaranteed by the company and, where necessary, the guaranteed fraction of such issues ;
- (10) the amount of the issue ;
- (11) the face value of the bonds to be issued ;
- (12) the rate and mode of calculation of the interest and other proceeds, as well as the method of payment ;
- (13) the period and conditions of possible repayment as well as the conditions of redemption of the bonds ;
- (14) the guarantees provided, where necessary, for the bonds.

The prospectus shall bear the signature of the company.

**Article 843 :**

The following shall be appended to the prospectus referred to in Article 842 of this Uniform Act :

- (1) a copy of the last balance-sheet approved by the general meeting of shareholders, certified by the legal representative of the company ;
- (2) where the balance-sheet was closed on a date more than ten months before the start of issue, a statement of the company's assets and liabilities dating not more than ten months, drawn up under the responsibility of the board of directors or managers, as the case may be ;
- (3) information on the progress of the company's business since the beginning of the current fiscal year and, where appropriate, on the preceding fiscal year where the ordinary

general assembly required to adjudicate on the summary financial statements has not yet met.

Where no balance-sheet has yet been drawn up, the prospectus shall make mention thereof.

The annexes provided for in paragraphs (1) and (2) of this article may be replaced, depending on the case, by the reference to the publication in newspapers empowered to publish legal notices of the last balance-sheet or the interim financial statement of the balance-sheet drawn up on a date not more than ten months prior to the date of issue, where the balance-sheet or statement has already been published.

**Article 844 :**

The circulars informing the public about the issue of bonds shall reproduce the information in the prospectus referred to in Article 842 of the Uniform Act, indicating the issue price and bearing a statement about the insertion of the said prospectus in a newspaper empowered to publish legal notices, with reference to the number in which the prospectus was published.

The posters and notices in newspapers shall reproduce the same information or at least an extract from the said information with reference to the prospectus and an indication of the number of the newspapers empowered to publish legal notices in which it was published.

### **Section 5. Bondholders' meetings**

**Article 845 :**

Before the session of the meeting of bondholders, the notices convening the bondholders published in newspapers empowered to publish legal notices of the Contracting State of the registered office and, where necessary, of the other Contracting States where a public issue is launched shall contain :

- (1) the company's name followed, where necessary, by its acronym;
- (2) the form of the company ;
- (3) the amount of the company's capital ;
- (4) the address of the registered office ;
- (5) the registration number of the company in the Trade and Personal Property Credit Register ;
- (6) the agenda of the meeting ;
- (7) the day, time and venue of the meeting ;
- (8) where necessary, the place or places where the bonds shall be submitted in order to obtain the right to take part in the meeting ;
- (9) an indication of the loan subscribed to by the bondholders whose group is convened for the meeting ;
- (10) the name and domicile of the person who took the initiative to convene the meeting and the capacity in which he acted ;
- (11) where appropriate, the date of the court decision designating the representative responsible for convening the meeting.

### **Section 6. Publicity**

**Article 846 :**

The provisions of this section shall apply to companies whose shares are listed partially or wholly in the stock exchange of one or more Contracting States.

#### **Sub-section 1. Annual publicity**

**Article 847 :**

The companies whose shares are listed on the stock exchange shall publish in a newspaper empowered to publish legal notices within a period of four months from the close of the fiscal

year and no later than fifteen days before the date of the annual general meeting of shareholders, under a heading clearly showing that the publication concerns drafts not verified by the auditors :

- (1) the summary financial statements (balance-sheet, profit and loss account, statement of source and expenditure of funds and annexed statement) ;
- (2) the proposed allocation of income ;
- (3) for companies with subsidiaries or holdings, the consolidated summary financial statements, where available.

**Article 848 :**

Companies whose shares are listed on the stock exchange shall publish in a newspaper empowered to publish legal notices within a period of forty-five days following the approval of the summary financial statements by the ordinary general meeting of shareholders the following documents :

- (1) the approved summary financial statements, bearing the certificate of the auditors ;
- (2) the decision on the allocation of income ;
- (3) the consolidated summary financial statements bearing the certificate of the auditors.

However, where these are exactly identical to those published in pursuance of Article 765 of this Uniform Act, only one notice making reference to the first publication and bearing the certificate of the auditor shall be published in a newspaper empowered to publish legal notices.

**Sub-section 2. Publicity at the end of the first half of the year**

**Article 849 :**

Companies whose shares are listed on the stock exchange of one or more Contracting States shall, within a period of four months following the end of the first half of the fiscal year, publish in a newspaper empowered to publish legal notices of the Contracting States a statement of operations and income as well as a half-yearly progress report accompanied by a certificate from the auditor on the authenticity of the information provided.

**Article 850 :**

The statement of operations and income shall show the net amount of the turnover and income from the ordinary operations of the company before tax. Each item on the statement shall show the figure of the corresponding item during the previous fiscal year and the first half of that year.

**Article 851 :**

The half-yearly progress report of its activity shall annotate the data on the turnover and the income of the first half of the year. It shall also describe the company's operations during this period and provide a forecast of the development of the operations up to the close of the fiscal year. Any important events which happened during the just-ended half year shall also be included in the report.

**Article 852 :**

Companies drawing up consolidated summary financial statements shall be required to publish their statements on operations and income and their half-yearly progress reports in consolidated form accompanied by a certificate from the auditor on the authenticity of the information provided.

**Sub-section 3. Publicity - Subsidiaries of listed companies**

**Article 853 :**

Companies not listed on the stock exchange, half of whose shares are held by one or more listed companies having :

- (1) a balance-sheet above two hundred million (200 000 000) CFA francs ; or

(2) a share portfolio with an inventory value or stock exchange value exceeding eighty million (80 000 000) CFA francs, shall, within a period of forty-five days following the approval of the summary financial statements the meeting of shareholders, publish in a newspaper empowered to publish legal notices the documents, approved summary financial statements bearing the certificate of the auditors, and the decision to allocate the income.

**BOOK 5  
THE JOINT VENTURE**

**TITLE 1  
GENERAL PROVISIONS**

**Article 854 :**

A joint venture shall be an entity whose partners agree not to register it in the Trade and Personal Property Credit Register and not to give it a corporate personality. It shall not be subject to publicity.

The existence of a joint venture may be proved by any means.

**Article 855 :**

The partners shall freely agree on the object, duration, conditions of functioning, rights of partners and termination of the joint venture, subject to there being no derogation from the mandatory rules of the provisions common to companies, with the exception of those relating to corporate personality.

**TITLE 2  
RELATIONS AMONG PARTNERS**

**Article 856 :**

Unless a different organization has been provided for, the relations between partners shall be governed by the provisions applicable to private companies.

**Article 857 :**

The assets necessary for the company's activity shall be placed at the disposal of the manager of the company. However, each partner shall remain owner of the assets he places at the disposal of the company.

**Article 858 :**

The partners may agree to put certain assets in joint ownership or that one of the partners, in relation to third parties, shall be owner of all or part of the assets he acquires with a view to the realization of the company's object.

**Article 859 :**

The assets acquired by application of funds or re-investment of joint earnings shall be deemed to be joint holdings throughout the duration of the company, as well as assets which were joint before being placed at the disposal of the company.

The same shall apply to assets which the partners may have agreed to put into joint ownership.

**Article 860 :**

Unless otherwise provided for by the articles, no partner may request the sharing of joint assets as long as the company is not wound up.

**TITLE 3  
RELATIONS WITH THIRD PARTIES**

**Article 861 :**

Each partner shall contract in his personal name and shall be solely liable to third parties.

However, where the partners act expressly in their capacity as partners towards third parties, each of those who acted shall be liable for the commitments of the others.

Any bonds subscribed to under these conditions shall commit them indefinitely, jointly and severally.

The same shall apply to a partner who, by interference, has made the contracting partner believe that he intended to commit himself on the partner's behalf and it is proved that he reaped profit from the enterprise.

#### **TITLE 4 WINDING UP OF THE COMPANY**

**Article 862 :**

A joint venture shall be dissolved by the same events which terminate a private company.

The partners may, however, agree in the Articles of Association or in a subsequent deed that the company will continue in business in spite of such events.

**Article 863 :**

Where the company is of an unspecified duration, its winding up may come at any time after notification, by hand-delivered letter against a receipt or by registered letter with acknowledgement of receipt, from one partner to all the others, provided that the notification shall be in good faith and not at the wrong moment.

#### **BOOK 6 DE FACTO PARTNERSHIP**

**Article 864 :**

A de facto partnership shall exist where two or more natural persons or corporate bodies act as partners without having formed between themselves one of the companies recognized by this Uniform Act.

**Article 865 :**

Where two or more natural persons or corporate bodies form between themselves a company recognized by this Uniform Act but have not fulfilled the constituent legal formalities, or have formed between them a company not recognized by this Uniform Act, a de facto partnership shall exist.

**Article 866 :**

Any interested party may petition the competent court of the principal place of activity of a de facto partnership for a recognition of a de facto partnership between two or more persons ; He shall produce the identity or the commercial name of the partnership.

**Article 867 :**

The existence of a de facto partnership shall be proved by any means.

**Article 868 :**

Where the existence of a de facto partnership is recognized by the judge, the rules governing private companies shall apply to the partners.

**BOOK 7**  
**THE ECONOMIC INTEREST GROUP**

**TITLE 1**  
**GENERAL PROVISIONS**

**Article 869 :**

An economic interest group shall be one which has the exclusive object of putting in place for a specified duration all the means necessary to facilitate or develop the economic activity of its members and to improve or increase income from the said activity.

Its activity shall mainly be connected with the economic activity of its members and shall not be of an auxiliary nature in relation thereto.

**Article 870 :**

The economic interest group shall not by itself give rise to the realization or sharing of profits.

It may be formed without capital.

**Article 871 :**

Two or more natural persons or corporate bodies, including persons exercising a liberal profession governed by a legislative or statutory instrument or whose title is protected, may form between them an economic interest group.

The rights of members of the group may not be represented by negotiable instruments. Any clause to the contrary shall be deemed to be unwritten.

**Article 872 :**

An economic interest group shall have corporate personality and full capacity with effect from registration in the Trade and Personal Property Credit Register.

**Article 873 :**

The members of the economic interest group shall be liable for the debts of the group on their assets proper. However, a new member may, where the contract permits, be exempted from the debts contracted before he joined the group. The exoneration decision shall be published.

The members of the economic interest group shall be jointly and severally liable for payment of the debts of the group, unless otherwise agreed with a contracting third party.

**Article 874 :**

The creditors of the group may take action for the settlement of debts against a partner only after unsuccessfully notifying the group by an extra-judicial act.

**Article 875 :**

An economic interest group may issue bonds under the general conditions of issue of such bonds where the group exclusively comprises companies authorized to issue bonds.

**Article 876 :**

Subject to the provisions of this Uniform Act, a contract shall determine the organization of the economic interest group and shall freely lay down the contribution of each member to the debts of the group. Failing this, each member shall bear an equal part of the debt.

During its existence, the group may accept new members under the conditions laid down by contract.

Any member may withdraw from the group under the conditions laid down in the contract, subject to having fulfilled his obligations.

The contract shall be in writing and shall be subject to the same conditions of publicity as the companies concerned by this Uniform Act.

It shall in particular contain the following details :

- (1) the name of the economic interest group ;
- (2) the name, trade name or corporate name, legal form, address of the domicile or head office and, as the case may be, the registration number in the Trade and Personal Property Credit Register of each member of the economic interest group ;
- (3) the duration for which the economic interest group is formed ;
- (4) the object of the economic interest group ;
- (5) the address of the registered office of the economic interest group.

Any amendments to the contract shall be drawn up and published under the same conditions as the contract itself. They shall be demurrable to third parties from the date of such publicity.

The deeds and documents emanating from the economic interest group intended for third parties, in particular letters, invoices, various notices and publications shall clearly show the name of the group, followed by the words « economic interest group » or the acronym « E.I.G. »

Any violation of the provisions of the above paragraph shall be punished with penalty for simple offences.

**Article 877 :**

The general meeting of members of the economic interest group shall be competent to take any decision, including premature winding up or extension of the existence of the group under the conditions laid down in the contract.

The contract may provide that all or some decisions shall be taken under the conditions of quorum and majority it shall determine. Where the contract is silent, decisions shall be taken unanimously.

The contract may also allocate to each member of the economic interest group a number of votes different from that allocated to others. Failing this, each member shall have one vote.

**Article 878 :**

The meeting shall meet as of right at the request of at least one quarter of the members of the economic interest group.

### **TITLE 3 ADMINISTRATION**

**Article 879 :**

The economic interest group shall be administered by one or more natural persons or corporate bodies, provided that in the case of a corporate body, such corporate body shall designate a permanent representative, who shall incur the same civil and criminal liabilities as if he were a director in his own name.

Subject to this reserve, the contract or, failing that, the general meeting of members of the economic interest group shall freely organize the administration of the group and appoint the directors whose duties, powers and conditions of dismissal it shall determine.

In relations with third parties, a director shall commit the economic interest group for any act connected with the object of the group. No limitation of powers may be invoked against third parties.

### TITLE 3 AUDIT

**Article 880 :**

The audit of management and of the summary financial statements shall be carried out under the conditions laid down by the contract.

However, where an economic interest group issues bonds under the conditions provided for in Article 874 of this Uniform Act, the management audit shall be carried out by one or more natural persons appointed by the meeting.

Their term of office and powers shall be determined by the contract.

The audit of the summary financial statements shall be conducted by one or more auditors chosen from the official list of auditors and appointed by the meeting for a term of six fiscal years.

Subject to the regulations proper to the economic interest group, the auditor shall have the same status, duties and responsibilities as the auditor of a public limited company.

**Article 881 :**

In case of issue of bonds by the economic interest group, the punishment of offences relating to the obligations provided for in this Uniform Act shall be applicable to the executives of the economic interest group as well as to natural persons managing the member companies or permanent representatives of the corporate bodies managing these companies.

### TITLE 4 TRANSFORMATION

**Article 882 :**

Any company or association whose object corresponds to the definition of the economic interest group may be transformed into an economic interest group. It shall not be necessary to wind up the company or to set up a new corporate body.

An economic interest group may be transformed into a private company without having to wind up the group or to set up a new corporate body.

### TITLE 5 DISSOLUTION

**Article 883 :**

The economic interest group shall be dissolved :

- (1) by the end of the term ;
- (2) by the realization or extinction of its object ;
- (3) by decision of its members under the conditions laid down in Article 877 of this Uniform Act ;
- (4) by court decision, for justifiable reasons ;
- (5) by death of a natural person or dissolution of a corporate body which is member of the economic interest group, unless otherwise provided for in the contract.

**Article 884 :**

Where one of the members becomes incapacitated, personally bankrupt or is banned from directing, managing, administering or controlling an enterprise, whatever its form or object, the economic interest group shall be dissolved, unless its continuation is provided for in the contract or the other members so decide unanimously.

**Article 885 :**

The dissolution of the economic interest group shall entail its liquidation. The personality of the group shall subsist for the purposes of the liquidation.

The liquidation shall be carried out in accordance with the provisions of the contract. Failing this, a liquidator shall be appointed by the general meeting of the members of the economic interest group or, where the meeting is unable to make such appointment, by decision of the president of the competent court.

After settlement of the debts, the surplus of assets shall be shared among the members under the conditions laid down by the contract. Failing this, the sharing shall be done in equal parts.

### PART 3 PENAL PROVISIONS

#### TITLE 1 OFFENCES RELATING TO THE FORMATION OF COMPANIES

**Article 886 :**

A criminal offence shall be committed where the founders, chairman and managing director, general manager, managing director or assistant managing director of a public limited company issue shares before registration of the company or at any time whatsoever where registration is obtained by fraud or the company is irregularly formed.

**Article 887 :**

Whoever —

- (1) knowingly, by the establishment of the notarial statement of subscription and payment or of the depositary's certificate, certifies as true and authentic subscriptions he knows are fictitious or declares that the funds which have not been placed definitely at the disposal of the company have been effectively paid ; or
- (2) hands over to the notary or to the depositary a list of shareholders or statements of subscription and payment bearing fictitious subscriptions or payment of funds which have not been definitely made available to the company ; or
- (3) knowingly, by fictitious subscriptions or payments or by publication of non-existent subscriptions or payments or by any other false acts obtains or attempts to obtain subscriptions or payments ; or
- (4) knowingly, in order to obtain subscriptions or payments, publishes the names of persons falsely designated as being or expected to be linked to the company in any capacity whatsoever; fraudulently, causes a contribution in kind to be given an assessment above its real value —

shall incur a punitive sanction.

**Article 888 :**

Whoever knowingly negotiates —

- (1) registered shares which have not remained in the registered form until they were fully paid up ; or
- (2) initial shares before the expiry of the time limit during which they are not negotiable ; or
- (3) shares issued for cash for which payment of a quarter of the face value has not been

made —  
shall incur a punitive sanction.

## TITLE 2 OFFENCES RELATING TO THE MANAGEMENT, ADMINISTRATION AND DIRECTING OF COMPANIES

### **Article 889 :**

Any company executives who, in the absence of an inventory or by means of a fraudulent inventory, knowingly share fictitious dividends among shareholders or partners of the company, shall incur a punitive sanction.

### **Article 890 :**

Any company executives who, knowingly, even without any sharing of dividends, publish or present to the shareholders or partners, with a view to hiding the true situation of the company, summary financial statements not showing, for each fiscal year, an accurate picture of the transactions of the year, of the financial situation and of the situation of the estate of the company at the expiry of the said period, shall incur a punitive sanction.

### **Article 891 :**

Any manager of a private limited company, directors, chairman and managing director, general manager, managing director or assistant managing director who, in bad faith, use the assets or credit of the company in a way they know is against the interests of the company, for personal, material or moral ends, or in favour of another corporate body in which they have an interest directly or indirectly, shall incur a punitive sanction.

## TITLE 3 OFFENCES RELATING TO GENERAL MEETINGS

### **Article 892 :**

Whoever, knowingly, prevents a shareholder or a partner from participating in a general meeting shall incur a punitive sanction.

## TITLE 4 OFFENCES RELATING TO VARIATION OF THE CAPITAL OF PUBLIC LIMITED COMPANIES

### CHAPTER 1 INCREASE OF CAPITAL

### **Article 893 :**

Any directors, chairman of the board of directors, chairman and managing director, general manager, managing director or assistant managing director of a public limited company who, on the occasion of an increase of capital, issue shares or share denominations —

- (1) before the establishment of the depositary's certificate ; or
  - (2) without due compliance with the preliminary formalities for an increase of capital ; or
  - (3) without the previously subscribed capital of the company having been fully paid up ; or
  - (4) without the new initial shares having been fully paid-up before the registration of the amendment in the Trade and Personal Property Credit Register ; or
  - (5) without one quarter of the face value of the new shares having been paid up at the time of subscription ; or
  - (6) where necessary, without the total agio on issue having been fully paid up at the time of subscription —
- shall incur a punitive sanction.

Penalties shall also be applied against persons referred to in this article who fail to maintain the shares issued for cash in registered form until they are fully paid up.

**Article 894 :**

Any company executives who, at the time of an increase of capital —

- (1) fail to enable shareholders to benefit, proportionately to the amount of their shares, from the pre-emptive right of subscription for shares issued for cash where such right has not been repealed by the general meeting and where the shareholders have not renounced it ; or
  - (2) fail to reserve a deadline of at least twenty days for shareholders from the opening of subscription, unless such deadline has expired prematurely ; or
  - (3) fail to allot the shares which become available, because of insufficient number of subscriptions as of right, to shareholders who have subscribed for excess shares which outnumber the shares they subscribed for as of right, proportionately to the rights which they enjoy ; or
  - (4) fail to reserve the rights of holders of subscription certificates —
- shall incur punitive sanctions.

**Article 895 :**

Any company executives who, knowingly, give or confirm incorrect information in the reports presented to the general meeting convened to decide on the repeal of the pre-emptive right of subscription, shall incur a punitive sanction.

## CHAPTER 2 REDUCTION OF CAPITAL

**Article 896 :**

Any directors, chairman and managing director, general manager, managing director or assistant managing director who, knowingly, carry out a reduction of capital —

- (1) without respecting the equality of shareholders ; or
- (2) without communicating the proposed reduction of capital to the auditors forty-five days before the holding of the general meeting convened to decide on the reduction of capital —

shall incur a punitive sanction.

## TITLE 5 OFFENCES RELATING TO THE AUDIT OF COMPANIES

**Article 897 :**

Any company executives who fail to have auditors appointed for the company or not to convene them to the general meetings of shareholders, shall incur a punitive sanction.

**Article 898 :**

Whoever, in his own name or as a member of an auditors company, knowingly accepts, performs or maintains the duties of auditor, notwithstanding legal incompatibilities, shall incur a punitive sanction.

**Article 899 :**

Any auditor who, either in his own name or as a member of an auditors' company, knowingly gives or confirms false information on the situation of the company or fails to reveal to the public prosecutor's office any offences which may have come to his knowledge, shall incur a punitive sanction.

**Article 900 :**

Any company executives or any person in the service of a company who knowingly, obstruct verifications or audit by auditors or refuse to communicate to them on the spot, all the documents needed for the performance of their duty, in particular all contracts, books, accounting documents and minutes registers, shall incur a punitive sanction.

## **TITLE 6 OFFENCES RELATING TO THE DISSOLUTION OF COMPANIES**

### **Article 901 :**

Any company executives who, knowingly, fail, where the shareholders' equity of the company falls below half the registered capital due to losses recorded in the summary financial statements to —

- (1) have an extraordinary general meeting convened, within a period of four months following the approval of the summary financial statements in which the losses appear to order, where necessary, the premature dissolution of the company ; or
  - (2) file at the registry of the court responsible for commercial matters, register in the Trade and Personal Property Credit Register and publish in a newspaper empowered to publish legal notices the premature dissolution of the company —
- shall incur punitive sanctions.

## **TITLE 7 OFFENCES RELATING TO THE LIQUIDATION OF COMPANIES**

### **Article 902 :**

Any liquidator of a company who, knowingly —

- (1) fails within a time limit of one month from the date of his appointment, to publish in a newspaper empowered to publish legal notices of the place of the registered office of the company, the document appointing him liquidator and to enter the decisions pronouncing the dissolution of the company in the Trade and Personal Property Credit Register ; or
  - (2) fail to convene the members of the company at the end of liquidation to adjudicate on the final liquidation account, the final discharge of his management and of his terms of reference and to record the close of the liquidation ; or
  - (3) fails, in the case provided for in Article 219 of this Uniform Act, to deposit final accounts at the registry of the court responsible for commercial matters of the place of the registered office, or to petition the court for the approval of the accounts —
- shall incur a punitive sanction.

### **Article 903 :**

Any liquidator who, where liquidation is ordered by a decision of a court, knowingly —

- (1) fails to present, within a period of six months of his appointment, a report on the situation of the assets and liabilities of the company under liquidation and on the pursuit of liquidation transactions, or to apply for the authorizations needed to end them ; or
- (2) fails to establish, within a period of three months following the close of each financial year, the summary financial statements upon the inventory and a written report in which he gives account of the liquidation transactions during the just-ended financial year ; or
- (3) fails to enable the members of the company to exercise, during the liquidation period, their right to receive the company's documents under the same conditions as before ; or
- (4) fails to convene the members of the company, at least once a year, to give them an account of the summary financial statements in the case where the company continues in business ; or
- (5) fails to deposit in a bank account opened in the name of the company under liquidation, within a time limit of fifteen days following the decision to share the sums allocated for the partners and the creditors of the company ; or

- (6) fails to deposit in a deposit account opened in the accounts of the Treasury, within a time limit of one year from the close of the liquidation, the sums allocated to the creditors or partners of the company but not claimed by them — shall incur a punitive sanction.

**Article 904 :**

Any liquidator who, in bad faith —

- (1) uses the assets or credit of a company under liquidation in a way he knows is contrary to the interests of the company, for personal ends or in the interest of another corporate body in which he has a stake directly or indirectly ; or
- (2) transfers all or part of the assets of a company under liquidation to a person who has had in the company the status of partner in name, active partner, manager, member of the board of directors, managing director or auditor, without having obtained the unanimous consent of the partners or failing this, the authorization of the competent court — shall incur a punitive sanction.

**TITLE 8  
OFFENCES RELATING TO  
PUBLIC CALL FOR CAPITAL**

**Article 905 :**

Any chairmen, directors or general managers of companies who issue transferable securities offered to the public —

- (1) without a notice being inserted in a newspaper empowered to publish legal notices before any publication measure ; or
- (2) without prospectuses and circulars reproducing the information in the notice referred to in paragraph (1) of this article and bearing a mention of the insertion of such notice in a newspaper empowered to publish legal notices with reference to the number under which it was published ; or
- (3) without posters and notices in newspapers reproducing the same information in or at the very least an extract of the information with reference to the said notice and indications of the number of the newspaper empowered to publish legal notices in which it was published ; or
- (4) without posters, prospectuses and circulars mentioning the signature of the person or the representative of the company making the offer and specifying whether the securities are quoted or not and, where quoted, on which stock exchange — shall incur a punitive sanction.

The same penalty shall be applicable to persons who act as an accessory in the transfer of transferable securities in violation of the provisions of this article.

**PART 4  
FINAL AND TRANSITIONAL PROVISIONS**

**BOOK 1  
MISCELLANEOUS PROVISIONS**

**Article 906 :**

The CFA franc shall, within the meaning of this Uniform Act, be the basic currency of OHADA. The exchange rate in the national currency of Contracting States which do not have the CFA franc as their monetary unit, shall initially be the one determined by application of the parity in force between the CFA franc and the national currency of the said Contracting States on the date of adoption of this Uniform Act. The exchange rate shall be rounded up to the next higher unit where the conversion shows a decimal number.

The Council of Ministers of the Contracting States to the Treaty on the Harmonization of Business Law in Africa, on the proposal of the Finance Ministers of the Contracting States, shall, as and when necessary, examine and, where necessary, revise the amounts in this Uniform Act expressed in CFA francs, depending on the economic and monetary developments in the said Contracting States. The exchange rate in the national currency shall, where necessary, be that determined by application of the parity in force between the CFA franc and the national currency of the said Contracting States on the day of adoption of the revised amounts in this Uniform Act.

## **BOOK 2 TRANSITIONAL AND FINAL PROVISIONS**

### **Article 907 :**

This Uniform Act shall be applicable to companies and economic interest groups which shall be formed on the territory of one of the Contracting States from the date of its entry into force in the said Contracting State.

However, any formalities towards the formation of a company accomplished prior to the entry into force of this Uniform Act shall not be repeated.

### **Article 908 :**

Companies and economic interest groups formed prior to the entry into force of this Uniform Act shall be subject to its provisions. They shall be required to harmonize their Articles of Association with the provisions of this Uniform Act within a period of two years following its entry into force.

Partnerships limited by shares existing regularly in one of the Contracting States shall be transformed, within the same time limit of two years, into public limited companies, under penalty of being dissolved as of right on the expiry of the said time limit.

### **Article 909 :**

The purpose of harmonization shall be to repeal, amend and replace, where necessary, the provisions of the Articles of Association contrary to the mandatory provisions of this Uniform Act and to include therein the supplements warranted by this Uniform Act.

### **Article 910 :**

Harmonization may be carried out through amendment of the old Articles of Association or through adoption of redrafted Articles of Association.

Harmonization may be decided upon by the meeting of shareholders or of partners sitting under the conditions of validity of ordinary decisions, notwithstanding any legal or statutory provisions to the contrary, provided there shall be amendment in substance of only those clauses which are incompatible with the new law.

### **Article 911 :**

Transformation of the company or an increase of its capital by any means other than incorporation of reserves, profits or agio on issue may only be carried out under the conditions normally required for the amendment of the Articles of Association.

### **Article 912 :**

Where, for any reason whatsoever, the meeting of shareholders or of partners has been unable to reach a valid decision, the proposed harmonization of the articles shall be submitted for the approval of the president of the competent court sitting at the request of the legal representatives of the company.

**Article 913 :**

Where harmonization is unnecessary, the fact shall be duly noted by the meeting of shareholders or of partners whose decision shall be subject to the same publication as for the decision to amend the Articles of Association.

**Article 914 :**

Where private limited companies and public limited companies fail to increase their registered capital by at least the minimum amount stipulated respectively in Articles 311 and 387 of this Uniform Act, they shall, where their capital is below the said amounts, pronounce, before the expiry of the time limit specified in Article 908 of this Uniform Act, their dissolution or be transformed into another form of company for which this Uniform Act does not require minimum capital above the existing capital.

Companies which do not comply with the provisions of the preceding paragraph shall be dissolved as of right upon the expiry of the stipulated time limit.

**Article 915 :**

Where the Articles of Association of a company are not harmonized with the provisions of this Uniform Act within a period of two years from the date of entry into force, the clauses of the articles repugnant to these provisions shall be deemed to be unwritten.

**Article 916 :**

This Uniform Act shall not repeal laws applicable to companies subject to a special scheme.

The clauses of the articles of such companies which conform to the provisions repealed by this Uniform Act but which are repugnant to the provisions of this Uniform Act and which are not provided for by the special scheme of the said companies, shall be harmonized with the provisions of this Uniform Act under the conditions laid down in Article 908 of this Uniform Act.

**Article 917 :**

This Uniform Act shall not derogate from the laws relating to the minimum amount of company shares issued by the companies formed prior to its entry into force.

**Article 918 :**

Partnership shares or founder's shares issued before the entry into force of this Uniform Act shall remain governed by the instruments concerning them.

**Article 919 :**

All laws repugnant to the provisions of this Uniform Act shall be repealed, subject to their application transitionally for a period of two years from the date of entry into force of this Uniform Act to the companies which have not harmonized their Articles of Association with the provisions of this Uniform Act.

However, notwithstanding the provisions of Article 10 of this Uniform Act, each Contracting State may, during a transitional period of two years from the date of entry into force of this Uniform Act, maintain its national law applicable for the procedure of establishing the Articles of Association

**Article 920 :**

After consideration, the Council of Ministers of the Contracting States present and voting, in accordance with the provisions of the Treaty of 17 October 1993 on the Organization for the Harmonization of Business Law in Africa, hereby adopts unanimously this Uniform Act.

This Uniform Act shall be published in the Official Gazette of OHADA and of the Contracting States. It shall enter into force on 1 January 1998.

Done at Cotonou on 17 April 1997.