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Extracts from the Liechtenstein Law on Companies

Second Part

The Legal Entities

(Juridical Persons)

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Twentieth Title
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Second Part
The Legal Entities
(Juridical Persons)

Third Title
General Provisions

Art. 106

The incorporated associations of persons (corporate bodies or corporations) and the establishments including foundations which are devoted to a specific object or purpose and are independent shall acquire the right of legal personality through registration in the Public Register (incorporation), that is, in the absence of deviating provisions of law, even if the preconditions of entry did not in fact, exist, subject to the procedure of voidability.

- A. Legal Personality
- I. Preconditions
- 1. Registration

Registration is not required for the corporate bodies and establishments under public law, for the societies which do not pursue an economic object such as that which exists in the operation of a business which pursues commercial objects, for ecclesiastical foundations, for family foundations and where the law provides an exception otherwise.

Art. 107

Associations of persons and fund donations whose economic objects are the conduct of trade, the manufacture of goods or the conduct of other commercial business may, insofar as the law does not allow an exception, only acquire the right of legal personality as companies with legal personality (company limited by shares, partnership limited by shares, Anteilsgesellschaft¹⁾, private company limited by shares, registered cooperative society, registered mutual insurance association or registered relief fund) or as

- 2. Purpose and object

¹⁾ See Art. 375.

an establishment and where the legal personality has not been acquired and the preconditions for another form of legal entity do not exist shall be subject to the provisions concerning the unregistered partnership.

Companies with legal personality and establishments may also be formed for the pursuit of objects which are other than commercial.

Where the law refers to legal entities which are regarded as equal in status to companies with legal personality, all other legal entities whose main object is to undertake commercial activities shall, in the absence of legal provisions to the contrary, be deemed to be included with these. In particular, investment and administration of assets or the holding of participations or other rights are not commercial activities unless the type and size of the undertaking render necessary the facilities of a commercial business and orderly accounting.¹⁾

Otherwise, the objects of the business may be all kinds of transactions for economic or other purposes and the articles may cite these, in general or in particular.

Associations of persons and establishments, including foundations whose objects are immoral or unlawful, may not, by virtue of the law, acquire the right of legal personality.

Art. 108

II. Absence of the same

In the event that action is undertaken on behalf of a legal entity without or prior to the said legal entity having acquired legal personality, liability shall rest with the persons that have so acted in particular founders or persons that have already been designated as bodies or the participants who pass resolutions at assemblies, pursuant to the provisions concerning the unregistered partnership and subject to the right of recourse against the persons otherwise participating.

A person who has not acted personally shall be liable only if according to the circumstances it must be assumed that that person granted an agent authority to act.

¹⁾ Art. 107 par. 3, second sentence inserted by the law of 15 april, 1980, LGBl. 1980, No. 39.

Those persons, who as a result of their acts, with or without the power of agency, have become unrestrictedly liable, may be released from this liability by the legal entity within three months of it acquiring legal personality, provided the obligation entered into by the person acting was expressly on behalf of the legal entity to be formed and the said legal entity appears competent to assume its undertaking pursuant to the law or the articles and to acquire this legal personality.

After assuming this legal personality, only the legal entity shall be liable to the creditors, subject, however, to the special provisions concerning contributions in kind and acquisitions in kind and concerning tortious acts.

Where assets are transferred to a person for the purpose of forming a legal entity, the said person is in doubt subject to the provisions concerning the implied¹⁾ trust relationship.

Art. 109

The legal entities are by virtue of the law eligible for all rights in the same manner as natural persons, in particular, property rights, the right to the use of a name or the right of honour, the rights of membership, of participation in firms and all obligations insofar as these rights or obligations do not have the natural circumstances or characteristics of man, such as sex, age, relationship by blood, as a necessary precondition.

III. Legal capacity

With this restriction, the provisions which apply to natural persons are therefore also applicable to legal entities.

Within this intendment, the legal entities may, through their governing bodies appointed to represent or their representatives, under their name or under their firm's name, appear before all court and administrative authorities and in all proceedings as party, intervener, the person summoned, participant or in a similar capacity for their rights and effect entries in public registers such as Land Register, Public Register, Patents Register and the like and demand the protection of the law.

¹⁾ See annotation ³⁾ to Art. 898.

By the virtue of the law, each member may, if necessary, at his own expense, appear as intervener, participant or as a summoned person for one of the parties at the legal entity's law cases. Where, however, the law acknowledges member minorities as parties, only members belonging to this minority may intervene in a dispute of the minority.

Art. 110

- IV. Capacity to act and for tortious liability
- 1. Precondition

The legal personalities are capable of acting as soon as the indispensable bodies required for this pursuant to the law and the articles have been appointed.

The internal regulations (by-articles), the memorandum of association, the formation deed (foundation deed) and the like shall, within this intendment, also be valid as articles, insofar as a deviation does not ensue from the individual provisions.

Art. 111

- 2. Activity
- a. In general

Natural persons, legal entities and firms may be appointed as members of a body.

The bodies are appointed to carry out the legal entity's wishes and intentions.

They commit the legal entity, without regard to their competence and subject to the right of recourse against the suspected party and to the special provisions concerning the liability of the principal by virtue of the law, not only by the conclusion of legal transactions but also by their conduct, insofar as this constitutes the undertaking of their representational activity or took place on the occasion of and when the opportunity was presented by the representational activity.

Within the limits of their legal capacity and their capacity to act, the legal entities are responsible, moreover, subject to a possible right of recourse against the suspected parties, for criminally tortious acts which a body or another representative appointed pursuant to the articles has committed in the exercise of their representational activity.

Where a legal entity or firm is a governing body or a representative of another legal entity, the represented legal entity or firm shall be directly entitled and committed as the result of the representational activities of their bodies and persons entitled to represent, subject to a possible right of recourse against the suspected parties.

The persons acting are, moreover, personally responsible for their inadmissible, culpable conduct and, if the preconditions of the foregoing paragraph are applicable, the legal entity or firm entitled to represent is also responsible.

Art. 112

Where the law or the articles do not determine to the contrary, the subject of the resolution shall be stated when a multiple-member body is convened.

b. Passing of resolutions

In the absence of other provisions, the resolutions of a multiple-member body shall be validly passed by a simple majority of the countable votes.

Countable votes shall be deemed to be those which in individual cases are represented and have taken part in the voting and are not excluded from the right to vote.

Where the law or the articles do not determine to the contrary, resolutions of the bodies may also be passed by written assent to a motion put forward (resolution by circular letter) if a member of the body does not demand verbal deliberation.

Art. 113

Where their articles do not determine to the contrary, the domicile of the legal entities shall be situated at that place where their administrative activities are centred, subject to the provisions concerning domicile in the international relationship. By virtue of the law, the domicile of the legal entity is placed, under private law, in the same category as the residences of private individuals.

V. Domicile and legal venue
1. Domicile

In addition to their domiciles, legal entities may have one or several branch establishments.

Art. 114

1. Legal venue,
etc.

Subject to special legal provisions, the competent courts and administrative authorities for legal entities shall be those which have jurisdiction at the legal entities' place of domicile.

For disputes between a legal entity and the members of the legal entity from within the membership and for creditors' claims arising from the responsibility or because of dissolution or the like, the legal venue by virtue of the law shall be, insofar as the law does not provide an exception as, for instance, in the case of legal entities subject to foreign law, the court having jurisdiction at the place of domicile of the legal entity, even if in addition a court of arbitration is provided in the articles.

Foreign legal entities owning a branch establishment in Liechtenstein may be held responsible by virtue of the law for all claims at the place of this branch establishment and a special bankruptcy procedure (branch bankruptcy) may be executed for the branch establishment.¹⁾

For litigation arising from accountability, the Liechtenstein judge shall be competent in all cases where it is a question of a domestic legal entity or a branch establishment or when the defendant has a domicile or registered office in Liechtenstein.¹⁾

Art. 115

VI. Protection of
personality

Legal entities enjoy the same protection of personality as natural persons insofar as a curtailment does not emanate from the restriction of their legal capacity and their capacity to act or from the nature of the relationships.

In particular, they are protected in their right to the name, the company name, marks, honour, the inviolability of letters, business and other secrecy worthy of protection.

Where a legal entity conducts a firm, the firm's admissibility and change of name shall conform with company law and the otherwise valid legal regulations or as laid down in the articles.

The change of name of a legal entity not entered in the Public Register shall conform analogously with the provisions drawn up

¹⁾ Para. 3 and 4 inserted by the law dated 30. October 1996, LGBl. 1997, No. 19.

for the firm name without, however, any obligation to register insofar as the articles do not determine to the contrary, subject to the prohibition concerning unfair competition.

Art. 116

Insofar as the law does not determine to the contrary, written or otherwise produced articles shall be required for the formation of a legal entity.

- B. Formation
- I. Articles
- 1. In general

Where a public notarised deed is prescribed by law for the articles, this shall apply only with respect to the content of the articles necessary on the occasion of the formation of the legal entity. The written form (internal regulations) shall be sufficient for all other provisions.

Where the law does not allow an exception, the legal entity must be designated in the articles as an association, a company limited by shares, a partnership limited by shares, an Anteils-gesellschaft¹⁾, a private company limited by shares, a registered co-operative society, a registered mutual insurance association or a registered relief fund, an establishment or a foundation.

Insofar as a corporate body institution is necessary or intended, this must be set forth in the articles in a manner which is in conformity with the law and the intention of the participants to possess the legal personality must be made evident in a satisfactory manner.

Where, apart from the case of the assembly of the supreme body, a public notarised deed is prescribed for the articles, the founders or members may also give their assent by signature at various recordings and authentications which may take place at different times and places.

The articles and their amendments shall in all cases be signed by a founder or a member if there is no provision for exceptions such as in the case of associations, co-operative societies or general associations.

¹⁾ See Art. 375.

Art. 117

2. Relationship to the law

In the absence of mandatory provisions of the law and provided the articles do not lay down supplementary provisions relating to the legal entity concerning, particularly, the governing bodies, the relationship of the legal entities between themselves, towards their members or third parties, the provisions of the law which are not mandatory shall be applicable supplementally.

Provisions whose application is mandatory, either by virtue of the law or otherwise, cannot be amended by the articles.

Apart from the fact that legal personality is acquired by entry in the Public Register, even if the actual preconditions for this did not exist, the defectiveness of a provision which conflicts with the law is cured by registration only where provision is made for this.

Art. 118

- II. Entry in the Public Register
1. Notification to the Register Office

Where entry in the Public Register is necessary in order to acquire legal personality or such entry is demanded voluntarily, it shall ensue at the domicile of the legal entity and the articles shall be deposited for safe keeping in the Register Office files, with details of the recordable facts or relationships and of the persons who comprise the bodies of the administration and, if necessary, the audit authority.

Notification to the Public Register shall be the responsibility of the administration or the persons particularly entrusted therewith at the time of formation.

Art. 119

2. Registration of branch establishments

Where in addition to its head office (domicile) a company with legal personality has branch establishments such as a place of business, a branch office with a degree of independence, which are not merely agencies, they shall also be entered in the Public Register at their actual places, with a reference to the entry of the head office.

The notification shall ensue with the enclosure of an extract from the Register or the like on behalf of the administration from the persons entitled to represent pursuant to the articles.

Where another legal entity conducts for its purpose a business which pursues commercial objects, the said legal entity shall be required to register its branch establishments.

Art. 120

Like the formation, every amendment to the articles, every change in the appointments to the bodies which are required to be stated at the time of registration and the dissolution must be reported to the Public Register insofar as a duty to report exists or an entry was demanded voluntarily and is admissible.

3. Amendments and dissolution

The same procedure shall be followed by the persons entitled to sign for amendments to the articles as for the original articles if they are changed. Publication of the amendment shall take place only insofar as provisions contained in earlier announcements are thereby changed.

Amendments and the dissolution shall be effective towards bona fide third parties only from the time of registration and, where applicable, of publication.

Where the amendment does not concern the points stated at the time of the first notification, it shall be sufficient if the entry refers to the document submitted to the Public Register or to the declaration delivered concerning the amendment.

Art. 121

When a corporate body is formed, at least sufficient members must be present in order to set up the administrative bodies insofar as the law does not permit an exception.

III. Number of members

Where the number of members subsequently falls below the minimum number, the dissolution of the corporate body shall not ensue automatically as a consequence thereof.

Where, however, this state continues, so that as a consequence the directives required by law or the articles can no longer be issued for more than one year, the court, at the request of a member or a creditor, unsatisfied or threatened with damages and losses, shall, in extrajudicial proceedings, following the possible hearing of participants, allow a reasonable period of time for the

restoration of the lawful state and, if this does not occur, declare by means of a ruling pursuant to the court's legal force, the corporate body to be dissolved.

Art. 122

IV. Minimum capital resources or minimum own assets and the like

In the case of a limited company (Aktiengesellschaft) and other legal entities whose capital is divided into shares, the minimum capital or minimum assets must be at least SFr. 50'000.-, and in the case of the private company limited by shares (Gesellschaft mit beschränkter Haftung) and legal entities whose capital is not divided into shares, at least SFr. 30'000.-¹⁾

Minimum capital and minimum assets must be fully paid up or contributed.²⁾

If the minimum own capital (minimum own assets) falls below the prescribed sum, members or creditors may apply to the court in extrajudicial proceedings for the dissolution of the company if there are important reasons for this or if the necessary number of members is lacking.

Where the law refers to own capital, this is to be understood as a numerical sum expressed in terms of money and where the law refers to own assets as assets consisting of any property or rights which are usually estimated in terms of money solely for balance sheet or other purposes.

The provisions of this articles may be applied correspondingly to the minimum sum or the minimum quota of a share.

To safeguard the acquisition of landed property and rights entered in the Land Register, a note can be made in the Land Register in favour of the legal entity.

If the minimum own capital (minimum own assets) falls below the prescribed sum, members or creditors may apply to the court in extra-judicial proceedings for the dissolution of the company if there are important reasons for this or if the necessary number of members is lacking.

¹⁾ Art. 122 para. 1, amended by the laws dated 21 December, 1954, LGBl. 1955, No. 2, and 4 June, 1963, No. 17, in the version of the law dated 11 July, 1974, LGBl. 1974, No. 51.

²⁾ Art. 122 para. 2, amended by the law dated 21 December, 1954, LGBl. 1955, No. 2, in the version of the law dated 4 June, 1963, LGBl. 1963, No. 17.

Where the law refers to own capital, this is to be understood as a numerical sum expressed in terms of money and where the law refers to own assets as assets consisting of any property or rights which are usually estimated in terms of money solely for balance sheet or other purposes.

The provisions of these articles may be applied correspondingly to the minimum sum or the minimum quota of a share.

To safeguard the acquisition of landed property and rights entered in the Land Register, a note may be made in the Land Register in favour of the legal entity being formed.

Art. 123

The legal entities shall be dissolved:

1. pursuant to the law or the articles,
2. by resolution of the supreme body which, in the absence of other provisions in the articles, shall be passed by two-thirds of the votes as determined pursuant to the following subparagraph and concerning which, where the law makes additional provision, a public document shall be drawn up,
3. by court judgment, where dissolution is demanded by a wholly liable member, for important reasons related to the legal entity, or by members who represent at least one-tenth of the capital resources or the own assets (non-prescribed monetary capital expressed in figures) of the legal entity or, where such is not present, by at least one-tenth of the members in order to avoid impending heavy damages and losses, after making prior provision for possible losses. Instead of redemption, however, the judge may order other measures, such as dissolution, the exclusion of the plaintiff members, under observance of the provisions concerning the reduction of the capital resources, the sale of the membership shares in favour of the plaintiff members and the appointment of an administrator,
4. by opening bankruptcy proceedings on grounds of insolvency or over-indebtedness, insofar as the law does not determine otherwise.

- C. Termination
- I. Reasons for dissolution
- 1. In general

The provisions concerning the lodging of security, the consolidation of several actions, the effect of the judgment and compensation in the case of actions on grounds of voidability or the rescission of resolutions of the supreme body shall be applied analogously to the petition for judicial dissolution pursuant to subparagraph 3.

Where a legal entity is dissolved for other reasons as, for example, on grounds of notice to terminate by members or third parties, pursuant to reservations in the articles, the provisions concerning liquidation shall also be applicable, provided the law does not determine otherwise.

In the event of the tacit continuation of a legal entity beyond the time determined in the articles, one of the minority quoted in the first paragraph under subparagraph 3, except for this right being otherwise forfeited, may demand dissolution within six months of the expiration, insofar as its redemption or exclusion does not ensue at the discretion of the judge, under observance of possible provisions concerning the reduction of capital resources.

Art. 124

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

Where the purpose or object of a legal entity is unlawful or immoral, the legal capacity shall be taken away and dissolution shall ensue without compensation

1. pursuant to administrative court action by the representative of public law,
2. pursuant to the action of a participant or the representative of public law in the due course of the law.

The directive for precautionary measures remains reserved in every case, such as the suspension of the course of business, the appointment of a sequestrator and the announcement of the said sequestrator's appointment, the seizure of books and documents, assets and the like before the final ruling by the Government in the application of administrative compulsion or, at the wish of the applicant, by the Princely Liechtenstein Court of Justice in extrajudicial proceedings.

Where cancellation proceedings against a legal entity are pending before one authority, cancellation proceedings may not be initiated before another authority and if cancellation proceedings are pending before both simultaneously, the final decision shall be made by the administrative court.

The dissolution action in the case of legal entities entered in the Public Register may, upon application or ex officio, be annotated in the Public Register, before or during the dispute, until the case is finally closed.

As soon as the decision has become final and absolute, the judge shall communicate with the Registrar ex officio for the purpose of making an annotation. After liquidation has been carried out, the entry shall be deleted automatically.

The foregoing provisions shall also be applicable where, because of its purposes or objects or means, a legal entity is a threat to the security of the State.

Art. 125

Should the original or amended articles not contain the provisions designated by the law as essential or should these be contradicted by an instruction laid down in regulations, voidability proceedings may be initiated insofar as the form, the defect in a provision concerning notification to the members or third parties, or the minimum number of members are not involved.

Every member of a legal entity and/or every other person in a legal entity entitled to vote, the administration or the audit authority may, through the Registrar, in extrajudicial proceedings, after the legal entity's bodies authorized to represent or also, possibly, a legal advisor specially appointed by the Registrar have been granted a hearing, cause a reasonable period of time to be set, amounting to not less than three months' duration from the date of service, extendable if necessary, for the legal entity's competent body to remove the defect and if the said defect is not removed within the set period of time, to effect dissolution by means of legal action.

The legal entity may, through its competent bodies, at any time, even during voidability proceedings, up to the time of final

3. On grounds of important defects in the articles (voidability)
 - a. In general

and conclusive decision, cure the defect by removal. If, however, this cure is not effected until after the expiration of the period of time mentioned in the previous paragraph, the legal entity shall pay all the costs accruing to the opposing parties, notwithstanding the legal entity's right of recourse to the offenders.

In all cases the legal entity shall retain the right of legal personality up to the termination of its liquidation, which shall ensue pursuant to the other provisions of this law, with reservation of bankruptcy.

This shall apply particularly with respect to the position of possible members and third parties.

Action can no longer be taken after the expiration of five years from the drawing up of a provision designated as essential.

Art. 126

b. Voidability
action

The action for voidability shall be taken against the legal entity which is represented by the administration or by the possible audit authority if the administration brings an action. If, however, not only the members of the administration but also those of the audit authority bring an action or if an audit authority does not exist and another representative for the legal entity is not present, the court, pursuant to the provisions of the code of procedure, shall appoint a legal adviser for the proceedings.

Several actions shall be combined for simultaneous hearing and judgment. The initiation of the action as well as the time of the hearing itself may be published at the discretion of the court; publication may also ensue in the manner determined in the articles for notices and, if such a provision is lacking, in the journals intended for the publication of official notices and shall be annotated ex officio in the Public Register.

Upon application by the legal entity, the court may order, because of the disadvantage threatening the legal entity, that the plaintiff shall lodge a judicial bond which shall be determined at the court's absolute discretion. Otherwise, the provisions of the Code of Civil Procedure concerning the judicial bond for the costs of an action shall be applied analogously to the performance and compensation of the said judicial bond.

Conversely, the court may postpone in proceedings by official order the execution of the contested provision if a threatening, irretrievable disadvantage to the legal entity can be established by preponderant evidence.

Any member of the legal entity or any other person in the legal entity entitled to vote may join the proceedings as an intervening party, on one side or the other, at the expense of the said intervening party.

Art. 127

Upon receipt of information or of his own accord, the Registrar may, *ex officio*, under the same preconditions as those obtaining in the care of voidability action, order in extrajudicial proceedings, the cancellation of the legal entity without compensation.

c. Proceedings *ex officio*

The Registrar shall first of all fix a reasonable period of time, which shall amount to at least three months and may be extended for important reasons, for the legal entity to submit a written or minuted verbal statement and, pursuant to the factual situation, remove the defect. The Registrar shall order the annotation of the voidability proceedings in the Public Register if the legal entity is entered therein.

Should the defect not be removed and a statement not be submitted and if meanwhile an action for voidability has not been finally and conclusively decided, the informer and the legal entity shall be summoned to a hearing to discuss the defects and a decision shall be made concerning dissolution.

Otherwise, the provisions relating to voidability shall be applied analogously with respect to the proceedings and the decision.

Art. 128

Depending upon whether the decision pronounces or dismisses voidability, the effect of the decision shall operate for or against all members and bodies of a legal entity, regardless of whether they took part in the proceedings or not.

d. Effect and responsibility

In the case of legal entities entered in the Public Register, the decision pronouncing dissolution shall, provided he did not initiate this, be communicated, ex officio or upon application, to the Registrar for the purpose of entry and publication, insofar as the entered provision was published.

If intent or gross negligence is involved the plaintiffs or informers shall be liable to the legal entity, without restriction, jointly and severally, pursuant to the provisions concerning tortious acts, for all damages and losses arising from unfounded action or information, insofar as the informer is not the representative of public law or insofar as another line of action does not exist ex officio.

Art. 129

II. Application of assets

Unless the law, the articles or the competent bodies determine to the contrary, the assets of a legal entity which is cancelled shall devolve upon the state which, as universal successor, shall be liable for the indebtedness solely to the extent of the assets taken over and in the same way as the bona fide owner.

Pursuant to the provisions concerning the implied¹ trust relationship, the application of the assets shall correspond as closely as possible to the existing purpose and the former participants in the cancelled legal entity may demand the said application through administrative channels.

Where a legal entity is judicially cancelled because immoral or unlawful purposes have been pursued, the assets, after liquidation has been officially implemented, shall devolve upon the State for discretionary utilization, even though provisions determine otherwise.

Art. 130

III. Liquidation 1. In general

Insofar as the law does not determine to the contrary, the dissolution of a legal entity for reasons other than bankruptcy shall result in the legal entity's liquidation.

Where a domestic branch establishment of a foreign company with legal personality is closed down, liquidation shall be implemented in the same way as when a domestic company with legal

¹) See annotation 3, Art. 898

personality is liquidated, unless the Public Register Office allows exceptions.¹⁾

Insofar as assets are present after the conclusion of the bankruptcy of a legal entity, they shall also be liquidated, unless it is resolved to continue the legal entity.

The procedure in the case of the liquidation of the assets of the legal entity shall be pursuant to the following provisions, where special provisions have not been drawn up for individual legal entities or their application is partly excluded as in the case of associations or foundations which are not entered in the Public Register or where an obligation to keep books or account is lacking.

Where during the liquidation proceedings it is established that the assets do not cover the liabilities towards third parties, the liquidators shall suspend their activity and give notice to the court for the purpose of initiating bankruptcy proceedings.

In the event that the application does not issue from all the liquidators, the court, before initiating bankruptcy proceedings, shall hear the members of the administration as well as the other liquidators and if they are not of the same opinion, shall initiate bankruptcy proceedings only if it is convinced of the over-indebtedness.

Insofar as the law or the articles do not determine to the contrary, a legal entity may, with the assent of all members, without being wound up, be converted into another legal entity or company with company name and in all cases the rights of third parties which existed up to the time of conversion shall remain reserved.

Art. 131

Where legal entities go into liquidation, they shall retain their legal personality and use their existing company name, with the unabbreviated subjoinder "in liquidation" until the liquidation is implemented, towards third parties and among the possible members.

Legal action may be taken against them under their existing company name and execution may be demanded against them as

2. The state of liquidation

¹⁾ Art. 130 para. 1a inserted by the Law dated 10 April, 1928, concerning the Trust Enterprise, LGBL 1928, No. 6.

long as, in the case of a legal entity entered in the Public Register, the subjoinder "in liquidation" is not entered in the Public Register, even, that is, if they have added the said subjoinder to their signature on the filed documents.

The bodies of the legal entity, with the exception of the administration whose powers as a body pass to the liquidation office, shall have the same powers during the state of liquidation as before liquidation, with the restriction, however, effective by virtue of the law, to acts such as those which, by their nature, may be justified by the purpose of the liquidation.

An acquisition of membership shall no longer take place, however. The members shall nevertheless remain committed to the performances, also during the liquidation, as, for example, to the payment of membership shares which are not fully paid up, of further contributions and the like which, by virtue of their purpose, appear to be recurrently executable for the duration and the state of liquidation and inasmuch as they serve to satisfy the creditors or for adjustment between the members.

Art. 132

- 3. Liquidators
- a. Due appointment and removal

Liquidators of the legal entity are the members who manage and represent, insofar as the liquidation is not transferred to other persons, in the articles or by resolution of the supreme body.

The power of agency of such liquidators may be extended, restricted or withdrawn by the supreme body or, if important reasons exist, upon application by a member or other participant and, in the case of legal entities without members, by the Registrar in extrajudicial proceedings.

Instead of this, the Registrar may, upon application by the creditors who represent at least one-third of all uncovered credit balances, by representatives of professional organisations or the Chamber of Commerce or, for important reasons, by members, also order an official liquidation and have it implemented, under his supervision or under that of a committee of creditors to be appointed and subject to the appropriate provisions concerning liquidation.

In the case of official liquidation, the court may order the discontinuance of all executions pending against the legal entity.

The provisions concerning the liquidators shall be applicable analogously to the substitute liquidators.

Art. 133

Where the liquidators are not designated in the manner stated or where the legal entity is cancelled because of the pursuit of unlawful or immoral objects, they shall be nominated by the Registrar in extrajudicial proceedings and in this case may be removed only by the judge.

b. Official appointment and status in bankruptcy

The registration of the official appointment or removal of liquidators shall ensue ex officio.

In the case of bankruptcy, the trusteeship in bankruptcy shall attend to the liquidation pursuant to the law relating to bankruptcy. However, the bodies including possible liquidators of a legal entity, insofar as dispositions concerning components of the total assets are not involved, shall have the same status as before the adjudication of bankruptcy.

In relation to the trusteeship in bankruptcy, the liquidators shall have the status of a natural person as a bankrupt.

Art. 134

The provisions concerning the obligation to register, the notification and the rights and obligations of the liquidators, which are drawn up with respect to the general partnership, shall also be applicable to the legal entity, subject to the following provisions and in the opinion that the notifications for the purpose of registration in the Public Register shall ensue through the administration.

c. Obligations and responsibility

Every change in the appointment of liquidators and the termination of their power of agency shall be notified through the administration.

Where the law does not determine to the contrary, the provisions which apply to the administration shall also apply to the liquidators, except however, the restraint of competition.

Liquidators who violate or neglect the obligations with which they are charged pursuant to the law or the articles shall, after dissolution of the legal entity, be responsible to the legal entity, at all events to the members and the creditors of the dissolved legal entity, for the damages and losses which have arisen, without

restriction, jointly and severally, in the same way as the bodies of the legal entity.

Unless otherwise determined, the liquidators shall act collectively and take decisions with a simple majority of votes.

Art. 135

- 4. Liquidation activity
- a. Drawing up of the balance sheet

Upon taking up office, the liquidators shall draw up a winding-up balance, in the preparation of which the administration shall assist and make available all relevant records and business papers.

The creditors who are known from the business records or in other ways, whose abode can be ascertained, shall be requested by special notification in this connection to register their claims; notification to the unknown creditors for the purpose of registering claims shall be by public announcement in the journals provided pursuant to regulations for announcements to third parties and, in the absence of such a provision, in the journals intended for official announcements, insofar as the Registrar in extrajudicial proceedings does not permit any other kind of request or insofar as all creditors give their assent to such a request.

Simultaneously, they may petition the court for the discontinuance of all executions.

At the request of the liquidators, the Registrar may, for important reasons, in extrajudicial proceedings, release the liquidators from their obligation to notify and request the creditors to register their claims, in which case the six-months' waiting period shall commence on the day the dissolution was announced by the Registrar.

The request pursuant to the foregoing paragraphs shall also be made in the case of domiciliary undertakings.

Art. 136

- b. Procedure

The liquidators shall conclude current business, satisfy, as far as the assets allow, the legal entity's liabilities pursuant to the provisions of the bankruptcy law concerning the ranking of claims and realise the assets and, insofar as they are necessary in order to cover the liabilities, collect the members' performances which are still outstanding.

In the realisation of the assets, real estate or analogous rights may, with the assent of the supreme body or another body empowered pursuant to regulations, also be disposed of by private contract.

A balance sheet showing the net position on the assets and liabilities of the legal entity in liquidation shall be drawn up annually. During the liquidation, however, income may not be distributed and donations may not be made to the reserve fund.

Monies received, which are not necessary for the payment of creditors, may be deposited at the Landesbank (the state savings and loan bank) or, for important reasons, also in other ways or, with the consent of the court in extrajudicial proceedings, the monies may be applied for part payments.

Art. 137

Where known creditors have omitted to register, the amount of their claims shall either be deposited judicially or paid out to them without notification.

c. Safeguards for creditors

Likewise, an appropriate amount shall be deposited for the legal entity's obligations which are suspended and not yet due as well as for the litigant obligations, insofar as the distribution of the legal entity's assets does not remain suspended until the legal entity is disposed of or the creditors are provided with security which is of the same standard as judicial deposition.

Where important reasons exist, a committee of creditors may, upon the application of creditors, be appointed for the supervision of the liquidators and for the purpose of accelerating the liquidation. The said committee of creditors shall be appointed by a simple majority of the votes represented at a creditors' meeting convened under the chairmanship of the court and shall support and supervise the liquidators and shall exclusively validate responsibility towards the liquidators.

Art. 138

After the debts have been repaid, the assets of a dissolved legal entity shall, where the members are entitled to certain shares and insofar as they and not the legal entity itself are entitled to these

d. Distribution of the assets and deregistration

and it has not been determined otherwise, be distributed among the members in proportion to the amounts paid in on these shares, but otherwise in case of doubt, per capita.

Distribution shall not be effected before six months have expired, calculated from the day on which dissolution was announced for the third time in the public journals intended for this purpose, with the request to register claims or, insofar as exceptions are not allowed, distribution shall ensue pursuant to the Registrar's order in extrajudicial proceedings.

A distribution before the expiration of these six months may be allowed by the Registrar in extrajudicial proceedings where, pursuant to the existing circumstances, danger to the creditors is completely excluded.

After the termination of their activity, the liquidators shall apply to the Public Register for deregistration.

Deregistration may ensue already before the expiration of the six-month ban.

Where the articles or the competent body do not determine to the contrary, the liquidators, after the termination of the liquidation, shall call the supreme body, insofar as such a body exists, for the purpose of approving the final account and releasing the liquidators. Where the resolution to release is unreasonably refused, the liquidators may have the release determined by way of action taken against the legal entity.

Art. 139

5. Supplement-
ary liquidation

Where after the dissolution and its entry in the Public Register it is found that there are further assets which are subject to distribution, the Court of Justice shall, upon the application of participants such as members, creditors or ex officio, in extrajudicial proceedings, undertake the distribution of the assets through officially appointed liquidators, in order of rank pursuant to bankruptcy law.

This provision shall apply analogously where a legal entity has been dissolved as the result of bankruptcy and the supreme body omitted to appoint special liquidators or it is resolved that the legal entity shall continue.

Where undistributed assets of the legal entity still exist, a creditor, insofar as he seeks his satisfaction solely from these, cannot be opposed by the period of prescription (statute of limitations) which commenced after distribution.

Art. 140

In the absence of a deviating provision in the articles, the assets may, pursuant to the provisions concerning a resolution to dissolve, be transferred as a whole and the resolution shall result in the dissolution of the legal entity, insofar as this has not already been resolved or the alienating transfer of the entire assets ensues in order to pay off creditors.

6. Alienation of the assets as a whole

In the absence of any other legal disposition, the contract of alienation shall require the simple written form and the transfer of the assets to the acquiring party shall be executed pursuant to the provisions applicable to the transfer of the individual asset components.

The provisions concerning liquidation shall be applicable in the sense that the liquidators shall also be empowered to undertake those transactions and lawful acts necessitated by the resolved alienation. However, the transfer of the assets to the transferee shall ensue solely subject to the observance of the provisions drawn up for the distribution of the assets among the members.

Art. 141

Where a legal claim is asserted against a deregistered or otherwise terminated legal entity as the result, for example, of proceedings being reopened or of an action for annulment, the court, upon application by the participants, shall appoint a legal adviser for the dissolved legal entity, who shall represent the participants in the proceedings. The provisions concerning the administrator ad litem (Prozesspfleger) shall apply analogously with regard to the legal adviser's costs.

IV. Assertion of claims against a dissolved legal entity

The appropriate provisions relating to liability shall be reserved for the liability concerning the unjustified withdrawal of liquidation shares.

Where successors in title or other persons (firms, legal entities) incur liability for the debts of the legal entity deregistered in the Public Register and the period of prescription has not commenced, they may be held responsible as joint litigants in addition to the legal entity or separately, individually or together, subject to their liability.

Art. 142

V. The keeping of business records and business papers

The business records and business papers of a company with legal personality which has been wound up, or of a legal entity on the same footing shall, at the expense of the total assets, following the liquidators' application, be deposited for safe keeping in a place to be determined by the Register Authority for a period of ten years and after the expiration of this period shall be used at the discretion of the Register Authority.

Where a legal entity is wound up as the result of bankruptcy, the trusteeship in bankruptcy shall, at the expense of the total assets, issue the directive concerning storage.

Any person able to substantiate a legitimate interest by prima facia evidence may be empowered by the Court of Justice in extrajudicial proceedings to examine the said business records and business papers as, for example, former members, successors in title or creditors.

Art. 143

VI. Take-over by the community
1. By acquisition of the shares

Where a commune (state or communes) has acquired the entire membership shares of a legal entity, such as shares and shares in a co-operative society, the winding up of the legal entity may be dropped even when the commune remains the sole member of the legal entity without, however, the legal entity losing the nature of a legal entity pursuant to private law.

The commune or the persons designated by it may then exercise the functions of the entity's various bodies.

In the case of the dissolution of the legal entity, the liquidation may proceed in such a manner that the commune declares its readiness to enter into all the obligations of the legal entity.

The provisions concerning the one-man legal entity remain reserved.

Art. 144

Where a commune has taken over the assets of a legal entity in their entirety, with assets and liabilities, only the commune shall be liable towards the legal entity's creditors after the assets have been transferred.

- 2. Take-over of the assets and liabilities
- a. Effects

Where, however, the members of a legal entity are not personally liable for the legal entity's indebtedness, the commune's liability when taking over shall, in the absence of any other provision, be limited to the assets taken over.

In the event that an entry in the Public Register ensues, the legal entity's liabilities shall be transferred to the commune ten days after the publication of the take-over entry in the Public Register, but otherwise immediately after the take-over.

The formation of a one-man legal entity is reserved.

Art. 145

The possibly necessary registration shall ensue jointly through the competent representative of the commune and the legal entity and the take-over agreement shall be enclosed.

- b. Procedure

The entry and publication may not ensue until after the liquidation of the legal entity has been entered in the Public Register.

The implementation of the liquidation may be agreed in such a manner that the commune pays out to the legal entity in liquidation or its members either a certain sum or the surplus balance-sheet assets from the legal entity's assets.

Art. 146

Where a legal entity has been dissolved for the purpose of alienating its assets as a whole, for the purpose of conversion into another legal entity or by resolution of the competent body, the body competent to dissolve the legal entity may, if the intended purpose can no longer be achieved or is no longer envisaged and distribution of the assets has not yet commenced, with the majority required to amend the articles, resolve that the legal entity shall continue to exist.

- VII. Continuation of a dissolved legal entity

The same shall apply in the case where the legal entity is dissolved by the adjudication of bankruptcy, but the bankruptcy is

cancelled following the conclusion of a settlement agreement or upon application by the trusteeship in bankruptcy, the community of creditors or the bankrupt or for another reason, insofar as the capital or assets necessary for continuation pursuant to the law are still available.

If the legal entity is entered in the Public Register, the body committed to or responsible for applying for registration shall also apply for the registration of the continued existence.

Art. 147

- D. Membership
- I. Joining
- 1. In general

Except for the tacit condition of materialisation, the declaration to join a legal entity with shares, as a member or otherwise to participate in its assets, must be worded unconditionally, it shall not contain any conditions, but a date shall be stated determining the period for which the subscription or other declaration shall remain binding.

The formalities for the acquisition of membership shall also apply with respect to the preliminary agreements concerning this.

Conditional declarations may be taken into consideration at the time membership is established only insofar as other binding declarations concerning enrolment or participation exist in the event of the non-occurrence of the condition.

Where the period of validity of a binding declaration of membership of a legal entity in the process of formation is not determined and is not established by the circumstances, the validity of the declaration shall be limited to a period of six months.

Where in the law or the articles mention is made of the members, membership of the legal entity shall be inferred and not that of a body forming a board unless, in an individual case the intent is different.

Art. 148

- 2. Rescission

Unless the law determines to the contrary, a member's declaration of membership, after the legal entity has come into existence, by subscribing to shares and the like, cannot be contested by a member on grounds of deficiency of intention (mistake, deceit, the creation of fear) or by a creditor or heir on grounds of discrimination. This also applies to the articles.

Damage claims against those who are to blame for the deficiency of intention, also the right of execution and other means of rescission provided by law are reserved.

Art. 149

Where the law or the articles do not determine to the contrary, legal entities may grant their members share rights for which, in the absence of any other rule, the valid provisions for the cooperative society shares of registered co-operative societies shall be applicable with regard to rights and obligations in particular.

Where the law or the articles do not determine to the contrary, the membership shall be indivisible, alienable and inheritable,

The transfer of the membership and the creation of a restricted right in rem assigned to this shall ensue by written agreement insofar as no securities exist concerning the membership and the articles do not set up any aggravating provisions such as, particularly, a right of pre-emption or the assent of governing bodies or members.

To be valid in the event of the bankruptcy of a member, the transfer, insofar as an order concerning the bankrupt's estate is contained therein, shall be subject to the consent of the trustee in bankruptcy.

Where doubt exists, the distribution of profit shall be in relation to a member's payment of assets on membership shares.

Where the law does not determine otherwise, legal entities may issue dividend right certificates, with or without membership, and the provisions concerning dividend right certificates shall be applicable to these where a membership is not combined therewith; otherwise, however, the provisions concerning dividend shares relating to companies limited by shares shall be applied analogously.

The appointment of trusts with or without the issuance of trust certificates relating to shares in the profit, liquidation surplus and the like and the transmission of membership by virtue of the law, are reserved.

- II. Membership shares
- 1. In general

Art. 150

2. Securities concerning membership

Securities concerning membership may be issued only insofar as the law expressly allows this.

Where securities are issued in violation of this provision or before the acquisition of legal personality, they shall be null and void and the issuer and, insofar as they are to blame, the other participants shall be liable to the bearers, without restriction, jointly and severally for all the loss caused by the issuance, notwithstanding the obligations and privileges resulting from joining or possible subscription.

The provisions concerning shares as securities, in particular those concerning the share certificate shall be supplementally applicable to the other membership securities.

Art. 151

3. Personal participation

In the absence of other provisions of the law or the articles, a legal entity may only acquire or take in pledge personal participations pursuant to the provisions concerning the acquisition of own shares.

Furthermore, a legal entity may not appoint any trustees for the participations owned by the legal entity for the purpose of circumventing the law or the articles.

Where a legal reserve fund is prescribed, the fund may be invested in the legal entity's own participations, wholly or partly, only with the assent of the Registrar.

The remaining provisions concerning the legal entity's own participations are reserved.

Art. 152

4. Several participants

A membership participation to which several members are undividedly entitled shall be represented by them jointly in law and with respect to obligation.

If there has not been a dispute between them regarding the membership participation, they shall be liable, jointly and severally, to the legal entity for the performances related to the membership participation.

Several members shall appoint a joint representative.

In the event that they fail to appoint a representative and to notify the legal entity concerning this, expressions of intent may be given to another member and the judge may appoint a joint representative in extrajudicial proceedings.

Art. 153

Provided the articles do not determine to the contrary, members with proprietary membership shares may appoint an actual trust pursuant to the relevant provisions and, accordingly, transfer to the trustee the shares for the restricted or unrestricted exercise of the personal (territorial) rights arising from the membership, in particular, the right to vote, under reservation of the proprietary rights and obligations arising from the membership.

In the absence of other provisions in the trust deed, the trustee shall deposit with the legal entity the securities handed over to him against the delivery of trust certificates which shall be transferable in the same way as membership securities or in another way in favour of the members (settlers).

Trust certificates having the characteristics of securities and relating to proprietary claims arising from the membership may, provided the articles do not forbid it, be issued by a member as trustee or by a specially appointed trustee, even if the membership is not connected with a security or is indivisible.

- 5. Trust certificates
- a. In general

Art. 154

Insofar as there are no deviations resulting from the issuance of several certificates for one membership or otherwise, the trust certificate shall state the powers of the trust body from which the performances relating to law of property and deriving from the membership can be obtained and, furthermore, shall have the same content as the deposited securities concerning membership.

By operation of the law, the deposited securities shall remain non-transferable until trust certificates have been issued for them. If, contrary to this provision, they are issued, the issuer and, insofar as blame attaches to them, the other participants shall be liable to the bearer, without restriction, jointly and severally, for all loss caused.

- b. Form and effect

The members are in the same position as other members with regard to the obligation to the legal entity to perform; on the other hand, in the absence of other provisions in the trust deed, only the trustee can assert the rights arising from the membership or cause them to be asserted by others.

Where a trust exists, the assertion of claims arising from the membership in the case of execution against the member or if the said member is bankrupt is admissible only pursuant to the provisions concerning the trust.

The creation of other trusts is reserved.

Art. 155

III. Established and other rights

Established rights to which the members as such are entitled may not be taken away from them or restricted without their assent, not even by amendment of the articles, insofar as not all equally entitled members are affected in the same way by the deprivation or the restriction.

Insofar as the law or the articles do not determine to the contrary, where a member withdraws or is excluded without the legal entity being dissolved and this member has a claim relating to dissolution, settlement or similar, the determination of this claim shall ensue on the basis of a liquidation balance drawn up for this purpose whereby, however, the legal reserves shall be entered on the liability side of this balance.

By operation of the law, each member shall be entitled to inspect and copy the articles and, where they are duplicated, to obtain a copy in return for a reasonable payment.

Art. 156

IV. Liability and liability to effect further contributions
1. In general

Insofar as the law does not determine or allow any other action and in the latter case this is stipulated in the articles, only the assets of a legal entity are available for the said legal entity's creditors.

A liability or liability to effect further contributions on the part of the individual members may therefore be determined in the articles only where the law allows this and a joint and several liability exists for them only where the law or the articles make such provisions.

In the absence of other provisions, its assertion shall ensue by way of the contribution procedure.

Where shares of the legal entity are held by the said legal entity, liability and the liability to effect further contributions shall be dormant for the duration of the possession, but so, too, shall a possible option right to acquire new shares and in the absence of other provisions in the articles the said option right shall be governed by the provisions relating to this as drawn up for companies limited by shares.

Art. 157

Insofar as it might not be possible to satisfy the creditors in bankruptcy owing to their claims to the assets of the legal entity existing at the time of the adjudication of bankruptcy having to be taken into account at the time of the later final distribution in bankruptcy proceedings, members with liability or liability to effect further contributions shall be liable to effect contributions to the bankrupt's estate in order to cover the deficiency pursuant to the bankruptcy winding-up balance, namely, in the absence of any other provision laid down in regulations, in proportion to the sums involved in the liability or the further contributions where limited liability or liability to effect further contributions is involved, but otherwise per capita (contributed assets).

Where individual members, including the withdrawn members liable to contribution pursuant to the law or the articles, are incapable of effecting contributions owing, for example, to insolvency or other reasons, these contributions shall be spread over the remaining members, insofar as this is not opposed by limited liability or liability to effect further contributions.

After the creditors have been satisfied, voluntary payments, made by the members in excess of the contributions owed pursuant to the foregoing provisions, shall be refunded right away to the said members from the contributions and, if necessary, may be asserted by means of a calculation of additional contributions.

Insofar as the preconditions exist under which a member as creditor in bankruptcy may claim satisfaction on grounds of a claim arising out of the contributions, a member may set off against the contributions a claim on the legal entity.

2. The contribution procedure
- a. In general

Where, pursuant to individual provisions of this law, the contribution procedure is applicable outside the bankruptcy proceedings, the administration and/or the liquidators shall take the place of the trusteeship in bankruptcy on the understanding that the powers and obligations to which they are otherwise entitled pursuant to the provisions concerning the contribution procedure shall be dropped.

Art. 158

b. Computation
of advances
aa. In general

Immediately following the adjudication of bankruptcy, the trusteeship in bankruptcy shall compute, based on the winding-up balance which has been produced, the contributions to be effected by the members by way of advances in order to cover the deficit shown in the balance sheet and in this case the various conditions relating to liability and liability to effect further contributions where groups of members are involved, as, for example, in the case of mixed cooperative societies, shall be taken into consideration.

All members, with name (firm's name) and domicile, shall be quoted in the computation together with the contributions allotted to them and the extent of the contributions shall be assessed in such a manner that a deficiency in the total amount to be covered, resulting from a predictable inability on the part of individual members to effect contributions, regardless of whether it is determined judicially or not, shall not occur.

Art. 159

bb. Writ of execution

Upon petition of the trusteeship in bankruptcy, the Court of Justice, in expedited extrajudicial proceedings, shall declare by adjudication, which is no longer voidable by litigation, the computation to be enforceable by execution.

For this purpose, the court shall immediately order a public court hearing for the purpose of explaining the computation to the participants. To this court hearing shall be summoned the members quoted in the computation and/or their successors in title, the members of the administration and/or the liquidation

authority, the audit authority if applicable, the trusteeship in bankruptcy and, in the event that the community of creditors has appointed a committee of creditors or similar, these members also and these shall be heard briefly, without evidence actually being taken.

It shall be stated in the public announcement and in the summonses that the computation shall be accessible for examination at the court registry one week before the court hearing.

The court shall adjudicate concerning the objections raised, correct the computation if necessary or order it to be corrected and finally rule that the computation is enforceable by execution.

At the same hearing or at a court hearing ordered specially, pursuant to the second paragraph, to which those who participated in the first hearing may be summoned orally, the adjudication shall pronounce and simultaneously explain that the computation, with the adjudication declaring enforcement by execution which shall not be served, shall be accessible at the court registry for examination by the participants.

Art. 160

After the computation has been declared enforceable by execution, the trusteeship in bankruptcy shall collect the contributions from the members without delay.

cc. Execution

The enforcement of execution against a member shall ensue pursuant to the existing applicable provisions by reason of a copy of the adjudication to enforce by execution which shall be served upon the member together with an excerpt from the computation from which at least the total deficit, the name (the name of the firm) of the member and the amount allocated to the said member shall be evident.

The forms of legal redress, such as actions, complaints and the like, against an enforceable title, to which the member as debtor in the execution proceedings is entitled, shall remain unaffected.

The collected contributions shall be deposited at the Landesbank or at another place to be determined by the trusteeship in bankruptcy or the committee of creditors.

Art. 161

dd. Action in res-
cission

Each member and/or the member's successor in title may challenge by way of action against the trusteeship in bankruptcy the computation declared enforceable by execution and the adjudication, with the petition to rescind the computation of contributions and the adjudication enforceable by execution against the said member because, for example, the said member is no longer a member, the computation does not conform with the legal provisions or the provisions laid down in regulations or the winding-up balance is incorrect or because not contributions, but other payments are demanded, and the like.

The rescission shall take place only within the strict time limit of one month from the pronouncement of the adjudication and only insofar as the plaintiff asserted the grounds for rescission at the time of the court hearing concerning the declaration of enforceability by execution or, through no fault of his, the plaintiff was unable to assert by action in court because, for example, the grounds did not come into being until after the hearing or of ignorance of the law.

The oral hearing in the proceedings to rescind shall not take place before the expiration of the strict time limit and several actions for rescission shall be combined for simultaneous hearing and adjudication.

Upon petition and against the possible deposit of a security, concerning which the provisions relating to the safeguarding of the costs of an action shall be applied analogously, the court may, during the litigation, suspend the execution or direct that enforcement measures be rescinded.

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

After the expiration of the unused strict time limit of one month, membership for the members entered in the members' register shall be deemed to be finally and conclusively determined for the contribution procedure.

Art. 162

Insofar as the total amount to be covered is not achieved owing to the inability of individual members to effect contributions or pursuant to the judgment pronounced in an action to rescind or for other reasons the computation is required to be amended, the trusteeship in bankruptcy may draw up a supplementary computation.

ee. Supplemen-
tary computa-
tion

If necessary, the drawing up of the supplementary computation shall be repeated.

The foregoing provisions concerning the computation of advances, the writ of execution, the execution and the action to rescind shall be applicable to the supplementary computation.

Art. 163

As soon as the final distribution, pursuant to the provisions of the bankruptcy law, is commenced, the trusteeship in bankruptcy shall determine as a supplement to and correction of the advance computation and of the supplementary computation, handed down to the said trusteeship in bankruptcy, how much in contributions, pursuant to the valid provisions, still has to be effected by the members including the costs of the bankruptcy and contribution proceedings, insofar as the members, possibly as the result of proceedings concerning advance payments, have not already been held liable to the limit of their liability or liability to effect further contributions.

c. Computation
of further con-
tributions

The last paragraph of the previous article shall be applicable to the computation of the further contributions, on the understanding that contributions shall not be apportioned to the members whose inability to effect contributions becomes evident.

Apart from the other assertion, right of recourse by virtue of membership, arising from the liability or the liability to effect further contributions, may also be asserted by means of computation of further contributions.

Art. 164

After the possibly necessary computation of further contributions has been declared enforceable by execution, but otherwise after the computation of advances, the trusteeship in bankruptcy

d. Distribution of
the contributed
assets

shall immediately distribute to the creditors, by way of subsequent distributions and pursuant to the provisions of the law concerning bankruptcy, the existing balance of contributions and whenever a sufficient amount has been received from the contributions still to be collected.

Apart from the dividends in bankruptcy allocated to the claims designated pursuant to the bankruptcy law which are to be retained, the shares allocated to claims which were contested by the trustees in bankruptcy or the liquidators in the proceedings concerning the claims of the creditors in bankruptcy shall be retained.

It is left to the creditor in bankruptcy to eliminate, with effect for the contributed assets, the administration's and/or the liquidators' protest against the legal entity, by bringing action against the legal entity within a period of one month since the contestation. However, insofar as the protest is declared finally and conclusively well founded the shares are free to be distributed between the other creditors of the assets paid in as additional capital.

The creditors and the trusteeship in bankruptcy not taking action may intervene in a dispute concerning the protest.

Where voluntary payments by the members or third parties do not have to be reimbursed beforehand, the surpluses not required for paying off creditors shall be repaid to the members by the trustees in bankruptcy in proportion to the amount of contributions effected.

Art. 165

V. Default in the performance in kind, exclusion of the settlement, of the right of retention, etc.

In the absence of other directives, the provisions of the code of obligations concerning the consequences of default shall be applied in general to default in the case of performances in kind by the membership as, for example, in the case of subscriptions in kind or other additional performances which do not consist of money and a liability exists solely for the person who has undertaken to perform in such a manner.

For the subscription in kind subscribed to the capital resources or own assets, the legal entity, after its formation, may, by virtue of the warranty, on grounds of defects pursuant to the principles of the contract of purchase, claim a right to a reduction and com-

pensation for damages, but not rescission and, if the subscription is quite worthless, claim that the subscription be effected in money.

An offset or a right of retention on an object belonging to the legal entity cannot be asserted against a claim by the legal entity arising from the obligation of a member to pay on capital shares or from any other obligation as a member to contribute or liability to make further contributions.

The objection that a counter-performance is possibly unfulfilled cannot be raised where another performance in the form of a subscription in kind is legally due.

Where bodies are to blame for delaying or preventing the withdrawal of a member and the member suffers loss in consequence, the members of the body concerned shall be liable in the first place and the legal entity subsidiarily.

Art. 166

In the case of legal entities with membership, the meeting of the members shall be the supreme body insofar as the law or the articles do not determine otherwise, as in the case of delegate meetings, the passing of resolutions by circular letter and similar.

The articles may transfer the authority of the meeting of members, completely or partly, to a committee comprised of members or non-members or to a council of members which is elected by the entirety of the members at the members' meeting or at the section or department meetings provided in the articles, which are separated locally according to professional or other aspects (representative constitution).

Where there is no provision to the contrary or nothing ensues by virtue of the nature of the matter, the same conditions as those applicable for the meeting of members, including minority rights, shall be applicable for these committee or section or department meetings.

In the case of legal entities without members which have a supreme body, the provisions analogously applicable to the latter shall be those drawn up for the supreme body in the case of corporations unless otherwise provided.

- E. Governing bodies
- I. Supreme body
- 1. In general

Art. 167

- 2. Convocation
- a. In general

The supreme body shall be convened by the administration (chairman), the liquidators or, by virtue of the law, by the representatives of the loan creditors or other bodies authorised pursuant to the articles, or their individual members or third parties and, for the duration of bankruptcy proceedings, also by the trusteeship in bankruptcy as frequently as required by law or the articles or as necessary in the interest of the legal entity. In the event of undue delay causing risk, the audit authority may also summon the supreme body.

In the case of companies with legal personality and the legal entities granted the same status as such companies, the supreme authority shall be called at least once each year, insofar as in the case of legal entities with less than twenty members each resolution is not passed by way of circular letter or insofar as the articles do not expressly determine the ordinary meeting of the supreme authority once and for all with respect to time, place and the statement of agenda.

Where the law does not determine otherwise, the form of convocation, whether orally, in writing or by public announcement, may be determined in more detail in the articles and these should state the place, time and purpose of the meeting in detail when it is intended to amend the articles, particularly the essential content of the amendments. Where, however, the law or the articles do not determine otherwise, each meeting shall be announced at the domicile at least one week in advance in the journals intended for public announcements.

With the exception of the resolution concerning the chairmanship and the keeping of minutes, the motion proposed at the meeting of the supreme authority to call an extraordinary meeting and the instituting of an examination of the management and the appointment of those commissioned to undertake this, resolutions may not be passed concerning subjects whose deliberation has not been announced in the manner required by law or the articles (agenda).

Prior announcement is not required for the proposal of motions and for deliberations concerning which resolutions will not be passed.

Should all members or representatives be assembled and no entitled person objects, they may, without observing the otherwise prescribed formalities for convening constitute an assembly of the supreme authority and within the same lawfully confer and pass resolutions concerning subjects within their competency (universal meeting).

Art. 168

Convocation of the members' meeting shall ensue if demanded by the representatives of at least one-tenth of the countable votes; if less than thirty countable votes are present, when demanded by at least three votes with statement of purpose submitted in a petition signed by the petitioners.

b. Minority rights

Should the competent body unreasonably deny this demand, the convocation may ensue upon petition of the members entitled to vote and, after the hearing of the members of the administration, by the Registrar in extrajudicial proceedings with the simultaneous appointment of a chairman and, moreover, compensation may be claimed against the suspected bodies on grounds of their contractual relationship, possibly pursuant to the provisions concerning tortious acts.

Art. 169

In the absence of provisions to the contrary, members or other persons entitled to vote may be represented by such or by third parties with written authoriation.

3. Participation

The legal representatives, the representatives as laid down in regulations and those representing a firm who represent those persons of a legal entity who are incapable of acting must be allowed to participate in negotiations and the passing of resolutions without special powers of agency, even if the articles do not allow representation or only by others entitled to vote.

Those incapable of acting as, for example, drunken persons, may be excluded from the meeting.

If they are not members of the legal entity the members of the audit authority may participate in an advisory capacity.

Within the scope of the law, the articles may determine to what extent non-members such as bond holders and the like are authorised to participate in the deliberations and voting.

A register (attendance list) signed by the chairman shall be kept of the participants who attended or who were represented at the meeting of the supreme body of a company with legal personality and of the votes they cast. The said register shall be displayed during the meeting.

Art. 170

- 4. Authority and passing of resolutions
- a. In general

Unless the law or the articles determine to the contrary, the supreme body shall be entitled to those powers which are drawn up for registered cooperative societies; in particular, it shall supervise the activity of other bodies and rule on the competence of the bodies.

Voting may take place either at the meeting or, where notarial authentication is not prescribed for the resolutions, without a meeting, by means of ballot boxes or, in the case of legal entities with less than twenty members, in such a manner that instead of the meeting of the supreme body, the expressly formulated resolutions are sent by registered letter to the persons entitled to vote and the minimum number of persons entitled to vote, necessary for the passing of a resolution, return their written assent.

The provisions applicable to the voting shall also apply to the ballot.

Pursuant to the provisions concerning minority rights, a minority may demand, by means of a signed petition to be submitted to the administration or the body otherwise summoned at least five days before the meeting is due to take place, that specified subjects be placed on the agenda for discussion and the passing of resolutions.

Where the laws or the articles do not determine otherwise, the rules concerning parliamentary negotiations shall be applicable for the chairing of the meeting, the deliberation and the passing of resolutions.

Art. 171

Unless the articles determine to the contrary, a member elected by the meeting shall preside over the meeting on each occasion.

b. Chairing and keeping of minutes

It shall be incumbent upon the administration to ensure that minutes of the meeting are kept and these shall report briefly but in sufficient detail on the deliberations, resolutions and votes. The administration shall also give the necessary instructions concerning the formalities for voting and the determination of voting rights.

In the absence of any other rule determined by the articles or the meeting, the minutes of the meeting shall be kept by a member and signed by the chairman of the meeting and the keeper of the minutes.

Each person entitled to vote shall be allowed during business hours to examine the minutes and, upon demand, obtain a copy of same.

Art. 172

In the absence of any provisions to the contrary, the resolutions, in order to be valid, shall require the assent of the simple majority of the present, countable votes and at least one-tenth of all votes must be represented, insofar as the judge, upon petition by the administration, does not, for important reasons, allow an exception in extrajudicial proceedings.

c. Required majority
aa. In general

Where the law does not determine to the contrary, as in the case of multiple voting rights or proportional representation, each member shall have one vote.

Bond holders or lenders, with or without a claim to convert their right of creditor's title into a right of membership, may be conceded in the articles a more closely defined right to vote, for which the provisions relating to the exercising of the rights of members to vote shall be supplementally applicable whereby, however, the entirety of such voting rights may comprise at the most half of all the votes, but the assent of at least three quarters of all the votes shall be required in the event that more than one-third of all the voting rights are conceded.

Should the membership be combined with a security, the majority, where doubt exists, shall be computed according to the number of shares; where doubt exists at delegate meetings, however, each delegate shall be accorded one vote.

The articles may also determine that individual groups of members or shares shall have different voting rights; in such cases, however, each member must have at least one vote.

Where the law or the articles prescribe that a minimum of votes shall be present for the passing of a resolution and where an insufficient number of votes is represented at a first meeting, this resolution, concerning the same subjects, may be passed, regulations to the contrary reserved, with a simple majority at a second meeting to be convened within an appropriate period, which shall be at least eight days, regardless of that minimum number, if nothing to the contrary is determined.

In the event of parity of votes, the chairman shall have the casting vote.

In particular, the foregoing paragraph shall be applied analogously if resolutions may be adopted by circular letter.

Art. 173

bb. Special entitlements and obligations

Where in a legal entity there exist members or shares having different rights or obligations as, for example, preference shares, ordinary shares or restricted and unrestricted liability or liability to effect further contributions, those who are equally entitled or equally liable form a party between themselves in litigious proceedings and special groups (categories) when voting takes place, insofar as their rights or obligations are influenced dissimilarly by the resolution to be passed and for such a resolution to be validly passed it is necessary to have the assent of all groups required for an amendment of the articles unless, with the approval of the Register Authority, it is regulated differently in the articles.

In the absence of other provisions in the articles, these special meetings shall be called by the administration and chaired by a participant elected by the meeting. Otherwise, the provisions

concerning the supreme body shall be applicable analogously.

In the absence of other directives in regulations, the provision contained in the previous article shall be applicable to the passing of resolutions.

Where the dissimilarity in the right to vote exists essentially in a dissimilar number of votes, only a joint resolution shall be passed and the dissimilarity in the right to vote shall be taken into consideration.

Art. 174

Where the articles do not determine to the contrary, they may be amended with the approval of three-quarters of all those present at the meeting of the supreme body, representing at least half of all the shares; in the event that the latter are not present, the approval of all members shall be required.

cc. Article amendment

Insofar as it is not determined to the contrary, new obligations for the members to perform may be substantiated or increased only with the approval of the members, otherwise a resolution shall be valid only if it is not contested.

Amendment of the internal regulations (by-articles) shall require merely the written form, even if such provisions were drawn up in an authenticated deed.

Amendments of the articles shall be drawn up within the same scope as the original articles and, if necessary, authenticated and entered in the Public Register.

The execution of the amendments which concern only the wording may, by resolution of the supreme body, be transferred to another body.

An amendment of the articles does not exist where, pursuant to the law relating to firm names, a clearly distinguishable sub-joiner is added to the firm name of a branch establishment.

Art. 175

Notwithstanding the right of participation in the meeting and the discussion, each person entitled to vote shall be excluded from the right to vote, in the said person's own name or in the name of another by virtue of the law, in the case of the passing of a reso-

d. Exclusion from right to vote

lution concerning a transaction or litigation between the said person, the said person's spouse, betrothed or a person related in the direct line on the one hand and the legal entity on the other or the passing of a resolution concerning a transaction or litigation between a third party and the legal entity from which a person entitled to vote derives personal advantage or disadvantage.

Own shares in the possession of the legal entity do not confer the right to vote and do not belong to the countable votes. The right to vote, however, may be exercised by the legal entity appointed as the trustee.

In the case of resolutions concerning the release of the administration with regard to management and accounting, the persons who participated in the management in any way shall not, by virtue of the law, have voting rights.

A resolution contravening these provisions may be rescinded pursuant to the provisions concerning the rescission of resolutions of the supreme body.

These restrictions shall not be applicable to legal entities with less than thirty persons entitled to vote, to members of the audit authority, in the case of elections and removals or where, in extrajudicial proceedings, the Registrar allows an exception otherwise.

Art. 176

c. Right to vote in case of usufruct, pledge and other rights

Where a restricted right in rem attaches to a membership right, only the member or the trustee who is on the same footing is entitled to vote, under reservation of representation.

Where securities relating to the membership are in existence, the bearer of the title is bound to enable the right to vote to be exercised with the said title insofar as the immediate restitution of the unchanged title is ensured after the exercise of the right to vote.

Where a right of membership is being used, only the member has the right to vote. However, the member shall obtain the assent of the usufructuary for all resolutions which constitute unusual acts on the part of the administration, and in the event of infringement of this obligation the member shall be liable for damages.

The voting right for the deposited securities (deposit vote) may be asserted by the depositary only provided the said depositary has special authority to do so, granted by the depositor, insofar as the law does not allow exceptions, as in the case of trust deposits, for example.

In the absence of a deviating provision or agreement, the exercise of other personal (territorial) rights arising from the membership shall be deemed to be equal to the right to vote.

This provision shall be applied analogously to other rights to vote.

Art. 177

Concerning the resolutions of the supreme body which relate to the constitution, the amendment of the articles and the dissolution of a legal entity, an authenticated document shall be drawn up in all cases where membership exists as a proprietary share or such recording is otherwise required by law, unless the law itself provides an exception as, for example, in the case of cooperative societies, small insurance associations and establishments or in the case of recording by circular letter.

f. Official recording of resolutions

The authenticator must be present in person when the resolution is passed and, stating the place and time of the meeting, must keep minutes which record accurately and briefly the resolutions passed as well as the occurrences and statements which took place or were made in the authenticator's presence and were of significance for the appraisal of the regularity of the proceedings.

The minutes must be signed by the chairman of the meeting and by a person designated as the keeper of the minutes.

Insofar as the prerequisites for this exist and it is specifically demanded, a confirmation in the minutes of the identity of the chairman and other persons present at the meeting may also be considered to be adequate.

If need be, the founder's draft of the articles, the declarations of membership, the signed subscription prospectus, the articles approved by the members' meeting and similar shall be appended to the authenticated deed.

In all cases, the authenticated deed may be replaced by a declaration signed by all the participants and authenticated.

Art. 178

- 5. Rescission of resolutions
- a. In general

The administration and, insofar as it does not initiate action itself, the audit authority of the legal entity may contest before the judge at the domicile by means of action, cross action, plea or interlocutory or final decision within summary proceedings against the legal entity resolutions of the supreme body or of another body which contravene the provisions of the law or the articles.

Where the subject matter of the resolution is a rule whose implementation would render the members of the administration or the audit authority liable to prosecution or render the creditors or members of the legal entity liable, each member of the administration and the audit authority may, by virtue of the law, contest it or refuse to implement it.

Furthermore, in the case of legal entities with members, with reservation of the provisions concerning established rights, the representatives of at least one-twentieth of all votes, but at least three votes and where there are less than ten votes or members, each vote or each member may, by virtue of the law, cause a resolution to which they have not given their assent to be contested and rescinded. Under these circumstances, the judge, with appropriate application of the provisions of the Code of Civil Procedure concerning the lodgment of security for the costs of an action, may require security, and in the event of failure to observe this requirement the claim to rescind shall no longer be admitted.

In the same way, individual persons entitled to vote may, where, contrary to law or article, they have not been summoned to meet or their participation in the meeting or the voting has been made impossible in another way or rendered more difficult in an inequitable manner and as a result of this have not participated in the meeting or the voting or, in the case of a resolution to be adopted by circular letter, persons entitled to vote have voted against the resolution or have been circumvented or, finally, where unauthorised persons have taken part in the passing of a resolution, whether an objection has been raised or not, cause a resolution to be contested and rescinded if, at the same time, they are able to substantiate by prima facie evidence that this defect had an influence on the resolution passed.

Where an irretrievable disadvantage threatening the legal entity is substantiated by prima facie evidence, the court may postpone the contested resolution in mandatory proceedings.

Art. 179

The right of rescission of the persons entitled to vote lapses if the said persons fail to announce their intention to bring action within one month of the passing of the resolution or, in the event that the articles provide for a special rescission procedure fail to announce this to the administration immediately following the exhaustion of the administrative channels and bring the action before the judge within a further month at the latest of the passing of the resolution.

In the event that the contested resolution is entered in the Public Register, the judgment shall, upon demand of the contestants, be entered in the Public Register in amendment of the earlier entry and published, if this is necessary.

The judgment declaring annulment shall be binding on all persons of a legal entity entitled to vote.

The plaintiffs acting negligently by initiating the action against the resolution of the legal entity shall be liable for all the losses arising from unfounded contestation, pursuant to the provisions concerning tortious acts, without restriction, jointly and severally.

The provisions concerning action for voidability shall be applicable supplementally to the action to rescind.

Otherwise, resolutions may also be rescinded ex officio by the Registrar pursuant to the provisions as drawn up ex officio in the case of voidability.

b. Assertion of liability for damages, etc.

Art. 180

Each legal entity must have an administration, (board of directors, managers and the like) which, in the absence of provisions to the contrary, may be comprised of one or several natural or juridical persons or firms and be appointed by the supreme body from members of the legal entity or third persons for a period of three years and the members of the administration may be re-appointed and remunerated or not.

II. Administration
1. In general

Subject to the provisions concerning the participation of the community, the articles may also concede to other third parties, such as loan and mortgage creditors or non-profit making undertakings, the right to appoint individual members of the administration or its board of directors (bound administration).

Where during the course of a business year individual members from an administration comprised of several members cease to be members or are prevented from participating in the management, the remaining members may, insofar as the articles do not determine to the contrary, continue to manage and represent until the next meeting of the supreme body.

The current members of the administration or other persons authorized to sign and the termination or an amendment of their authority to represent shall, in the case of legal entities entered in the Public Register, be registered without delay and the proof of appointment as, for example, an extract from the minutes, shall be appended, insofar as a re-appointment is not involved.

The provisions drawn up for the members of the administration are also applicable to their possible representatives when they act, or should act, as such.

A special administration may not be appointed for a branch establishment, but, however, a special representative as authorised signatory.

Unless the law or the articles determine otherwise, management shall also embrace the authority to represent.

The articles may declare applicable the provisions concerning the board of directors in the case of companies limited by shares.

Art. 180a¹⁾

At least one member of the administration of a legal entity authorised to manage and represent must be a Liechtenstein citizen domiciled in the Principality of Liechtenstein and be in possession of the professional licence to act as lawyer, legal agent, trustee or auditor, or a government-recognised business qualification.

¹⁾ Art. 180a inserted by the law dated 4 June, 1963, LGBl. 1963, No. 17 reformulated by the law dated 15 April, 1980, LGBl. 1980, No. 39.

On the same footing are persons resident in Liechtenstein (foreigners require permission to settle) who possess a government-recognised certificate of qualification which corresponds to one of the requirements laid down in para. 1, whose fixed, main employment is with a lawyer, legal agent, trustee, auditor or a juridical person with licence to act as trustee or auditor, or with a bank, and pursue their activity within the intendment of para. 1, within the framework of this employment.

Excepted from the obligations pursuant to para. 1 are:

- 1 Legal entities which, on the basis of the law concerning trade, have a qualified manager,
- 2 Legal entities which pursue an activity in Liechtenstein which does not fall within the scope of application of the trade law.

By means of an Executive Order the Government may assign to a government office, for independent settlement, the issuance of confirmations relating to the recognition of business qualifications, with reservation of recourse to the Government's collegial jurisdiction.¹⁾

Art. 181

If nothing to the contrary has been determined or the competent body has not ruled in a resolution, all members of the administration shall be entitled to manage.

2. Management
- a. In general

Where the administration is comprised of several members and the articles do not determine to the contrary, no member alone shall execute an act which appertains to management if danger due to delay does not exist.

Where pursuant to the articles or a regulation based on these each member of the administration is entitled to manage alone, the execution of an act pertaining to management must be left undone if one of the members objects to the execution of the said act, in the case that the articles do not determine otherwise.

Actions vis-a-vis third parties, however, remain unaffected.

¹⁾ Para 4 of Art. 180a inserted by the law dated 16. December 1994, LGBl. 1995, No. 25.

Art. 182

b. Authority and obligations

The administration shall have all the authority and obligations which are not transferred to or reserved for another body as, for example, the vesting and retraction of the power of "Procura", i.e., of signature rights; in particular, the administration shall also be concerned with the preservation of the capital resources and/or the legal entity's own assets in the case of legal entities whose capital resources are not required to be expressed as a sum of money as well as with the security and success of the undertaking.

It shall conduct and promote the legal entity's business undertaking with care and shall be liable for the observance of the principles of careful management and representation.

The administration shall receive from the founders all the written documents relating to the formation of the legal entity.

The administration shall be under obligation to the legal entity to observe all restrictions which are determined by law, articles, resolutions of the competent body or in any other way.

Unless determined to the contrary, the administration of a legal entity shall be entitled to the same authority and obligations as the administration of a registered cooperative society.

Art. 183

c. Restraint of competition

Where the articles do not determine to the contrary, the members of the administration of companies with legal personality which pursue commercial objects and of other legal entities whose status is equal to these may not, without the consent of the supreme body or, in the absence of a supreme body, without the approval of the judge in extrajudicial proceedings, either effect transactions in the line of business for their own account or for the account of third parties or participate as a partner or member with unlimited liability or occupy a position in the administration or the audit authority in a company without legal personality or in a legal entity in the same line of business.

The consent may be expressed in general terms in the articles. Furthermore, the said consent may be assumed where, on the occasion of the appointment as member of the administration of the legal entity such an activity or participation was known and its termination was nevertheless not expressly required.

Members of the administration who infringe the restraint stated in the first paragraph may be removed at any time without obligation to compensate. Moreover, the legal entity may demand compensation for damage or, instead of this, demand that the business effected for the account of the member of the administration be deemed to have been concluded for its account and, regarding the business concluded for the account of others, demand the surrender of the emolument obtained for this or the assignment of the claim for emolument.

The rights of the legal entity referred to in the foregoing lapse three months from the day on which the other members of the administration and, if members do not exist, the members of the audit authority gained knowledge of the substantiating fact and in all cases after the expiration of one year.

Other contractual arrangements, such as the agreement not to compete, etc., are reserved.

Art. 184

The representation of legal entities ensues through the bodies appointed for this purpose or other special representatives pursuant to the regulations in the articles. The administration does not require a special power of agency provided, for example, by law.

- 3. Representation
- a. In general

The performance of the legal entity's transactions as well as the representation of the legal entity in this business activity may, where the administration is comprised of several members, also be transferred to individual members or other authorised representatives or employees of the legal entity.

Legal entities or firms may also be appointed as bodies authorised to represent or manage, as board of directors or as administration or as a member or other representative of such. The authorised representatives or managing persons of the said legal entities or firms shall then execute for them, insofar as special delegates are not appointed for this, all the negotiations of the bodies and the representatives.

Where the law does not otherwise determine to the contrary, the administration has the status of a legal representative.

The legal entities not entered in the Public Register are required, following a request from the Registrar, in order to avoid the administrative penalty admissible in the Public Register proceedings, to make known their members of the administration (of the board of directors) appointed to represent.¹⁾

Art. 185

b. Position as party

A legal entity shall be deemed to be in bad faith if one of the persons acting as body or representative is in bad faith or if an authorised representative in bad faith fails to draw the competent persons' attention to the defect.

The provision of the foregoing paragraph shall be applied analogously where the judgment of the knowledge, of the fault or of loyalty and good faith of the legal entity is involved.

The members of the body entitled to represent take oaths, affirm to the judge, etc., on behalf of the legal entity in the same manner as a party.

In the case of the bankruptcy of the legal entity, the members of the administration have the same obligations to the Bankruptcy Office as a natural person when bankrupt and the administration shall protect their rights against the trusteeship in bankruptcy.

Art. 186

c. Exclusion

Upon the conclusion of transactions by the legal entity in which a member of the administration is interested as, for example, upon the conclusion of transactions with the member himself, this person may not, by virtue of the law, participate, except in the case of urgency.

Where as a result of this a valid resolution cannot be passed, the transaction shall be referred to the audit authority or, in the absence of an audit authority, to another body determined in the

¹⁾ Art. 184 last para. (= para. 5) inserted by the law dated 10 April, 1928, concerning the Trust Enterprise LGBl. 1928, No. 6.

regulations and, if such a provision is lacking, to the supreme body, which shall entrust one or several specially authorised agents with the representation of the legal entity or deal with the transaction itself.

This provision shall not be applicable where deviating provisions are contained in the articles, in the case of legal entities having less than thirty members or in the event that the audit authority approves the transaction, in which case, however, the audit authority must report to the next meeting of the supreme body concerning this matter.

Art. 187

The bodies as well as the other persons appointed to manage and represent totally are authorised by virtue of the law to conclude on behalf of the legal entity all transactions with bona fide third parties which may promote the purpose or object of the undertaking.

d. Power of agency of the bodies and representatives

Third parties may also be legal entities or firms in which the legal entity participates as member.

In respect of this definition and also with regard to the meaning of the restriction of their power of agency in the relationship with the legal entity and bona fide third parties, the bodies and the persons mentioned are subject to the provisions drawn up for the general partnership, insofar as special provisions do not exist.

The transactions which they undertake shall be deemed to be valid for the legal entity even if they do not ensue expressly in the name of the said legal entity, but the circumstances pertaining to their execution indicate that they are undertaken on behalf of the legal entity in accordance with the intentions of the participants.

The authority to represent of persons (firms) not appointed for total management and representation shall be in accordance with the authority assigned to them. In case of doubt, it shall extend to all lawful acts which are usually associated with the execution of such transactions.

Art. 188

e. Execution

The articles of all legal entities should determine the manner in which the administration shall declare its intentions, who is authorised to sign and, where several are authorised to sign, who shall sign validly with sole and who with collective signature rights.

In particular, the articles may determine that a member of the administration comprised of several members is authorised to sign validly only in combination with an authorised signatory; however, this circumstance must be notified to the Public Register, entered therein and published.

Where the law or the articles do not determine to the contrary and the administration is comprised of several members, the participation and the signature of at least two members shall be required for the representation of the legal entity and for valid signature on behalf of the said legal entity. However, also in the case of joint management and representation, expressions of intent as, in particular, summonses and other processes served upon the legal entity shall be validly served when served upon only one of the members entitled to represent or a representative.

Art. 189

f. Evidence of authority and signature

Where an entry has been made in the Public Register, certification provided by the Register Authority signifying that the persons designated therein are entered in the Public Register as members of the administration is sufficient evidence of the authority of the administration as far as public authorities are concerned. On the other hand, for legal entities that are not entered in the Public Register, proof of identity is required concerning the appointment by the competent body as, for example, minutes of the meeting or a notarised copy or excerpt.

Where the law does not allow an exception, signing shall be effected in such a manner that the signatories shall add their name, by their own hand, to the name of the firm or the legal entity.

Where another legal entity or firm is entitled to sign on behalf of a legal entity or firm, it shall be sufficient if the signature is signed in such a manner that the representative of the former adds

his signature, by his own hand, to the name of the legal entity or firm represented.

Art. 190

Where an existing legal entity temporarily lacks the required managing bodies or the bodies authorised to represent or, in addition, a legal representative with this authority or where the persons forming the administration are not known or, in the individual case, the representatives are excluded from the representation and where management and representation has not been taken care of in another manner, the court, upon application by the participants and at the expense of the legal entity, shall appoint a legal advisor in extrajudicial proceedings insofar as the interests of the legal entity, its members or creditors or the public demand this.

- 4. Appointment of a legal advisor
- a. In general

The legal advisor shall convene the body responsible for the appointment without delay and, by virtue of the law, all the authority exercised by the lacking bodies or representatives shall be exercised by the said legal advisor.

The provisions concerning the creation and dissolution of legal entities are reserved.

Art. 191

Upon application by members and at the discretion of the judge, management and representation may, against the provision of security for possible loss, be temporarily withdrawn from the body of a legal entity by the appointment of a legal advisor, provided it can be substantiated by prima facie evidence that the said body endangers the interests of the legal entity and that danger is imminent.

- b. Withdrawal of management and representation

Except in the case where a legal advisor is appointed solely for individual items of business as, for example, in the case of legal representation in court, the suspension of representation and management as well as the appointment of a legal advisor shall, in the case of legal entities entered in the Public Register, be noted in the Public Register with a statement concerning the legal advisor and his authority to represent and, at the discretion of the Register Authority, published.

Art. 192

- III. Audit authority
- 1. Appointment

The supreme authority may appoint one or several auditors as audit authority who are not required to be members of the legal entity and may neither belong to the administration nor be employees of the legal entity assigned to the said administration and shall exercise their authority and obligations pursuant to the law, articles and possible resolutions of the supreme body, for or without reward.

A special audit authority acting on its own responsibility may be determined in the articles also for individual lines of business, business departments or branch business establishments.

In addition to the participation of the community, the articles may also concede the right to appoint individual members of the audit authority or its chairman to other third parties such as loan or bond creditors or non-profit making undertakings (bound audit authority).

The Government may prescribe by way of ordinance that legal entities which have issued bearer bonds without special cover or whose capital resources or own assets including the borrowed, unsecured monies amount to at least SFr. 5 million be audited by an approved or legally qualified firm of auditors.¹⁾

Where the audit authority is not appointed or is not complete pursuant to the law or the articles, the court, upon application of a participant in the legal entity, shall, in extrajudicial proceedings, determine a three-month period of time during which the audit authority shall be appointed or completed and should this period of time elapse without the said audit authority being appointed or completed, the court itself shall designate the required audit authority members for the period until the appointment is made.

A legal entity which undertakes commercial activities or whose purpose or object as laid down in regulations allows the pursuit of commercial objects must appoint an audit authority pursuant to para.¹⁾

¹⁾ Art. 192 para. 4 and 6 in the version of the Law dated 15 April, 1980, LGBL 1980, No. 39.

Art. 193

In the case of companies with legal personality and legal entities on the same footing, the audit authority may not be appointed for longer than one year in the first instance and, later, for not longer than three years.

If doubt exists, this latter duration shall be applicable to the audit authority in the case of all legal entities.

Where representation before court or administrative authorities is not involved or the articles do not determine otherwise, the members of the audit authority may not transfer the exercise of their obligations.

The provisions drawn up for the members of the audit authority shall apply analogously to their representatives where they act or should act as such.

Insofar as exceptions are not determined, the audit authority shall act towards third parties as a body and shall be represented by its chairman.

- 2. Position
- a. In general

Art. 194

Where an audit authority is appointed and the articles do not determine otherwise, the said audit authority is empowered by operation of the law to represent the legal entity with members of the administration when transactions are concluded and, where the members' meeting does not appoint another authorised agent, to conduct legal proceedings against present members of the administration, concerning which the said members' meeting shall pass a resolution.

In proceedings against the members of the audit authority, the legal entity shall be represented by special authorised agents whom the supreme body shall appoint for the said proceedings.

In the absence of a provision in the articles to the contrary, the audit authority shall be empowered, at its discretion in the event of apprehended danger, temporarily to suspend from the management and representation, or have suspended by the judge in extrajudicial proceedings, members of the administration who are not appointed by a legal entity under public law as well as

- b. Towards the administration and the supreme body

authorised signatories and other authorised agents until a decision has been reached by the supreme body which must be summoned without delay.

Art. 195

- 3. Duties
- a. In general

The balance sheets, inventories, profit and loss accounts and other books of account of companies with legal personality and other legal entities, insofar as the latter pursue commercial objects, shall, as far as possible, be examined by the appointed audit authority with respect to regularity, accuracy and reliability and to determine whether the financial situation and the business result are presented correctly.

For this purpose, the audit authority may, as a body or through individual members, demand that the books of account and documentary material be submitted to it, that as far as possible it is called in for the inventory taking and that the administration explains certain individual items to it.

The audit authority may demand that certain subjects be handled by the administration or placed on the agenda of the supreme body for consideration and decision by resolution.

Art. 196

- b. Reporting

In the case of companies with legal personality, the audit authority must report in writing to the supreme body concerning the balance sheet and profit and loss account submitted to it by the administration and, as far as possible, this report shall furnish information concerning the following:

1. Whether, in the opinion of the audit authority, the balance sheet and profit and loss account submitted to the supreme body reflects the true economic position of the company,
2. whether the balance sheet and profit and loss account agree with the books of account and the inventory,
3. whether the audit authority proposes to the supreme body that the balance sheet and profit and loss account be approved, with or without reservation, or be returned to the administration,
4. whether the audit authority agrees to the administration's proposals concerning the distribution of profits or whether it recommends another method of distribution.

Where an audit authority is prescribed, the annual balance sheet and profit and loss account may not be approved by the supreme body before such a report has been submitted.

A minority identical to that which may demand that the supreme body shall be summoned has the right to draw to the notice of the audit authority certain objects which require examination on the understanding that the audit authority shall report this to the next meeting of the supreme body for the purpose of passing a resolution.

Art. 197

The audit authority shall draw to the attention of the body immediately superior to the suspected person and, in important cases, also to the supreme body, any irregularities or infringements of the provisions contained in the law or the articles which come to the notice of the said audit authority in the performance of its duties.

c. Notification of irregularities and pledge of secrecy

Outside the meeting of the supreme body, communications from the auditors to persons other than members of the administration and the audit authority concerning the observations made are save for other responsibility, inadmissible, pursuant to the provisions concerning the right of privacy in particular.

Art. 198

Concerning the organisation of the audit authority, further provisions for the expansion of the said audit authority's powers and obligations and in particular for the undertaking of interim audits may be specified in the articles.

4. Other provisions of the articles

In addition to the ordinary auditors (audit authority), the supreme body may at any time appoint special inspectors or experts to investigate the management or individual parts thereof.

Art. 199

In addition to the administration, the articles may also make provision for a supervisory board which is appointed pursuant to the provisions concerning the administration and may be assigned

5. Supervisory board

the function of permanently supervising the management and participating in the administration.¹⁾

The charge of responsibility may also be brought by the supervisory board against the members of the administration.

The members of the supervisory board may, but are not required to be entered in the Public Register.

Art. 200

IV. Other bodies
and applicable
law

Where the law does not determine to the contrary, the articles may also provide for other indirect or direct bodies such as management, committees and other representatives.

Where no other provision is made, the provisions concerning the implied²⁾ trust and, supplementally, those concerning the mandate or, insofar as remuneration is agreed or, depending upon the circumstances, may be assumed, the contract of employment shall be applicable to the relationship between the bodies and the legal entity, insofar as the supreme body or the position of the minorities or special categories of members is not concerned.

Art. 201

V. Termination
and removal

Where the law does not determine to the contrary or the articles do not entrust another body with this, the supreme body shall be empowered at any time to remove the members of the administration, the audit authority or other bodies as well as other authorised agents or delegates appointed by the said supreme body.

The right to appoint a body, a member of such or an authorised agent includes the right to remove or give notice of termination to these and this shall occur by virtue of the law where authorities make the appointment. In other cases, only insofar as no other provision has been made.

This right to remove exists, contrary to conflicting provisions in the articles, by virtue of the law where important reasons as, for example, gross neglect of duty or inability to manage properly justify such action.

¹⁾ Art. 199 para. 1 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39

²⁾ See annotation ³⁾ to Art. 898.

The administration may also at any time remove the committees, delegates, directors and other authorised agents they have appointed and suspend the functions of the authorised agents appointed by the supreme body, while informing the latter of this suspension.

Possible claims for compensation by those removed, arising from contracts, such as contract of employment or mandate or from tort and the temporary suspension from management and representation by the judge, are reserved.

Where the judge removes members or bodies, he shall, at the same time order that a new appointment be made by the competent bodies and, meanwhile, take appropriate steps pursuant to the provisions concerning the appointment of a legal advisor.

Art. 202

Companies with legal personality and other legal entities, insofar as the latter are engaged in commercial activities, are subject to the following provisions and the provisions which are otherwise drawn up concerning the commercial clearing system.

- F. Clearing system
- I. In general

Insofar as it is required to state the capital resources (money capital resources), determined numerically, in money, of an undertaking, this may ensue in domestic or foreign currency and, accordingly, the clearing system may be based on the appropriate currency or another currency.

Where important reasons exist, the Government may determine by way of Executive Order in the case of undertakings other than domiciliary undertakings that domestic money shall be employed for the money capital resources and/or the undertaking's own assets and for the clearing system, or that other deviating provisions shall be applicable.

Art. 203

Unless important reasons justify an exception, the draft balance sheet shall be submitted to the supreme body for approval within the first six months of the succeeding business year.

- II. Annual balance-sheet regulations
- 1. Date of balance

Legal entities with capital resources and/or own assets amounting to at least one million francs as well as all those that have issued bearer bonds are required to prepare a balance sheet at least once every year.

Art. 204

- 2. Balance-sheet principles
- a. In general

The annual balance sheet shall express the relationship between the firm's own means and liabilities and between the short-term liabilities and the permanent maintenance of liquidity from available means.

A balance sheet showing entries which on the balance sheet date are below the value of the assets permissible pursuant to the law as well as the investment by the administration of other hidden reserves is permitted within the frame of this law and the articles in the interest of the most uniform distribution of profits and for the consolidation of the undertaking.

Where in the time between the end of the business year and the passing of a resolution by the meeting of the supreme body concerning the closing of the accounts it comes to the notice of the administration that the financial state of the legal entity is considerably reduced, owing to losses which have occurred or as the result of depreciation and the reduction is presumably not merely of a temporary nature, the profit shown in the annual balance shall, in the absence of deviating provisions in the articles, be excluded from the distribution to the extent of the loss of assets and transferred to the account of the current business year.

The articles may determine that profit in the form of an interim payment on the profit to be shown in the annual balance sheet may be paid out during the business year on the basis of an interim balance sheet, or that the administration or another body, without prior resolution of the supreme body, may at certain times during the year distribute profits from profit balances brought forward from previous years or from special reserve funds.

Shares of a legal entity which are in the possession of the said legal entity as, for example, shares of the latter's capital shall, in

the absence of other provisions laid down in regulations, be taken into account when profit and other performances accruing from the membership are distributed but not, however, with respect to liquidation certificates.

Art. 205

Formation, organisational and administrative costs shall be fully written off in the profit and loss account. By way of exception, however, organisational costs which are provided for in the articles or in the resolutions of the supreme body, whether for the original setting-up, for a subsequent expansion of the business or for operational reorganisation and, in the same manner, stamp duties, bank commissions and the like may be distributed over a period of five years at the most in such a manner that an item is entered on the assets side and each year at least the corresponding fraction is written off.

b. Costs

Art. 206

Where economic or other circumstances make this appear imperative, the Government, by way of Executive Order, may order the following additional balance sheet regulations for undertakings other than domiciliary undertakings:

c. Special regulations

1. That in the case of legal entities concerned with participation (subsidiary companies, associated companies and similar), where more than one-tenth of the capital resources or the legal entity's own assets are invested in participations, the kind and the amount of the securities shall be entered in the balance sheet,
2. that in the case of investment, associated, controlling or holding companies the securities which the company intends to hold permanently (participation account), in addition, those which it is intended to dispose of as quickly as possible (security transfer account) and, finally, those for which the company still has to effect payment (syndicate account) shall be entered separately in the balance sheet, according to the kind of security and the amount.

Art. 207

3. Publication of the annual balance sheet

By virtue of the law, the annual balance sheet as well as supporting documentation, the profit and loss account and the business report shall, with notification to the members pursuant to the articles, be available for the said members to inspect at least ten days before the meeting of the supreme body which shall decide concerning the approval of the balance sheet and before the passing of a resolution by circular letter and, in addition, during the three months following the meeting.

By virtue of the law, each member of the company providing proof of participation may demand a copy of the annual balance sheet but not of the supporting documentation and the profit and loss account.

By way of Executive Order the Government may put legal entities with capital reserves divided into bearer shares which, together with the unsecured borrowed moneys, amount to one million Swiss francs as well as those legal entities which have issued bearer bonds without particular cover under obligation to publish in the journals intended for official notices the annual balance sheet together with supporting documentation in addition to the profit and loss account, possibly on the basis of official forms, six months after the balance sheet date at the latest.

The foregoing paragraph shall not be applicable in the case of legal entities which simply have their domicile in the Principality of Liechtenstein and administer their assets or whose sole purpose or object is the undertaking's activity abroad (domiciliary companies) and in the case of companies whose shares or participations are purely in the hands of relatives (family concerns).

Art. 208

4. Duty to disclose
 - a. In the case of loss of capital

Where in the case of a company with legal personality or of a legal entity of equal rank to the said company with legal personality, an annual balance shows that the capital resources, but not the own assets in the case of partnership companies and establishments and in the case of other legal entities which, in the same way as partnership companies, may assess their assets and calculate their profit and loss, have decreased by half and should

the winding-up balance, which shall thereupon be prepared, show the same result, the administration must convene a meeting of the supreme body without delay and inform it of the facts of the situation.

In the event that the capital decreases by two-thirds, the legal entity shall be liquidated if the said legal entity does not supplement the no longer available capital or reduce it to the actual amount.

In all cases the Registrar shall be informed of the resolutions passed; publication, however, shall only take place in the event of a previously published provision being amended.

Art. 209

As soon as the claims of the creditors of a legal entity are no longer covered by the assets, but are covered by the inclusion of possibly adequate liabilities to make further contributions, the administration and, if necessary, each member of the said administration shall have the right and the duty to inform the court for the purpose of opening bankruptcy proceedings. If, however, the notification is not received from all members of the administration, the others shall be consulted.

b. In the case of overindebtedness

The court may, in extrajudicial proceedings, upon petition of the administration, the audit authority, one or several creditors or one of the representatives or trustees appointed to safeguard the common interests of certain classes of creditors, postpone the opening of bankruptcy proceedings and in the meantime give orders which serve to preserve the assets relating, for example, to stock taking, the prohibition of payments, respite, having an interrupting effect on statutory limitation and forfeiture up to the time these measures are cancelled, the collection of additional contributions, the restriction of the authority to represent or the appointment of a creditor's representative as supervisory body.

In the case of all legal entities with members' liability to make further contributions, the petition to open bankruptcy proceedings shall be dropped with the judge's approval in extrajudicial proceedings if the supreme body passes a resolution immediately to wind up and assert the liability to make further

contributions as well as the obligation of liability in place of the creditors or the trusteeship in bankruptcy and if the creditors have been satisfied within nine months from the time of over-indebtedness.

In times of economic crisis, the Government may, by Executive Order, amend the provisions of the first paragraph so that a duty to notify shall exist under more limited preconditions.

Art. 210

III. Official audit
1. Precondition
and appoint-
ment

Where a petition to appoint a specialist auditor is refused by a resolution of the competent body of any legal entity or where the petition, submitted in good time, is not put to the vote, the Court of Justice may, by virtue of the law, within two months following the refusal or the meeting, upon petition of members who represent at least one-tenth of the capital resources or the legal entity's own assets or the votes, appoint one or several auditors in extrajudicial proceedings if, at the same time, the members can substantiate by prima facie evidence that dishonesty or gross infringements of the law or the articles have taken place.

Before appointing the auditors, the court shall hear the administration and the audit authority. The court may demand security from the petitioners, which shall be determined at the court's absolute discretion pursuant to the provisions of the Code of Civil Procedure concerning the lodgment of security for costs of action and, depending upon the circumstances, appoint one or several auditors.

The members concerned may, in the event of their petition being otherwise invalid and with liability for costs and losses for the duration of the audit, transfer their membership only with the assent of the legal entity and/or, if securities such as shares have been issued, they shall deposit these with the court or at a place determined by the said court.

Where a legal entity effects banking, insurance, savings bank or actual trust transactions and if domiciliary companies are not involved, the Government may, of its own accord, decide to order, through administrative channels, that an official audit be

undertaken, at the expense of the legal entity, without being liable to render compensation as a result of this.

Art. 211

Before commencing their duties, the auditors shall affirm to the judge that they shall faithfully fulfil the duties incumbent upon them and in particular shall observe silence towards all persons concerning business and operational circumstances which may come to their notice while carrying out the audit and they shall be responsible in the same manner as the members of an audit authority.

2. Position of the auditors

The auditors shall have the right to examine the books, vouchers and inventories for the purpose of determining the accuracy of the last annual balance sheet, to demand information and explanations from the members of the administration and the audit authority and each employee of the legal entity entrusted with the accounting and to investigate the cash in hand as well as the position regarding other existing assets.

The persons called upon to do so must, without delay, provide the required clarifications and information, accurately and truthfully, or otherwise be responsible for all losses.

The members of a possible audit authority shall be involved in the audit. Furthermore, the court may, at its discretion, permit the participation of one or several of the petitioners.

The auditors' remuneration shall be determined by the court in extrajudicial proceedings. Otherwise, they may not draw any other emolument.

Art. 212

The written report concerning the result of the audit, which shall state whether all the auditors' wishes relating to the undertaking of the audit were fulfilled and whether the last annual balance sheet provided a truthful and correct picture of the financial situation of the legal entity, shall be communicated to the administration and the audit authority without delay.

3. Treatment of the auditors' report

The petitioners have the right to examine the auditors' report on the business premises and, in the absence of such, at another place to be determined by the judge in extrajudicial proceedings.

The administration and the audit authority are required, for the purpose of passing a resolution, to announce the auditors' report when the next meeting of the supreme body is convened, to cause the said report to be read in its entirety at the meeting and to provide an explanation concerning the result of the audit and concerning the steps taken to remedy the illegalities or grievances which may have been discovered.

It shall be incumbent upon the audit authority to report to the meeting concerning the claims for compensation to which the legal entity is entitled.

Should the auditors' report reveal that a gross infraction of the law or the articles has taken place, a meeting of the supreme body must be convened immediately.

Art. 213

- 4. Costs and compensation for loss

In the absence of an agreement, the court, in extrajudicial proceedings with analogous application of the provisions concerning the costs of the action, shall decide, depending on the result of the audit and with due appraisal of all the circumstances, whether the costs of the audit shall be borne completely or partly by the legal entity.

Should, according to the result of the audit, the petition for an audit prove to be unjustified, the petitioners shall be liable to the legal entity jointly and severally for the damages without restriction arising from the petition, together with possible satisfaction, insofar as the blame for evil intent or gross negligence rests with the petitioners.

Art. 214

- G. Sociopolitical rights to shares and profit
- I. Working shares

Legal entities with members' rights to shares may provide in the articles for the issuance of working shares to employees and workers, for which the provisions applicable to working shares shall be applied analogously.

Inalienable working shares issued pursuant to the articles to a named person as property of the individual or a co-operative society on the basis of work performance may also be provided in such a manner that a share of the capital resources or the legal

entity's own assets does not exist but, however, a claim to the personal rights arising from the membership, to profit, subscription rights and a share upon withdrawal from the terms of employment or to the liquidation surplus, with or without preferential right, or the other capital or asset shares shall exist.

Art. 215

The articles of a legal entity may provide for funds for the formation and support of welfare institutions for members, workers and employees or similar purposes.

Such funds as welfare institutions for members, workers and employees have, without further formality, the character of foundations and their assets are set aside from the assets of the legal entity and are no longer liable for the legal entity's debts.

Insofar as an actual transfer of the assets of the foundation has not taken place, the foundation shall have a preference in bankruptcy proceedings equivalent to the wage.

Resolutions concerning contributions from net profit towards the formation and support of welfare institutions for members, employees and workers or for other welfare purposes may be passed by the supreme body even if such provision is not made in the articles.

The special provisions concerning trusts and autonomous departments are reserved.

Art. 216

These foundations are not subordinated to the supervisory authority but remain, however, where the articles do not determine to the contrary, under the administration of the legal entity and their balance sheet may not be taken into that of the legal entity.

In the absence of other provisions in the articles, the fund shall revert to the legal entity in the event that the purpose of such a foundation is cancelled.

Further provisions concerning the foundation may be drawn up in the articles.

- II. Welfare funds
- 1. Preconditions

- 2. Structure and dissolution

Art. 217

III. Other profit participation

The articles of a legal entity may, moreover, provide that its employees and workers participate in the net profit, which participation shall be paid to them in cash or in another way.

By resolution of the supreme body of a legal entity, the employees and workers of the said legal entity may be awarded voluntary benefits in cash or in a different manner even though this may not be provided for in the articles.

Art. 218

H. Responsibility
I. In the case of companies with legal pers. and legal entities on the same footing
1. Kind of liability

The bodies of a company with legal personality and the legal entities on the same footing are liable to the legal entity for the damage they cause if the said damage is caused intentionally or by neglect.

They shall be liable to the members for the intent and the negligence only insofar as the legal entity is not entitled to a claim for compensation.

Where, however, the legal entity has such a claim, the members shall have an independent claim only in the case of damage inflicted with intent.

Third persons who have cooperated in the issuance of shares, share certificates or bonds shall be liable to all parties only in the case of intentional damage.

Art. 219

2. Cases of liability
a. In general

Whosoever is active in the formation of a company with legal personality or a legal entity on the same footing is liable for compensation for damage:

1. If he makes or circulates untrue statements in prospectuses or circulars,
2. if with his cooperation a deposit or the takeover of parts of assets or a beneficial interest of individual members or other persons are stated incorrectly or incompletely or are withheld or concealed in the articles or a founder's report or if he has contravened the law by approving of such an action in another way,

3. if he had knowledge of the subscribers' inability to pay or otherwise to perform in respect of the capital resources or the legal entity's own assets.
4. if the company's entry in the Public Register was effected on the basis of a certification or document which actually contained untruthful statements to which he contributed.

This provision shall be applicable analogously where after the formation the same acts or omissions have led to damage.

Where such a company with legal personality or legal entity has issued shares, share certificates or bonds, either itself or through a third party, each person who was active in this matter shall be liable for the damage caused or circulated by the person concerned by way of untruthful statements in prospectuses or circulars.

Whosoever contrary to the provisions of the law has received payments such as profits or interest on building finance from the legal entity shall be required to return the said payments insofar as the recipient was demonstrably in bad faith at the time of receiving the said payments.

Where, on the other hand, contrary to the provisions of the law, a share of the liquidation assets has been obtained by the members or, insofar as transactions without value are involved, by third parties, they shall be liable to the extent of their enrichment, even though they are in good faith.

Art. 220

The persons entrusted with the administration and the auditing of a company shall be responsible for the damage caused by the non-fulfilment of the duties incumbent upon them.

Where the neglect of duty is committed as the result of the passing or the omission of a resolution by a body comprised of a number of members, organised on a collegiate basis, all members of the said body who were bound to take part in the resolution concerned shall be responsible.

The members who voted against the resolution which established the responsibility or, where the omission of a resolution establishing the neglect of duty is involved, the members who

b. Management
and audit
authority

voted for the resolution which was rejected by the majority shall be free from the liability.

Members of a collegiate body who have also taken part in the said collegiate body's deliberations shall be liable if the assertion of their votes, for whose lack of assertion they were to blame, could have prevented the neglect of duty on the part of the said collegiate body or if in demonstrable agreement with them other members brought about a liability establishing a neglect of duty on the part of the collegiate body.

Where the omission of a resolution in breach of duty is involved, without the collegiate body having deliberated concerning this, each member shall be liable from the time he became aware of the matter and did not take steps within his authority to bring about the deliberation of the said matter by the collegiate bodies.

Where the administration or one of its members receives an instruction from an overriding body, such as the supreme body or the audit authority, whose execution would violate the duties incumbent upon the said administration or member pursuant to paragraph 1, execution may be refused without the legal entity being able to assert a responsibility as a consequence thereof.

The provisions concerning the responsibility of the liquidators are reserved.

Art. 221

c. Liability of large shareholders

Where in the case of banking establishments or trust companies, a large shareholder, who although not a member of the administration induces, indirectly or directly, the members of the administration of such an undertaking in the course of their management to violate the due diligence of a prudent businessman, the said shareholder shall be liable jointly and severally with such members of the administration for the damage thereby caused to the legal entity, under reservation of the right of recourse to the large shareholder of the members made responsible by the legal entity.

A large shareholder within the intendment of this law is a shareholder who, on the basis of his own shareholding or on the basis of another title, has at his disposal the right to vote for at

least a tenth part or certainly for a part of the capital resources or of the legal entity's own assets which is so large that the votes to which he is entitled count decisively at the meetings of the supreme body of the company concerned, having regard to the amount of capital resources or own assets normally represented at such meetings.

Those shares which are transferred to another person for the purpose of circumventing this provision shall be ascribed to the shareholding of the large shareholder. An intention to circumvent the law shall be presumed where the transfer ensues to the spouse or to a relative as far as the second degree of relationship.

Where for important reasons the circumstances justify this, the Government may, by way of ordinance, expand this liability obligation to undertakings other than those mentioned in the first paragraph.

Art. 222

Primarily, the company that has suffered damage and, in the event of bankruptcy, the said company's liquidation assets, shall be entitled to claim compensation for damage.

Where the company does not have a claim, as well as in the case of malicious injury, each individual member may demand that he be compensated directly for the damage inflicted upon him.

Insofar as the company renounces the lodgment of a claim or fails to assert the said claim within three months after a member's request to do so, each individual member may institute an action in favour of the company for compensation for the damage intentionally inflicted upon the company, subject to a binding resolution of release.

Where the company does not assert its claim each individual member has the right of action on grounds of intentional damage only if the member is able to prove that he did not take part in the resolution or voted against the said resolution or did not become a member until after the resolution had been passed and had no knowledge of it.

In the event that a member initiates such an action, further actions concerning this matter may be introduced within the period

- 3. Liability claim
- a. Claim of the company and of the individual members

of time allowed only insofar as in the first action the damage was not asserted to the full extent. The other members who suffered damage, however, shall be entitled to join the first action as intervening parties.

This claim of the individual member shall become statute-barred upon the expiration of six months after the said individual member became aware of the resolution.

Art. 223

b. Creditors' claims

Where the company's creditors suffer damage they may demand, if the company does not have a claim, that they be compensated directly for the damage inflicted upon them.

In the case of intentional damage to the company the individual creditors may demand compensation in favour of the company for the damages inflicted upon the said company if bankruptcy proceedings concerning the latter have been opened and the bankrupt's estate waives the assertion of the claim or, in spite of being requested to do so, does not bring the said claim within a term of one month.

The creditors shall be entitled to claim for damages resulting from default, in addition to the provisions drawn up to protect the creditors.

Art. 224

c. Release
aa. Relationship to right of action

Insofar as malicious damage does not exist, the supreme body may release the persons liable to pay damages by waiving the claim, concluding a settlement with the persons responsible or in any other manner, as long as the company has not become bankrupt. The rescission of the resolution to release, however, is reserved.

A resolution of the company to release may, in the case of injury being caused to the company, be set up as a bar under all circumstances to the member or creditor entitled to claim insofar as the injured party fails to prove thereby that no liability whatsoever was imposed upon the released persons to effect compensation or, pursuant to their fault and their ability to pay, an apparently inadequate liability to effect compensation was imposed, or that malicious injury exists.

Where the resolution to release is agreed by at least three-quarters of all the countable votes, the claim may be brought only provided inadequate compensation and also malevolence can be proven.

The foregoing restrictions concerning release shall not be applicable to settlement proceedings for the warding off or termination of the bankruptcy of the person responsible

The release conferred by the competent body of the administration on the basis of an audit authority report shall embrace only those transactions of which the audit authority has knowledge.

Art. 225

Where the management and the representation and/or the audit are conducted pursuant to the law and the articles and other admissible instructions, the members of the administration and/or the audit authority shall have a claim to release against the company through the competent body and with effect against the company, its members and creditors.

bb. Claim to release

The release may be pronounced in judicial judgment.

Art. 226

The liability of the persons responsible pursuant to the foregoing provisions is subject to the provisions concerning liability as determined by contract and becomes statute-barred in ten years and where knowingly false statements or intentional infliction of injury are not involved, in two years, calculated from the time when the transaction to which the injury is attributed took place.

4. Nature of liability

Where several persons are responsible for the injury inflicted, they shall be jointly and severally liable for the compensation.

Liability arising from the illegal receipt of payments of the legal entity becomes statute-barred for the recipient in bad faith in ten years where the liquidation share is involved and in five years in the other cases and for the recipient of a liquidation share in good faith, in two years, calculated from the day of receipt.

Art. 227

5. Proceedings

In the event of the litigation and liability for all the injury sustained by the company or the members of company bodies being otherwise invalid, the plaintiff members shall not surrender their membership rights and the plaintiff creditors may not surrender the demands which establish the characteristics of a creditor for the duration of the litigation.

In the case of action to rescind against resolutions of the supreme body, relevant provisions shall be analogously applicable to the lodging of security on grounds of damage accruing to the company or the other defendants, to the combination of several actions and to the liability for damage.

Art. 228

II. In the case
of other legal
entities

Insofar as companies with legal personality or legal entities on the same footing are not under consideration, the principles of liability corresponding to the underlying contractual relationship between the bodies and the legal entity shall be applicable with respect to the responsibility and the liability of the bodies; in cases of doubt those regulations concerning the mandate relationship shall be applicable.

The foregoing provisions are analogously applicable with respect to the claim of the legal entity and the individual members, the release and the kind of liability.

Art. 229

J. Participation of
legal entities
under public
law
I. In general

In its articles, a legal entity may concede a special legal position to the community on the basis of a special agreement with the said community; this may be with or without its inclusion in the membership and may relate to the liability to contribute, the right to vote, participation in the administration and the audit authority or in their appointment, liability to the creditors, the termination of the relationship and participation in the liquidation result.

Art. 230

In the case of such legal entities and also mixed economic undertakings in which a legal entity under public law participates as a member, the liability of the members, the administration and the audit authority shall be:

II. Responsibility

1. Towards the legal entity, the members and the creditors where in the individual case the Government does not determine otherwise pursuant to the provisions as applicable to the members elected by the supreme body,
2. towards the legal entity under public law pursuant to the contractual relationship existing between the said legal entity under public law and the member, such as a services contract, a commission mandate and the like.

The legal entity under public law may, however, according to regulations, assume the liability for its representatives in the bodies of the legal entity performing their functions with care, with reservation of recourse to the persons at fault.

The representatives of the legal entity under public law shall under all circumstances remain liable for intentional violation or neglect of the said public entity's duties.

Otherwise, the special provisions concerning the undertakings serving the public economic interest are reserved.

Art. 231

Where the articles lack a statement as required by law concerning the form of the notification to members of the legal entity or third parties, notification, in case of doubt, shall ensue through the administration and in the journals provided for official announcements. In the case of societies, small cooperative societies and small insurance associations, however, whose activity is limited to a local sphere, notification shall ensue in the manner customary in the locality.

K. Notification

In the case of legal entities which simply have their domicile in the Principality of Liechtenstein (domiciliary companies), notification displayed on the court notice board in extrajudicial proceedings shall be sufficient where doubt exists.

In the case of a lapse in a form of notification provided in the law or the articles, the Registrar, upon the demand of the administration, shall determine a means of notification for as long as the law or the articles fail to do so.

Public notification in journals, proclamation in the church square, and the like shall, except in the case of domiciliary companies or unless the Registrar allows an exception, ensue in the language of the Country.

Art. 232¹⁾

- I. International law
- 1. Foreign or domestic legal entities and applicable law

Depending on whether a legal entity is organised according to foreign or Liechtenstein law, i.e., its Articles declare foreign or Liechtenstein law as applicable or it complies with foreign or domestic filing or registration provision or, if such provisions do not exist, has been organised according to foreign or Liechtenstein law, it is to be regarded as a foreign or domestic law shall be applied. It shall also have its domicile there in regard to the international relationship.

If a legal entity does not meet these conditions, it shall be subject to the law of the state in which it has the centre of its administrative activity.

The provisions concerning diplomatic protection and the legal protection of personality are reserved.

Art. 233²⁾

- II. Transfer of a legal entity
- 1. Transfer of the legal entity from abroad to Liechtenstein

A foreign legal entity, with the permission of the Court of Justice and through an entry in the Public Register and the appointment of a legal representative should such be necessary, may subordinate itself to domestic law and thus transfer its domicile to the Principality of Liechtenstein without dissolution abroad and re-formation in the Principality or without the transfer of its business activities or administration.

¹⁾ Para 1 and 2 in the version of the law dated 30. October 1996, LGBl. 1997, No. 19.

²⁾ Art. 233 in the version of the law dated 30. October 1996, LGBl. 1997, No. 19.

This permission may only be granted when the legal entity shows that it has complied with domestic law and that the foreign law permits a transfer of the legal entity.

A legal entity must show before the entry in the Public Register is executed that the registered capital declared as fully paid up in the Articles is covered at the time of the transfer of the legal entity.

A legal entity which by domestic law is not subject to registration becomes subject to domestic law as soon as its intention to become subordinate to domestic law is clearly evident, has an adequate relationship with the Principality and compliance with domestic law has taken place.

Art. 234

The subordination of a domestic legal entity to foreign law and thus the transfer abroad of its domicile without dissolution is admissible only with the permission of a public office designated by the Government by ordinance.

By way of ordinance, the Government shall specify the procedures and conditions for the granting of permission for the transfer of domicile, especially in regard to the protection of creditors.¹⁾

The transfer abroad of a domestic legal entity without dissolution is admissible only with the approval of a government office which has been designated by the Government in an Executive Order and provisions relevant to this in the articles shall be invalid as long as the administration's activity is centred in the Principality of Liechtenstein.²

The Government may by way of ordinance draw up other or further provisions concerning the transfer of domicile or forbid this completely or partly.

2. Transfer of the legal entity from Liechtenstein to another State

¹⁾ Para 1 and 2 in the version of the law dated 30. October 1996, LGBl. 1997, No. 19.

²⁾ Para 3 in the version of the law dated 16. December 1994, LGBl. 1995, No. 25.

Art. 235¹

- III. Legal capacity and the capacity to act
- 1. General

The legal capacity and the capacity to act, including the capacity for tortious liability, shall be determined according to the law applicable to the legal entity (Art. 232).

In particular, this law shall decide on the formation, amendment and dissolution of a legal entity, on the organisation, rights and obligations of the individual bodies, the legal position of a member, the acquisition and loss of membership.

Within the Principality of Liechtenstein, however, it may not acquire rights and assert a claim to the protection of the law to a broader extent than is possible for domestic legal entities and a foreign legal entity shall have at least the same capacity for tortious liability as such domestic legal entities.

Legal entities may not assert in the Principality of Liechtenstein prerogatives (privileges) acquired abroad.

When pursuant to the law applicable to the legal entity the assets of a legal entity shall pass to a community, the assets located in the Principality shall not pass to the foreign community, but shall be treated in accordance with domestic law.

Where a foreign legal entity does not have legal capacity or the capacity to act or the capacity for tortious liability pursuant to this applicable law, but such does indeed apply according to domestic law, the latter shall be applicable for its activities within the Principality.

Art. 236¹

- 2. Branch establishment

Liechtenstein law shall be applicable for the formation, amendment and dissolution of a branch establishment of a foreign legal entity in Liechtenstein.

The relationship of the branch establishment to the principal establishment shall be determined, however, by the law in force at the principal domicile.

A branch establishment's authority to represent shall be determined by Liechtenstein law. At least one person with repre-

¹) Art. 235 and 236 in the version of the law dated 30. October 1996, LGBl. 1997, No. 19.

sentative authority must have his or her domicile in the Principality and be entered in the Public Register.

Where a branch establishment of a foreign legal entity is entered in the domestic Public Register, the foreign legal entity shall be considered to have legal capacity and capacity to act respecting the obligations entered into or to be fulfilled in the Principality of Liechtenstein even though pursuant to the law in force at the principal domicile it does not possess such capacities.

Foreign legal entities which do not conform with Liechtenstein law may also form branch establishments in the Principality.

Where a foreign legal entity is dissolved by a step taken in the country of principal domicile which contravenes public order and morality, the effects of the dissolution shall not be recognised in the Principality of Liechtenstein. If, however, a branch establishment exists in Liechtenstein, this shall be formed, if dissolution is not ordered, into an independent legal entity within a period of time to be determined by the Registrar or otherwise be officially liquidated.

Art. 237¹⁾

A foreign legal entity may only claim legal protection of personality in Liechtenstein pursuant to the law applicable to it, but not exceeding the scope of Liechtenstein law.

Liechtenstein law shall be applicable to the domestic branch establishment of a foreign legal entity with respect to legal protection of personality.

3. Protection of personality

Art. 237a¹⁾

Should the name or style of a legal entity entered in the domestic Public Register be violated, the protection of the same shall be determined by domestic law.

If a legal entity is not registered in the domestic Public Register, the protection of its name or style shall be determined by the law applicable to unfair competition or to the violation of personal rights.

4. Protection of name and style

¹⁾ Art. 237, a, b, c and d in the version of the law dated 30. October 1996, LGBl. 1997, No. 19.

Art. 237b¹⁾

5. Restriction of the authority to represent

A legal entity may not refer to the restriction of the authority to represent of a body or representative which is unknown to the law of the state of normal domicile or to the branch establishment of the other party unless the other party knew of this restriction or should have known of it. This provision shall not apply to legal business disposing of landed estate situated in another state or to a right equated with such.

Art. 237c¹⁾

6. Liability for foreign legal entities

Should the impression be given by a legal entity which has been formed in accordance with foreign law that it is subject to domestic law and its business is conducted within the Principality or from the Principality, the liability of the persons acting for it for such business shall be subject to domestic law.

Art. 237d¹⁾

7. Claims from the public issue of equities and bonds

Claims from the public issue of equities and bonds on the basis of brochures, circulars and similar notices may be lodged pursuant to the law applicable to the legal entity or in accordance with the law of the state in which the issue took place.

Art. 238

8. Restriction of mortmain

The acquisition within Liechtenstein by one of the legal entities regulated under this Heading of donations without valuable consideration, such as gifts, legacies and the like in excess of five thousand Swiss francs as well as the acquisition in Liechtenstein of real estate, if the total ownership exceeds the size admissible for the erection of a homestead, shall require the permission of the Government in order to be valid.

¹⁾ Art. 237, a, b, c and d in the version of the law dated 30. October 1996, LGBl. 1997, No. 19.

This provision shall also be applied to foreign legal entities under public law.

In the case of family foundations and establishments or insofar as the law or the Government order exceptions otherwise, the provisions concerning donations without valuable consideration shall not be applicable where real estate is not involved.¹⁾

Art. 239²⁾

Domestic legal entities and the branch establishments of foreign legal entities whose managing or representing bodies, such as the board of directors or the administration, are comprised in the main of foreigners or foreign firms, shall appoint in Liechtenstein a Liechtenstein citizen who is permanently resident here, either to represent the legal entity towards the authorities as a legal representative or, empowered as an authorised signatory (procurist), to exercise the representation, without the co-operation of others.

Instead of this, the Landesbank or a firm may also be designated as a legal representative that shall appoint a Liechtenstein citizen who is permanently resident in Liechtenstein as a legal representative or at least equip the said Liechtenstein citizen with the power of agency of a legal representative.

Notwithstanding the provision concerning the appointment of a legal advisor, the observance of the provisions of this article may be supervised by the Government in administrative proceedings.

The obligation to appoint may be dropped with the agreement of the Government where important reasons exist as, for example, where a legal entity or its branch establishment brings into the Country work and earnings or significant public proceeds or similar and, otherwise, in the event that the legal entity's remaining representation provides adequate warranty as a substitute for the legal representative.

IV. Legal representative
1. Obligation to appoint

¹⁾ Art. 238 last para (= para 3) inserted by the law dated 10 April, 1928, concerning trust enterprises, LGBl. 1928, No. 6.

²⁾ Para. 3 of Art. 239 deleted by the law dated 21. March 1996, LGBl. 1996, No. 68.

Art. 240¹⁾

2. Registration
in the Public
Register

In the event that the legal entity is not entered in the domestic Public Register, the bodies of the legal entity entitled to represent shall notify the legal representatives to the Public Register, enclosing an excerpt from the registers kept abroad, or, possibly, otherwise credible proof of identity. The following information shall be furnished:

1. The name of the firm or the name of the legal entity,
2. the name, domicile and nationality of the legal representative.

If the legal representative does not notify the signature or signature rights in notarized form, the said legal entity shall record these in the presence of the Registrar.

In the case of foreign insurance undertakings, the legal representative's entry shall be published. In the case of other undertakings, the publication may be omitted.

Art. 241²⁾

3. Legal power of
agency

By virtue of the law, the legal representative is empowered in respect of all court and administrative authorities, in all matters, notwithstanding a possible obligation to compensate the legal entity, to receive declarations and communications of all kinds including service and the like, also to keep files in safe custody and to keep books of account, where and insofar as the domestic operation requires this.

Apart from representation towards authorities, the legal representative may put a legal entity under obligation only insofar as he has been empowered to do so by the said legal entity.

Where doubt exists, several legal representatives appointed by one legal entity shall have joint power of agency.

Legal representatives shall sign on behalf of the legal entity by signing their name by their own hand to the written, etc., wording or company name or name, with a subscript which alludes to the legal representative.

¹⁾ Para. 2 and 4 of Art. 240 deleted by the law dated 21. March 1996, LGBl. 1996, No. 68.

²⁾ Para. 3 of Art. 241 deleted by the law dated 21 March 1996, LGBl. 1996, No. 68.

Otherwise, the provisions concerning signature rights in the case of legal entities shall apply analogously to the signing effected by the legal representative.

Art. 242

The legal representative shall be liable to the legal entity for all damage caused as a result of the said legal representative's activities, in the same manner as a mandatary.

Several legal representatives shall be liable jointly and severally for all the damage caused by them as a result of their activities.

4. Responsibility

Art. 243¹⁾

Art. 244

Public law remains reserved for legal entities under public law, ecclesiastical legal entities and the legal entities regulated under this law.

M. Reservation
and scope of
application
I. Reservation

The provisions under this Heading, with the exception of the provision concerning capacity to act and capacity for tortious liability, shall not be applicable to corporate bodies or establishments (banks, associations of insurers, etc.) which are formed under special laws and administered with the participation of public authorities, insofar as the state accepts the subsidiary liability for their obligations, even where the necessary capital is completely or partly divided into shares or other participations and subscribed by the participation of private persons, unless the law were to order otherwise.

Legal entities under public law and ecclesiastical legal entities, however, shall be deemed to have legal capacity and capacity to act as soon as the provisions of this law have bestowed the said capacities, insofar as the public and/or ecclesiastical law, with reservation of ecclesiastical foundations, does not determine otherwise.

¹⁾ Art. 243 deleted by the law dated 21. March 1996, LGBl. 1996, No. 68.

The provisions concerning the capacity for the tortious liability of the legal entities shall also be valid, however, for legal entities under public law and ecclesiastical legal entities in the sphere of their private-law activity where the administration or a member thereof or another representative appointed on the basis of the legal provisions commits a tortious act or an omission within the frame of his powers.

The special provisions concerning the liability of such legal entities for compensation under public law on grounds of wrongful or lawful exercise of the public authority entrusted to their bodies, officials and employees, are reserved.

Art. 245

II. Scope of validity

Furthermore, all the corporate bodies and establishments including foundations regulated under the following Headings shall be subject to the general provisions under this Heading, insofar as the special provisions drawn up for them or the individual provisions under this Heading do not determine a deviation.

Legal entities under private law other than those determined under this law cannot exist.

Fourth Title
Second Section
The Company Limited By Shares

Art. 261

The limited company is a company having its own name (firm), whose capital, determined in advance (nominal capital, capital invested), is divided into smaller amounts (shares). Only the company's assets are liable for the company's debts.

- A. General provisions
- I. Definition
- 1. In the case of fixed shares

The shareholders are only liable as far as the performances as laid down in regulations are concerned and are not liable personally for the company's liabilities.

The deviating regulations concerning the special legal entities pursuant to foreign law, concerning variable nominal capital, additional benefit shares and similar are reserved.

Art. 262

Instead of being divided into certain amounts the nominal capital, determined in advance, of a limited company may be divided into portions (quotas), which may be equal or dissimilar (shares without par value).

- 2. In the case of non par value shares

The non par value share is issued for a portion of the nominal capital, without having to have a specific value.

Fixed and non par value shares may also be combined and the regulations relating to fixed shares are also applicable to non par value shares unless pursuant to the relevant provisions they are inapplicable.

In addition to the quota in words, the securities issued as non par value shares must also state the amount of nominal capital and the reserves, if any.

Art. 263

The shares are issued to a named person or to the bearer and may also be comprised simultaneously of both types in the proportion provided for in the articles.

- II. Share
- 1. Type of shares

The articles may determine that the shares issued to a named person, i.e. the registered shares, shall or may be converted to bearer shares, or bearer shares shall or may be converted to registered shares.

The provisions relating to special types of shares such as ordinary or preference shares are reserved.

Art. 264

2. Division, consolidation and change of shares or units of shares

With reservation of the subparticipations between a shareholder and a third party and the trust certificate, a division or consolidation of shares or share units by a shareholder is inadmissible.

On the other hand, by means of an amendment of the articles, the general meeting is empowered, with the subscribed capital remaining unchanged, to divide the shares into other shares of a lower par value, to divide them into units of shares or, with the assent of the shareholders, to reduce the number of shares so that they have a higher par value.

Art. 265

3. Reduction of the nominal value

It is permissible to reduce the par value of individual shares, provided that the existing amount of nominal capital is maintained unchanged, by simultaneously issuing new shares equal to the amount or the quota of the effected reduction of the share value hitherto.

On the other hand, a reduction of the par value of individual shares without a simultaneous issue of new shares is only permissible when the regulations are observed which relate to the repayment and reduction of the nominal capital and its distribution in the case of the dissolution of the company.

A reduction of the quota is subject to the regulation of the foregoing Article.

Art. 266

4. The amount of the share

An issue for an amount which is less than the nominal amount is only permissible in the case of registered shares which are transferable with the assent of the company and with the approval of the Register Authority.

The conversion of such registered shares into others may ensue by reducing the nominal capital as laid down in the articles to the amount actually taken up or still available or if the nominal capital as laid down in the articles is actually available through further contributions from profits and similar.

Where shares have been issued below the par value, the par value of all the shares which have been issued must be entered on the liabilities side of the balance sheet.

It is admissible to issue at a higher value if such an issue is provided for in the articles or if the general meeting or a body empowered by the general meeting passes resolution to this effect.

The added value achieved over and above the nominal value may not be distributed as profit, but must be used to meet expense items or for writing down or for the creation of reserves.

Art. 267

The company is obliged to issue share certificates only if the articles do not determine otherwise.

The articles may determine in detail the form and terms of the share certificate.

The share certificates must bear the signature of at least one member of the board of directors or the mechanical reproduction of a personal signature of such members.

The share document must comprise a share certificate and a renewal coupon sheet may also be attached.

- 5. Share certificates
- a. In general

Art. 268

The share certificate records membership of a limited company, in particular, the right of participation in nominal capital, the right to dividends and to vote.

In the case of registered shares, the share certificates must contain the detailed regulations relating to transfer as provided in the articles; similarly, in the case of additional benefit shares, the details of the performance must also be included.

If in order to exercise the right to vote and similar it is necessary to deposit shares, it shall be sufficient in case of doubt to

- b. Share certificate

deposit the share certificate, unless the articles expressly determine otherwise, such as the presentation of the certificate with the coupon, or permit only the bearers of the coupons relating to the previous business year to participate in the general meeting.

Unless the articles provide otherwise, the regulations applying to bearer or registered securities or securities that can be transferred by endorsement shall apply with regard to the declaration of invalidation, depending on the kind of shares, and the person who brought about the declaration of invalidation may, in the absence of provisions to the contrary in the articles, at his own expense, demand the issuance of a new document.

Art. 269

c. Talon

The talon is an authorisation to obtain new coupon sheets, when the old coupons have been used up, lost or mislaid.

The talon may only be transferred together with the share certificate.

The procedure for the declaration of invalidation shall be in accordance with the existing regulations for bearer papers.

As far as the company is concerned, only the bearer of shares is entitled to obtain a talon in the absence of a special authorisation.

Art. 270

d. Coupon
aa. In general

The issued coupons record the membership right to receive dividends and, after the dividend has been determined by the competent body, an independent right to claim which cannot be withdrawn by the company.

As long as they remain attached to the share certificate the coupons are part of the latter and share its legal fate; after they have been separated or if they are issued independently, they are nevertheless independent securities and in case of doubt are subject to the provisions concerning bearer papers, in particular with respect to the declaration of invalidation.

With the loss of the shares as, for instance, in the case of redemption, collection or withdrawal or similar, the right derived

from the coupon is also lost, even if it is independent, if the distribution of a dividend has not been decided at the time of the loss of the share.

The coupon detached from the share with which it is associated may be declared invalid independently of the share; if it is joined to the share, it may only be declared invalid together with the share.

Art. 271

In respect of the right to draw dividend, the coupon of the individual share has the same status as the share itself so that the coupon of the preference share takes precedence over the coupon of the ordinary share and the coupon of the ordinary share takes precedence over the dividend-right certificate or the dividend share, if the articles do not provide otherwise.

bb. Legal status of the coupon

In the absence of provisions to the contrary in the articles as, for example, in the case of the existence of dividend-right certificates, the right to draw dividend in advance or the right to a cumulative dividend and the final payment of dividend shall conform with the legal status of the share and, subject to other provisions in the articles, only the shareholder has the right to contest a resolution of the competent body relating to the declaration of dividends.

In the event of the share being pledged, the coupon shall be deemed to be pledged with the share insofar as the lien on the coupon has been asserted in compliance with the required legal form, unless it has been agreed otherwise.

In case of doubt, the profitability or dividend guaranteed to a company shall be for the benefit of the bearer of the coupon.

Art. 272

Workers' shares may be handed over to the employees and workers of an undertaking pursuant to the detailed provisions drawn up in the articles. Such transfer may also be effected without the subscription and the taking up of at least 20% of the capital having to be fixed at the time of issue and without entry in the Public Register.

6. Workers' shares
a. In general

Workers' shares have the same nominal value or the same quota as the undertaking's other capital shares. However, they must be entered in the balance sheet with that sum which has been taken up.

Art. 273

b. Registered shares, transfer and payment

Workers' shares are issued to a named person and, as long as the shareholder is an employee or a worker in the employ of the company, they may not be transferred at all and later, only with the assent of the board of directors.

This permission to transfer may not be refused if the acquirer of the shares pays the outstanding amount at the time the share is transferred.

Otherwise, there is an obligation to pay the call on these shares only insofar as the owner must allow the participation in the net profit of the undertaking and the dividend accruing to the sum paid up on the actual shares to which the owner is entitled pursuant to the articles to be entered to his credit until the par value (the quota) of the workers' share has been fully paid up.

Art. 274

c. Registration, voting right and conversion

As soon as 20% of the workers' shares has been paid up, the capital increase brought about by this payment must be entered in the Public Register.

The shareholder's right to vote commences from this time.

A new entry must be made in the Public Register each time a further 20% is paid up.

After the workers' share has been fully paid up, it is converted to a normal capital share having the same nominal value (quota) and the properties of the most entitled kind of share issued by the undertaking at this time or in the future.

Art. 275

During its existence, the workers' share shall be entitled, in proportion to the amount paid up at the time, to the same rate of dividend as the most entitled kind of share issued at the time by the undertaking.

d. Dividend entitlement

Payment of the dividend shall be by credit entry in the account of the outstanding capital payment, the outstanding amount being that which was outstanding at the time of the last balance sheet.

Art. 276

The articles may determine that a certain part of the annual profit may be devoted to the creation of a fund for the purpose of issuing shares for workers and employees who, in this case, may form a workers' cooperative pursuant to the regulations relating to small cooperative societies.

e. Workers' shares in combination with a workers' cooperative

In case of doubt, such cooperative society shall be the sole owner of the shares issued.

In particular, the articles shall make provision for the representation of the workers' shares in the company's governing bodies.

Art. 277

The regulation which determines that the amount of nominal capital of the company must be fixed in advance does not apply to workers' shares.

f. Variable capital

Moreover, the limited company with variable invested capital is reserved.

Art. 278

With the assent of the workers and employees, the articles may also settle the issuance of workers' shares (low-priced shares) by determining that a part of the workers' and employees' wages (salaries), to be defined in detail in the articles, shall be deducted and used to redeem each year (drawing for redemption) the other company shares (capital shares) which shall be replaced by workers' shares.

g. Creation of workers' shares from wages

Art. 279

III. Articles
1. Legally
required
content

The limited company's articles must contain provisions relating to the following:

1. The name and domicile of the company,
2. the company's objects,
3. the amount of nominal capital and individual shares or parts of shares, with a statement as to whether these are registered or bearer shares, the quantity of each type as well as the sum actually paid up,
4. the convening of the general meeting, the shareholders' right to vote and the passing of resolutions,
5. the governing bodies for the administration and, if necessary, for supervision and the manner in which representation shall be exercised,
6. the manner in which company notices to shareholders and third parties shall ensue.

With the exception of No. 6, the provisions shall be deemed to be essential within the intendment of the voidability proceedings.

Art. 280

2. Provisions to
be drawn up if
necessary

Provisions which pursuant to the regulations of the law are only valid if they are provided in the articles (by-articles) are, in particular, the following:

1. Information concerning contributions to capital which are not made in cash, acceptance of assets, with notification of the acceptance price, acceptance of shares or other performances in lieu of payment, with statement of the number of shares, stipulation of special advantages in excess of the usual bank commission in favour of one or certain shareholders or other persons, with the names of such persons, issuance of dividend-right certificates to these as well as any other kind of founders' advantages whatsoever,
2. regulations relating to article amendments, business expansion, business limitation, capital increase, capital reduction, fusion, which deviate from the legal provisions,

3. the admissibility of acquiring own shares for valuable consideration for the purpose of amortisation pursuant to the articles or repayment of the nominal capital and the conversion of shares,
4. the number of shares, if any, to be deposited by members of the board of directors,
5. building interest promise,
6. limitation of the duration of the undertaking,
7. penalties for delay in the taking up of shares,
8. release from the duty of payment on shares in excess of one-half or a higher quota of the nominal capital,
9. the preclusion or limitation of the transfer of registered shares,
10. issuance of founder's share certificates, dividend-right certificates and dividend shares as well as the issuance of preference and ordinary shares below the par value or shares with multiple voting rights, bonus shares or convertible bonds and the taking up of convertible loans,
11. limitation of the shareholders' right to vote and right to be represented,
12. the matters concerning which resolutions cannot be passed by a simple, but only by a larger majority or concerning which a resolution can be passed when a certain number of shares are represented or in accordance with other requirements,
13. authorisation to transfer certain powers of the administration to individual members or third parties and the appointment of a board of directors,
14. regulations concerning the organisation of the audit authority and the extension of its powers and duties which go beyond the legal provisions,
15. regulations which supplement the legal provisions concerning the drawing up and examination of the balance sheet and the calculation and distribution of the profit.

Art. 281

- B. Formation
- I. Successive formation
- 1. Formation requirements in general

With reservation of simultaneous formation, the following are required for the formation of a company limited by shares

1. The determination of the articles by the founders, who must sign the draft of such articles,
2. the subscription to the shares forming the nominal capital,
3. the resolution of the general meeting of the subscribers approving the subscriptions and the ensuing payment for shares and appointing the required company bodies.

Art. 282¹⁾

Art. 283

- Subscription and paying in

In order to be valid, subscriptions to shares, also subscriptions in kind, require a written declaration referring to the draft articles and, in the case of a public share issue, to the prospectus.

Apart from the implicit condition relating to the materialisation of the limited company, they must be worded unconditionally and include the issuing price as well as the length of time for which the subscription remains binding.

A sum amounting to at least 20% of the subscribed share capital must be paid up for each share at a paying in office mentioned in the offer, at the time of application or, at the latest, at the constitutive general meeting, such sum to be at the exclusive disposal of the company's future administration, unless the minimum payment owed by the subscribers is covered by the assets in kind to be acquired by the company.

Art. 284

- 3. Constitutive resolution

After the subscription to shares has been closed, a general meeting of the subscribers, summoned pursuant to the provisions

¹⁾ Art. 282 deleted by the law dated the 23. October, 1997, LGBl. 1997, No. 210.

of the law and the articles, must, on the basis of the certificates to be submitted to it, pass a resolution determining that the nominal capital is fully subscribed and that the minimum amounts determined in the articles, but at least 20% of each share, are paid up in cash or covered by the subscriptions in kind described in detail in the articles.

In addition, the necessary bodies must be appointed at the same meeting and the draft articles which provide for the subscription to shares shall be considered and determined finally. Important amendments to the draft articles may only be made with the assent of all the subscribers represented at the general meeting.

A vote shall be taken on the draft and a public document shall be drawn up concerning the resolution, unless all subscribers in favour sign the draft and the resolution.

Art. 285

Where the bringing-in of tangible articles of property or rights is concerned, whether these are to be offset by a part of the share capital or by cash, or where certain shareholders are to be granted special preference rights, a promotion report must be submitted in writing to the general meeting before a vote is passed. This report must contain detailed information concerning the scope and condition of the objects brought in and the appropriateness of the calculated evaluation, the number of shares acquired, preference rights which are in excess of a customary bank commission, the issuance of dividend rights certificates and, generally, the substantiation and appropriateness of the preference rights granted to the founders.

The original of this report or a certified duplicate must be available for inspection by the shareholders at every subscription receiving office, before the commencement of the subscription period.

4. Procedure relating to capital invested, acquisitions and founders' preference rights
- a. Report

Art. 286

b. Expert opinion and apportioned shares

At the request of subscribers, who must represent at least ten percent of the nominal capital, the passing of a resolution concerning the approval of the subscriptions in kind and the founders' preference rights must be suspended until the judge, in extrajudicial proceedings, has appointed an expert authority to report on the valuation and condition of the subscriptions in kind and the investments to be acquired as well as the appropriateness of the founders' preference rights. Such report shall be submitted at a second general meeting. It shall also be duplicated ten days in advance and held in readiness for the shareholders.

If the founders have given the general meeting a report of an expert authority or if other subscribers replace those who submitted the request, the subscribers' request pursuant to the foregoing paragraph shall be no longer applicable and the subscribers shall have the choice, without a new report, of participating or, without a claim for compensation, but with restoration of any contributions which may have been made to the nominal capital, of withdrawing.

The provision of the first paragraph shall also be inapplicable if the articles provide for a special category of shares for the subscriptions in kind or the acquisitions in kind (non-cash shares) which, in the case of the company being dissolved within two years of the creation of such shares, would be satisfied from the liquidation assets only after the shares received for cash had been satisfied in the event of a loss occurring as the result of a proven over-valuation at the time of contribution or acquisition.

Art. 287

c. Passing of resolutions at the general meeting

The provisions in the articles concerning payments in kind, acquisitions and founders' preference rights require special approval from the general meeting which must be held after the subscription to shares has been closed. The following regulations shall apply to such approval by operation of law:

1. Only one vote shall be accorded to each person present when the vote is taken,

2. each object shall be put to the vote separately and the shareholder making the contribution concerned or appearing as the transferor of a capital asset to the company or stipulating special rights may not vote either for himself or as a proxy,
3. the approval of the contribution or the acquisition of preferential treatment must ensue with a majority of at least three quarters of the votes present or represented,
4. a public document or a document signed by all the voters who voted in favour shall be drawn up concerning the resolution and shall be attached to the original report submitted by the founder and the original report (if any) of the expert authority.

The foregoing and this article shall not be applicable where a public share issue has not taken place.

Upon application of the subscribers, the judge in extrajudicial proceedings may allow exceptions to the regulations contained in the first paragraph as, for example, if all the founders' subscriptions are in kind or if the necessary majority of subscribers entitled to vote and not involved in the contributions to capital, acquisitions or benefits could not otherwise be achieved.

Art. 288

The formation of a limited company may ensue when all the founders declare in a deed their intention to form a limited company. Such a deed must be signed by all the founders and the signatures must be certified. The said founders must determine the articles of the company, the acquisition of all the shares and confirm in the deed, by means of substantiation from the bank or similar, the paying in of at least 20%, also more if required, for every share, whether in cash or by transfer of payment in kind. Assent must also be given in the deed to any other acquisition of assets as well as to the appointment of the company's necessary bodies.

The drawing up of such a deed takes the place of the constitutive general meeting.

- II. Simultaneous formation
- 1. Formation of the company

Art. 289

2. Blocking the shares

The shares of a company formed in the manner just described may be put up for sale after formation by their acquirers or for the account of the same by third persons, by means of a public share issue or by admission on the stock exchange for official trading only if the results and balance sheets for at least the first two business years can be submitted with the share offer.

Documents of ownership of the shares may not be issued to the shareholders by the company during these two years, notwithstanding membership rights and the issuance of dividend right certificates having the character of securities.

The foregoing provisions shall not apply if the deed does not provide either for tangible articles of property or rights to be handed over or acquired as contributions to capital or does not allow founders' preference rights, furthermore, the foregoing provisions shall not apply if the articles provide for non-cash shares and only these are blocked.

Art. 290

III. Registration of the company
1. Notification of registration

Registration by the members of the board of directors entitled to sign must be accompanied by the original or a certified copy of the articles and the minutes of the general meeting or the deed or a declaration containing:

1. The determination that the entire nominal capital is covered, with signatures confirming this, with reservation of issue below the nominal value and authorisation of the board of directors to issue further nominal capital without a resolution having to be passed by a general meeting,
2. the determination that at least 20%, or more if the articles determine a higher minimum amount, has actually been paid up for each share, or the amount is covered by payment in kind,
3. proof that the board of directors and, if necessary, the audit authority have been appointed, with details of the names, first names, profession and place of residence, or the name of the company and domicile of the members,

4. if necessary, the resolutions of the general meeting concerning the contributions to capital, acquisitions and founders' preference rights as well as the related reports of the founders and the expert authority.

Where representatives are appointed by the board of directors, these must also be registered, possibly with a copy of the board of directors' minutes enclosed.

Art. 291

The following must be entered in the Public Register and published as an extract:

2. Registration and publication

1. The date of acceptance of the articles,
2. the name and domicile of the company,
3. the objects and, if required, the duration of the company,
4. the amount of nominal capital actually issued, the nominal value or quota of the individual shares or share units and the amount actually taken up,
5. the legal form of the shares, whether they are bearer or registered shares as well as their preferential or conversion rights (if any),
6. the amount of payment in kind, acquisitions and founders' preference rights,
7. the members of the board of directors and the representatives, with names, first names, profession and place of residence or the name of the company and the domicile,
8. the form in which the board of directors makes known its declarations of intent and the manner in which representation is exercised,
9. the manner in which the company's notices to the shareholders and third parties shall ensue.

In the case of domiciliary limited companies, it will be sufficient if the entry in the Public Register is published by being displayed on the court notice board.

Art. 292

- C. Protection of the nominal capital and the shareholders
- I. Protection of vested rights
- 1. Protection of the individual

The vested rights of a shareholder or individual shareholders shall be deemed to be those rights, provided in the articles or the law, pursuant to the regulations of the law or the articles, which are independent of the resolutions of the general meeting or the board of directors or which appear as the prerequisite of participation at the general meeting.

These include membership, the right to vote, the right of rescission, the right to building interest, to dividends, to a share in the liquidation surplus, if the articles do not limit or exclude individual rights within the scope of this law.

Art. 293

- 2. Requirement of the specially conditioned majority of the general meeting

In the absence of provisions to the contrary in the articles, the approval of three-quarters of the votes represented at a general meeting but of at least two-thirds of the representatives of all the shares shall be required to pass a resolution of the general meeting in the following cases:

1. The changing of the company's objects,
2. the conversion of the limited company into another legal entity,
3. the removal of the requirements provided in the articles which render more difficult the passing of resolutions by the general meeting.

Art. 294

- II. Business expansion, business contraction and merger

An expansion of the company's sphere of business, by the adoption of related objects, or a contraction of such objects, or a merger, whether by transition to or association with another limited company, the changing of the name or the domicile of the company, or the dissolution before the time determined in the articles may, unless the articles determine otherwise, only be decided by a vote taken at the general meeting at which at least two-thirds of all the shares are represented.

If two-thirds of all the shares are not represented at a first general meeting, a second meeting must be convened at least eight days after the first at which the resolutions mentioned in the preceding or this Article may be passed even if only one-third of all the shares is represented.

Art. 295

Insofar as special regulations are not drawn up in the following, an existing limited company may issue new shares as, for example, in the case of variable capital paid in, provided only that the regulations drawn up for the formation of the company limited by shares are observed without, however, the nominal capital as stated in the articles having to be fully paid up.

If shares have been issued below the nominal value, new shares of this type may be issued again only after the deficiency arising from the issue below par has been covered from the reserves or the profit.

It is sufficient, however, if a person authorised to represent or sign undertakes the registration in the Public Register.

The subscription for shares shall ensue with reference to the resolution to increase the capital.

The increase in capital may be undertaken alone or in combination with a reduction of the existing nominal capital as, for example, in the case of capital reconstruction.

III. Issuance of new shares
1. General prerequisites

Art. 296

Where new shares are issued as a counter-performance for the contribution of tangible articles of property or rights, the resolution to increase the capital and to approve the payment in kind and the rights can only be passed at a general meeting at which at least two-thirds of the share capital must be represented after that part which is in possession of payment in kind has been deducted, and the majority must be comprised of at least two-thirds of the votes represented.

The shareholders participating in the contribution of articles of property or rights shall not be counted and shall have no voting right.

2. As counter-performance for payment in kind and rights

Information relating to the articles of property and rights brought in must be provided in the articles and, as when the company is formed, a special report must be submitted by the board of directors as well as by an expert authority (if necessary) before the resolution is passed. Such reports must be attached to the document required to be drawn up concerning the resolution and a certified copy of the reports must be deposited in the Public Register files.

The preceding paragraphs shall not apply if the issuance of new shares as a counter-performance for payments in kind and rights ensues pursuant to the regulation concerning the formation of the company limited by shares by simultaneous formation.

In addition, the judge may allow exceptions in extrajudicial proceedings.

Art. 297

3. Issuance
without pay-
ment in cash or
kind

The issuance of new shares, whether these are to be added to the existing shares, or whether they are to replace them, whether the quantity or quota, or whether the amount is to be changed or left unchanged, may ensue without the payment of capital in cash or the contribution of tangible articles of property:

1. If, in place of company debts, shares with or without preference are issued to assenting creditors (repayment of debts by shares), if the articles provide for this; a right, in particular, may be conceded to bond creditors, already at the time bonds are issued or, in the case of a loan being taken up, to the granters of a loan, enabling their bonds or their loans to be converted to preference or ordinary shares, or an obligation may be imposed in this regard (convertible bonds and/or loans), according to which the regulations concerning capital increase in the case of companies with variable capital shall be applied analogously, with the exception of those regulations which relate to the name and the limitation to registered shares,
2. by application of the reserve fund, other reserves and withheld profits, insofar as a minimum reserve is not required by law (revaluation upwards),

3. by adjusting the nominal value to the actual value of the assets as, particularly, in the case of devaluation of money and conversion to shares of the undisclosed reserves within such assets (revaluation upwards),
4. in the case of the reduction of the nominal capital and the share amount (devaluation),
5. in the case of the nominal capital or a part thereof being changed to another currency and, likewise, the nominal value of the shares or the quota (revaluation),
6. conversion of the preference shares to fully entitled ordinary shares and similar.

Art. 298¹⁾

Art. 299

Pursuant to or by amendment of the articles the general meeting may pass resolutions to take up new nominal capital or to modify the existing nominal capital by issuing preference shares (priority shares) with or without the ordinary shareholders having the preferential right to acquire preference shares.

When preference shares are issued, the right may be reserved to convert these to different shares, in particular to ordinary shares or bonds with or without the right to vote or participate in profits. In the latter case, however, the regulations concerning the reduction of capital in the case of limited companies with variable share capital shall be applied accordingly, but not those concerning the company name and the restriction on registered shares (convertible preference shares).

If the articles do not determine otherwise, shares which should take precedence over preference shares shall, after such preference shares have been issued, only be issued with the approval not only of the general meeting of all the shareholders but also of a special general meeting of the preference shareholders.

- IV. Issue of preference shares
- 1. Authority to issue

¹⁾ Art. 298 deleted by the law dated the 23. October, 1997, LGBl. 1997, No. 210.

The same regulation shall also be observed in the case of the subsequent amendment of provisions in the articles which confer special rights on the preference shares.

The articles may determine that in order to raise new funds without implementing an increase in capital, the shareholders may be invited to contribute voluntarily a certain sum of money above the nominal value of the shares and those shares for which an additional payment was made shall be converted into preference shares.

Art. 300

2. Passing of resolutions

The passing of resolutions concerning the issuance of preference shares or concerning the amendment or cancellation of the preferential rights conceded to preference shares shall be subject to the same regulations as those drawn up for the resolutions concerning the expansion of the sphere of business.

A resolution of the general meeting may be replaced by a document in which all the shareholders approve by signature the issuance of preference shares.

Art. 301

3. Status of preference shares

With preference over ordinary shareholders, preference shareholders enjoy the preferential treatment specifically conceded to them in the original articles or in the amendment of the article amending resolution applying to the issuance of the preference shares; otherwise, preference shareholders rank *pari passu* with the ordinary shareholders.

The preferential treatment may extend in particular to the right to vote, to the exclusive election of certain company bodies as, for example, the board of directors, or the passing of resolutions concerning certain objects designated in the articles, to the dividend, with or without right to a cumulative dividend, to the share of the liquidation surplus and to the right to subscribe to new shares if such are issued.

If vested rights are not involved, the preference shareholders are bound, as far as the bringing or waiving of their claims is concerned, by the resolutions which may be passed by special general meetings of the preference shareholders.

Unless the articles determine otherwise, the resolutions mentioned in the last paragraph must be passed with three-quarters of all the votes of the preference shareholders.

Unless the articles determine otherwise, the trustee in bankruptcy, in the event of winding up shall in the first instance call in all the arrears on the ordinary shares and then, if these payments are inadequate, the arrears on the preference and other shares, one after the other, according to their legal status.

Art. 302

Shares which are handed over to the shareholders or third parties without counter-performance or only in return for reimbursement of expenses, and are paid for by the company itself, from a fund which is available in addition to the nominal capital, from reserves formed out of profits or similar (bonus shares) may be issued pursuant to the original or amended articles.

V. The issuance of
bonus shares

Their issue may also ensue with partial upward revaluation and similar operations, or instead of dividend subscription rights (dividend shares) or dividend-right certificates.

With the exception of the duty to pay a call on shares, the bonus shareholder has the same duties and rights as any other shareholder, such as the right to vote, the right to dividends, the right to subscribe to new shares, unless the articles determine otherwise.

Also permissible is the formal distribution to the shareholders (bonus) of reserves pursuant to the articles which have accumulated in this regard and the immediate repayment or settlement of the amount in return for the transfer of shares by the company (false bonus shares).

Art. 303

VI. Subscription right and obligation to subscribe

Unless the articles provide otherwise, the existing shareholders, including the bonus shareholders, have a reversionary right to subscribe to new shares.

The subscription right may also be such that shareholders have a right to subscribe to the shares of an existing company or of a company yet to be formed, as in the case of an exchange issue, or in another manner.

The conceding of subscription rights for shares to be issued in the future, before the resolution is passed to increase the capital, may be provided for in the articles with the approval of the Register Authority in extrajudicial proceedings with the proviso that this concession must be restricted to a certain issue and the amount of capital increase may not be higher than the sum of the issue vested with the subscription right.

The duty may be imposed upon registered shareholders to subscribe to new shares to an extent determined in the articles, pursuant to the regulations applying to additional service shares.

In the absence of other provisions, the subscription right and the obligation to subscribe apply to the current owner of the shares. The subscription right is a part of the share but not a benefit; the obligation to subscribe is a burden on the registered share.

Special transferable securities may be issued via the subscription right of the shareholders.

The subscription right in the case of convertible bonds or loans is reserved.

Art. 304

VII. The issuance of dividend right certificates

Pursuant to the original articles or by means of an amendment of the articles, the general meeting may vote to issue dividend right certificates having the character of securities for the benefit of the founders or such persons who are or were associated with the undertaking on the basis of capital participation, the ownership of shares or a creditor's claim or work or in another manner.

The dividend right certificates do not confer company membership on the entitled persons, but solely a conditional creditor's claim, whether to a share of the net profit or to a share of the liquidation surplus or also a right to subscribe to new shares or to one as well as to the other.

Unless the articles provide otherwise, the right to subscribe to new shares may be withdrawn by the issue of dividend-right certificates for not more than half of the new shares to be issued in the individual case.

The passing of resolutions concerning the subsequent issue of dividend-right certificates is subject to the same regulations as those drawn up for resolutions concerning the conceding of founders' preferential rights at the time the company is formed.

The community of loan security creditors shall apply to the holders of dividend right certificates with the proviso that resolutions of the holders of dividend right certificates may be passed with a simple majority, unless determined otherwise in the resolution concerning the issuance of the dividend right certificates.

If the company is in a state of bankruptcy, the holder of dividend-right certificates may, if his claim is for a definite share of the profit, put forward such claim as a claim in bankruptcy, and, if his claim is for a dividend, he may only put this forward if the payment of a dividend had been non-appealably declared before the adjudication of bankruptcy.

Art. 305

Pursuant to the law, a public document or a document signed by all assenting voters must be drawn up for each resolution of the general meeting whose object is to amend the provisions of the articles.

The application for registration of the resolution must be made either by all the members of the board of directors or by a member with authorisation to represent and sign, and entry in the Public Register and publication ensues on the basis of the same disclosures as in the case of the original articles; legal effect is acquired only after entry in the Public Register.

VIII. Document-
ation and
registration
of article
amendments

If an increase in the share capital is involved, the determination of the subscription and the necessary and actual payment on shares shall be entered on the basis of a declaration of a person authorised to represent and sign. Such entry shall be in addition to the registration of the resolution relating to the amendment of the articles. The regulations concerning the issuance of new shares as the counter performance of contributions in kind and rights remain reserved.

Art. 306

IX. Acquisition of the company's own shares

The company limited by shares may not acquire its own shares for valuable consideration; moreover, it may not accept such shares as a pledge. An exception to this prohibition ensues:

1. If the acquisition is undertaken in connection with an amortisation pursuant to a provision of the law or the articles,
2. if undertaken in accord with the regulations of the law and the articles for the partial repayment of the nominal capital,
3. if the acquisition is made to satisfy the company's own claims and is necessary to safeguard the company's interests,
4. if the acquisition or the acceptance of a pledge is associated with the operation of a branch of the business, belonging to the undertaking, pursuant to the company's objects as provided in the articles,
5. if it takes place together with that of an impersonal entity.

In the first and second cases, the re-acquired shares must be immediately rendered unsuitable for all further disposal and in the third, fourth and fifth cases they must be disposed of as quickly as possible.

The acquisitions and disposals which take place during the year as well as the company's own shares as security for borrowing, at hand at the end of the year, must be shown in the annual report, and these shares may not be represented by the company at general meetings.

Art. 307

As long as the company exists each shareholder has a claim to a proportional share of the net profit as determined from the annual balance sheet, insofar as this is intended for distribution to the shareholders pursuant to the law and the articles.

In the event of the company being dissolved, the shareholder shall have the right to a proportional share of the liquidation proceeds unless the articles provide otherwise under reservation of the vested rights.

The preferential rights provided in the articles for individual classes of shares are reserved.

- D. Share-holders rights and duties
- I. Shares of profit and liquidation proceeds
- 1. In general

Art. 308

Unless the articles provide otherwise, the shares of the profit and the liquidation proceeds shall be calculated in proportion to the amounts paid in.

A shareholder shall not have the right to reclaim payments in cash or kind either before or during the dissolution of the company.

For company notices to the public concerning dividends and with the exception of domiciliary undertakings, these are to be stated as per hundred of the nominal share amount if the amount is given in percent when non par shares are not involved; otherwise, this shall be as per hundred of the share capital plus all reserves.

- 2. Method of calculation

Art. 309

Each year, by operation of the law, a sum amounting to one-twentieth of the net profit must be allocated to a general reserve fund until such fund amounts to one-tenth of the nominal capital.

If shares are issued below the nominal value, a sum amounting to a further one-twentieth of the net profit must, by operation of the law, be allocated each year to the general reserve fund until the nominal share value has been reached.

- II. Reserve fund
- 1. Reserve fund required by law

Surplus proceeds obtained from the issue of shares above their nominal value shall be allocated to the same fund, even after the legally required amount has been reached, unless such surplus proceeds are required to cover the costs of issuing the shares, or for marking down or for welfare purposes or for the profit-sharing of staff or workers. A further allocation shall be made to the same fund from that amount of the contributions left over from the shares declared null and void after a possible deficit in the proceeds from the shares issued has been covered.

This fund may only be used to cover balance-sheet losses.

Art. 310

2. Reserve fund provided in the articles

The articles may provide for higher contributions to the reserve fund.

The articles may provide for further funds and determine their application and purpose such as, in particular, a welfare fund, a renewals fund and an amortisation fund.

Art. 311

3. Relationship of the profit share to the reserve assets

The dividend may not be determined before the contributions to the reserve and other funds pursuant to the law and the articles have been deducted from the net profit for payment into the reserve and other funds as determined by the law and the articles.

The general meeting is also empowered, before the dividend is determined, to pass resolutions to establish such reserve funds as are not provided for in the law or the articles if such action appears appropriate for the safeguarding of the undertaking or achieving a dividend which is as uniform as possible.

The regulations concerning the socio-political rights to a share and to profit are reserved.

Art. 312

- III. Dividends, building interest, directors' remuneration, etc.
1. Dividends

Interest on the share capital may not be paid or promised. Dividends shall result solely from the net profit, as shown in the annual balance sheet, with reservation of a distribution based on an interim balance sheet, or shall be available from reserves accumulated for this purpose.

The articles may determine that the board of directors or another body, without prior resolution of the general meeting, may distribute dividends on the preference shares at fixed times during the year, e.g. at six-monthly intervals. Such distributions, whose scope shall be described in detail, shall be derived from the profits (surplus) brought forward from the previous business year or from a special reserve fund.

In the absence of other provisions in the articles, the dividends shall be paid in cash.

If the articles make such provision, dividends may also be paid to parties other than shareholders, such as insurance policy holders, subsidiary and associate companies, charitable undertakings.

The articles may provide for the payment of dividends by means of coupons, but also in other ways, by cheque, for instance, and similar.

Dividends whose payment has been approved pursuant to the law and the articles before the initiation of the company's bankruptcy may, as well as a dividend according to para. 2, be the subject of a claim in bankruptcy.

Art. 313

Interest at a certain rate may be stipulated for the shareholders at the expense of the investment account for the time required to build and prepare the undertaking up to the commencement of full operation.

2. Building
interest

The articles must determine the latest date when the payment of interest shall cease.

If new share are issued for the expansion of the undertaking, the resolution to increase the capital may concede a certain payment of interest to the new shares at the charge of the investment account for the period up to the time of going into operation.

Payments for building interest must be entered on the assets side and the entry must be paid off from the profits as quickly as possible.

The claim for the building interest which accrues before the adjudication of the company's bankruptcy may be made as a claim in bankruptcy.

Art. 314

3. Management fees

The payment of dividends to members of the board of directors, the audit authority or other bodies provided for in the articles is only admissible after the contribution has been made to the legal reserve fund and a dividend of 5% or more if a higher percentage is determined in the articles has been paid to the shareholders.

Art. 315

4. Other claims

In addition to or in place of the claim to dividends, the shareholders may be granted the right to use or the right to usufruct of the company's assets which, however, may not reduce the balance of the company capital and shall lapse in the event of bankruptcy.

Art. 316

IV. Statute of limitations

The claim to dividends, building interest and management fees and, in the case of the right to use and the right of usufruct, the claim to individual performances, shall fall under the statute of limitations upon the expiration of three years after their due date.

The existence of the right to use and the right of usufruct is determined by the right of membership.

Art. 317

V. The shareholders' liability
1. Object

Except in the case of additional performance shares, the shareholder is not liable to contribute more to the objects of the company and to the fulfilment of its obligations than the amount determined by the company at the time of issue for the allocation of a share.

Except in the case of the nominal capital being reduced, the shareholder cannot be granted either a release from or a respite for payment of this amount, under reservation of the provisions concerning the shareholder's liability.

Art. 318

In addition to the fixed share sum, the articles may determine, without inclusion in the share capital and without being taken into consideration in the balance sheet, that the obligation may be imposed on the shareholder to effect non-recurring or recurring cash or other contributions, including defaults, or to effect further limited contributions or to accept limited liability, although the articles may determine joint and several liability, up to a sum amounting to twice the nominal value of the shares, pursuant to the relevant regulations applying to cooperative societies and in this case the imposition of liability and the duty to make further contributions shall ensue by allocation procedure.

- 2. Additional contributory-shares
- a. In general

Where such companies are concerned, insofar as the shares with additional performance are involved, only registered shares may be issued, which shall be transferable with the assent of the company.

The obligation and the scope of the contribution must be indicated on the share or the interim certificate and an amendment of the articles reaffirming such obligations or extending existing ones is only permissible with the assent of all the shareholders thereby affected.

The articles must determine a penalty for the case where such obligation towards others to effect contribution other than monetary payments is not fulfilled or not fulfilled in due form or where a shareholder renounces his shares even when they are fully paid up. Otherwise, every shareholder shall have the right to return his shares after they have been fully paid up, in the same way as a partner in a partnership limited by shares when a limited liability does not exist.

The company may only refuse to approve the transfer of shares for important reasons. In the case of approval being withheld, the transfer may, under these prerequisites, be approved by the judge in extrajudicial proceedings.

The obligation to effect individual contributions of this kind shall fall under the statute of limitations three years after their due date.

Art. 319

b. Remittance

Periodic non-monetary contributions, for which shareholders are liable in addition to payments for capital, may not exceed the value which forms a creditor's claim and may be remitted regardless of whether the annual balance sheet shows a net profit.

Only dividends may be paid out for periodic contributions.

The claim for remittance or reimbursement of individual contributions shall fall under the statute of limitations three years after their due date.

Art. 320

3. Consequences
of undue delay
a. Pursuant to law
and articles

A shareholder who fails to pay at the right time the sum due for his share shall be liable to pay interest on default payment by operation of the law.

Moreover, the board of directors has in all cases the right to declare forfeited the defaulting shareholder's entitlement accruing from the subscription to the shares and from the partial payments already made and to issue new shares in place of those withdrawn.

The articles may also provide for the imposition of a penalty on the shareholder for such default.

Moreover, the regulations concerning the additional performance shares, in the case of which the declaration of forfeiture may, in the absence of articles to the contrary, ensue on grounds of undue delay in the execution of the additional performances, also are reserved.

Art. 321

b. Request to
perform

A shareholder can only be penalised by the imposition of a penalty and his rights accruing from the share and the subscription be declared forfeited if the request to pay on shares has been published at least twice in the journal used for such purpose, the last time at least two weeks before the final date fixed for payment, or, if the request was communicated to him by registered letter, within the same period of time.

Where the shares are issued to a named person, a special single communication by registered letter takes the place of the public request in all cases. The communication is sent to the individual shareholders entered in the share register at least four weeks before the final date fixed for payment.

Insofar as he is personally liable, the defaulting shareholder is liable to the company for the amount which is not covered by the issuance of the new shares.

Art. 322

Issued share documents or interim certificates are subject to the regulations concerning securities, unless special provisions are drawn up in the foregoing regulations concerning share documents or in the following provisions.

- VI. Legal relationship of the shareholders
1. In general

Up to the time such securities are issued, the legal relationship between the subscriber and his possible successors and the company is subject to the general provisions of the Code of Obligations, in particular to the regulations concerning the assignment of claims and the assumption of a liability.

To what extent a transfer of the legal relationship takes place by means of the transfer of deposit slips for deposited registered shares, blocked shares and interim certificates shall be assessed for the individual case.

Art. 323

Bearer shares may only be issued after a sum determined in the original articles has been paid in; such sum must amount to at least half of the nominal value.

2. In the case of bearer shares
 - a. The issuance of bearer documents

If such a sum is not determined in the articles, the issue of shares to the bearer is admissible only after the full nominal value has been paid in.

Bearer documents issued beforehand shall be null and void and the subscribers and shareholders remain subject to the regulations concerning shareholders in general, up to the time of the payment stated.

Bearer shares are transferable to the bearer as securities.

Art. 324

b. The subscriber's liability

Even if he transfers his entitlement to another person and such person accepts the liability to pay, with or without the approval of the board of directors, the subscriber remains liable for payment, up to the amount determined by the law and the articles, with his entire assets and legal action can be taken by the company, even if the share has been transferred to a third party if, in spite of due demand by the board of directors, he fails to comply with his duty to pay, and in consequence the share shall be declared cancelled.

If no provision has been made for the release of the subscriber from further payments regarding the amount determined in the articles or by the law or if the company is wound up within one year of being entered in the Public Register, the subscriber can still be required to make further payments, even though he no longer has the share.

Art. 325

c. Liability of the bearer

After the bearer share has been issued, the bearer at the time, who is not the subscriber, is not, in the absence of another agreement, liable personally for further payments. However, only insofar as a due payment is not met, his right accruing from the share may, pursuant to the provisions concerning the consequences of undue delay in the case of delayed payment, be declared forfeited.

This limitation of liability, however, is not effective if within one year of being entered in the Public Register the company is wound up and the bearer, for his part, has not made the payment and his right accruing from the share has therefore been declared forfeited.

If interim certificates are issued for the registered share, which can only be issued to a named person, they shall be subject to the regulations concerning registered shares.

Art. 326

d. Recourse of the subscriber

The subscriber who is called upon by the company to pay on a share which has been disposed of has recourse to the present shareholder or subsequent bearer of the share by operation of the law.

In the absence of any other agreement, however, such shareholder or bearer is liable to the subscriber only with the share itself.

Art. 327

Unless the articles determine otherwise, registered shares are freely transferable, also by blank endorsement, and in case of doubt shall be deemed to be instruments to order.

3. In the case of a Registered share
 - a. Transfer

In order to transfer the registered shares, it is only necessary to deliver the endorsed share title to the purchaser.

The preclusion of the transferability of a share shall not be valid in the case of succession upon death, levy of execution and writ or bankruptcy. However, the purchaser is obliged and entitled to assign the share to the company in exchange for reimbursement amounting to the value shown in the last annual balance sheet.

Registered shares which are not fully paid up or interim certificates, which are only transferable with the assent of the company, may only be validly transferred during bankruptcy proceedings with the assent of the trusteeship in bankruptcy.

Art. 328

The company must record the owners of registered shares in a share register in which names, addresses or company name and domicile of the shareholders shall be recorded.

- b. Entry in the share register

As soon as such a share register has been established, those persons who are entered therein shall be considered to be shareholders in relation to the company.

Entry shall ensue on the basis of an identification document referring to the transfer of the share which has taken place by succession upon death, upon notification by the heirs and/or the probate authority and upon the dissolution of a firm or legal entity on notification by the successor in title.

The completed entry shall be noted by the company on the share document.

Art. 329

c. Refusal to record

The company may refuse to make entries in the share register for the reasons stated in the articles.

If the articles do not contain provisions concerning this matter, entry in the share register may only be refused for important reasons.

In the case of shares which are not fully paid up, the purchaser shall give an undertaking to effect the further payments and the board of directors shall examine the purchaser's solvency and, if necessary, demand security. If such security is not provided, entry in the register shall be refused.

In the case of acquisition as the result of succession upon death or by virtue of the law on matrimonial property, entry in the Share Register may only be refused if the company limited by shares or the shareholders declare their readiness to take over the shares at the current price.

Art. 330

d. Liability of the registered shareholder

The acquirer of a registered share which is not fully paid up is under obligation to the company to effect payment as soon as he is recorded in the share register.

The transferor, who is not the subscriber, is thereby released from the duty to pay, the subscriber, however, remains liable, despite the transfer to the new acquirer, if the company is wound up within one year of being entered in the Public Register, and the company may take legal action against him as soon as the successor in title fails to meet his obligation to pay, despite being called upon in due form and in consequence, his share has been declared invalid by the board of directors.

Art. 331

VII. Declaration that shares are not fully paid up

As long as shares have not been fully paid up, whether these are bearer or registered shares, the amount actually paid in shall be clearly stated on every document.

Furthermore, where reference is made to the share capital in any public notices by the company (announcements, circular letters, reports, letter headings, etc.), the amount of share capital actually paid in shall be clearly pointed out.

The Public Register shall be notified by the board of directors concerning the sum of the further payments on the share capital and, like the provisions of the articles, this shall be published.

Art. 332

The rights to which the shareholders are entitled relating to the affairs of the company, particularly with regard to the conducting of business, the examination of the balance sheet, the calculation of the profit and the distribution of the profit, shall be exercised at the general meeting of the shareholders, unless the law provides for an exception.

Each shareholder entitled to vote shall be at liberty to represent his shares personally at the general meeting or, unless the articles determine otherwise, to delegate a third party, who need not be a shareholder, to represent him.

If registered shares are concerned, the representative must be provided with written authorisation, unless the articles determine otherwise.

All the shares owned by one shareholder must be represented by a single person. In this case, however, the regulations concerning the trust are reserved.

Art. 333

The borrowing or lending of shares for the purpose of exercising the right to vote at the general meeting is inadmissible; so, too, is any other exercise of the right to vote by anyone but the owner if this leads to the circumvention of a voting right restriction.

Each shareholder shall be entitled to object to the board of directors concerning the participation at the general meeting of a person not entitled to vote, unless the law or the articles make provision for an exception.

Art. 334

By virtue of the law, the right to vote commences as soon as at least 20% has been paid in on the share.

The articles may determine that after the expiration of six months following the formation of the company or the issuance

- VIII. Personal membership rights
- 1. Participation in the general meeting
 - a. In general

- b. Unauthorised participation

- 2. The right to vote at the general meeting
 - a. In general

of new shares, only those shareholders shall be entitled to vote who can prove a period of share ownership of at least six months.

The shareholders shall exercise their voting right at the general meeting in proportion to the number of shares they own and the same voting right shall be conferred upon all shares in proportion to their nominal value or quota, unless the articles determine otherwise.

Each shareholder, even if he owns only one share, shall have at least one vote.

Art. 335

- b. Voting shares and bonds with voting rights

The company may reserve in its articles the right to restrict the number of votes of the bearers of several shares or provide in the articles that shares confer the right of several votes (plural shares) or confer different voting rights.

In the latter case, a majority resolution is passed only if each group of shares, for its part, approves a motion with a majority.

It may be determined in the articles that preference shares or a category of such may be conceded a preference to the effect that their voting right shall be increased in relationship to the other votes with each increase in the capital or the introduction of other voting shares or by raising the preference shares' voting rights, also according to a certain ratio (voting right on a sliding scale).

With the approval of the Registrar, a similar or different voting right may also be conferred upon the creditors of convertible loans or other bearers of convertible bonds, pursuant to detailed determination in the articles.

Art. 336

- 3. The shareholders' right of verification
- a. Right of disclosure of balance sheet

Ten days at the latest before the ordinary general meeting is due to take place, the balance sheet and the profit and loss account together with the auditors' report and the business report shall be made readily available for the shareholders to examine at the domicile of the board of directors.

If bearer shares are issued, the announcement of such issue must ensue in those public journals intended for such announcements.

Instead of by means of public announcement, registered shareholders whose names are recorded in the share register shall be informed by special notification.

Where domiciliary limited companies or family limited companies are concerned, the announcement, unless the articles determine otherwise, shall be made by the judge in extrajudicial proceedings, with a notice displayed on the court notice board.

Art. 337

The shareholders shall be entitled to point out doubtful entries to the audit authority and to demand the necessary explanations from the audit authority and the board of directors.

b. Right to supervise the board of directors

With the authorisation of the general meeting or with the permission of the board of directors or by order of the court in extrajudicial proceedings after the board of directors has been heard, the shareholders shall be allowed to examine the books of account and the correspondence. Business secrets must be given the necessary consideration.

The shareholders' rights of verification cannot be rescinded or restricted, either by the articles or by resolution of the general meeting. However, the regulations concerning trust certificates are reserved.

Art. 338

The supreme authority of the limited company is the general meeting of the shareholders which expresses the company's intentions to the shareholders and the governing bodies.

E. Governing bodies
I. General meeting
1. Powers

The powers of the general meeting include:

1. The appointment of the board of directors and the audit authority,
2. the approval of the balance sheet and determination of its results and the dividends,
3. the release of the administration and the audit authority,
4. the passing of resolutions concerning the acceptance and amendment of the articles and, insofar as the articles do not determine otherwise, the establishment of branches,

5. the passing of resolutions concerning the matters reserved by the law or the articles for the general meeting or submitted to it by other bodies.

However, the articles may transfer to another body, completely or partly, the duties of the general meeting pursuant to the law and the articles.

Art. 339

2. Convening

An ordinary general meeting shall take place every year within six months of the close of the business year. Extraordinary general meetings shall be convened as required.

The general meeting shall be called in the manner determined in the articles and on each occasion the notice shall include an agenda for the general meeting which shall state clearly and completely the matters to be dealt with.

Exceptions pursuant to the law or the articles are reserved.

Art. 340

3. The passing of resolutions

If the nominal capital is reduced by one-half and the articles make such provision, a resolution of the general meeting concerning the dissolution of the company shall be valid when the assenting majority of shareholders who have approved the dissolution represent one-quarter of the nominal capital.

Other cases, for which the law or the articles stipulate a special majority or the unanimity of the votes represented at the general meeting, are reserved.

Art. 341

- II. Board of directors
1. Appointment

The members of the board of directors shall be appointed by the general meeting. Initially, the appointment shall be for a maximum of three years and thereafter for a maximum period of six years.

For the first three years, the members of the board of directors may be designated in the articles.

For the protection of the minority of the shareholders, the articles may include provisions concerning the method of election

and, in place of election by the general meeting, provide for election by the shareholders with ballot box or by delegates.

If persons are elected who, in order to perform their duties, are required to deposit shares and if, according to the articles, only shareholders may be members, such persons may not take up office until they have become shareholders by acquiring shares.

The provisions concerning the defined mandate for the administration are reserved.

Art.342

Where the articles so determine, the members of the board of directors must deposit, for the duration of their term of office, the number of shares stated in the articles.

With the approval of the board of directors, such deposition may also be undertaken by a third party.

The articles may determine that in every case the deposited shares shall be issued in or transferred to the names of the individual members.

2. Deposition of shares
- a. Manner of deposition

Art. 343

For the duration of the deposition, the deposited shares are inalienable.

They provide the company, the shareholders and the creditors with a pledge as security for their claims arising from the responsibility of the members of the board of directors.

They may not be withdrawn before release has been granted.

- b. The effect of this

Art. 344

Where the administration is entrusted to several persons or firms, these form the board of directors, whose powers may be defined in detail in the articles or in special regulations.

Companies limited by shares whose nominal capital amounts to at least one million Swiss francs must have a board of directors comprising at least three members, unless the companies con-

3. Board of directors
- a. Appointment and procedure in general

cerned are only domiciled in the Principality of Liechtenstein, with or without an office, or only administer assets, but do not conduct other business in Liechtenstein.

Art. 345

- b. Procedure for business

The board of directors shall designate a president and the other members of its committee insofar as this is provided for in the articles or in a regulation admitted by the articles, or is considered by it to be necessary.

Minutes shall be kept of its resolutions, which shall be signed by the chairman.

Art. 346

- c. Representation

The articles may determine that absent members of the board of directors may be represented at a meeting by another member or by a substitute whose name is recorded in the Public Register.

The relevant powers of agency must be granted for a particular meeting and be attached to the minutes.

No member may represent more than two other members.

Art. 347

- d. Committees of the board of directors

The board of directors may appoint one or several committees comprised of members drawn from its own ranks, whose duty in particular shall be to supervise the course of business, to prepare the business to be submitted to the board of directors, to report to the latter on all important matters also, in particular, concerning the drawing up of the balance sheet, and to supervise the implementation of the resolutions of the board of directors.

Art. 348

- e. Transfer of management and representation to special bodies

The articles may determine that management and representation may be transferred by the general meeting or the board of directors to one or several persons, members of the board of directors (delegates) or third parties, who need not be members of the company, who are then also subject to the regulations concerning responsibility.

If they are entrusted with the conduct of the entire business, they shall form the management.

Persons (firms) entrusted in this manner with the conduct of the business and representation are bodies of the company.

Art. 349

The duties of the board of directors shall be:

1. To prepare the agenda for the general meeting and to implement its resolutions,
2. to draw up the rules necessary for the orderly conduct of business and to instruct management accordingly,
3. to supervise the persons entrusted with management and representation, having regard to the correct execution of the latter pursuant to the law, the articles and the regulations and,
4. with this aim in view, to be regularly informed concerning the course and the conduct of business.

f. Duties of the board of directors

The board of directors shall also be responsible for the minutes of the general meeting and of the board, for the necessary business records being properly kept and for the annual balance sheet being drawn up in accordance with the legal regulations, audited and, if required, published.

Art. 350¹⁾

In all cases, the supreme body shall elect an audit authority.

III: Audit authority

Art. 351

In the case of the dissolution of a limited company, brought about by the take-over of such company, with assets and liabilities, by another limited company as universal successor in title, the following provisions shall be applied, with the exception of the regulations applying to a resolution to merge, where the transferee company decides to increase its capital by merging with another and the company to be taken over decides to dissolve by merging with another:

F. Merger
I. Take-over of one limited company by another

¹⁾ Art. 350 in the version of the law dated 15 April, 1980, LGBl. 1980 No. 39.

1. The assets of the dissolved company shall be administered separately until, according to judicial discretion in extrajudicial proceedings, the company's creditors are satisfied or safeguarded.
2. The legal venue of the company shall remain unchanged for the duration of the separate assets administration; such administration, on the other hand, shall be conducted by the transferee company and any action or the like shall be taken against the latter.
3. The members of the board of directors of the company taking over shall be responsible to the creditors jointly and severally, without limitation, for the separate administration.
4. The dissolution of the company and the take-over by the other company must be notified by each management concerned for registration in the Public Register.
5. After registration of the dissolution, the shares of the transferee company which are to be granted by way of settlement, shall be delivered to the shareholders of the dissolved company.
6. The public demand of the creditors of the dissolved company may be postponed; the consolidation of the assets of the two companies, however, is only admissible at the time when a distribution of the assets of a dissolved company to the shareholders may ensue.
7. In the relationship of the dissolved company to the transferee company and its creditors, the assets taken over and whatever may be acquired by transaction or in another way with the resources of these assets, up to the expiration of the six-month waiting period, shall be deemed to be the assets of the dissolved company up to the time of the admissible consolidation of the two companies; and the creditors of the dissolved company, in the absence of an opposing provision in the resolution concerning the decision to merge, may demand preferential satisfaction in execution and bankruptcy proceedings, notwithstanding their claims for payment against the transferee company.

8. Subscription to shares is not required for the capital increase needed for the take-over by the transferee company and existing subscription rights and duties shall not apply for these new shares.
9. The transfer of the assets to the transferee company takes place, without delay, with the registration of both parties' resolutions. However, the items of property whose transfer necessitates registration in Public Registers, such as the Land Register or similar may not be at the disposal of the transferee company until the prescribed transfer has been entered in the Public Registers.

Art. 352

By the formation of a new limited company, several limited companies may be taken over in such a manner that the assets of the present companies are transferred, without liquidation, to the assets of the company to be newly formed.

II. Merging of
several limited
companies

The regulations concerning take over by another limited company and, in addition, the following provisions shall be applied in the case of such a merger:

1. In a public document or in a document signed by all the shareholders, the several companies must conclude a merger agreement in which they declare that the companies shall be dissolved and that they intend to form a new company and appoint the necessary company bodies.
2. Simultaneously, in a public document or in a document signed by all the shareholders, they must determine the articles of the new company, confirm the taking over of all the new company's shares and their payment by the bringing in of the assets of the present companies, and nominate the necessary bodies of the new company.
3. The merger and formation agreement must be approved by the general meeting of each of the previous companies.
4. The shares of the new company shall be delivered pursuant to the merger agreement after the resolutions of approval have been passed and the new company has been entered in the Public Register.

Art. 353

III. Take-over by a partnership limited by shares

Where the dissolution of a limited company ensues in consequence of a take-over by a partnership limited by shares, the partners of the latter with unlimited liability become the debtors for the debts of the dissolved limited company.

Otherwise, the regulations concerning a take-over by a limited company shall be applied analogously.

Art. 354

G. Transfer to the community

If, with reservation of the regulation concerning dissolution without liquidation under the general regulations, the assets of a limited company are taken over by the State or a Liechtenstein commune with state guarantee, it may be agreed, with the approval of the general meeting, that liquidation shall not take place.

The resolution of the general meeting shall be drawn up pursuant to the regulations concerning dissolution and entered in the Public Register.

The transfer of the company's assets, including the debts, is executed with the entry of this resolution in the Public Register and the name of the company extinguished.

If the transfer of real estate or other rights pursuant to land registry law is concerned, such transfer shall ensue on the basis of the entry in the Public Register.

Art. 355

H. Repayment and other reductions of the nominal capital.
I. Resolution to repay and reduce, etc.

Repayment of the nominal capital to the shareholders or a reduction of the nominal capital may ensue only on the basis of a provision of the articles with a resolution of the general meeting in compliance with the requirements pursuant to the law and the articles.

If an adequate, special cover for the payment of the existing creditors is not available or will not be newly created within the scope of the capital reduction or the creditors agree to the reduction, the repayment or reduction may ensue only on condition that the provisions applicable to the distribution of the company's assets in the case of dissolution are observed.

In the case of the nominal capital being reduced as the result of loss, the shares issued earlier will be affected by this before those issued at a later date if different classes of shares were issued and at the time of issue it was not determined, for instance, which class of shares should have preference over another class with respect to the liquidation surplus.

In the case of a straightforward reduction, the agreement of the creditors shall be presumed if they do not give notification of their claims within the six-month waiting period.

If the company becomes bankrupt before expiration of the six-month waiting period, the shareholder, unless repayment with reservation of return payment is involved, may make his claim on the repayment quota only in competition with the creditors who have become creditors since the commencement of the six-month waiting period. If, however, the company becomes bankrupt after the expiration of that six-month waiting period, the shareholder may make his claim in competition with all the company's creditors, insofar as the old creditors did not register their claims or they were otherwise not shown in the books of account and consequently payment or the provision of security did not ensue.

Art. 356

It may be determined in the articles that the board of directors or another body is empowered, without a company resolution and without observing the provision concerning the repayment of capital to the shareholders, to repay to the shareholders a part of the nominal capital which, however, may not fall below 20%, or 50% if bearer shares have been issued, on each share, on the express understanding that the amount shall be paid in again at a later date on demand of the same or another company body.

Such capital repayment shall be recorded in the Public Register; publication of the entry, however, shall be at the discretion of the Register Authority.

II. Repayment of capital with reservation of return payment

Art. 357

III. Consolidation
and reduction
of the number
of shares

If the legal prerequisites exist for the reduction of the nominal capital, such reduction may be undertaken, also by way of share consolidation, with the approval of the shareholders.

If a resolution to consolidate and reduce the number of shares is passed with a three-quarters majority of all the votes at the general meeting, the shares of the shareholders who did not vote in favour shall be forfeited to the company and by way of settlement they may be paid in cash according to the result of a winding up balance-sheet.

Art. 358

1. Amortisation
1. Preconditions

Compulsory amortisation is only admissible if provided for in the original articles or, in the case of new shares being issued, in the amended articles which preceded their subscription. On the other hand, amortisation by means of the voluntary acquisition of the shares is admissible, even if not provided for in the articles.

If the repayment is undertaken from the nominal capital, such repayment, if new share contributions are not created to the extent of the capital reduction, is only admissible if the provisions drawn up for the case of the capital being reduced are observed for the protection of the creditors.

If, on the other hand, amortisation ensues from the net profit or from reserves, these provisions need not be observed. In this case, however, a sum equal to the amortised shares must be entered on the liability side of the balance sheet.

Art. 359

2. Redemption
and drawing

In the case of the provision of an amortisation of the share capital out of the net profit, the articles may determine that this may be undertaken by the board of directors or another company body by redemption or drawing of the shares, without observing the procedure for reducing the capital.

The acquired or repaid shares must be destroyed and the share capital reduced accordingly.

Art. 360

In the case of shares being drawn, the articles may determine that transferable bonus shares (substitute shares) shall be issued for the drawn and repaid shares. Such bonus shares shall not have a par value, but shall embody membership rights, in particular the right to vote, the right to a share of the net profit and of the liquidation surplus.

Moreover, with the assent of the Registrar, bonus shares may also be issued in other cases.

- 3. Issue of bonus shares by drawing

Art. 361

Unlike the regulations relating to a fixed capital, the articles of a limited company which issues registered shares exclusively may determine that the increase of the company capital may ensue by the gradual issue of new shares to existing shareholders or third persons and the reduction of the nominal capital by the gradual, total or partial, repayment of the company capital by the redemption of shares without, in this regard, having to observe the procedure provided in the foregoing articles provided for the increase or reduction of the nominal capital.

Unless specified otherwise, the remaining regulations concerning the company limited by shares shall be applied to the company limited by shares with variable nominal capital.

- J. Limited companies with variable invested capital
- I. In general

Art. 362

The articles of such a company must determine the maximum sum which may be achieved in this manner by a gradual increase of the company capital. The articles must also determine the amount below which a gradual reduction, brought about by repayments to shareholders, may not take place.

The minimum amount must be at least one-tenth of the maximum capital, unless for important reasons this may be completely disregarded with the approval of the Registrar in extrajudicial proceedings.

- II. Maximum and minimum nominal capital

Art. 363

III. Reduction
1. Preconditions
and procedure

With the exception of the provision concerning capital repayment, with reservation of the possibility of having to refund same, and if the articles do not make provision for other restrictions, a repayment to the shareholder from company capital may ensue in each case only on the basis of a winding up balance sheet which shows that after capital invested, which is allotted for repayment, has been deducted, the business liabilities and the remainder of the nominal capital, including the appropriate legal reserves in accordance with the balance sheet, are fully covered by the available assets.

The articles shall determine the manner of establishing the part of the capital allotted for repayment, whether by drawing, resolution of the board of directors, etc.

In particular, the reduction of the par value of the not fully paid up shares or the issuance of bonds to the shareholders to be drawn, instead of being repaid, is put in the same category as repayment.

Shares acquired by the company by repayment may be kept in safe custody for the purpose of reissue. However, they may not be treated as membership rights.

Art. 364

2. Liability

If a reduction of the nominal capital causes the provisions of the law or the articles to be violated, the members of the company's bodies who are at fault, also the shareholder who received benefit shall be liable without limitation, jointly and severally, for the damages caused to the company, intentionally or by negligence, pursuant to the regulations concerning responsibility.

If the company becomes bankrupt within a period of one year after the share of a company was repaid or, instead of payment, its nominal value was reduced, the shareholder and the redeemer of the share shall be liable to the bankrupt's estate for the amount received or the remitted remainder on payment, without being able to claim a right to settlement or items of the company's property.

Art. 365

The regulations concerning the legal reserve fund shall be applied with the deviation that each year a sum equal to at least one-tenth of the net profit must be allocated to the reserve fund until it is equivalent to the minimum capital and, if such capital is lacking, to one-tenth of the maximum capital.

IV. Mandatory
reserve fund

Art. 366

Insofar as the nominal capital is used up by gradual repayment and bonus shares have not been issued, the articles must determine the legal form in which the undertaking shall continue to exist, whether as an establishment, or a foundation or similar.

The conversion without liquidation of a company with variable nominal capital into a limited company with fixed nominal capital shall require an amendment of the articles, the necessary change of company name and registration in the Public Register.

The conversion without liquidation of a limited company with variable nominal capital into a cooperative society with shares and without liability and obligation to make further contributions is possible at any time on the basis of a company resolution with amendment of the articles and registration in the Public Register.

V. Conversion

Art. 367

Each year the company must submit to the Public Register its annual balance sheet and, if a reduction of the capital ensued during the financial year, its winding up balance and a statement concerning the change in the capital invested which thereby took place.

The names and addresses and/or the name of the company and the domicile of the drawn shareholders must be listed in the statement.

The documents submitted shall be filed in the Register files and shall not be published.

VI. Registration
in the Public
Register

Fifth Title

The Establishments and Foundations

First Section

The Establishments

Art. 534

An establishment within the intendment of this title and pursuant to the following regulations is a legally autonomous, organised, permanent undertaking dedicated to economic or other objects and entered in the Public Register as the Establishment Register, which has holdings of material and possibly personal resources. It does not have the character of an institution under public law and has no other form of legal entity.

A. Concept and definition

Establishments under public law which serve a defined permanent object and are in the hands of the public administration are subject to public law, insofar as exceptions do not exist and, where they are independent, to the following regulations supplementally.

Ecclesiastical establishments are subject to public law and, supplementally, canon law.

Establishments without legal personality (non-independent establishments) and other non-independently donated assets for a specific object are not subject to the following regulations, but to the regulations concerning the implied¹⁾ trust. Foundations are reserved. ...²⁾

Art. 535

An establishment may be formed and operated by an individual person, a firm, a community or by an association of communes or a legal entity not otherwise entered in the Public Register.

B. Formation
I. Founder

¹⁾ See annotation ³ Art. 898

²⁾ Art. 534 last para. (= para. 5) inserted by the law dated the 10 April, 1928, concerning the trust enterprise, LGBl. 1928, No. 6, repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

Communes and associations of communes require Government assent to the formation.

More than one founder is not required.

Art. 536

II. Articles

Written articles are necessary for the formation, signed by one or several founders.

Moreover, the articles of an establishment must contain provisions concerning the following:

1. The name and/or the name of the firm, the domicile and the designation as "Establishment",
2. the objects of the establishment,
3. the estimated value of the establishment capital in the event that it is not in cash and the manner of procurement and composition,
4. the powers of the supreme body,¹⁾
5. the bodies for the administration and, if necessary, for the auditing and the manner in which representation is implemented,
6. the principles relating to the drawing up of the balance sheet and the appropriation of the surplus,
7. the form in which the establishment's notices ensue.

With the exception of Nos. 6 and 7¹ these provisions shall be deemed to be essential pursuant to the regulations concerning voidability.

Where the establishment capital exists in a form other than cash, the endowed assets may, instead of in the articles, be entered in detail in a special register which must be deposited with the Register Office for safe keeping.

Like a company limited by shares, an Establishment may also be formed with a variable capital. This circumstance must be entered in the Public Register.

¹⁾ Art. 536 para. 2 No. 4 and para. 3 in the version of the law dated 15 April, 1980, LGBI. 1980, No. 39

Art. 537

If the law does not provide otherwise, all establishments are required to be entered in the Public Register.

A certified copy of the articles and documented proof of donation of capital must be enclosed with the application to register, which must contain:¹⁾

1. the formation deed (the resolution and/or declaration of formation) in the event that it is not already included in the articles,
2. the declaration that at least half the establishment capital has been paid in or covered by payment in kind and stating how the remainder is to be raised and/or secured,
3. a list of the members of the board of directors stating the names of the members, their place of residence and/or the name of the firm and domicile.

III. Entry in the
Establishment
Register
1. Registration in
the Register

Art. 538

The following shall be entered in the Public Register and published as an extract:

1. The formation deed, if this is not included in the articles,
2. the date of the articles,
3. the name and/or the name of the firm and the domicile of the establishment,
4. the objects of the undertaking and, if applicable, the duration of the establishment,
5. the amount of capital endowed to the establishment as well as the sum paid in or the other assets contributed, with their estimated value,
6. if applicable, the participation rights of third parties in particular, in addition to the entitled beneficiaries,

2. Entry and
publication

¹⁾ Art. 537 para. 2 first sentence in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

7. the name, first name and place of residence and/or the name of the firm and domicile of the members of the board of directors, the form in which the board of directors gives notice of its expressions of intent and the manner of representation.
8. the form in which the establishment's announcements shall ensue.

The establishment comes into existence and acquires legal personality only upon entry in the Public Register. Should action be taken on behalf of the establishment before the said establishment has acquired or without it having legal personality, the parties acting on behalf of the establishment, in particular founders or persons already appointed as governing bodies shall be liable pursuant to the general regulations concerning legal entities.¹

Art. 539

IV. Establishment fund, liability

The establishment capital (endowment fund) may be endowed either completely or up to a partial amount to be determined in the articles in funds contributed by the founders who, however, shall have no claim to interest at a determined level.

The fund contributions must be paid in or contributed within the period of time determined in the articles.

Where the founders bring items of property into the establishment which are to be credited to the fund contributions, the articles or the register shall establish individually, in detail, accurately and completely the object contributed, its expert valuation and any beneficial interests which may be tied thereto.

Should the establishment capital be paid in full or covered by means of assets at a later date when the establishment is in operation, this fact shall be registered in the Public Register.

¹) Art. 538 para. 2 inserted by the law dated 15 April, 1980 LGBl. 1980, No. 39.

Art. 540¹⁾

Establishment shares of the establishment assets for the founders or third parties shall only exist pursuant to the provisions of the articles, even though fund contributions have been effected and entitled beneficiaries have been designated to draw profit from the establishment.

V. Establishment shares

Shares and share certificates of an establishment shall also be null and void as long as the admissibility of shares or share certificates is not provided for in the articles and the issuer and third party participants shall be liable pursuant to the provisions drawn up under the general regulations.

In case of doubt, the shares provided for the founders in the articles shall be in proportion to the amount of their possible fund contributions and if funds have not been contributed the founders shall receive equal shares.

Establishment shares shall be treated as securities only when the articles make express provision for such treatment.

Establishment certificates as securities shall be subject to the regulations concerning registered shares unless more restrictive regulations concerning their transferability are drawn up in the articles.

The board of directors shall keep a register of the establishment shares with appropriate application of the regulations concerning the share register in the case of a limited liability company.

Art. 541²⁾

The founder's rights to which one or several persons are entitled may be relinquished or otherwise transferred or inherited but may not be pledged or otherwise charged.

C. Founder's rights

¹⁾ Art. 540 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

²⁾ Art. 541 and Art. 543 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 542

D. Contestation

The contestation of an establishment by the heirs or the creditors of a founder shall ensue, if it was formed in favour of third party beneficiaries without valuable consideration, as in the case of a gift.

Art. 543¹⁾

E. Governing
bodies

I. Supreme body

The bearer(s) of founder's rights form(s) the establishment's supreme body. The articles may also confer the powers of the supreme body upon the board of directors.

Where the law or the articles do not determine to the contrary, the supreme body shall be entitled to those powers which are provided by the general provisions for the supreme body.

Where several persons have founder's rights, resolutions shall require the assent of all bearers of founder's rights in order to be valid if the articles do not determine otherwise.

A bearer of founder's rights shall be at liberty to represent personally the founder's rights to which he is entitled or to instruct a third party, who is not required to be a bearer of founder's rights, by means of a written power of attorney to represent the said founder's rights.

Art. 544

II. Establishment
administration
and audit
authority

The members of the board of directors may or may not be entitled beneficiaries.

If the law or the articles do not determine otherwise, the judge may, upon application of the participants, in extrajudicial proceedings, appoint the members of the board of directors in case of doubt for a period of three years and remove them or individual members at any time, without prejudice to claims for compensation.

In the absence of a deviating provision, the board of directors shall be under obligation to the establishment also to observe all

¹⁾ Art. 541 and Art. 543 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

those restrictions which, upon application of the participants, are determined by the judge in extrajudicial proceedings, relating to the scope of their authority, the conduct of establishment business and the representation of the establishment. However, a restriction on representation towards bone fide third parties shall have legal effect only insofar as the law permits this.

Where an audit authority is prescribed pursuant to the general regulations or the articles make provision for this, the judge may, in extrajudicial proceedings, in the absence of another provision in the law or the articles, appoint or remove the audit authority, in the same way as the members of the board of directors are appointed or removed.¹⁾

Art. 545

The articles shall determine in detail:

1. Who shall benefit from the establishment and its possible net profit (beneficiaries),
2. the manner in which these shall be determined specifically,
3. whether and in what way the beneficiaries shall be entitled to participate in the organisation (supreme body, board of directors, supervision.²⁾)

As long as no third parties have been appointed as beneficiaries (entitled beneficiaries), it shall be assumed that the bearer of the founder's rights is the beneficiary.²⁾

Only an amount corresponding to the surplus of net assets in excess of the establishment capital paid in pursuant to the articles or otherwise covered may be withdrawn from the establishment assets as available net profit, after allowance has been made for possible reserves to be paid into the reserve fund provided for in the articles.

- F. Legal relationship of the founders and the beneficiaries to the establishment, between themselves and towards third parties
- I. In general

¹⁾ Art. 544 para. 4 in the version of the law dated 15 April, 1980, LGBl. 1980 No. 39.

²⁾ Art. 545 para. 1 No. 3 reworded and para. 1¹⁰ inserted by the law dated 15 April, 1980, LGBl. 1980, No. 39.

Upon demand of the board of directors unknown beneficiaries may be called in public citation proceedings on condition that individual performances which have not been withdrawn shall become forfeited in favour of the regional public assistance fund three years after the call unless the articles determine otherwise.

Art. 546

II. Non-withdrawability

In the case of family establishments, the founder may determine in the articles that the establishment beneficial interest of the specifically designated third parties, acquired without valuable consideration, may not be withdrawn from them by their creditors by way of levy of execution and writ or by bankruptcy proceedings initiated against them. This circumstance shall be annotated in the Public Register at the time of registration.

Apart from the previously mentioned provision in the articles, the income received without valuable consideration by a third party beneficiary from an establishment formed by another may be withdrawn from the said third party by creditors by way of levy of execution and writ or bankruptcy proceedings only if the said income is not required for the defrayal of the essential maintenance of the beneficiary, the beneficiary's spouse and children not provided for.

Art. 547

III. Determination of assets and profits

Where the articles do not determine to the contrary, the book value of the establishment assets shall be determined from the difference between the valuation of the assets, undertaken annually, and the debts owed to third parties.

Under these circumstances, the annual balance sheet shall show the amount by which the establishment assets have increased or diminished by comparison with the previous business year.

In this case, only the amount yielded during the course of the year may be distributed as profit after the deduction of any reserves which may have to be formed.

Art. 548

In all cases, only the establishment's assets shall be liable for the establishment's debts.

Each founder shall only be required to meet the obligation to transfer as specified the endowed assets including a limited liability or liability to make further contributions as in the case of registered cooperative societies. The founder shall not be released from these performances nor may respite be granted and this shall apply in the event of the bankruptcy of the establishment.

Instead of or in the absence of members, third parties may also assume the limited liability for the establishment's obligations or a limited liability to make further contributions.

IV. Liability of the establishment, limited liability or liability to make further contributions

Art. 549

The founder may at any time amend the articles and, in particular, the objects, with reservation of the creditors' rights, e.g., by increasing or reducing the establishment capital, changing the governing bodies and by making other similar amendments.

Instead of or in addition to the founder, the articles may empower other persons, legal entities, firms or authorities to amend the articles and include detailed regulations concerning this.

Where the founder's rights cannot be exercised and the articles do not determine otherwise, they may be amended by the judge in extrajudicial proceedings upon application by the board of directors or one of the beneficiaries, taking into consideration the objects of the establishment.¹⁾

G. Amendment of articles

Art. 550

To what extent the dissolution of a legal entity, a company or a firm which is the founder or possessor of an establishment results in the dissolution of the said establishment shall be pronounced by the judge in the individual case, after considering all the circumstances.

H. Dissolution, merger and conversion

¹⁾ Art. 549 para. 3 in the version of the law dated by the 15. April, 1980, LGBl. 1980, No. 39.

Insofar as the law concerning establishments or the articles do not indicate a deviation, the relevant regulations concerning registered cooperative societies shall be applied accordingly to the take-over of one establishment by another and the association of several establishments.

The regulations concerning the conversion of a company limited by shares in the case of limited liability companies shall be applied accordingly to the conversion to an establishment of a company limited by shares or a company with limited liability.

Art. 551

J. Reference

If no mandatory regulations are drawn up in this section and no rule or no satisfactory rule is contained herein, the regulations concerning trust enterprises with legal personality shall be applied, in addition to the general regulations concerning legal entities.¹⁾

For establishments without members which serve exclusively non-profit making objects, the supplementary regulations concerning the supervision, conversion and cancellation of a foundation shall apply, and for family establishments without members the regulations for family foundations, provided that a deviation is not foreseen in this section or in the articles.

¹⁾ Art. 551 para. 1 in the version of the law dated 15 April, 1980, LGBl. 1980 No. 39.

Second Section The Foundations

Art. 552

For a foundation to be formed by natural persons or legal entities or firms, it is necessary for assets to be endowed (foundation property) for a certain specific purpose. Ecclesiastical, family and non-profit making purposes may be given particular consideration. Commercial activities may be undertaken by a foundation only provided such activity serves its non-commercial purpose or the type and scope of the participations held require the facilities of a commercial business.¹⁾

A. Definition and delimitation
I. In general

Asset donations without legal personality (dependent foundations) or donations tied to the condition of a special administration under a special name and of application for a special purpose and similar conditions to already existing legal entities or natural persons or companies are subject to special regulations such as those applying to gifts or concerning the law of succession and, supplementally, to the regulations concerning the implied²⁾ trust relationship.

The judge shall decide in the individual case the extent to which separately administered assets (fund) shall be entitled to independence according to private law or to the character of trust property.

The regulations concerning the trust enterprise with legal personality shall be applied to foundations accordingly, particularly with regard to foundation participants (founder, foundation council, beneficiaries), where and insofar as the following provisions or the foundation articles or the regulations concerning the obligation of trust enterprises to register do not determine to the contrary.³⁾

¹⁾ Art. 552 para. 1 in the version of the law dated 15 April 1980, LGBl. 1980, No. 39

²⁾ See annotation ³ to Art. 898.

³⁾ Art. 552 last para. (= para. 4) inserted by the law dated 10 April, 1928, concerning the trust enterprise, LGBl. 1928, No. 6.

Art. 553

II. Ecclesiastical
and family
foundations

Ecclesiastical foundations within the intendment of this section are foundations formed for ecclesiastical purposes.

A family foundation is a pure family foundation where the foundation assets are continuously connected with the purpose of defraying the expenses for the upbringing and education, outfitting or support of the relatives of one or several designated families, or with similar purposes.

It is a mixed foundation where assets so donated serve ecclesiastical or other purposes outside the family in addition or supplementally.¹⁾

Art. 554²⁾

III. Deposition

To ensure observance of the obligation to register, to prevent foundations with unlawful or immoral purposes and to avoid circumvention of possible supervision, the foundation deed and/or a certified copy of the testamentary disposition or the deed of inheritance must be deposited by the foundation council or the legal representative and/or the probate court with the Register Office at the time a foundation is formed, insofar as an application for entry does not ensue otherwise. Amendments of the articles must also be deposited with the Register Office.

Art. 555

B. Formation
I. Foundation
deed

The formation of a foundation ensues in the form of a deed on which the signatures of the founders are certified, by testamentary disposition or by deed of inheritance.

The foundation deed or the articles must contain the name and domicile of the foundation, its purpose or object, the designation of the foundation council members and the method for appointing another foundation council as well as a provision concerning the application of the assets in the event of the dissolution of the foundation.

¹⁾ Art. 553 para. 3 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

²⁾ Art. 554, amended by the law dated 30 April, 1938, LGBl. 1938, No. 10, and the 8. June, 1938, LGBl. 1938, No. 12, in the version of the law dated 4 June, 1963, LGBl. 1963 No. 17.

Art. 556

The foundation's application to register in the Foundation Register must be recorded by all the members of the foundation council personally or submitted in writing in certified form. The application must be accompanied by a certified copy of the foundation deed.

II. Entry in the Foundation Register

The entry and publication, which may ensue by announcement on the court notice board, must contain: the name, (name of the firm), address and purpose of the foundation, the date of the formation deed, the names and addresses and/or the name and domicile of the firm of the foundation council members and/or of other representatives.

If necessary, entry and publication may also be undertaken by order of the Government as supervising authority by virtue of the foundation deed, possibly by the Register Authority ex officio upon notification by the Probate Authority or upon petition of the Beneficiaries.

Art. 557

The foundation only comes into existence when entered in the Public Register as Foundation Register.

III. Existence

Ecclesiastical foundations, pure and mixed family foundations and foundations whose entitled beneficiaries are specifically designated or definable acquire legal personality without being entered in the Public Register.¹⁾

Foundations which engage in commercial activities are under the obligation to register and acquire legal personality only when entered in the Public Register.¹⁾

The registration of a foundation formed by testamentary disposition shall ensue only after the death of the founder and, in the case of a deed of inheritance, provided that this does not determine otherwise, only after the death of one of the founders.

¹⁾ Art. 557 para. 2 and 3 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 558

IV. Donation of assets

When the foundation has come into existence, the founder or the third party, upon demand of the Supervising Authority, the representative of public law or of interested parties, is required to transfer to the foundation the assets mentioned in the deed of foundation.

Rights, for whose transfer a declaration of assignment is sufficient, devolve by operation of the law upon the foundation on coming into existence.

Where the foundation only becomes effective on the death of the founder or after the termination of a firm or legal entity, the said foundation shall be deemed to have been in existence already before the death or termination of the founder for the donations of the founder or third party.

The donation of assets may also be effected, in particular, by the establishment of a contractual relationship to the founder or third party according to which the founder or third party undertakes to donate annually or at certain intervals a fixed or variable sum or other assets (donation of periodical payments).

In case of doubt, the investment of assets shall ensue pursuant to the regulations concerning trust investments.

Art. 559

V. Revocation

Revocation of the foundation is admissible only:

1. If a foundation has not yet been entered in the Public Register, inasmuch as existence ensues only in the event of such entry,
2. in the event that registration of the foundation is not necessary and the foundation should become effective in law during the founder's lifetime, up to the time of conclusion of official certification,
3. in the case of foundations formed by testamentary disposition or deed of inheritance, pursuant to the regulations of the laws of succession applicable to these circumstances.

In the case of testamentary dispositions, the founder personally has an unrestricted right of revocation but not, on the other hand, the heirs after the founder's death, not even if the foundation is not yet entered in the Public Register.

Likewise, the heirs do not have a right of revocation where in the case of the foundation inter vivos the founder certainly drew up the deed but died before the foundation was entered in the Public Register.

Revocation expressly reserved in the foundation deed or the reserved amendment of the deed or of the articles is admissible at any time.

Art. 560

The validity of a foundation may be disputed by the heirs or the creditors in the same way as a gift.

VI. Contestation

Also after it has been registered, the founder and his heirs may dispute the validity of the foundation on grounds of deficiency of intention in the manner admissible pursuant to the provisions of contract law.

Art. 561

The foundation's governing bodies, such as the foundation council, the audit authority and similar bodies, as well as the type of administration and representation, etc., are determined in the deed of foundation or in the foundation articles drawn up by the founder in a document, a will or a deed of inheritance.

C. Governing
bodies
I. In general

The conferment of beneficial interest in the foundation may be entrusted to a special body (collators), independently of the foundation council.

The regulations concerning the governing bodies in question in the case of establishments shall be applied accordingly to the powers and duties of the bodies appointed in this manner, with reservation of the following provisions.

Art. 562

II. Order of the
Supervising
Authority

Where no governing bodies have been provided for or where those provided are inadequate, the Supervising Authority shall take the necessary steps with appropriate observance of the regulations concerning the establishment's governing bodies. If required, the Supervising Authority shall arrange for entry in the Public Register.

In the event that such steps cannot be taken expediently if, for instance, there are inadequate assets, the Supervising Authority, provided the founder does not object or a provision of the foundation deed or the foundation articles is not expressly opposed to this, shall donate the assets on trust to another foundation having as far as possible the same kind of purpose.

Art. 563

D. Liability and
exclusion of
enforcement,
etc.

Only the foundation's assets shall be liable for the foundation's debts to the creditors.

Except for the extensive provisions in the case of family foundations, income which a person receives from a foundation without valuable consideration may be withdrawn by injunction, levy of execution and writ or bankruptcy proceedings only when the said income is not required for the defrayal of the essential living expenses of the beneficiary, his spouse and his children without means.

In the case of foundations subject to supervision, unknown beneficiaries of the foundation may be traced by the Government or, otherwise, upon application by the judge in public citation proceedings.

Art. 564

E. Supervision
I. In general

With the exception of ecclesiastical foundations, pure and mixed family foundations or such foundations as those whose entitled beneficiaries are specifically designated or definable natural or juridical persons, firms or their successors in title or those foundations whose purpose is solely to administer the assets and

distribute the income, participation or similar, the foundations are subject to supervision by the Government, which shall be notified by the Register Authority of every foundation under obligation to register.¹⁾

The foundation deed may also subject other foundations to Government supervision.

It shall be incumbent upon the Supervising Authority to ensure that the foundation assets are administered and applied pursuant to their purposes. This Supervising Authority may give the necessary orders concerning, for example, auditing and the removal of the foundations' governing bodies.

Any person who has an interest in the administration and application of the assets, their yield or use and the representative of public law may lodge a complaint with the Supervisory Authority concerning an administration and application of the assets by the foundations's bodies which is in conflict with the purpose of the foundation.

The participants shall be heard before a decision is pronounced by the Supervising Authority or the Administrative Court of Justice.

Art. 565

After hearing the foundation's supreme authority and those persons whose rights are affected, the Government, upon application of one of the participants or ex officio, may change the foundation's organisation by administrative action if this is required urgently in order to preserve the assets or safeguard the foundation's purpose and insofar as the foundation deed or the articles has (have) not entrusted another body or a third party with the changing of the organisation.

The Landesbank in particular may be designated as a foundation governing body by the Supervising Authority.

In opposition to such amendment orders, the participants may lodge an appeal with the Administrative court.

II. Amendment
1. Concerning
governing
bodies

¹⁾ Art. 564 para. 1 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 566

2. Concerning the purpose

After hearing the foundation's supreme authority and those persons whose rights are affected, the Government, upon application by participants or ex officio, may amend the foundation deed by administrative action if its original purpose has acquired a completely different meaning or effect and as a result of this the foundation is obviously estranged from the intentions of the founder.

The foundation deed or the articles may also provide for a foundation governing body or a third party to be empowered to effect amendment of the purpose if it is incapable of achievement, inadmissible or unreasonable.

Charges and conditions which impair the foundation's purpose may be cancelled or amended under the same preconditions.

The last paragraph of the preceding article shall be applied accordingly.

Art. 567

F. Family foundations, ecclesiastical foundations and similar

Permanent or temporary judicial supervision with respect to the regulation of the governing bodies and the purpose of foundations not subject to supervision, insofar as ecclesiastical foundations are not concerned, and their conversion may, upon application of participants, be pronounced by the judge in extrajudicial proceedings and, if adequate reasons exist, be cancelled again. In this case, the judge, like the Government as Supervising Authority, may give the necessary instructions.

If provision has not been made for the absolute discretion of the foundation's governing bodies, the judge shall in all cases decide in contentious proceedings concerning other difficulties of a private law nature such as, for example, the question of beneficial interest (entitlement or privilege), its scope, and so forth.

In the case of family foundations, the founder may determine at the same time that the creditors of the specifically designated third-party beneficiaries shall not withdraw from these their beneficial interest acquired without valuable consideration by way of injunction, levy of execution and writ or bankruptcy proceedings.

Trust certificates may also be issued to the entitled beneficiaries.

Art. 568^{b)}

The cancellation of a foundation ensues by operation of the law as soon as the purpose cannot be achieved, particularly when the foundation purpose can no longer be realised when, owing to lack of adequate assets, the duties of the foundation can no longer be fulfilled or the duration specified in the foundation deed has expired.

G. Cancellation
I. By operation of law

Art. 569

The Supervising Authority, the representative of public law and any interested party is entitled to take action

The cancellation shall be reported to the Registrar ex officio in order that deregistration may ensue.

The action may be annotated in the Public Register before or during the proceedings, up to the time of final decision, upon application or ex officio. The governing bodies of the foundation and other participants shall be heard before the decision is made.

II. Right of action and deregistration

Art. 570^{b)}

Where conversion is expressly provided for and also the necessary prerequisites, such as articles or governing bodies are provided, the foundation, without being wound up, may be converted by the foundation council or a third party empowered by the foundation council into an establishment or a trust enterprise by means of a document which must be correct with respect to form.

III. Conversion

^{b)} Art. 568 and 570 in the version of the law dated the 15. April, 1980 LGBl. 1980, No. 39.

Fifteenth Title
**The Individually Owned Enterprise
with Limited Liability**

Art. 834 to 896a¹⁾

Sixteenth Title
The Trusts

First Section²⁾
The Trusts in General

Art. 897³⁾

A trustee within the intendment of this law is a natural person, firm or legal entity to whom another (the settlor) transfers movable or immovable property or a right (as trust property) of whatever kind with the obligation to administer or use such property in his own name as an independent legal owner for the benefit of one or several third persons (beneficiaries) with effect towards all other persons.

A. Definition
I. The trust relationship

Art. 898³⁾

Wherever by operation of law or disposition of an official authority or in any other way, a person, without being specifically appointed as trustee, receives property or rights of any kind in his own name, but for the benefit of the owner hitherto or a third party, the relationship existing between such person and the

II. The implied trust

¹⁾ Art. 834 to 896a, amended by the law dated 10 April, 1928, LGBl. 1928, No. 6, repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

²⁾ Title inserted by the law dated the 10. April, 1928, concerning the trust enterprise, LGBl. 1928, No. 6.

³⁾ Art. 897 and 898 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39. By the law mentioned, the "implied trust" in Art. 898 was deleted without being replaced.

third party shall, in the absence of any other provision, be treated as an implied trust.

If the law does not make special provision for such legal relationships or nothing otherwise results from the special circumstances, the regulations relating to the trust relationship concerning, in particular, the status of the trust property in the case of levy of execution and writ and bankruptcy proceedings shall be applied analogously to the legal relationship between the holder of assets or rights and the third party.

Art. 899¹⁾

- B. Creation and termination of the trust
- I. Creation
- 1. Trust instrument

A trust is created by a written agreement between the settlor and the trustee. A statement of consideration is not required.

A written declaration of acceptance by the trustee is required for the creation of a trust where the appointment of a trustee ensues by virtue of a unilateral declaration by the settlor.

A trust must in all cases be expressly denominated as such, in a manner which is readily distinguished by the trustee.

The provisions relating to the formalities of transfer of tangible articles of property and other assets are reserved.

Art. 900¹⁾

- 2. Registration in public registers
- a. In general

Within twelve months of its creation, every trust created for a period of longer than twelve months must, with reservation of the following provisions, be recorded in the Public Register where the trustee or at least one of several co-trustees is resident or domiciled in the Principality of Liechtenstein.

The application for registration in the Public Register must contain:

- (a) The name of the trust,
- (b) the date of formation of the trust,
- (c) the duration of the trust,
- (d) the surname, first name and place of residence or firm and domicile of the trustee.

Every amendment of a registered fact must also be registered.

¹⁾ Art. 899 and 900 in the version of the law dated 15 April, 1980 LGBl. 1980, No. 39.

Art. 901¹⁾

Where property of a trust is registered in other public registers, such as the Land Register, the Patent Register or similar and the trust itself is entered in these public registers, the Registrar may agree to waive an additional entry of the trust in the Public Register.

b. Exceptions

Art. 902¹⁾

An obligation to register a trust in the Public Register does not exist when the original or a certified copy of the formation deed is deposited with the Public Register within the time limit of twelve months. In such case, an original or certified copy of every document amending the formation deed must also be deposited with the Public Register Office.

c. Deposition

Art. 903

Where a trustee has not been appointed by an agreement inter vivos, but by a unilateral trust instrument or testamentary disposition, the trustee must be informed of the appointment by the Public Registrar or the probate authority upon application of interested parties or ex officio if the settlor has not informed the trustee of his appointment and the latter has accepted.

3. Notification of appointment

The nominated trustee must notify the Registrar or the probate authority of his acceptance of the trusteeship within the time limit of fourteen days from the date of receipt of notification, which period may be extended as appropriate, otherwise it shall be presumed that he has refused the appointment.

A refusal must also be presumed if, contrary to the trust instrument, the acceptance is qualified, limited, subject to a condition or otherwise restricted.

In addition, the regulations concerning entry in the Public Register shall apply where relevant.

¹⁾ Art. 901 and 902 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39

Art. 904

- 4. Judicial and public trustee and legal representative
- a. Judicial and public trustee

In addition to the cases provided by law, the Princely Liechtenstein Court of Justice must appoint a judicial trustee in extrajudicial proceedings if a trust as, for example, a foundation without legal personality, has been created by a unilateral formation deed inter vivos or a disposition mortis causa, but a trustee has not been appointed by name or in any other recognisable manner or if the trustee appointed refuses to accept office or if a trustee nominated in any other way ceases to act for any reason and the trust instrument does not determine the manner in which another trustee should be appointed or how the trust property is to be otherwise dealt with.

The Public Register or the probate authority or other judicial and administrative authorities must inform the Princely Liechtenstein Court of Justice of such reasons for appointment.

After consultation with the interested parties, the Princely Liechtenstein Court of Justice shall, where appropriate, appoint a judicial trustee, paying due attention in the first place to the possible wishes of the settlor and, in the absence of such wishes, to the interests of the trust property.

Normally, the Liechtensteinische Landesbank should be appointed as judicial trustee and, if the Landesbank refuses to accept the appointment and important reasons do not justify an exception, only Liechtenstein citizens should be appointed, to whom the personal prerequisites relating to an appointment as legal representatives of legal entities shall apply.

The Liechtensteinische Landesbank shall be considered as public trustee and in this capacity shall fulfil those duties imposed upon it by the law, the authority or a trust instrument.

Art. 905¹⁾

- b. Domestic trustees

If persons residing abroad are appointed as trustees of a trust, at least one person resident in the Principality of Liechtenstein or a domestic legal entity must be appointed as co-trustee.

¹⁾ Art. 905 in the version of the law dated 15. April 1980, LGBl. 1980, No. 39.

Art. 906

The trust shall terminate pursuant to the provisions of the trust instrument and, in addition, if the trust property is exhausted and not replaced.

- II. Termination
- 1. In general

A trust may be dissolved by the Princely Liechtenstein Court of Justice in extrajudicial proceedings, under the conditions applying to the cancellation of a foundation by the Court.

In the case of termination of a trust, where the trust instrument does not determine otherwise, the trustee or his successor in title must render account and provide information concerning the trust property in the same manner as during the existence of the trust.

If nothing to the contrary is contained in the trust instrument or the foregoing regulations, the trust property must be transferred to the settlor or his successor in title and, in the absence of such persons, to the entitled beneficiary and, in the absence of an entitled beneficiary, to a foundation whose purpose is as similar as possible to that of the trust.

The trustee or his successors in title are under obligation to effect the dispositions and administrative actions necessary for the transfer.

Should the termination of the trust endanger the interests of the trust property, the trustee, his heir, legal representative or other universal successor in title (in the case of firms or legal entities) shall be under obligation to continue the administration of the trust until the settlor, his heir or representative or, upon application, the Princely Liechtenstein Court of Justice has given the necessary instructions.

Art. 907

Rescission of the trust agreement by the settlor or revocation of a trust is admissible only if the agreement or the unilateral trust instrument expressly reserves such right of rescission or if revocation is permitted pursuant to the regulations concerning foundations created by testamentary disposition or contract of inheritance.

- 2. Grounds for termination relating to the settlor

In all other cases, the trust shall be irrevocable, with reservation of the settlor's or a third party's right of avoidance pursuant to the regulations concerning contractual defects, the regulations concerning the law of inheritance or the law concerning acts voidable at the instance of creditors and, if the case arises, the law concerning donations.

In the case of trusts created by testamentary disposition or by the articles of a legal entity, rescission or revocation is also subject to the special provisions of the legal relationship.

Provided the trust instrument or the circumstances do not determine otherwise, the death of the settlor or, in the case of companies, firms, legal entities and similar, their termination, as well as inability to act and bankruptcy shall not effect the cancellation of the trust.

Art. 908

- 3. Termination relating to the trustee
- a. Notice by the trustee

In the absence of a provision in the the trust instrument, a trustee who has once accepted office shall be under obligation to hold office for a period of at least one administrative year, insofar as he remains capable of acting during such period.

Provided the trust instrument does not determine otherwise, the trustee shall be entitled to give notice of termination for the end of a calendar year, with a period of three months' advance notice, if important reasons do not justify a shorter term of notice.

In the absence of other provisions in the trust instrument or if a settlor a co-trustee or an entitled beneficiary is no longer present, notice of resignation shall be given to the Public Registrar.

The trustee designated in the trust instrument to succeed shall be notified by the Public Registrar, but where a successor trustee has not been designated or an appointed trustee refuses or is unable to accept the office, the Registrar shall advise the Princely Liechtenstein Court of Justice which, as in all other cases where trust property is left without a trustee, shall appoint a trustee.

Art. 909

If the trust instrument does not make provision for the substitution of the initially designated trustee in the event of death or on grounds of inability to act, each heir of a trustee and, in the event of inability to act, his representative is under obligation to notify the Princely Liechtenstein Court of Justice.

b. Death or termination, inability to act and bankruptcy of the trustee

Where the trustee is a partnership, a firm or a legal entity, the partners, or shareholders, the representatives or successors of the firm, or the governing bodies of the legal entity, or the trusteeship in bankruptcy must give notice of termination to the Princely Liechtenstein Court of Justice.

In addition, every beneficiary shall be entitled to give such notification to the Princely Liechtenstein Court of Justice for the purpose of appointing another trustee.

The procedure for appointment is the same as in the case of resignation.

In the absence of any other provision in the trust instrument, the trustee shall not retire from the trusteeship in the event of his bankruptcy where the trust property does not appear to be endangered and the judge does not order his removal. However, the judge, upon petition of the participants or the trusteeship in bankruptcy, may appoint a co-trustee.

Art. 910

The terms of the trust instrument, such as those of the trust agreement, the disposition mortis causa or the articles shall be authoritative in the first place for the interpretation of the trust relationship between settlor, trustee and beneficiaries.

C. Terms and effect of the trust relationship
1. In general¹

Where the terms of such a document are in conflict with mandatory regulations or the public order of the country, they shall be interpreted so as to be in accord therewith, insofar as the law or the document does not determine otherwise.

Where the terms and the effect of the trust relationship between the participants and third parties cannot be determined from the trust instrument, the regulations of this chapter shall

¹) Marginal note to Art. 910 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

apply and in this regard the rights entered in the Land Register shall be effective against all persons, while with respect to other rights the trustee shall have the status of a beneficial owner (administrative right in rem).

The regulations concerning the amendment (conversion) of a foundation shall be applied analogously to the amendment (conversion) of a trust by the Princely Liechtenstein Court of Justice in extrajudicial proceedings.

Where nothing otherwise results from the pursuit of commercial objects or entry in the Trust Register, the regulations concerning the trust enterprise shall be applied supplementally.¹⁾

The interpretation and application of all regulations concerning the trust enterprise and all other trust provisions shall ensue pursuant to the principles of equity.²⁾

Art. 911

- II. The trust property
- 1. In general

All assets so designated by the settlor or by operation of the law shall be trust property, as well as all assets acquired by the administration of such property, whether it has been included in a schedule or an inventory or not .

Property that has been included in a schedule or an inventory shall be presumed to be part of the trust property.

The trust property shall also include property acquired on grounds of a right accruing to the trust property as a substitute for an object of the trust property which has been destroyed, damaged or removed, or acquired in any other way, by the means of the trust property or as the result of a transaction related to the trust property.

In the absence of provisions in the law or the trust instrument to the contrary, the regulations concerning joint ownership (Gesamteigentum), with the exception of those relating to the dissolution of joint ownership, shall apply to trust property as separate property on the understanding that the trustees have joint rights and duties and that in the case of retirement of a trus-

¹⁾ Art. 910 para. 5 and 6 inserted by the law dated 10 April, 1928, concerning the trust enterprise, LGBI. 1928, No. 6.

²⁾ Art. 910 para. 5 and 6 inserted by the law dated 10 April, 1928, concerning the trust enterprise, LGBI. 1928, No. 6.

tee or the appointment of a new trustee the rights and duties shall devolve automatically upon the new trustee, except for the duty to appoint new trustees, insofar as the transfer is not subject to special formalities.¹

Art. 912

Where real estate or rights registered in the Land Register are part of the trust property, they must, in the absence of other provisions in the trust instrument, be transferred to the name of the trustee in order to be effective towards third parties, whether with or without restraint on disposal. This may be noted or annotated in the Land Register.

2. Specific trust property

Where an undertaking is registered in the Public Register under a firm name or where an asset forming part of the trust property is registered in another register, such as the Patent Register or similar, then, in the absence of a provision to the contrary in the trust instrument, the said undertaking or asset shall be specifically described as trust property in the Public Register upon application by participants.

Where third parties have acquired from the trustee property or rights which they knew were trust property and the trustee was not entitled to dispose of such property or rights, the settlor, a co-trustee or a beneficiary or, finally, a trustee appointed by the Princely Liechtenstein Court of Justice may, alone or as joint litigant with others, claim the surrender of such assets or take action on grounds of unjust enrichment for the benefit of the trust assets.

A debtor shall acknowledge that a claim forms part of the trust property only after receiving notification to this effect

Where claims are assigned by the settlor or a third party acting on his behalf to the trustee, the debtor, in the absence of provisions to the contrary in the trust instrument, cannot raise any objections he is entitled to raise against the trustee, but all the objections he is or was entitled to raise against the settlor.²)

¹) Art. 911 para. 4 inserted by the law dated 10 April, 1928, concerning the trust enterprise, LGBl. 1928. No. 6.

²) Art. 912 para. 5 and Art. 913 para. 2 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 913

3. Authorised
trust invest-
ments

Unless the trust instrument determines to the contrary, the trustee, if he is required to invest trust assets, shall deposit them with the Liechtensteinische Landesbank and/or invest them in securities issued by this bank or in bonds or in unbonded claims for which Liechtenstein municipalities guarantee the payment of interest or in loans to Liechtenstein municipalities or in mortgages within the limits prescribed for mortgages.

The investment of trust assets in the acquisition of real estate or the establishment of homesteads or participation in undertakings is permitted only provided the trust instrument makes provision for or allows this or if the judge gives permission in extrajudicial proceedings and if at the same time the regulations concerning mortmain are not circumvented.¹⁾

By way of an exception, also in other cases where there are important reasons and provided the trust instrument does not determine to the contrary, the trust property, or individual parts thereof may, with the assent of the Princely Liechtenstein Court of Justice in extrajudicial proceedings, also be invested in other securities or in another manner.

These restrictions shall not apply to trusts which have property belonging to persons or legal entities or firms domiciled abroad (domiciliary trusts)

Art. 914

4. Execution and
bankruptcy
a. Creditors of
the settlor and
beneficiaries

The creditors of the settlor or his successors in title may only lodge a claim against the trust property pursuant to the provisions of the law concerning acts voidable at the instance of creditors, or otherwise, depending on the type of donation, pursuant to the law concerning donations or succession.

The creditors of the beneficiary may lodge a claim against the trust property by way of levy of execution and writ or bankruptcy proceedings only insofar as the beneficiary himself has claims against the trust property and a provision concerning the

¹⁾ Art. 912 para. 5 and Art. 913 para. 2 in the version of the law dated 15 April, 1980, LGBI. 1980, No. 39

prohibition of such withdrawal, as in the case of family foundations, does not exist.

If at the same time the beneficiary is also a trustee, the foregoing regulations shall apply analogously.

Art. 915

In injunction proceedings or in the case of levy of execution and writ against or bankruptcy of the trustee, the trust property shall be regarded as separate property and the trustee's creditors shall therefore have no right of claim against the trust property where the trustee's remuneration and claims for compensation are not involved.

b. Creditors of the trustee

Where the trust property is comprised of real estate, movables or other separable assets, it shall be separated as far as the circumstances permit and passed to the successor trustee, appointed in the normal manner or judicially. The Princely Liechtenstein Court of Justice shall issue the necessary orders concerning such transfers, e.g., entries in Public Register *ex officio*.

Where the trust property is mixed with the debtor's assets to such an extent that an immediate official separation is not possible, the separation shall be undertaken by the Princely Liechtenstein Court of Justice as soon as possible.

Where separation is not possible during the course of levy of execution and writ and bankruptcy proceedings, a claim for restitution of the trust property shall take precedence over all other creditors and if there is more than one settlor and/or entitled beneficiary, they shall rank equally among themselves.

Where the trust instrument does not determine to the contrary the settlor or his successor in title, the co-trustee or beneficiary may claim individually or as joint litigants against the trustee or the bankrupt's estate for separation or compensation and they shall be entitled to examine all the bankrupt's books and records.

Within a period of time determined by the Court, the creditors of the trustee may, for their part, contest by recourse to the law the claims for separation and compensation insofar as these are unjustified, in whole or in part; in particular, they may assert

that a mixed trust exists and for this reason their debtor may have a partial claim against the trust property for money, but not for other assets.

Art. 916

c. Creditors of
the trust prop-
erty

The trustee is personally liable without limitation, jointly and severally with possible co-trustees, for the debts incurred by him on behalf of the trust insofar as they cannot be met out of the trust property. However, unless the trust instrument determines otherwise, the trustee shall have a right of recourse against the settlor and, where there are grounds for avoidance or the prerequisites exist for a case for unjust enrichment, against the beneficiary. A liability on the part of the trustee and a right of recourse only exists, however, if it cannot be proved that the third party was not acting in the belief that a liability went beyond the amount of the trust property.¹⁾...²⁾

Where a trustee participates in a firm or legal entity, the trustee's creditors may have a claim against him only to the extent permitted by the regulations relating to the undertaking concerned.³⁾

The trust property may be subject to separate bankruptcy proceedings pursuant to the regulations of the law on bankruptcy, in which case the creditors of the trust property may, if they are not fully satisfied, claim compensation for loss from the trustee insofar as such claims are not excluded pursuant to the foregoing paragraphs.

Art. 917

III. Rights and
duties of the
settlor
1. Rights

The settlor may transfer any parts of his assets on trust to a trustee appointed by him by means of a trust agreement, unilateral trust instrument, testament or articles and subject to the

¹⁾ Art. 916 para. 1 and 3 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

²⁾ Art. 916 para. 2 repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

³⁾ Art. 916 para. 1 and 3 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

mandatory provisions of the law he may define the precise terms of the trust. In particular, he may make provision for the trust property, under certain conditions or after a certain period of time, to revert to him or his successors in title or to devolve upon third parties such as foundations or establishments.

He may draw up the conditions in the instrument according to which a trustee appointed by him may be removed and possible future trustees may be appointed.

Furthermore, he may specify conditions according to which a beneficiary named in the trust instrument shall be excluded and another nominated in his place and may state the conditions on which trust property shall pass to other beneficiaries in the event of death or exclusion of beneficiaries or similar.

Where the disposition provides for an estate in fee-tail (*fidei-commissum*), it may not contravene the mandatory provisions relating thereto.

Art. 918

The settlor may not draw up conditions which bind the trustee to continuous instructions of the settlor.

2. Duties and other functions

Where such provisions are drawn up, the relationship shall be deemed to be a normal mandate within the intendment of the Code of Obligations, unless the circumstances indicate a different relationship such as, in particular, an agreement for service.

When the trustee executes the trust agreement or upon his acceptance of the trusteeship on the basis of a different trust instrument, the settlor shall be bound by the relevant provisions.

The trustee, however, shall not be liable to the settlor for acts undertaken pursuant to the settlor's instructions but in violation of the provisions of the trust.

In the case of proceedings concerning trust property, the settlor may only be heard as a party and not as a witness and the objection of *res judicata* shall apply both for and against the settlor and his successors in title.¹⁾

¹⁾ Art. 918 para. 5 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 919

- IV. Rights and duties of the trustee
- 1. Rights
- a. In general

After the agreement has been concluded, the trustee may require the settlor to comply with the said agreement, unless the trust instrument determines otherwise.

Unless the trust instrument or the special circumstances determine otherwise, the trustee may, after having accepted the trusteeship, demand that the settlor or other legally bound third parties, such as heirs or similar, comply with the terms of the trust agreement.

Subject to his obligations pursuant to the provisions of the trust instrument, the trustee shall be entitled to dispose of the trust property in the same manner as an independent holder of rights and duties as, for instance, an owner, a creditor, a member or governing body of a legal entity or partnership or similar entity and he may represent the trust before the authorities in his own name as a party to an action in any capacity including that of an intervener participant, co-summoned person. The trustee may also administer and exercise the pertinent rights against all third parties pursuant to the trust instrument and, insofar as this is necessary, convert the trust property into cash and reinvest same unless the purpose of the trust determines otherwise.

Provided the trust instrument does not determine otherwise, the trustee shall be empowered to advance to a beneficiary an appropriate part of the property which will subsequently devolve upon him.

Insofar as obligations under the trust do not require fulfilment by the trustee personally, the trustee may delegate all acts of administration to third parties.

If the trustee is in doubt concerning the admissibility or appropriateness of an act of administration or a disposition of the trust property or unusual acts which create obligations at the expense of the trust or if, in the case of co-trustees, one of these refuses to cooperate, he shall, if necessary, appeal for binding information to the Princely Liechtenstein Court of Justice in extrajudicial proceedings and the Court may call in suitable persons to assist in the legal findings.

Pursuant to the regulations concerning the administration of companies with legal personality, the trustee has a right to request

discharge relating to his activity pursuant to the last two paragraphs of the following Article.

Art. 920

The trustee is entitled to claim reimbursement for all necessary expenses and costs incurred by him in the interest of the trust. The trustee is also entitled to be indemnified against damage resulting from the trust property, to be released from obligations entered into on behalf of the trust or otherwise incurred and, furthermore, to appropriate remuneration for his services, insofar as the trust instrument or another legal relationship does not determine otherwise.

The trustee may claim interest at the rate which is usual in the country on expenses or costs, calculated from the day on which such expenses or costs were incurred.

In the absence of any provision to the contrary contained in the trust instrument or any conclusions to the contrary which could be drawn from the legal relationship between the trustee and the settlor, any claim shall be made in the first place against the settlor and then against the beneficiary entitled to the trust property or the income therefrom.

Alternatively, the claims may be made against the trust property direct, against the designation pursuant to the trust deed, or against the persons liable as mentioned in the previous paragraph.¹⁾

Art. 921

Without prejudice to his right to bring a claim in contentious proceedings, the trustee may petition the Princely Liechtenstein Court of Justice to determine the remuneration for his services in extrajudicial proceedings after hearing the participating parties.

He may be reimbursed from the trust property in preference to the beneficiaries and for this he may set off the claims he may have against the settlor or beneficiary and may assert a lien on the assets of the trust property.

- b. Indemnification, trustee fees, etc.
- aa. Claims

- bb. Enforcement

¹⁾ Art. 920 para. 4 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 922

- 2. Duties of the trustee
- a. In general

The trustee shall be under obligation to comply with the provisions of the trust instrument and the regulations of this law which are not in contradiction with the said provisions of the trust instrument, to preserve and administer the trust property with the care of a prudent business man and where customary or appropriate he shall insure the trust property against risk.

The trustee may not dispose of the trust property in a manner which could affect adversely or frustrate the purpose of the trust.

In the absence of provisions to the contrary or unless an emergency requires urgent measures, co-trustees must act jointly (collectively).

Trustees who conduct a business of deposit banking must strictly segregate trust property from other assets, insofar as the trust relationship does not determine otherwise (trust deposits).

Special records must be kept by persons whose business it is to act as trustees.

Art. 923

- b. Inventory of assets and liabilities and the rendering of accounts

If an inventory has not already been prepared, the trustee must draw up an inventory of the assets and liabilities of the trust and the said inventory must be revised annually.

He is required to render accounts annually and to provide information at any time concerning the state of the trust affairs to the audit authority provided for in the trust instrument or, in the absence of such audit authority to the settlor or, if the settlor should have died or be otherwise unavailable, to the beneficiary who has a right of claim and in the absence of such beneficiary to the Princely Liechtenstein Court of Justice, unless the circumstances necessitate a deviation as, for instance, in the case of banking trusts, small trusts or similar.

Where the entitled beneficiary is a partnership or a legal entity the accounts must be submitted and the information disclosed to the partner representing the partnership or to the governing bodies in the case of a legal entity.

Where the beneficiary (ies) is (are) not of age, legally incapacitated, insane or mentally deficient, or the rendering of ac-

counts is impracticable for any other reason, the trustee shall submit the accounts to the Princely Liechtenstein Court of Justice.

The trust instrument may also provide for the submission of accounts in another manner or it may release the trustee from such requirement.

If the trust property is comprised of an undertaking which is subject to the provisions of this law concerning commercial accounting, the trustee shall be required to comply with such provisions.

Unless the trust instrument determines otherwise, the judge in extrajudicial proceedings may for important reasons order an official audit upon application by an entitled participant. The result of such audit shall be submitted to the Court as in the case of legal entities.

Art. 924

Where the trustee is in breach of the provisions of the trust instrument or of those of this title otherwise relevant (breach of trust), he shall be personally liable to the settlor with his entire assets or, where the settlor is no longer present, to the beneficiary, pursuant to the principles of the law of contract. The third party acting in bad faith, however, shall be liable for damages to the settlor and to the beneficiary pursuant to the regulations relating to tortious acts, but only insofar as they did not themselves cause the breach.

c. Responsibility
aa. Breach of trust,
etc.

In the case of a breach of trust, co-trustees shall be liable jointly and severally, without limit, if the trust instrument does not determine otherwise, unless they can prove that they acted with the care of a prudent businessman in the supervision of the co-trustee and with reservation of their right of recourse against the guilty party.

With reservation of the right of recourse or insofar as it does not result otherwise owing to the circumstances of the particular trust, the trustee shall be liable for the acts and omissions of a third party to whom he has delegated the performance of transactions on behalf of the trust or engaged in any other way as, for instance, an authorised signatory, authorised agent and similar.

Art. 925

bb. Transaction in favour of the trustee

In the absence of a provision to the contrary in the trust instrument and with the exception of his claims for expenses and compensation, the trustee is not entitled to take any advantages from the trust.

Where the trust instrument does not make provision otherwise, the trustee is therefore only entitled to conclude transactions with the trust property on his own account as, for example, renting or leasing for himself, using money of the trust property for his own business purposes, making loans to himself, appropriating assets of the trust property for his own account or giving it to close relatives or friends, insofar as the transactions in question do not go beyond the scope of orderly administration.

Any other transaction which cannot be rescinded renders the trustee liable for damages to the settlor or the beneficiary subject to a right of claim against a third party acting in bad faith.

Where it becomes apparent that the trustee has mixed trust property money with his own money, he must pay interest on these monies at one and a half times the normal domestic rate and, if he has used these moneys profitably in business transactions, he must render account of such business and provide information and deliver up in full the share of the profit accruing to the trust property. Where the amount of profit cannot be determined, the trustee must also pay interest on such monies at a higher rate, depending on the circumstances.

Unless the trust instrument determines otherwise, the claims referred to in the foregoing may be brought by the settlor or, if the settlor is no longer alive or is otherwise unable to act, by the beneficiary and, if a beneficiary does not take action, by a trustee appointed by the Princely Liechtenstein Court of Justice for the benefit of the trust.

Art. 926

3. Reference, etc.

The regulations of the law concerning mandates shall be applied analogously to the legal relationship between the settlor and the trustee insofar as deviations do not result from the provisions of this title or from the particular purpose of the trust or unless

the regulations of another legal relationship apply supplementally as, for instance, in the case of a publishing contract, a service contract, a partnership or a consignment contract.

The regulations concerning modifications to the organisation and the purpose in the case of family foundations shall apply to trusts analogously.

Where the trustee gives a guarantee or surety for the fulfilment of his duties, the regulations concerning guarantees shall also apply.

During the existence of the trust, the statute of limitation and period of usucaption does not operate in favour of the trustee with regard to the trust property.

Art. 927

The beneficiary is entitled to demand execution of the provisions of the trust where the trust instrument does not determine otherwise or insofar as such execution is left to the absolute discretion of the trustee with regard to certain or all of the beneficiaries.

Each beneficiary entitled to claim who considers his rights or interests prejudiced by a disposition or an act of administration of the trustee may, in the absence of a provision to the contrary in the trust instrument, petition the Princely Liechtenstein Court of Justice to order in extrajudicial proceedings that the fault be remedied.

Where an application to the Princely Liechtenstein Court of Justice is unjustified, the beneficiary shall be liable to the trustee for costs and damages pursuant to the regulation concerning tortious acts.

Whether and to what extent a person is a beneficiary must be established in contentious proceedings before the Court insofar as the question should not be decided as a preliminary or interposed question in other proceedings.

As in the case of establishments, the judge may, in public citation proceedings, require unknown beneficiaries to present their claims.

- V. Position of the beneficiary
- 1. In general

The settlor may also be one of the beneficiaries of the trust; the trustee, however, may not be the sole beneficiary as, for example, in the case of conditions mentioned in a will, in favour of the testator, to be carried out after his death.¹⁾

In the case of non-profit making or similar trusts where there are no entitled beneficiaries and the trust instrument does not determine otherwise, the claims conceded to the entitled beneficiaries in the case of other trusts may be exercised by the representative of public law upon application or ex officio at the expense of the trust property or, where there is fault, at the expense of the party in default.¹⁾

Art. 928

2. Trust certificate

The trust instrument may provide that trust certificates for the trust property shall be issued to the beneficiaries as securities.

Insofar as the trust instrument does not determine to the contrary or it does not result otherwise from the nature of the trust as, for instance, in the case of trust certificates which only grant membership rights, the certificates provide the beneficiary with a creditor's right to the trust property, such as the right to participate in the income and the liquidation surplus.

In the absence of provisions to the contrary, the trust certificates shall be transferable in the same way as registered shares and the trustee must keep a register similar to a register of shareholders.

The names of the trustee and the beneficiaries shall be stated in detail on the trust certificate which shall also refer to the trust instrument and the law.

The law concerning the rights of bond holders shall also apply to the rights of the owners of trust certificates, with the provision that resolutions of the beneficiaries shall be passed with a simple majority of all the certificates, unless at the time of issue the wording of the certificates provides otherwise.

¹⁾ Art. 927 para. 6 and 7 inserted by the law dated 10 April, 1928, concerning the trust enterprise, LGBl. 1928, No. 6, redrafted by the law dated 15 April, 1980, LGBl. 1980, No. 39.

The special provisions concerning trust certificates as in the case of legal entities and partnership shall be reserved and the foregoing provisions shall be applied supplementally.¹⁾

Art. 929

The supervisory authority for trusts registered in the Public Register is the Princely Liechtenstein Court of Justice except in the case of family trusts or where another office is designated in the trust instrument or a supervisory authority is excluded or, at the discretion of the Court, such supervision is not necessary or is excluded by the circumstances.¹⁾

D. Supervision and other measures concerning trusts¹⁾

The Princely Liechtenstein Court of Justice shall officiate in this capacity in extrajudicial proceedings and may from time to at its discretion exercise control over the existence and administration of the trust property and shall keep a record (Trust Register) of the trusts subject to its supervision.

Where a trustee fails to carry out his duties, the Princely Liechtenstein Court of Justice in extrajudicial proceedings may, on application of a trustee or a beneficiary or ex officio, after giving the participants an opportunity to be heard and after previous warning, or without hearing or warning where there are important reasons in the trust relationship, itself remove the trustee from office and order the appointment of another trustee or itself appoint such a trustee, subject to a right of appeal against the decision.

Claims for damages brought by the participants against the trustee as well as those brought by the trustee against the participants and his claim against the participants on grounds of moral damages are reserved.

¹⁾ Art. 928 para. 6, marginal note to Art. 929 and Art. 929 para. 1 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 930

- E. International law and trusts under foreign law
- I. International law

The law of the state which is specified in the trust deed shall apply to the trust relationship. If no express choice of law is apparent, the law of the state in which the trustee or the majority of the trustees have their usual residence or domicile and subsidiarily the law of the state in which the trustee functions are effectively exercised shall be applicable to the trust relationship.¹⁾

Trusts which are not subject to Liechtenstein law may not claim a better legal position than domestic trusts.

Art. 931

- II. Trusts under foreign law

Trusts pursuant to foreign law may be created in Liechtenstein provided:

1. That as far as necessary in the individual case the relationship between the settlor, trustee and beneficiaries is subject to the trust regulations of the foreign law which must be included in detail in the trust instrument and that the relationship between the trust and third parties shall be subject to Liechtenstein law,
2. that a mandatory court of arbitration shall decide in disputes between settlor, trustee and beneficiary.²⁾

Art. 932²⁾

- F. Professional trustee

The statutory regulations relating to the conducting of a trusteeship business are reserved.

¹⁾ Art. 930 para. 1 in the version of the law dated 30. October 1996, LGBl. 1997, No. 19

²⁾ Art. 931 No. 2 and Art. 932 in the version of the law dated 15. April, 1980, LGBl. 1980, No. 39.

Second Section The Trust Enterprise¹⁾

(The Business Trust)¹⁾

Art. 932a¹⁾

A trust enterprise (a business trust) may be formed and operated pursuant to the following regulations:

§ 1

A trust enterprise as a real business trust pursuant to the law is an undertaking managed or further operated on the basis of the trust articles by one or several trustees (as fiduciary owners), under their own name or company name which, legally autonomous, pursues organised, economic or other objects and is endowed with its own assets, without legal personality, whose liability shall be pursuant to this law (trust enterprise without legal personality). The said trust enterprise does not have either character under public law or legal form under private law.

- A. In general
- I. Special trust enterprises
- 1. Definition
- a. Trust enterprises without and with legal personality

¹⁾ This section of the PGR (Persons and Companies Act) with its article 932a, which comprises §§ 1 to 170 of the Law concerning the Trust Enterprise, was inserted by:

Law dated 10 April, 1928 concerning the Trust Enterprise (and other amendments of the Persons and Companies Act dated 19 February (correct: 20th January) 1926, No. 4).

The wording is as follows:

"I give my approval to the resolution based on the Articles 2, 14 and 66 para. 1 of the constitution passed by the Diet at its meeting held on 17th February, 1928: The following shall be inserted after the title of the sixteenth heading concerning: "The Trust (das Salmannenrecht)":

The insertion of the title of Art. 897 et seq. PGR is taken into consideration in the text of the PGR.

"The following shall be inserted after Art. 932 of the Persons and Companies Act: The supplement to the PGR is taken into consideration in the text.

The law was issued on 18 June 1928, as LGBL. 1928, No. 6.

Where with analogous application of the foregoing paragraph an undertaking is created as a trust enterprise whose legal personality is expressly stated in the trust articles (formation deed), which are drawn up pursuant to the regulations of this law, the provisions concerning the real business trust shall be applicable additionally to this non-real trust enterprise, in particular, that relating to liability ("trust enterprise with legal personality").

§ 2

b. With Divisions,
trust funds or
similar

Several trust enterprises pursuant to this law, with the same or different participants, may be combined in the same trust articles in such a manner that each individual trust is legally independent within itself, as a division, and the following regulations of the law concerning trust enterprises, particularly those relating to liability, registration or notification to the Public Register Office and, supplementally, that concerning legal entities with divisions shall be applied accordingly to the individual divisions ("Trust Enterprise with Divisions").

In addition, a trust enterprise may, pursuant to the regulations concerning trust enterprises in general, take over as trustee other trusts operated under a particular name or company name, without the previously mentioned kinds of structure, subject to the proviso that the trust assets of the individual trust transferred to the trust enterprise or one of its divisions shall be solely liable for the obligations arising from the transactions of this trust and in legal relations the trust enterprise shall also act for these trusts which shall be quoted under their name or the name of their company.

In the absence of a provision to the contrary in the trust articles, the formation of a "Trust Enterprise Without Legal Personality" and without divisions, referred to in the following in abbreviated form as trust enterprise, shall be presumed to be incontestable.

§ 3

A trust enterprise may be formed for any defined, specific, reasonable and possible object which is not unlawful, immoral or dangerous to the state, in particular also for the investment of assets, the distribution of income, the integration of undertakings by the transfer of shares on trust or for acquisition, for family welfare, non-profit making, charitable, other personal, non-personal or similar objects.

2. Purpose or object

In the case of the exclusion or limitation of the liability of the participants, a fiduciary undertaking which pursues commercial activities may be operated only as a trust enterprise, unless another form of undertaking, with obligation to register, pursuant to the regulations concerning the trusts in general or this law, were chosen, or an exclusion of the liability or its limitation were negotiated in each case with the third party.¹⁾

Trust enterprises whose object is family welfare or is non-profit making or charitable in character may, in particular, erect homesteads of all kinds for beneficiaries.

When a trust enterprise is formed for an object other than the operation of a business (undertaking) in accordance with commercial principles as, for example, the object of satisfying creditors without the pursuit of commercial activities, the special regulations which may be applicable and the regulations concerning trusts in general shall remain reserved.

§ 4²⁾

II. Other fiduciary undertakings

§ 5

The general regulations concerning legal entities and in particular those relating to legal personality shall be applied supplementally and appropriately to the trust enterprise, without and with legal personality, insofar as possible deviations do not result

III. Reference, etc.

¹⁾ § 3 para. 2 in the version of the law dated 15 April 1980, LGBl. 1980, No. 39.

²⁾ § 4 Repealed by the law dated 15 April 1980, LGBl. 1980, No. 39.

from the absence of membership, from the nature of the trust enterprise and from the law.

The provisions concerning companies with legal personality whose objects are trade, manufacturing or another commercial activity shall be applied accordingly, pursuant to the foregoing paragraph, in particular to trust enterprises which pursue commercial activities.

The right and the obligation to register facts and circumstances in the Public Register as Trust Register as well as the entry and their announcement shall conform supplementally with the regulations drawn up for establishments.

Insofar as deviations do not result from the provisions of the law, the remaining regulations concerning trusts in general shall be applicable subject to the proviso that in place of the Court of Justice in extrajudicial proceedings, the Register Office shall act in the same proceedings.

When the Register Office is competent and, pursuant to the regulations, it is not required to proceed by way of the Public Register, those regulations concerning extrajudicial proceedings shall be applied supplementally, subject to the proviso that decisions may be referred to the Court of Justice or the higher instances.

In official proceedings, a trust enterprise may be designated as a party in the same manner as a legal entity which is represented by its administration or in such a manner that the managing trustees as such are designated by their names, first names and places of residence, or with company name and domicile, in their capacity as trustees of the undertaking.

§ 6

IV. Relationship of law and trust instrument

Insofar as exceptions are not allowed for trust enterprises pursuant to foreign law or approved foreign trust enterprises or otherwise, regulations of the law whose application is mandatory by virtue of the law or otherwise shall take precedence over a deviating trust instrument.

Other legal provisions shall be applicable only in the absence of deviating regulation of the trust instrument.

With reservation of compensation for damages or other legal consequences against the persons acting, the intended legal form for a trust enterprise may be acquired by entry in the Trust Register, even though the prerequisites for this did not exist.

Otherwise, the defectiveness of a provision which contradicts the mandatory regulations of the law is remedied by entry only if it is provided by law.

Where nothing else is established by the law, the expression trust instrument shall be understood to mean the trust deed, trust articles, regulations, internal regulations (by-articles) or the like and the expression trust articles shall be deemed to mean also the trust declaration or the trust formation document for a trust enterprise.

§ 7¹⁾

All trust enterprises come into existence only upon entry in the Public Register as Trust Register.

The provisions concerning formation under the general regulations concerning the legal entity shall be applied supplementally to the formation of a trust enterprise if the law does not determine otherwise.

- B. Existence
- I. Trust Register
- 1. Entry

§ 8

Where action is taken on behalf of the trust enterprise before its existence, the persons acting shall, insofar as the regulations concerning trusts in general do not determine otherwise, be liable by virtue of the law towards bona fide third persons, unrestrictedly, jointly and severally, subject to the right of recourse of the persons who acted to the persons who caused them to act in this capacity and to the claims for unjustified enrichment against the trust enterprise coming into existence later.

- 2. The absence of these

¹⁾ § 7 and marginal notes to § 9 in the version of the law dated 15 April 1980, LGBl. 1980, No. 39.

Where a person has taken over assets for the objects of a trust enterprise before the said trust enterprise has come into existence and it comes to light that the trust enterprise is invalid or has not materialised, the said person shall, pursuant to the regulations concerning trusts in general and with reservation of personal claims, nevertheless be treated as an implied trustee with regard to the receipt of the assets, but in particular relating to the rendering of account and the provision of information.

The said person shall be required to effect restitution plus legal interest or other appropriate reimbursement to the settlors or, pursuant to the underlying legal relationship, to those persons who placed the assets at the disposal of the said person or, insofar as the law does not determine to the contrary, to their successors in title or otherwise to surrender the said assets to the trust enterprise subsequently formed.

§ 9

- 3. Trust articles
- a. Necessary content

The trust articles (trust declaration) may be included in the deed itself, drawn up pursuant to the regulations concerning trusts in general, or in a document provided or admitted by this which, in its execution, is specifically drawn up and signed with certified signature by the settlor and the trustee or a third person or by one or the other.¹⁾

The trust articles shall state:

1. Name, domicile, duration and objects of the trust enterprise and the express designation as "trust enterprise", "trust foundation", "business trust", or a similar expression.
2. The trust fund and, possibly, its procurement and the individual assets, if necessary at a fair and reasonable estimated value, in the articles themselves or in one of the itemised lists accompanying the said articles, with certified signature, with the assurance that the data are correct.
3. Number and form of appointment of the trustees as well as a statement concerning the manner of future appointment of trustees in cases of withdrawal for any reason whatsoever un-

¹⁾ § 9 para. 1 in the version of the law dated the 15th April, 1980, LGB1, No. 39.

less, following the withdrawal of the first trustees or certain of these, it were required that dissolution of the undertaking should take place, finally

4. the form of notification to third persons.

If not stated otherwise in the foregoing statements, or Nos. 3 and 4 are not concerned, they shall be valid with essentially the same effect as the provisions concerning voidability proceedings under the general regulations concerning legal entities.¹⁾

§ 10

Pursuant to this law the trust articles may, moreover, contain further statements regarding other trusts or divisions, the governing bodies, in particular the appointment of a supervisory or audit authority, the detailed regulation of the beneficial interest or similar, or the further ruling may be reserved for a regulation (internal regulation, i.e. by-article) provided in the said trust articles.

b. Further statements and implementing provisions

The implementing provisions contained in the trust articles or in the regulations or the like, which have been drawn up without the assent of the settlor, shall not contradict the trust deed or the regulations drawn up by the latter; otherwise, subject to the claims of the bona fide third parties, the contradicting provisions shall be invalid, if the Register Office does not permit an exception for important reasons.

§ 11

Where in a disposition mortis causa the formation of a trust enterprise is provided, with instructions concerning the object and the amount of trust fund, but without other important instructions, or where the settlor dies after the trust deed has been drawn up but before the trust articles have been prepared and nobody else, as, for example, the executor or the administrator is

4. Formation in the absence of the settlor
a. In general
aa. After the death of the settlor

¹ § 9 para. 4 repealed by the law dated 15 April 1980, LBG1. 1980, No. 39.

under obligation to draw up and implement the trust articles, it is necessary, with reservation of the rights of the heirs and the creditors, for the heirs, possibly the legatees, executors or administrators or, upon application of others legally interested or in the case of non-profit making, charitable or similar objects, the representative of public law, after hearing those who are legally interested, at the expense of the estate, to initiate the drawing up of appropriate trust articles, the transfer of the assets to the enterprise, the appointment of the trustees and, if necessary, the entry and/or notification.

Upon application of those who are legally interested, the Register Office may, after hearing other interested parties, direct that the trust enterprise be formed.

The formation shall be dropped in the event that the settlor or his estate is over-indebted or insolvent and the settlor personally has not received a corresponding contribution from others for the trust fund to be donated.

These provisions shall also be valid accordingly if, after the drawing up of a trust deed which directs the formation of a trust enterprise with instructions concerning object and trust fund by means of a transaction inter vivos, the settlors or one of the settlors die or become incapable of acting before the implementation of the trust deed, unless the living settlor or the heirs, executors or the like were to withdraw from the trust transaction in an admissible manner, insofar as a trust enterprise with a non-profit making, charitable or similar object is not involved.

§ 12

bb. Upon the termination of companies or legal entities

Upon the termination of a firm or a legal entity, the liquidators or possibly the Register Office shall be under obligation, under the same preconditions and with the same measures as in the case of a disposition mortis causa, concerning the formation of a trust enterprise at the expense of the liquidation assets, in the event that such an enterprise shall be formed from the said liquidation assets pursuant to the company agreement, the articles or the like of the dissolved firm or legal entity.

§ 13

Where a trust in general exists, the trustees, after the demise of the settlor or after the termination of the fiduciary company or legal entity, notwithstanding the liability for the obligations towards third parties up to the time of conversion, shall be empowered by virtue of the law, for the purpose of excluding or limiting their liability, to convert this trust into a trust enterprise with or without legal personality, in conformity with the trust deed if at all possible, and to undertake at its expense all the lawful acts necessary for this.

cc. Legal power of authority

Where pursuant to the trust deed a trust enterprise is formed for the members of a family or a trust enterprise is formed otherwise, in favour of certain third parties and these waive the formation of the trust enterprise, whether this be with or without compensation, the formation shall be dropped in the absence of disposition to the contrary.

In this instance, the regulations concerning the distribution of assets in the case of liquidation shall be applied accordingly in the absence of any other directive in the trust deed or by the persons appointed as entitled beneficiaries.

§ 14

Before the formation of a trust enterprise by the Register Office in extrajudicial proceedings, those having a legal interest in the formation and in particular those upon whom the assets shall devolve in the event of the trust enterprise not materialising may be heard by the Register Office and they shall have the right of complaint against the formation and, if the occasion arises, the right of rescission by way of legal proceedings.

b. Formation procedure

The regulations concerning the summoning of beneficiaries for consultation shall also be supplementally applicable to the summoning of those legally interested in the formation procedure provided for here.

Where a decision concerning a formation or a trust deed is contested, the formation shall be suspended until the relevant decision permitting the formation becomes final and absolute.

§ 15¹⁾

- II. Application, entry and notification or advertisement
- 1. Obligation, right and content

The application for the entry of the trust enterprise in the Public Register as Trust Register must in all cases be undertaken by at least one trustee or one person who participated in the formation. Should the Register Office undertake the formation of the trust enterprise entry in the Public Register shall ensue through official channels.

The application for entry in the Public Register, the entry and the notification shall contain:

1. Name, domicile, duration and objects of the enterprise,
2. the amount of the trust fund or a statement of its estimated value in the event that it does not exist in cash and, if it is not fully paid in, a statement as to when the outstanding amounts are to be paid,
3. the names, first names, profession and place of residence or the company name and domicile of the trustees who will exercise the trust authority,
4. a statement concerning the form of notices to third parties.

The application shall be accompanied by an authentic copy or a certified copy of the trust articles or possibly also a certified excerpt of the latter, which must quote that content of the trust articles which is required for entry.

The regulations concerning notification under the general regulations concerning legal entities shall be applied accordingly.

§ 16

- 2. Amendments and other declarations

Each amendment of the facts and relationships which are notifiable or subject to obligation to inform shall in each case be registered or notified to the Register Office at a later date by the managing trustees and, if necessary, the trust articles or a certified excerpt shall be enclosed.

In the absence of managing trustees, the Register Office may proceed upon notification by participants or of its own accord, pursuant to the regulations concerning the Public Register.

¹⁾ § 15 in the version of the law dated 15 April, 1980 LGBl. 1980, No. 39.

The Government may, by way of ordinance, order the registration, entry, notification or announcement of further facts and relationships or the deposition of documents relating to the formation or amendment or cancellation of the trust enterprise.

§ 17

In addition to the provisions of this law the relevant provisions under the general regulation concerning the legal entities and those concerning trusts in general shall apply analogously to the termination.

- C. Termination (dissolution and cancellation)
- I. In general

In particular, a dissolution or cancellation takes place:

1. As the result of bankruptcy on grounds of insolvency or over-indebtedness as well as by means of cancellation proceedings on grounds of the objects being unlawful, immoral or constituting a danger to the state or on grounds of activity constituting a danger to the state and by means of voidability proceedings on grounds of essential defects in the trust articles pursuant to the rules drawn up according to this law and to the rules under the general regulations concerning legal entities,
2. where the trust deed does not determine otherwise, by the assent of all the trustees, beneficiaries and possibly all the entitled reversioners to an application for dissolution and if, pursuant to the trust deed, the beneficial interest has been acquired without valuable consideration, also with the assent of the settlor personally or the settlor's direct universal successors in title, which assent may, for important reasons, be granted by the Register Office,
3. after the expiration of a maximum fixed period which may be determined by order of the Government with analogous application of the regulations concerning the time limit of inheritance by substitution for all or individual kinds of trusts whose objects are not non-profit making or charitable,
4. where the law or the trust instrument does not determine otherwise, pursuant to the rules drawn up for the cancellation of a foundation.

In the case stated under 2., the unknown or uncertain entitled beneficiaries or reversioners shall be summoned by public citation pursuant to the regulations concerning the determination of beneficiaries and the Register Office, pursuant to the regulations of the Code of Civil Procedure concerning the proceedings trustee, shall appoint a special process administrator to represent them, at the applicants' expense, who may grant or refuse consent for the unknown or uncertain beneficiaries.

The regulations concerning the amendment of the trust instrument, conversion or merging of trust enterprises and those concerning the change of the governing bodies or the object by virtue of the law or the like and the claims of a beneficiary whose rights have been violated remain reserved pursuant to these provisions.

§ 18

II. Bankruptcy or administration proceedings

In the case of insolvent or over-indebted trust enterprises, the managing trustees, unless they do not petition or have not already petitioned for administration proceedings (settlement procedure) and the latter has not remained without success, must, by virtue of the law, file a petition in bankruptcy, or otherwise bear responsibility. At the same time they must terminate all further payment and limit the conduct of business to an absolute minimum.

Where such a petition does not proceed from all the managing trustees, those remaining shall be examined and if agreement concerning the petition is not reached or timely examination is not possible, bankruptcy proceedings shall be initiated only provided the insolvency or over-indebtedness or the precondition for the petition for administration proceedings can be substantiated by prima facie evidence.

Trustees shall be liable without limit, jointly and severally, to bona fide participants or third parties for losses arising from the petition in bankruptcy not being filed or the administration proceedings not being applied for in good time pursuant to the foregoing regulations.

§ 19

Where the enterprise is dissolved for reasons other than bankruptcy or administration proceedings, in particular also as the result of a rescission for any reason, or no other proceedings are provided by law, the regulations concerning liquidation in the case of legal entities shall be applicable supplementally, in addition to the following.

Should undistributed assets still exist after the bankruptcy or administration proceedings, liquidation shall not take place, unless other prerequisites concerning this exist, but the trust enterprise shall be continued and the relevant entries in the Trust Register shall ensue upon application of the participants or, if need be, ex officio.

In the case of trust enterprises without liability towards non-participants the liquidation may be limited to the collection from the participants of possibly necessary adjusting amounts, to the defrayal of the costs and to the distribution or donation of the assets to the allottees, without public notice to the creditors or waiting until the end of the prescribed period, and to the possibly necessary notice of cancellation.

In the case of the foregoing paragraph, the Register Office may, however, demand that a distribution or donation list concerning the assets be submitted.

Other regulations concerning the exclusion of liquidation also remain reserved as, for example, in the case of the gradual distribution of assets, conversion or merging.

§ 20

The managing trustees shall act as liquidators where the trust instrument does not determine otherwise, or a supreme body which may be formed by all the trustees does not pass a resolution to the contrary, or the Register Office, whether upon application of the participants or ex officio, does not, for important reasons, determine otherwise in extrajudicial proceedings, or provided the trust enterprise is not to be wound up, officially or under official supervision.

III. Liquidation
1. In General

2. Liquidators,
time limit and
public notice to
creditors

After all the trust enterprise's liabilities have been settled or secured, the period of time after which the assets may be distributed or donated to the allottees may, with the agreement of the Register Office, be reduced or, for important reasons, waived completely.

The public notice to creditors may also be waived under the same preconditions.

Upon application by the liquidators, the public notice to creditors may ensue from the Register Office at the expense of the trust enterprise, with the fixing of a time limit for registration and with the warning and effect that the assets shall be distributed to the creditors who have registered or are otherwise known and other creditors shall remain unconsidered.

§ 21

3. Distribution of assets

Where pursuant to the trust instrument or the law certain claims against the assets are conceded, the assets shall be distributed, if possible, that is, without conversion into cash, to the allottees or their universal successors in title, otherwise, in the event of the instrument being lacking or defective, the regulations concerning beneficial interest shall be applied accordingly and, supplementally, those concerning the application of assets in the case of legal entities.

In the case of family trust enterprises with a special system of succession, the allottees shall be stated for the event of the trust enterprise being terminated or the family concerned or the category of beneficiaries becoming extinct, otherwise the regulations relating to entailment, concerning the accession of property to the state, shall be applied accordingly.

With regard to the implementation of the termination and the regulation concerning the accession of property to the state, the representative of public law may, in case of doubt as to the presence of beneficiaries, apply to the Register Office for proceedings to trace beneficiaries.

Where satisfaction is sought from the available assets remaining undistributed after the trust enterprise has been terminated, an allottee may not be opposed by the statutory three-year period of limitation following the distribution or bestowal of assets.

§ 22

The minimum trust fund must be SFr. 30'000.--¹⁾ Provided the trust instrument does not exclude this, the trust fund may be increased by the endowment of successive, wholly or partly effected contributions by the old or newly entering settlor against a written declaration of membership, or reduced by gradual distribution.

D. Trust fund
1. In general

Each year, at the end of a calendar year, if an increase in or a reduction of the trust fund as such has taken place in this manner, the managing trustees of the enterprises entered in the Trust Register shall provide the registrar with a list of the trust fund changes which have taken place during the year for the purpose of correcting the entry concerned, without notification of this entry being required.

In the event that all the trustees without restriction are liable jointly and severally for all the obligations of the trust enterprise pursuant to the regulations applicable to registered cooperative societies, this provision may be included in the trust articles and also in the application to the Trust Register in place of the information concerning the trust fund.

§ 23

Where securities relating to the beneficial interest are issued for payment to the trust fund, the trust articles must contain a provision concerning this in order to avoid the consequences of the irregular issuance of securities.

II. Securities in particular

Should securities be issued below the nominal value or otherwise in such a manner that their total issue price is not equivalent to the total estimated value of the trust fund, this shall require the assent of the Register Office; moreover, the regulations concerning the issuance of shares below the nominal value shall be applied accordingly.

Otherwise, the regulations concerning securities in the case of trust beneficial interest shall be applied accordingly to the securities and their holders, in particular with regard to default.

¹⁾ § 22 Para. 1 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

§ 24

III. Liability and
default

If the trust instrument does not determine to the contrary and with the reservation of tortious acts or special agreements, several settlors as such shall not be jointly and severally liable for the obligations entered into by virtue of the formation of the trust enterprise.

Where an individual takes over obligations respecting performances in favour of the trust fund, combined with a beneficial interest, and the transferors, but not the managing trustees as such, know that at the time of the transfer the transferee is insolvent, the transferors as well as the transferee shall be jointly and severally liable for the performance deficiency.

For claims in favour of the trust fund in the case of a trust enterprise whose objects within the country are generally charitable or non-profit making, there exists a preference privilege in bankruptcy proceedings which is equivalent to the remuneration, with reservation of the right of rescission of the creditors or the heirs and of the claim on grounds of the breach of duty to support or of the need for support or other provisions.

If the settlors' performances respecting the trust fund or other funds are not completely fulfilled, the settlors shall be liable in the case of default, notwithstanding the admissibility of provisions concerning the appointed-date loss clause, the loss of all rights as a beneficiary, or the like, in the manner of a debtor pursuant to the Code of Obligations.

Otherwise, the provisions concerning statutory delay in performance in the case of trust beneficial interest shall be applicable supplementally.

§ 25

E. Trust assets
I. In general

Provided the provisions concerning the trust enterprise do not contain deviations, the regulations concerning the trust property of trusts in general shall be applicable supplementally to trust assets as separate property.

The rules valid for foundations shall be applicable supplementally to the donation of assets before and after the creation of the trust enterprise.

Where under certain prerequisites the settlor has provided for the reversion of the trust property to himself or his descendants or for devolution upon a third party, this may take place, in the event that the reverting or devolving trust property is a part of the trust fund, only without prejudice to the regulations concerning the liability of the enterprise for the obligations towards innocent third parties (the right of reversion or devolution).

Otherwise, however, the right of reversion or devolution in the case of real estate or limited rights in rem to such may, upon application by participants, be annotated or noted in the Land Register insofar as entries, similar to Land Register entries, in other public registers, are admissible for other pieces of property.

Otherwise, the regulations concerning the trust fund remain reserved.

§ 26

If the law or the trust instrument does not determine otherwise, the regulations concerning the determination of assets and earnings in the case of establishments shall be applicable analogously to the segregation of assets and yield.

- II Segregation and distribution of assets and yield
- 1. In general

Should pursuant to the trust instrument the net yield or part thereof or assets be distributed annually or at shorter or longer intervals to the beneficiaries as income, the managing trustees shall, in the absence of other directives, determine at their equitable discretion, taking as a basis the rules applying to an orderly profitable trade and, supplementally, those concerning usufruct, what shall be entered in the yield account (profit and loss account) as usufruct, charges, expenses and the like and what shall be entered in the trust assets account including the accruals and, if need be, the period of time between the distributions of the net yield.

Where trust enterprises pursue commercial objects exclusively, the distribution of income to the beneficiaries shall ensue, in the absence of other directives, after the completion of each calendar year on the basis of an annual balance sheet and, should doubt exist, in equal shares which shall be determined by the managing trustees.

Where in the case of a trust enterprise the claims of one beneficiary to the income and those of another to the trust property which is to be distributed are conceded or a system of succession is drawn up respecting the enjoyment of the trust, yield in place of elements of capital or, conversely, elements of capital in place of yield may, in particular, not be paid out to the beneficiaries, as in the case of fictitious yields, purely added value in accordance with the account on permanent investments or similar belonging to the trust assets.

Where in the case of a trust enterprise with definite beneficial interest claims the yield or elements of capital to be distributed are determined in a non-appealable manner by the trustees or other competent bodies, the parties entitled shall acquire an unconditional title as creditors.

§ 27

2. Gradual distribution

A gradual distribution of trust assets between beneficiaries, such as the payment of a redemption sum resulting from notice to terminate, exclusion or similar or payment of interest or amortisation or re-acquisition of beneficial interests by means of trust assets without liquidation, may ensue, with otherwise unlimited joint and several responsibility of the acting trustees and asset recipients and with reservation of the obligation on the part of the latter to make restitution to the creditors and beneficiaries or to the trustees called upon for this, who may possibly suffer loss, only insofar as the obligations of the trust enterprise towards third parties and other beneficiaries are still secured by the available assets, unless an individual having knowledge of the inadmissible distribution has become a creditor or a beneficiary.

Where as the result of amortisation, re-acquisition, statement of forfeiture or for other reasons all beneficial interests accrue to the trust enterprise which continues to exist, it shall be further determined in the trust instrument upon whom, if need be, the income and assets result shall devolve, otherwise the regulations concerning the devolution of the assets to the state, under the general regulations concerning legal entities, shall be analogously applicable.

Where the trust deed empowers an individual to dissolve the enterprise, that person shall, provided the circumstances do not indicate a different procedure, also be competent to dissolve it partially by ordering the gradual distribution of the assets to the allottees pursuant to the trust instrument or the law.

§ 28

Within the framework of the law and the trust instrument, the trustees shall ensure the orderly administration and preservation of the trust assets in their legal and economic volume and, in particular, take care, insofar as the nature of the business, the circumstances or the achievement of the objects permit this, that the trust assets pass into the possession of the enterprise, are kept separate from the trustees' own assets and that insecurely invested assets are redeemed and appropriately invested.

III. Administra-
tion of assets
1. In general

Moreover, there exists an obligation to preserve, improve and insure trust assets insofar as the orderly implementation of the objects of the enterprise requires the principles of good business management, having regard to the circumstances, pursuant to the law or the trust instrument, or even contrary to the trust instrument, by virtue of the law.

The trustees may at their absolute discretion advance elements of capital, against or without security, to those beneficiaries entitled to a claim to the trust assets to be distributed at a later date, and the said beneficiaries shall have the capacity of debtors up to the time when the handing over of assets to them is due to take place. However, when several beneficiaries exist, this shall ensue only insofar as the claims of other beneficiaries or third parties, in the absence of their assent, are not violated thereby.

In the case of family trust enterprises whose objects are support, education, training or similar, the Register Office may, upon application of the participants, for important reasons, provided the trust instrument does not determine to the contrary, order that advances be granted appropriately. ...¹⁾

¹⁾ § 28 para. 5 and § 29 para. 2 repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

§ 29

2. Alienation and charging

Where, pursuant to the trust instrument, in the case of trust enterprises which do not conduct business, the trust assets and the yield are inalienable or alienable only to a limited extent, within a certain family or category of people or may be encumbered with these restrictions, such a restriction may be noted or annotated "restraint on disposal", near where the items of property are entered in the Trust Register and the Land Register or in other public registers in which the entries have the same effect as entries in the Land Register.

...

Within the framework of the objects of the enterprise and otherwise by virtue of the law, the trustees shall be authorised to alienate or charge the trust assets including the yield: in the case of rapidly consumed or perishable objects whose proceeds take the place of the objects; with regard to the paying-off of the participants' obligations, insofar as a claim may be made against the trust property for this; in the event that enjoyment of the trust pursuant to the trust instrument is not without valuable consideration, with the consent of all the beneficiaries, including, if the occasion arises, also the reversioners, otherwise, however, also with the assent of the settlors or their direct universal successors in title; or with the assent of the Register Office, for important reasons, for instance concerning disposals which serve public objects, or the preservation or improvement of trust property, subject to the proviso that the rights of the creditors concerned must take precedence over the rights accruing from the beneficial interest pursuant to the directive of the Register Office.

Pure and mixed gifts or other similar distributions without valuable consideration as well as the existence of an obligation, acknowledged without legal reason, charged against the trust enterprise or the non-existence of a claim, causing loss to the trust enterprise may be undertaken by the trustees only insofar as the trust instrument allows this or is customarily required, as a moral duty or having regard to the observance of propriety.

¹) § 29 para. 2 repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

Claims for damages and other measures allowed by law against the trustees or other culpable persons as well as the regulations concerning bona fide acquisitions for valuable consideration, concerning the restriction of liability and encumbrance by virtue of the law, remain reserved additionally.

§ 30

Where a trustee or a representative of the trust enterprise wrongfully alienates trust property in opposition to the trust instrument or the law, each of the other trustees or entitled beneficiaries or reversioners shall have the right to trace the trust property and after informing the managing trustees may, pursuant to the rules of possession, reclaim the trust property on behalf and in favour of the trust enterprise, insofar as the said trust property has not been acquired in return for reasonable payment by a third party who had no knowledge of the fiduciary character at the time of acquisition.

3. Claim for
surrender and
enrichment

Whosoever pursuant to the foregoing paragraph is under obligation to surrender shall, in accordance with the rules of possession, in the event that the individual is no longer in a position, in the case of the said individual's bad faith, to surrender to the trust enterprise all that which has taken the place of the trust property, in return for the reimbursement of the said individual's performance or the value. The individual acting in good faith, however, whose acquisition is without valuable consideration, shall surrender only inasmuch as enrichment has ensued.

Where trust property has been wrongfully included in execution proceedings, bankruptcy or administration proceedings, each trustee, entitled beneficiary or reversioner may demand the surrender of the trust property or the substitution which has taken its place, pursuant to the foregoing and other regulations, in favour of the trust enterprise and take the admissible measures, in particular third-party action against execution.

The preceding regulations shall be analogously applicable to the wrongful charging of the trust property or the wrongful imposition of an obligation on the trust enterprise; in addition, the provisions concerning the restriction of the trust enterprise's li-

ability as well as those concerning transactions in favour of the trust enterprise and other provisions such as those relating to responsibility remain reserved.

In the case of unsuccessful execution proceedings (issuance of a loss certificate) against the trust enterprise, the creditors who suffered loss or, in the case of bankruptcy, the trusteeship in bankruptcy, shall be empowered to assert the claim to surrender or enrichment, insofar as the creditors concerned did not take part in the illegal alienation.

§ 31

4. Assets investment

Provided nothing to the contrary emerges from the objects of the trust enterprise or an express provision concerning the investment or deposition of the trust property is not included in the trust instrument (investment clause), the trustees may pass a resolution with a simple majority to the effect that the assets, in particular, also available yield up to the time of its distribution, shall be safely and profitably invested, pursuant to the regulations concerning trusts. An asset investment which pursuant to the law or the trust instrument is inadmissible may, provided all the entitled beneficiaries or an otherwise competent body do not disapprove of such an investment, at any time be converted by the trustees to an admissible investment.

Where the prerequisites for the appointment of a fiduciary legal advisor or other important reasons exist, the Register Office may, upon application of participants, possibly ex officio, order that the trustees shall invest or deposit the trust assets or individual parts thereof with the Landesbank or another suitable institution or that debtors of the trust enterprise may validly fulfil their obligations only by performance at the same or another institution determined by the Register Office.

Should a debtor of the trust enterprise have an important reason for assuming that the trustees will commit a breach of trust with the money to be paid by him, he may also legally effect the payment of this debt to the Landesbank, in favour of the trust enterprise.

§ 32

The costs accruing from the creation and termination of a trust enterprise, fiduciary supervision, fiduciary surveillance and from the activities of other persons or bodies appointed pursuant to the law or the trust instrument for the performance of such activity shall, in the absence of other provisions in the law or the trust instrument, be defrayed from the yield from the trust property or, if necessary, from the trust property itself.

IV. Costs

Where culpable conduct on the part of a person or body is at issue, if, in particular, an action or an omission is demanded without reason by a person authorised in this regard, the costs shall, in the absence of any other directive, be borne by the person with whom a fault lies.

Where an authority intervenes upon application or ex officio, pursuant to the law or the trust instrument, and no person is at fault or something else is ordered, the costs shall be charged to the yield account and where a yield does not exist or is inadequate, to the account of the trust assets.

§ 33

In the absence of other directives or where nothing to the contrary emerges from the objects of the enterprise as, for example, in the case of liquidation trusts, the trustees shall be empowered to establish appropriate reserve funds as a safeguard against losses, devaluation or to ensure a sustained yield capacity or similar and to provide a corresponding entry on the liability side of the balance sheet.

V. Reserve fund and other reserves

Insofar as the preservation of the assets requires this, as in the case of devaluation or similar as well as in the case of enterprises pursuing commercial activities, they shall be under obligation to establish appropriate reserves, unless important reasons justify an exception.

In the case of trust enterprises which undertake commercial activities, they shall, in the absence of other directives, allocate annually one-tenth of the net yield to the reserve fund for the purpose of covering balance-sheet losses until the said reserve fund amounts to one-tenth of the trust assets.

Income which is due to beneficiaries who are present, but has not been withdrawn within three years of the due date and also income which becomes due during a period of time up to the latest valid bestowal shall be allocated to the reserve fund for the balance-sheet losses or, in the case of enterprises which do not undertake commercial activities, for the accounts losses (intercalated beneficial interest in the trust).

Similarly, any fines or suchlike for possible non-attendance at meetings or for late arrival at such meetings or for other reasons, to be paid by the participants pursuant to the trust articles or, where doubt exists, to the regulations concerning fines, etc., imposed under the contractual penalties also, in the absence of any directive to the contrary, other elements of capital released by the lapse of individual beneficiaries, shall be allocated to the reserve fund.

Otherwise, the regulations concerning the reserve fund in the case of companies limited by shares shall be applicable accordingly with the proviso that the reserve fund for balance-sheet or accounts losses shall, as far as possible, be invested in readily realisable, safe securities.

§ 34

VI. Accountancy

Unless determined otherwise for a trust enterprise which engages in commercial activities, managing trustees shall, from the time of formation onward, observe the provisions of this law and the regulations concerning the trusts in general relating to the drawing up of inventories of property and the submission of accounts and shall, insofar as they are in a position to do so, keep accurate, regular, clear and suitable accounts, accompanied by receipts if necessary, separate from other records, otherwise, they shall entrust these duties to others.

Insofar as an enterprise pursues commercial objects (business) the regulations of this law and supplementally those concerning the system of commercial clearing, in the same manner as in the case of an establishment which undertakes commercial activities, shall be observed from the time of formation onward, otherwise the managing trustees shall bear responsibility.

The regulations concerning the official audit remain reserved.

§ 35

The regulations concerning the rescission of trusts in general shall be applicable to the rescission of the formation or amendment of a trust enterprise; however, the claims of bona fide creditors accruing up to the time of final and conclusive rescission shall in all cases take preference over the claims of the contestants.

F. Rescission and right of redemption

Where pursuant to the trust instrument the trustees are simultaneously the sole persons entitled to benefit from the alienable and transferable beneficial interest, with or without membership, rescission on the part of the settlors or their creditors and/or the trusteeship in bankruptcy or the settlement administration after formation shall be admissible only pursuant to the provisions concerning membership under the general regulations concerning legal entities.

Where within the last five years before the initiation of bankruptcy proceedings relating to the settlor's assets or before the implementation of unsuccessful execution from the settlor's assets a trust enterprise was formed without valuable consideration in favour of third parties or, in this manner, assets were otherwise donated to the enterprise, the trust enterprise shall, in the event that the creditor of the settlor or the trustee in bankruptcy is able to prove that the settlor concerned was insolvent after setting aside the assets donated to the trust enterprise, notwithstanding the bona fide rights acquired for valuable consideration by participants or third parties, be liquidated in favour of the settlor's creditors by order of the law enforcement authority only where the satisfaction of the creditor, on the basis of a winding-up balance drawn up for this purpose, cannot be achieved appropriately in another manner.

Where on the grounds of a transaction a person has become a creditor of the trustee, although the said person had knowledge of the insolvency at the time of the formation, rescission by the said person or through the latter's trusteeship in bankruptcy shall be excluded.

The settlor's spouse or issue may, within a period of time determined by the Register Office and, if need be, in a manner determined by the latter, assert the right of redemption against the creditors or the trusteeship in bankruptcy after payment of the

claim concerned; however, at the most, a fair and reasonable amount shall be paid, determined on the basis of a winding up balance.

Where insolvency exists in the case of one or the other of several settlors, this regulation concerning the right of redemption shall be applied accordingly, with the proviso that after the spouse and/or the issue the beneficiaries shall also be entitled to the right of redemption within a period of time to be determined by the Register Office and, if necessary, in the manner directed by the latter.

Where a settlor forms a trust enterprise in his capacity as trustee of another trust or in fulfilment of another obligation towards a third party who, without valuable consideration, has placed assets for this purpose at the disposal of the said settlor, the foregoing regulations concerning the creditors or the trusteeship in bankruptcy and/or concerning the right of redemption shall be applied accordingly to the settlor of the other trust enterprise or the third party concerned (indirect settlorship) and/or to their spouses or issue.

Otherwise, the provisions concerning the revocation of the beneficial interest and concerning the violation of the duty to support shall also remain reserved.

§ 36

- G. Liability for the obligations of the trust enterprise
- I. By operation of the law

If the law does not determine to the contrary, only the trust fund stated in the articles and the other possible further assets of the trust enterprise shall be liable for the obligations of the trust enterprise towards third parties and a personal liability on the part of the participants shall not exist, unless the obligations of the trust enterprise are, at the same time, the obligations of all the participants or of individual participants.

Where in the exercise of their fiduciary authority trustees cause loss to bona fide third parties by intentional deception on the pretext that contrary to the trust instrument there exists a liability or a liability to make further contributions which extends beyond the trust property or is greater than the actual trust assets, or the like, the acting trustees shall be liable without restriction, jointly and severally, for the loss suffered in this connection by

the third party, under reservation of their right of recourse to the trust enterprise or other persons, insofar as it has (they have) become enriched thereby or has (have) derived other benefit.

Moreover, in the case of a trust enterprise which pursues commercial objects, the managing trustees shall, in the absence of any other directive, be liable jointly and severally for a period of six months after the date when the salaries and wages of the employees and workers are due for the amount no longer retrievable from the trust enterprise after this period of time.

Trustees who in the exercise of their fiduciary authority or a body or other representative appointed pursuant to the trust articles perform a tortious act or neglect duty in the exercise of their representational activity shall, in addition to the trust enterprise, otherwise with appropriate application of the relevant regulations concerning legal entities, be responsible without restriction, jointly and severally.

Insofar as the provisions concerning trust enterprises do not contain deviations, the regulations concerning trusts in general shall be applied accordingly for the legal position of the creditors of the trust enterprise in attachment, execution, bankruptcy and administration proceedings.

In the case of trust enterprises with special divisions or with trust funds specially set aside, each division or each fund shall, in the absence of any other directive in the law and insofar as mutual claims do not require something different, occupy a special position in such a procedure, similar to that of an independent trust enterprise.

§ 37

It may be determined in the trust instrument that also the other trust assets, not contained in the enterprise as a trust fund or otherwise from a trust, to which the enterprise itself belongs, shall be liable for its obligations.

Where as trust property for the enterprise assets are transferred with which obligations towards third parties are associated as, for example, in the case of shares which are not fully paid up, the trust instrument or the relevant declaration of membership

- II. By operation of the trust instrument and other transaction
- 1. Extension of liability

may provide, where it does not emerge otherwise from the legal relationship with the third party, that the transferors remain personally liable, in addition to the enterprise, or alone.

Furthermore, the trust articles may direct, without the substantiation of a membership being thereby possible or permissible, insofar as exceptions are not admissible, that individual or all participants or third parties, with analogous application of the regulations in the case of registered cooperative societies, shall be restrictedly liable or restrictedly liable to effect further contributions for the obligations of the enterprise towards third parties, for the adjusting amounts between those who are liable or liable to effect further contributions and for the defrayal of costs or that individual or all trustees in the case of enterprises which undertake commercial activities shall be liable or liable to effect further contributions without restriction, jointly and severally.

The regulations concerning the assertion of liability or of the liability to effect further contributions in contribution proceedings may, in the trust articles, also be declared to be applicable outside the cases determined by law.

In the case of an enterprise which undertakes commercial activities, the provisions concerning liability or liability to effect further contributions as well as each amendment thereof must be registered in the form of an excerpt in the Trust Register, entered there and published, otherwise annulment shall be declared.

The regulations concerning the register of cooperative society members with liability or liability to effect further contributions and those concerning the register of members in the case of registered cooperative societies shall, if the case arises, be applied accordingly in the case of trust enterprises which pursue commercial objects, to the register of participants, which may be associated with the register of beneficiaries, and to the list of participants according to the meaning stated here.

§ 38

2. Restriction of liability

In the case of a trust enterprise which does not pursue commercial objects and does not undertake any other business, the trust articles may include the provision, to be notified to the Trust

Register for the purpose of entry, that after formation private obligations which are valid for the enterprise, apart from claims arising from tortious acts, may be incurred only with the assent of a special body or of the next reversioners or third parties, or that a private creditor may seek satisfaction only from assets which do not form part of the trust fund or only from the income or neither from the trust property nor from the yield, as long as the trust enterprise has not been terminated.

In the case of items of property belonging to the trust which are entered in the Land Register or in another public register whose entries have the same effect as Land Register entries, such a restriction may be entered as an annotation or a priority notice or a borrowing limit or a real-estate mortgage with a restriction on the yield from the trust property concerned may be entered in the Land Register.

Where neither the trust property nor the yield may be charged or no valid obligations may be incurred by the managing trustees, other bodies or persons, at the expense of the enterprise, the trustees exercising fiduciary authority or other representatives of the trust enterprise shall be unrestrictedly liable, jointly and severally if they fail to draw the attention of the bona fide third parties with whom they deal expressly to these restrictions, with reservation of the claim against the trust enterprise on grounds of possible enrichment.

Where, apart from the possible assertion of their claims against participants or third parties, the creditors of the enterprise have access only to the yield, sequestration may, upon application of the competing creditors, take the place of bankruptcy and these may join the sequestration, pursuant analogously to the relevant regulations concerning the accession of creditors in the case of the compulsory sale of the individually owned enterprise with limited liability.¹⁾

¹⁾ The provisions concerning the individually owned enterprise with limited liability (Art. 834-896a) was repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

§ 39

- H. Participants
- I. Common provisions
- 1. Kinds and regulation of the legal position

In the absence of other provisions of law or trust instrument, the settlors, trustees and beneficiaries, including the reversioners, shall be deemed to be participants, irrespective of sex and, where the law or the trust instrument does not determine to the contrary, the participants occupying the legal position in each case, or individual kinds of these, singly or plurally.

Insofar as within the intendment of individual regulations persons other than settlors, trustees or beneficiaries are members of offices or bodies or such persons are entitled to rights and obligations, in particular a liability or a liability to make further contributions for the obligations of the trust enterprise, they shall, in this regard, also be deemed to be participants (irregular participants).

The trust deed or the trust articles may provide the regulation of the legal relationship of the participants to the trust enterprise, between themselves and between third parties, within the framework of the law, in a special regulation (internal regulation) signed by the managing trustees or other competent offices, which insofar as it contains facts or circumstances which require registration, shall be submitted to the Trust Register, either in the form of a notarised excerpt, or the original.

If a participant is entitled to a right and, in particular, to an expectancy, each participant shall be permitted to inspect the trust instrument provided and inasmuch as the documents concerned are not deposited with the Public Register Office as Trust Register Office and he may at his own expense make copies of the documents (articles, regulations and similar) or, if they are duplicated, demand, with appropriate reimbursement of the cost, that copies be supplied.

§ 40

- 2. Rights and duties in particular

Within the scope of the law, the provisions of the trust instrument shall be applied to their rights and duties towards the trust enterprise, between themselves and towards third parties. These are followed in priority by the provisions concerning trusts in general and, in addition, supplementally, provided it is not

determined otherwise as the result of the absence of members, the nature of the trust and the position of the participants, by those concerning membership under the general regulations concerning legal entities.

Where a person occupies the position of a trustee (co-trustee) and a beneficiary (co-beneficiary) simultaneously, the duties of a trustee shall take precedence.

Where, apart from possible contributions to the trust fund or liability or liability to make further contributions, one or several participants commit themselves in writing, in the trust instrument or otherwise, to recurring cash or other payments (acts or omissions) also, in particular, to payments relating to cartels or combines, the relevant regulations of the private company with limited liability shall hereupon be applicable accordingly.

Insofar as the prerequisites for this exist, documents enforceable by execution may also be drawn up concerning the obligations of the participants or third parties towards the trust enterprise, such as contributions to the trust fund or similar or concerning the obligations of the trust enterprise towards participants, under reservation of the creditors' rights.

Should the timely exercise of a right by a participant be endangered, the competent authority may also, upon demand of the participant, proceed by taking safeguarding measures.

Where pursuant to the law or the trust instrument rights are conceded to or duties are imposed upon a participant vis-a-vis another participant, this other participant shall, in the absence of a deviating regulation, have corresponding duties and/or rights vis-a-vis the first participant.

§ 41

The trust instrument may regulate more specifically the legal relationship between the participants or between the individual groups of participants as, for example, between the trustees and the beneficiaries, by creating a governing body, and set out the rights and duties of these organised participants, such as the mutual assertion of rights vis-a-vis the trust enterprise or other participants or similar.

3. Governing bodies
- a. In general

Where such a governing body is provided without more explicit implementation or unsatisfactorily, the provisions concerning the supreme body under the general regulations concerning legal entities, above all, supplementally, the provisions concerning minority rights shall be applicable where doubt exists, insofar as a deviation does not result from the nature of the trust or the absence of membership.

Even where the trust instrument does not make provisions for a governing body, groups of participants who are in the same legal position may create such a body by means of internal regulations or the like which they shall sign or under a legal form provided otherwise in the law. However, provisions drawn up in this manner may not contravene mandatory laws, the settlor's directives, the articles or public order or morals, otherwise nullity shall be declared.

Insofar as resolutions of bodies may, pursuant to the applicable regulations, be rescinded or cancelled ex officio, the implementation of the proceedings shall be expedited.

§ 42

b. Resolutions
and member-
ship

Where pursuant to the law or the trust instrument the participants or third parties have the right to elect or to vote, or both, and it is not determined to the contrary, each person entitled to vote shall have one vote and, if securities are issued, one vote for each security when voting takes place and resolutions are passed. Otherwise, the regulations concerning the right to vote and the resolutions under the general regulations concerning legal entities shall be applied supplementally.

Where a certain number of participants announce their intention to participate in the passing of a resolution of the supreme body or in this manner and for this purpose deposit voting right securities, but owing to an unforeseen or unavoidable circumstance are prevented from taking part and as a result a different resolution is passed, these participants may, within ten days after the passing of the resolution, by casting their vote by means of a substantiated petition to the trust enterprise and the Register Office, demand from the latter, at their own expense, the pro-

posed amendment of the resolution (subsequent amendment of a resolution) in extrajudicial proceedings, after hearing the trust enterprise, the supreme body concerned or the like.

Meanwhile, however, legally significant acts pursuant to the earlier resolution undertaken by the competent party relating to bona fide third parties shall remain valid in law, notwithstanding the possible claims of those who had been hindered, arising from the responsibility or from the taking of other admissible measures.

In the case of a body with the right to vote, which passes its resolutions with a majority, the majority of the participants concerned may not, in their position as implied trustees vis-a-vis the minority, violate the interests of the trust enterprise to the detriment of the minority or public morals.

Pursuant to the regulations concerning the supreme body in the case of legal entities, adverse resolutions may be overruled and the participants concurring with the majority shall be liable as joint and several debtors to the trust enterprise and/or the participants belonging to the minority who suffered damage, pursuant to the regulations concerning tortious acts, for all the damages accruing to the trust enterprise and/or the individual participants.

A membership, as in the case of legal entities with members, may be conceded to the participants only with the assent of the Register Office.

§ 43¹⁾

Insofar as this is prescribed in the general regulations concerning legal entities or particular provision is made in the trust instrument, an audit authority shall be appointed to whom the regulations concerning the audit authority whose possible members may not at the same time be managing trustees, under the general regulations concerning legal entities shall, in the absence of a deviating provision, be applied accordingly.

By furnishing their names, first names, information concerning profession and place of residence or company name and domicile

c. Supervisory
trust body

¹⁾ § 43 in the version of the law dated 15 April, 1980, LGBl. 1980, No. 39.

of the trustees or other bodies or persons competent by virtue of the trust instrument, the members of the audit authority may be registered for the purpose of entry in the Trust Register.

However, provision may also be made in the trust instrument for a board of trustees as supervisory trust body, comprised of one or several participants or third parties. Insofar as the general provisions concerning legal entities prescribe a mandatory audit authority, such a board of trustees may be provided additionally, beside the audit authority.

If the law itself does not determine to the contrary, the provision concerning the audit authority's responsibility, under the general regulations concerning legal entities, shall also be applicable accordingly to the members of the supervisory trust body.

The ordering of an official trust supervisory body and an official audit shall remain reserved.

§ 44

4. Statutory limitation

Insofar as the law does not determine to the contrary or the law as a whole is not concerned, individual claims of the trust enterprise against participants who are not trustees or are no longer trustees shall become statute-barred three years after their due date.

Individual claims of the participants as such against the trust enterprise shall become statute barred three years after their due date in favour of the trust enterprise, if the law as a whole is not concerned or if it is not determined otherwise.

Insofar as these are not against active trustees and with reservation of the provisions concerning responsibility, claims of the participants between themselves arising from the trust relationship shall become statute barred in the same period of time after the due date.

Shorter statutory periods of limitation, the possibly longer statutory period of limitation in the case of a punishable act and special regulations of this law remain reserved.

The regulations concerning statutory limitation shall be applied accordingly to the irregular participants as such.

§ 45

The regulations concerning domicile and legal venue under the general regulations concerning legal entities shall be applied accordingly to the legal and administration venue relating to the participants as such.

Insofar as the law has not drawn up mandatory regulations, the trust instrument may provide for an impartial court of arbitration or a conciliation board of this kind for all participants' disputes between one another and vis-a-vis the trust enterprise or for the one or the other, analogous to domestic or foreign law, regardless of whether the participants concerned have signed the trust instrument or not.

The final and conclusive decisions of such a court of arbitration shall be enforceable by execution in the same manner as the judgment of a domestic court, insofar as the said decisions do not violate public order and morals.

- 5. Legal venue, court of arbitration and procedural position of participants
- a. In general

§ 46

In legal and administrative matters including administrative cases of the trust enterprise as well as of all or groups (categories) of participants as such, every other legally interested participant as such, including the entitled reversionaries may, at their own expense, in the absence of a wider directive, appear as intervener, or in the same capacity, jointly with one of the parties. Moreover, in the absence of entitled beneficiaries and reversioners the representative of public law may appear, at the expense of the trust enterprise, as intervener, or in the same capacity, jointly with one of the parties. Where, however, the law admits participant minorities as a party in the same way as member minorities in the case of legal entities, the participants belonging to this minority may, at their own expense, appear on one side or the other.

Where in official proceedings all or individual participants are to be taken into consideration, whose existence or place of residence or name is unknown or in doubt, the Public Register Office may, in order to safeguard the interests of the participants concerned, following public citation or without the latter, upon application of participants or legally interested third parties or ex

- b. Procedural position of participants
- aa. In general

officio, nominate a procedural trustee who may appear or be held responsible, alone or jointly with other participants.

In the event of the lapse of a participant, the remaining participants or the procedural trustee appointed by the Public Register Office pursuant to the foregoing paragraph may, as a rule, continue the already commenced proceedings or other official proceedings, usually without interruption.

Insofar as adjudication issued against the trust enterprise or against all or groups of participants is also binding for or against one participant, the said participant or the opponent concerned shall be entitled to enter a plea of *res judicata* against later proceedings or against a later adjudication concerning the same matter, provided the law does not determine otherwise.

Where upon application of participants, third parties or *ex officio* the Public Register Office is required to intervene, it shall, unless important reasons exist, such as danger of default and similar, if possible, hear the trustees engaged in the conduct of business and other legally interested participants or, possibly, a trustee or representative officially appointed for this, before the issuance of an order or the pronouncement of a decision.

§ 47

bb. Virtual representation

Moreover, one or several participants may with the assent of the authority concerned, initiate an official procedure for other, for some reason unknown or uncertain participants with a common, legal interest or appear on one side or the other in such a procedure, where the unknown or uncertain participants are numerous.

These last mentioned participants may cite the issued final and conclusive adjudication insofar as no detrimental intention or disadvantageous understanding whatsoever exists between the participants taking part in the procedure and the opposing party or the interests of the acting party were not in conflict with those of the others, who may deduce rights from the adjudication.

§ 48

Where the regulations concerning the supreme body do not determine differently with respect to all or groups of participants or the trust instrument or the provisions concerning virtual representation or other regulations of the law do not determine differently with respect to the assertion pursuant to the law of rights of the trust enterprise or of all or groups of participants and where such a right has not been asserted by all the participants and not to the full extent, for the trust enterprise or for all of them or it was not desired or not possible to realise or fully realise the right embodied in the procedure, derived from a person (company or legal entity) who appeared as claimant in the procedure, e.g. as the result of acknowledgement, waiver, default of appearance, settlement or similar, or where the right itself has not been dismissed with respect to all these persons, the trust enterprise or its entitled persons who appeared as claimants cannot assert its (their) rights completely or within the scope of what remains of the said rights independently and separate from previous proceedings, insofar as they, as the intervening party or similar in another proceeding, have not acknowledged the claim for themselves or waived the said claim.

6. Position of the sued party

Where the same rights are asserted, completely or partly, by different claimants in the same proceedings which, however, are separate with respect to time, the said proceedings may, upon application of one party or ex officio, at the discretion of the competent government office, be combined.

A right which is not asserted by all entitled persons as well as the date for a possible hearing may, upon the application of a party, be announced pursuant to the trust articles or, if this is not possible, in the manner determined for official announcements or as directed at the discretion of the competent government office.

If only individual entitled persons take action, the answerable person may, moreover, at the claimant's expense, make an application with warning and effect, for a public citation pursuant to the regulations concerning the determination of beneficiaries, which shall state that the other entitled persons may only advance a further claim if the answerable person, as a result of his intentionally detrimental conduct, fails to comply to the full extent

with the asserted right. Similarly, the answerable person may also make application for the appointment of an official trustee for the remaining entitled persons for the retrieval and supplementation of the right not asserted or not fully asserted by the claimant.

§ 49

II. Settlor

In case of doubt, the settlor shall be deemed to be the person who supplies or undertakes to supply the trust fund with assets.

Notwithstanding their other and simultaneous position as trustee or beneficiary, the trust instrument may, within the frame of the law, only concede rights to the settlors (trustors) as such or their universal successors in title against the trust enterprise or the other participants as such provided they do not exist as a continuous and exclusive influencing control on the organisation or trust management of the trust enterprise. An exception to this shall exist in the right to supervise in the case of non-profit making or similar trust enterprises.

Insofar as the settlors who, without valuable consideration, donated the trust fund and on the basis of this donation created, without valuable consideration, the beneficial interest of others are not also entitled to the legal position of trustee, they may demand, pursuant to the law, within the same scope as entitled beneficiaries, that other participants or third parties observe the trust instrument.

If the regulations concerning the trust fund do not determine otherwise, the provisions relating to default in the case of the beneficial interest shall be applied accordingly to the settlor's default in the case of other obligations.

The regulations concerning the other rights and duties of the settlor pursuant to the law or the trust instrument, particularly those concerning the settlor's creditors, remain reserved.

§ 50

The trust instrument shall regulate appointment and substitution in the event of the lapse of a trustee for any reason such as death, inability to act, removal, notice or similar reason, if no other provision is made.

Where only certain persons entitled to enjoyment of the trust are present, they may, if need be, with the consultancy of a trustee appointed by the Register Office for the unknown or uncertain entitled beneficiaries, appoint or remove, etc. trustees by a unanimous resolution passed at a meeting or by means of a circular letter. Such actions shall be at the expense of the enterprise.

Pursuant to the trust instrument, the right to appoint or remove or to propose (right of proposal) may be left to all or individual trustees, all or individual participants or third parties or the Register Office may be appointed to perform this duty, without it being under obligation to execute such a directive.

- II. Trustee
- 1. Appointment, removal, notice, etc.
- a. In general
- aa. In the case of trust enterprises without divisions

§ 51

Where a trust enterprise is comprised of several divisions or if someone is appointed as trustee where there are several trusts within the same trust enterprise or for only one branch establishment, it shall be stated precisely in each case, in the absence of any other directive, for which division, other trust or branch establishment an appointment or proposal shall be made or a removal effected.

In case of doubt, a person may accept or decline the post of trustee only with respect to all divisions, special trusts or similar, insofar as the said person was appointed trustee pursuant to the same directive throughout.

- bb. With divisions and in the case of several trusts, etc.

§ 52

In the absence of any other directive, the right to appoint trustees shall be exercised by the person having a right to remove trustees under reservation of the appointment of a Register Office or public trustee pursuant to the regulations concerning trusts in general and the provisions otherwise drawn up.

- b. Appointment
- aa. Right to appoint

Where less than three trustees are appointed pursuant to the trust instrument, the trustees may, at the expense of the trust enterprise, appoint new trustees in addition to those already appointed (supplementary trustees) or substitute trustees, for the event of inability to act, etc., with the same rights and duties as they themselves have.

The Register Office may, for important reasons, upon application of participants or ex officio, appoint or remove trustees, supplementary trustees or similar, with or without observance of the trust instrument, for the entire trust enterprise, for a part of the trust assets to be set aside or already set aside, a fund, a branch establishment or, in the event that the preconditions exist, for the appointment of a judicial trustee pursuant to the regulations concerning the trust in general, pursuant to these provisions.

§ 53

bb. Choice and
duty to disclose

Following the lapse of a trustee, that person having the right or the duty to appoint trustees may also appoint himself as trustee, provided he has not been removed as trustee and provided there are no other important reasons which would preclude his appointment.

Whenever trustees are appointed subsequently, every possible attention should be paid to the commercial, financial, technical, etc., proficiency of the trustee and to the said trustee's personal relationships to the other participants, having regard to the objects of the trust enterprise.

As soon as the attributes of the trustee and the reason for the appointment of a trustee for the person represented or lapsed or for the adjudicated bankrupt are known to legal representatives, universal successors in title, legatees, administrators, liquidators, trustees in bankruptcy or of an estate, etc., they shall be under obligation at the expense of the enterprise, to announce this to the persons authorised or under obligation to appoint, possibly to the Register Office and provisionally to carry on the transactions of the trust up to the time of the appointment of the substitute and,

pursuant to the regulations concerning tortious acts, shall be liable for losses accruing to the trust enterprise or other participants as the result of grossly negligent or intentional violation of this duty.

§ 54

In case of doubt, the right to remove shall not also embrace the right to withdraw from the person removed the authority to appoint or to propose other suitable trustees, the enjoyment of the trust and other rights to which he is entitled without being a trustee.

c. Removal
aa. In general

A trustee may, for important reasons such as, for example, conflict of interest, unsuitability or incompetence for the position of trustee, etc., be removed, with immediate effect by the remaining trustees, possibly upon application by participants and in urgent cases ex officio by the Register Office, without prejudice to possible claims of the person removed against the applicants where the Registrar is not concerned or against the applying participants, arising from contract, tortious act or on grounds of violation of personal relationships and with reservation of the right to take further the decision to remove.

Trustees appointed by the Register Office or other authorities may be removed only with the assent of the authority concerned.

The provisional withdrawal (termination) of a trustee's right to conduct business may ensue at the discretion of the Register Office upon application by participants and also with the corresponding application of the regulations concerning the withdrawal of the authority to represent in the case of the general partnership, with reservation, however, of claims pursuant to the second paragraph.

§ 55

Where in fulfilment of the duties of a trustee pursuant to the law or other directive a person has provided the trust enterprise or all participants with security or has otherwise provided a guarantee, the said person shall be entitled, in the event of the security

bb. In the case of
security deposit
by third parties

or guarantee provided being endangered as the result of the behaviour of the trustee, to demand from the authority empowered to remove, possibly at the Register Office, the removal of the trustee endangering the said persons's security or to demand other measures for his protection.

Should his demand not be complied with, he may, in the absence of further agreement, terminate his relationship with immediate effect, in such a manner that his security may not be used for future obligations; in addition, he may, provided claims do not already exist, demand the return or cancellation of the security provided and, if necessary in case of doubt, compensation pursuant to the principles of the law of contract.

The other powers to which third parties are entitled, existing as the result of a suretyship or other legal relationship, shall remain unaffected.

§ 56

d. Termination
aa. In general

A trustee may at any time and at his own expense give notice of termination to the other trustees and, possibly, to the Register Office. The said trustee shall, however, continue to perform his duty until an appointment by substitution has been made, pursuant to the trust instrument and at the expense of the trust property.

For important reasons, a trustee may resign from his post with immediate effect. Such resignation shall be announced to the other trustees or to the competent bodies, to the Register Office if necessary.

Should only specifically designated entitled beneficiaries be present, a trustee may, with their assent, resign his post at any time, even if the trust instrument determines otherwise. The same shall apply in all cases with the assent of the Register Office.

§ 57

bb. Meaning

Where a person is a trustee with several trusts which are connected or with several divisions or branches of a trust enterprise the notice to terminate shall, in the absence of another trust directive, be valid with respect to all trusts, divisions or branches,

provided all the entitled beneficiaries do not determine otherwise or important reasons do not justify an exception with the assent of the Register Office.

Where, independently of his position as such, a trustee is conceded the right to appoint, propose or remove trustees with the same trust enterprise or with other trusts connected with this, it shall be assumed that the notice of termination shall not also extend to this right.

§ 58

Each appointment, removal or notice of termination or each proposal shall be issued in writing by those empowered or under obligation to do so or otherwise be invalid and, in the absence of other legal regulations, be announced to the trust enterprise, where necessary to the Register Office.

Appointments shall be made with the written assent of the person to be appointed. By way of substitution, appointments may also ensue by the person to be appointed submitting his signature in due form to the Register Office.

In the case of trust enterprises registered in the Trust Register, these procedures shall be registered and the facts and circumstances to be registered shall be provided.

§ 59

Trustees shall fulfil their duties up to the time a successor is duly appointed and, if necessary, registered with the Register Office, unless the law, the trust instrument, all those entitled to enjoyment of the trust or the Register Office were to determine otherwise or circumstances cause a change.

Trustees who are appointed by substitution or, otherwise, subsequently or who are remaining shall, in the absence of a deviating directive as, for example, where a special form is provided for the transfer of rights and duties or concerning signing or a regulation exists concerning the protection of the bona fide third party, enter at once into the same legal position as their predecessor, but not into the same legal relationships originating from responsibility, from personal liability or liability to make further

e. Form

f. Effect

aa. For those appointed, removed, giving notice of termination, etc.

contributions or other purely personal legal relationships as their predecessors or co-trustees.

The obligations entered into by the trustees or originating from the engagement itself shall remain unaffected by removal, notice of termination or similar procedures.

Where trustees are mentioned in the law or in the trust instrument, it shall be understood, where doubt exists, that additional or substitute or similar trustees are also included.

§ 60

bb. In the case of default or non-exercise of the right or the obligation to appoint, remove, propose or similar

Where only one person is entitled or under obligation to appoint or remove or propose and fails to exercise this right or fulfil the accepted duty or fails to do so in due time, appointment, removal or proposal may, in the absence of any other directive, also be effected by the bearers of beneficial interest, jointly if need be with the next living entitled reversioners, pursuant to the regulations concerning the organisation of the beneficiaries.

In the case of other trust enterprises and in other cases, the appointment, removal or the utilisation of the proposal, where a person is appointed to undertake this alone, but fails, is unable or unwilling to exercise the right or the duty, shall, in the absence of any other directive, be undertaken by the Register Office upon application by participants.

Should several persons be appointed to cooperate in the exercise of the same rights and duties and some of those appointed cannot or will not cooperate in the exercise of the right or duty, the remainder shall be entitled or under obligation to exercise the said right or duty and if all those appointed for this purpose cannot or will not cooperate, the foregoing regulations shall be applied accordingly.

Upon application by participants, the Register Office may, for important reasons, temporarily or completely suspend or cancel the right or the duty to appoint, remove or propose, or entrust another person with the right hereto, with reservation of possible claims by the persons affected against the culpable applicant, arising from an agreement, a tortious act or on grounds of violation of personal relationships.

Where a person culpably fails to fulfil or to fulfil in due time the accepted obligation to appoint, to remove or to propose, the said person shall be liable pursuant to the rules of the law of contract to the trust enterprise and to all others who have suffered loss thereby, without restriction in the latter case and, if the case arises, jointly and severally.

§ 61

In the absence of any other provision and with appropriate application of the regulations concerning the board of directors in the case of companies limited by shares, co-trustees appointed pursuant to the trust instrument form a board of trustees (trustee board of management, a trust committee, a committee of trustees, or a similar body) which may elect and remove a chairman, a treasurer, a keeper of the minutes (registrar), etc., from among its members and determine the powers and duties.

In case of doubt, the chairman, cashier, keeper of the minutes, etc., shall be entitled to those powers and obligations which persons occupying similar positions in the case of legal entities in similar kinds of business are normally entitled to.

Within the frame of the law concerning the legal relationship between co-trustees and the trust enterprise, between co-trustees among themselves and between co-trustees and other participants, the trust instrument may provide a detailed arrangement concerning, in particular, the formation of the trustees as a body which, within the frame of the trust instrument, has an advisory capacity and the power to pass resolutions in a manner similar to that of the supreme body under the general regulations concerning the legal entity, and these resolutions shall be executed by the board of managing trustees, in the same manner as such resolutions are executed by the board of directors of a legal entity.

§ 62

Provided the trust instrument or the law does not determine otherwise, the trustees shall be entitled to manage jointly and they shall be under obligation to act and to decide jointly in good faith.

2. Organisation

3. Trust management
a. In general

In the case of non-profit making or similar trusts, however, a resolution of the majority shall, in the absence of any other directive, also be binding upon the minority of the trustees.

It may not be determined in the trust instrument that all trustees shall be excluded from the management, otherwise the rule from the previous paragraph shall apply.

Insofar as nothing otherwise emerges from the trust instrument, from the nature of the trust and the law, the relevant provisions concerning administration under the general regulations concerning legal entities shall be applied to the trust management accordingly.

Within the frame of the trust instrument and the law the trustees shall be empowered to undertake all business transactions in the execution of the purpose of the trust or the objects of the enterprise and shall be under obligation to take all possible care.

§ 63

b. Position of trustees not engaged in the conduct of business

Where in addition to trustees who are entrusted with the conduct of business and the exercise of trust authority, there are others, these shall be entitled by way of substitution to the same rights and obligations insofar as trust authority, as in the case of representation by the board of directors of a legal entity, is not involved or the law or the trust instrument does not determine otherwise.

Within the frame of the trust instrument, trustees who are not involved in the conduct of business shall, by operation of law, have the right and, depending upon the circumstances, also the duty individually or collectively or in consultation with impartial and disinterested specialists to satisfy themselves at the expense of the trust enterprise concerning the course of business, to examine the books of account and the papers, to demand information from those conducting the business and, at appropriate intervals, to demand the submission of accounts at any time, provided important reasons justify such action.

They may in good faith object to the undertaking of business transactions not executed, with the effect that these shall be dropped, otherwise the acting trustee shall be responsible to the enterprise and, if the case arises, also to the other participants.

§ 64

Within the frame of the law and the trust instrument, the trustees may delegate the conduct of business to individual trustees or third parties or, insofar as they lack specialised knowledge or it is customary, enlist persons who are able to give assistance and draw up regulations concerning the conduct of business, with the proviso that individual trustees or third parties may also be entrusted with the conduct of individual branches of the enterprise or with individual trust transactions, with or without remuneration, on the responsibility of all trustees for the choice they make and under their supervision.

c. Regulations (internal regulations) and transfer of management

Where co-trustees conduct business at their absolute discretion, jointly, they may not delegate the conduct of this business to one trustee alone.

A delegation of the conduct of business may, by virtue of the law, be revoked at any time by the trustees engaged in the conduct of business or, if danger exists in undue delay, by each trustee, with reservation of the obligations of the trust enterprise or of the trustees at fault by virtue of the contract, tortious act or on grounds of violation of personal relationships vis à vis the other party.

§ 65

Within the frame of the law and the trust instrument, the duties to be loyal conform with the regulations concerning the duties to be loyal in the case of trusts in general.

d. Duty to be loyal
aa. In general

In the conduct of business, trustees and representatives shall perform their duties with the care of an orderly business man and with the same attention as they devote to their own affairs and shall be liable for every culpable violation of their duties.

Trustees shall acquaint themselves thoroughly with the trust instrument and may not excuse themselves on grounds of ignorance of its provisions.

Unless the law or the trust instrument indicates otherwise, the trustees shall comply with the written instructions drawn up by all the beneficiaries including possible entitled reversioners pursuant to the regulations concerning the organisation of the beneficiaries.

Where without being at fault a person is appointed invalidly as trustee and acts in this capacity, the person concerned shall nevertheless be treated as a trustee in a relationship of good faith and shall be responsible from the day of his appointment, even though the appointment has not been entered in the Trust Register.

A restraint of competition exists for the trustees insofar as this is determined in the trust instrument or is required for reasons of equity.

§ 66

- bb. Personal interest
- aaa. In general

Each trustee shall be under obligation to avoid a conflict of his interests with those of the trust enterprise or the participants as such and, if a conflict has already arisen, to eliminate this.

Where contrary to the law or the trust instrument a trustee derives personal advantage from the trust enterprise, from resolutions and instructions of competent bodies if the occasion arises or in connection with the conduct of business, and customary, occasional gifts are not involved, the trustee concerned, as a constructive trustee, shall be under obligation to submit accounts, provide information and surrender the advantages or any substitute advantage in the same manner as an implied trustee.

The regulations concerning transactions in which personal interest is involved, applicable to trusts in general, shall otherwise be applied accordingly and in this regard the injuriously affected enterprise shall be entitled to the claims in the first place, followed by the injuriously affected creditors in the case of unsuccessful levy of execution or in the bankruptcy or administration proceedings of the trusteeship in bankruptcy or of the settlement administration and, lastly, the participants, if the creditors or participants concerned have themselves not co-operated in this connection.

Where a trustee is at the same time the sole entitled beneficiary he may, in the absence of any other directive, conclude transactions with himself or as a representative or body of others under the same prerequisites as in the case of a one-man legal entity.

§ 67

Within the intendment of the foregoing regulations and in the absence of any other directive, the trustees may acquire, hire, lease, etc. trust property from themselves, from a co-trustee or the trust enterprise only in the fullest openness of the acquiring transaction at public auction or with the assent of other beneficiaries or bodies authorised to give assent or the Register Office, unless the acquisition involved freely transferable beneficiary rights or rights such as those which are disposed of at the instigation of third parties, or unless something different might result from the business transaction.

bbb. Acquisition of trust property and beneficiary rights

The circumvention of this regulation as, in particular, the alienation of trust property to a third person for the purpose of re-acquiring this trust property before the transaction involving alienation is complete, is inadmissible.

Where trustees acquire, hire or lease from beneficiaries rights which are not embodied in freely transferable securities, they shall, if the beneficiary so demands, provide the said beneficiary, in good faith, to the best of their ability, with information concerning all the facts and circumstances influencing the alienation price, otherwise liability for the transferor's damages shall be incurred pursuant to the rules of the law of contract for a statutory period of limitation of three years from the date of alienation.

The foregoing regulations shall be applied accordingly where trustees alienate, hire or lease, etc. to beneficiaries trust property or beneficial interests or individual claims therefrom.

In addition, the regulations concerning surrender and the claim on account of unjust enrichment in the case of unjustified alienation or charging of trust property remains reserved.

§ 68

If nothing otherwise is indicated by the law or the trust instrument or the circumstances, trustees, upon demand, shall equitably provide each entitled beneficiary and each entitled reverser, insofar as their rights are concerned, with information relating to all facts and circumstances and in particular to the

cc. Obligation to disclose
aaa. To beneficiaries

status and the investment of the trust assets, report at appropriate intervals and submit accounts and also explain why they have not actually maintained or achieved the assets including yield which, according to the usual course of events or according to other circumstances, they should have maintained or achieved or been able to maintain or achieve.

In the absence of other provisions in the law or the trust instrument, trustees shall be under obligation to allow the entitled beneficiaries, including the entitled reversioners, insofar as their rights are concerned, at their expense, to examine, personally or through a representative, all the books of account and papers and to copy these and to inspect and examine all facts and circumstances and in particular, the accounting.

Should the foregoing rights not be asserted jointly by all the entitled beneficiaries including all the entitled reversioners, the assertion, in the absence of another directive, may ensue only insofar as it is not demanded with dishonest intent, in a wrongful manner or in a way which conflicts with the interests of the trust enterprise or other entitled beneficiaries or reversioners or insofar as it is demanded in good faith.

§ 69

bbb. To co-trustees, etc.

Trustees shall provide each other with information in the same way as they provide entitled beneficiaries with information, i.e., not only relating to individual transactions concluded by themselves but also relating to other facts and circumstances.

Trustees or their universal successors in title who lapse for any reason shall, to the best of their ability, provide succeeding trustees with unrestricted information concerning all facts and circumstances and hand over all the books of account, papers or assets concerning the trust enterprise insofar as they are not entitled to a right of offset or retention relating to the latter.

Succeeding trustees shall examine the business conducted by lapsed trustees according to the requirements of the circumstances and assert possible claims of the trust enterprise against them or their successors in title.

§ 70

Within the frame of the law and the trust instrument, the powers of the trustees are determined in case of doubt, by the regulations concerning trusts in general, and possibly by the instructions of the Register Office.

e. Trust powers
aa. In general

Where at the discretion of the trustees engaged in the conduct of business it appears necessary and the trust instrument does not make any other provision, these may conclude arbitration and conciliation agreements on behalf of the trust enterprise and establish branches, possibly with special trustees.

Where branches are established by registered enterprises, they and the trustees or representatives concerned must be registered in the Trust Register for the purpose of entry and publication and the facts and circumstances required to be registered must be declared.

§ 71

Within the frame of the law and the trust instrument, trustees as creditors may demand settlement of their claims (reimbursement of expenses and applications on behalf of the trust enterprise and of the losses they incur which accrue from the enterprise, furthermore, release from the obligations entered into at their expense in the interests of the enterprise or otherwise as well as for trustee fees and the reimbursement of the interest customary in the country) only insofar as they are not to blame for their accrual and the claims appear to be justified by the circumstances.

bb. Claims for compensation and trustee fees
aaa. In general

Where a trustee fee is not or not adequately provided for in the trust instrument and nothing otherwise is indicated by the legal relationship between the participants, the Register Office may, under reservation of other admissible directives, validly determine a trustee fee which is commensurate with the circumstances, after hearing the participants.

Where claims of the trustees as such have been satisfied by another party which, in addition to the trust enterprise, was under obligation to do so, the right to satisfaction from the trust enterprise passes, in the absence of any other agreement, insofar as the claims were well founded and the right to compensation pursuant

to the underlying legal relationship is not excluded, by operation of law to the other party.

The claims of the trustees as such take precedence over the claims against the trust enterprise arising from the beneficial interest if the law or the trust instrument does not determine otherwise.

§ 72

bbb. Assertion

The claims of the trustees arising from the conduct of business are directed, with reservation of the law of settlement and retention, against the trust enterprise in the first instance and with this end in view claims are to be made first against the yield and then against the trust property itself. In the second instance, the claims are directed, in the absence of any other order, against those beneficiaries who, in the individual case, are enriched or who have derived benefit without valuable consideration from the trust enterprise or from the acts of management.

Where several beneficiaries have enriched themselves or have derived benefit without valuable consideration, the claim for compensation shall be made in proportion to their beneficial interest, as they derived benefit or enriched themselves.

Where claims can be made against the trustees for obligations of the trust enterprise, the trustees may, provided the enterprise does not, for instance, have a right to claim compensation from them, or nothing else is indicated, also surrender trust property in lieu of performance.

A trustee shall forfeit his claims up to the extent of the damages caused by a breach of trust, with reservation of further possible claims by the enterprise and other injured parties.

§ 73

4. Trust powers
a. In general

Within the frame of this law and the trust instrument, the provisions concerning representation by the board of trustees under the general provisions concerning legal entities shall be applicable with respect to scope, duration, effect, exercise, etc., then, supplementally, those concerning the trust power under the trusts in general and those concerning the conduct of trust business.

Those trustees appointed to exercise the trust power as well as others with signature rights and the right to terminate or amend the trust power or the authority to represent shall, in the case of enterprises entered in the Trust Register, be registered without delay, with the addition of the proof of their appointment and the relevant facts and circumstances capable of registration shall be declared, insofar as a re-appointment is not involved.

A transfer of the trust power as a whole or in individual parts is admissible within the frame of the trust instrument pursuant, if necessary, to the law or the regulations concerning the transfer of the conduct of trust business.

Art 74

In the event of danger resulting from undue delay or if other important reasons exist, the Register Office may, regardless of the admissibility of appointing legal advisors, upon application of participants or ex officio and after hearing or without hearing participants, also appoint and likewise remove authorised signatories or other representatives for the trust enterprise, or a division or a special trust or, finally, a branch office.

b. Appointment of representatives by the Register Office

The removal, however, may only take place, notwithstanding the possible claims of those removed against the suspected participants, by virtue of the agreement, owing to tortious act or on grounds of violation of personal relationships.

§ 75

Trustees who conduct business and other bodies or representatives of the trust enterprise shall be appropriately entitled by operation of law to at least those powers and be subject to those obligations which are provided under the general regulations concerning legal entities for representation in the case of the board of trustees, with reservation of deviating provisions of the law.

c. Minimum trust authority and minimum representative authority by operation of law

Where it is not determined to the contrary and, possibly, is also registered in the Trust Register, or a priority is not involved, trustees who conduct business shall exercise their trust authority jointly.

Where the co-trustees have not acted collectively, such an act, in the absence of any other directive, shall require the approval of the remainder in order to be effective with respect to the trust enterprise, without prejudice to possible claims of the injured party and bona fide third parties against the party who acted.

However, a statement or an announcement may be validly handed in to the trust enterprise and also to one of the trustees engaged in the conduct of business, or to a representative, in the same manner as to a member of the board of directors of a legal entity.

§ 76

d. Signature rights

The trustees appointed to exercise trust authority as well as others authorised to sign shall, in the case of trust enterprises with obligation to register or of those which register voluntarily, when registration first takes place, sign their signature before the Registrar or submit it in a certified form as in the case of the board of directors as a body of a company with legal personality or their representatives. The same act of signing before or the submission of a certified signature to the Registrar shall be performed by those appointed subsequently if, at a later date, there is a change in the composition of these trustees or authorised signatories or in the trust authority or authority to represent.

In the absence of any other trust directive and, possibly, entry in the Trust Register, signing on behalf of the trust enterprise in dealings with third parties shall, in the case of co-trustees, be undertaken by all the trustees in the same manner as by members of the board of directors of a legal entity in order to be valid with respect to the enterprise and third parties, and a seal or suchlike may also be used for the printed company name.

Should signing not ensue in the prescribed manner, those who act shall be liable jointly and severally to the trust enterprise and bona fide third parties in the event that the trust enterprise repudiates the validity of the transaction.

Where transactions are undertaken on behalf of the trust enterprise verbally or in a similar manner, without signature, this

shall be made recognisable to third parties and, if necessary, shall ensue jointly, in order to avoid the previously mentioned consequences.

§ 77

The relevant regulations relating to legal entities shall be applied accordingly to the evidence of authority to deal with authorities and individuals, on the understanding that the authority appointing a trustee or a competent third party may also issue a document which provides evidence of authority.

e. Evidence of authority

Where a document is issued providing evidence of the trustee's authority, the trustee shall be under obligation to return the document to or deposit it with the Register Office after the termination of his trust authority, for the trust enterprise to dispose of freely.

Should the trustee not be held to this by the trust enterprise or, possibly, by the universal successor of the trust enterprise, the trust enterprise or the said universal successor in title shall be responsible, with the right of recourse to the trustee, to the bona fide third party, unless the third party has knowledge from elsewhere of the termination of trust authority.

§ 78

Where the law does not determine to the contrary, beneficiaries and the like shall be deemed to be those who pursuant to the trust instrument draw benefit from the trust enterprise, either at the present time or at some time in the future, either as a share in the yield or the trust assets, or both, regardless of whether the beneficiary has a claim thereto or not, or whether security documents have been issued concerning the beneficial interest or a non-profit making or similar trust enterprise is involved and with reservation of the beneficiary's simultaneous claims otherwise due as a participant or third party.

IV. Trust beneficiaries
1. Beneficial interest in general
a. Kinds

Provided the beneficial interest of persons is not excluded, recipients of beneficial interest (holders of beneficial interest) shall be deemed to be those persons who, pursuant to the trust instru-

ment or the law are actually entitled in a prescribed manner to a specifically designated benefit and should they also have a legal claim thereto shall be deemed to be entitled beneficiaries (entitled to enjoyment of the trust).

Where the right of beneficial interest in general is limited to a strictly defined circle of persons (firms or legal entities) and after the lapse of the holders of beneficial interest others, on the basis of the trust instrument, are designated as beneficiaries, pursuant to a certain arrangement, by virtue of a legal claim, to succeed as holders of beneficial interest, the latter shall have reversionary rights (entitled reversioners).

Where it is not determined to the contrary, the expression beneficiary or trust beneficiary or enjoyment of the trust shall also embrace the reversioner with and without claim, in particular also the allottee and the beneficial interest also the reversion.

§ 79

b. Legal nature of the beneficial interest, etc.

Beneficial interest may be qualified, limited, tied to a condition or the like or also be dedicated for impersonal purposes.

Within the frame of the law, the right of the holders of beneficial interest, which rests upon the trust instrument, is restricted solely by this and by the possibly existing reversionary right of others.

Where the trust instrument allows beneficial interest and reversionary rights, such rights shall be treated solely as restricted creditor rights which, utilised pursuant to the law and the trust instrument, may be applied and transferred to others.

It may be determined by way of ordinance that, in the case of the relevant provision in the trust instrument being otherwise invalid, the designation of the beneficiaries may not be deferred or the yield or other advantages deriving from the trust enterprise may not be left undistributed or, similarly, that the non-disposal of trust property or beneficial rights may not be extended for longer than the period allowed for the nomination of a reversionary heir insofar as important reasons do not justify an exception, as in the case of non-profit making trust enterprises or inalienable trust property or similar property.

§ 80

The trust beneficial interest may accrue with or without valuable consideration, for instance by the remittance of purchase payments, regular payments or similar means, by the settlor for the beneficiaries or by the latter as settlors to the trust enterprise and with or without the issuance of security documents relating to the beneficial interest, insofar as the trust instrument does not provide for a non-profit making trust or a trust having a similar purpose or object with beneficiaries not appointed beforehand or with impersonal beneficial interests, etc.

Rights and obligations arising from the beneficial interest may, particularly pursuant to the trust instrument, also after the trust enterprise has been formed, be constituted by original beneficiaries for other participants or third parties as new beneficiaries in the same or in a different manner or gradually (successively constituted beneficial interests).

Certain bodies or offices or third parties may be conceded the authority to grant trust beneficial interest or to withdraw same at their absolute discretion or owing to the discontinuation of certain prerequisites or a right of provisional acquisition or redemption of the beneficial interest, effective with respect to all parties, may be conceded against payment of a redemption sum in the event of the said beneficial interest being alienated or the like. Upon application of the trustees conducting business or otherwise competent offices, the said provisional acquisition or redemption of the beneficial interest may be annotated in the Trust Register.

The acceptance of the rights derived from the beneficial interest by the beneficiaries anticipates that only advantages are associated therewith and that the circumstances do not indicate otherwise.

The accrual and loss of beneficial interest may be regulated also without the existence of a membership, as a deviation and analogously, pursuant to the rules concerning the acquisition and loss of beneficial interest drawn up in the case of registered cooperative societies.

- c. Acquisition and loss (existence and loss)
- aa. In general

§ 81

bb. Gratuitous beneficial interest and sociopolitical beneficial interest

In particular, beneficial interests may also be conceded without contribution by the beneficiaries to the trust fund or otherwise to the trust enterprise (gratuitous beneficial interests including gratuitous reversionary interests) and sociopolitical beneficial interests.

Where doubt exists regarding the latter kind of beneficial interests, the regulations concerning sociopolitical share and profit rights in the case of legal entities shall be applied accordingly.

The regulation concerning gradual distribution from the trust assets remains reserved.

§ 82

cc. Special skill

Where pursuant to the trust instrument the existence or non-existence of a certain attribute (skill) as, for example, belonging to a certain profession or circle of people or a family, domicile in the country or in a certain commune, etc., is required for the acquisition (the conferment) or the loss of the beneficial interest, this attribute, in case of doubt, must or must not exist at the time of devolution of the possession of the beneficial interest upon the reversioner.

Where the position of beneficiary may only be occupied during the existence of such an attribute, this attribute must, in case of doubt, continue to exist for the period of time concerned.

§ 83

dd. Convertible creditor and beneficiary rights

In particular, the creditors of a trust enterprise may also be granted the right to convert their creditor rights into ordinary or preference beneficial interests which may be combined with the possession of a security (convertible bonds)

Conversely, the entitled beneficiaries may, in the same manner, be granted the right to convert their beneficiary rights into unconditional creditor rights (convertible beneficial interests).

The application of the regulations concerning the gradual distribution of assets to the conversion of convertible beneficial interests remains reserved.

§ 84

The trust instrument may grant the beneficiaries a right of termination for withdrawal from the beneficiary relationship, to which, in the absence of a detailed directive, the regulations concerning notice of termination in the case of registered cooperative societies shall be applied supplementally.

ee. Notice of termination, etc.

Should the trust instrument also grant a beneficiary with a claim to the delivery of a part of the trust fund or similar, the right, under certain circumstances, such as notice, etc., to withdraw from the beneficiary relationship, the withdrawal shall be effective only provided the regulations concerning the gradual distribution of trust assets are observed.

§ 85

The trust instrument may also determine the reasons for which a beneficiary may be excluded from the trust relationship by the trustees or another office.

ff. Exclusion

Following notification of exclusion by the trustees or the competent office as trustees, the beneficiary may no longer be active, unless danger exists in undue delay, and from this time on shall be excluded from exercising a possible right to vote or any similar right.

The exclusion shall be null and void if the regulations concerning the gradual distribution of trust assets have not been observed.

The claims of the excluded party against the suspected parties in another legal relationship, such as an agreement, a tortious act or on grounds of violation of personal relationships, also remain reserved.

§ 86

Where the beneficial interest from a trust enterprise is handed over to the entitled beneficiary, pursuant to the settlor's directive, without valuable consideration, the settlor or the settlor's legal heir, provided the latter personally is not unworthy of the trust, shall have the right to revoke possession of the beneficial or rever-

ggg. Revocation
aaa. On grounds of unworthiness of trust

sionary interest on grounds of trust unworthiness, with effect against the culpable parties:

1. If the entitled beneficiary or reversionary concerned has committed or attempted to commit a serious crime against the settlor or a person closely connected with the settlor,
2. if vis-a-vis the settlor or one of his relatives the entitled beneficiary or reversionary concerned has seriously violated the duty incumbent upon him under family law, or
3. if the previously mentioned entitled parties fail in an unjustifiable manner to fulfil the conditions or other obligations connected with the possession of the beneficial or reversionary interest.

Where in the execution of his duty as trustee of another trust the settlor has procured the beneficial interest without valuable consideration, the settlor of the other trust and/or his heirs shall, having regard to trust unworthiness, be considered as settlors and/or heirs.

Where in the execution of another duty to a third party, for which the said third party has effected or promised to effect a gratuitous counter performance, a settlor has procured beneficial interest without valuable consideration for a person, the preceding regulations concerning trust unworthiness shall be applicable to the third party or the said third party's universal successors in title.

Trust unworthiness shall be cancelled by condonation by the settlor or by the third party concerned.

§ 87

bbb. For other reasons

The revocation of an order concerning the promise of a gratuitous handing-over of the beneficial interest and the refusal of fulfilment may also ensue from the settlor or the settlor's heirs who have taken over the fulfilment of the promise:

1. If, since the promise of the gratuitous handing-over of assets to the trust enterprise for the purpose of beneficial interest without valuable consideration, the financial circumstances of the settlor or the settlor's heirs concerned have changed to

such an extent that the further fulfilment of the promise to the trust enterprise, unless the settlor or the settlor's heirs have the beneficial interest, would burden him (them) exceptionally,

2. if, since the previously mentioned promise, duties to support under family law have become incumbent upon the settlor or the heirs concerned, which beforehand did not exist at all or only to a far lesser degree.

Where in his capacity as trustee of another trust a settlor has formed a trust enterprise or, on the basis of an obligation to a third party, for which the said third party has effected or promised to effect a gratuitous counter performance, has procured beneficial interest for another person, the prerequisites for revocation must have ensued in the person of the first trustee and/or of the third party concerned, or their heirs.

Rescission by the creditors of the settlor or the settlor's heirs is reserved.

§ 88

Revocation of the possession of beneficial or reversionary interest shall ensue through the duly authorised parties in favour of the settlor or the third party concerned and, should it concern their heirs or other successors in title, in their favour, with notification to the trust enterprise and to those parties against whom there are grounds of revocation.

ccc. Application of
revocation and
reference

Where a reversioner has committed a serious crime endangering life or limb against his predecessor in possession of the beneficial interest in order to gain this possession, revocation may be applied against him in favour of the beneficiary succeeding him.

Revocation may ensue within a year, commencing at that time when the party entitled to revocation gains knowledge of the grounds of revocation.

Revocation shall be excluded if five years have already elapsed since the occurrence of the grounds of revocation, unless the grounds of revocation were in the form of a serious crime and the prosecution or execution is not yet statute barred.

Regulations applicable to the statute of limitations shall be applied accordingly to the course of the time allowed and those

relating to the making of a gift shall be applied supplementally to the legal relationship between the settlor and the beneficiaries concerned and/or their heirs.

§ 89

hh. Failure to fulfil
the duty to
support

Where as the result of a donation without valuable consideration a settlor deprives himself of the possibility to defray his necessary support or to fulfil his legal duty to support, the judge may put the trust enterprise under obligation to support the parties in need of or entitled to support, taking these performances into account against that which the trust enterprise has to pay pursuant to the trust instrument and against that application without valuable consideration to the possible entitled beneficiary.

Where in his capacity as trustee of another trust a settlor has formed a trust enterprise or in the execution of another duty to a third party who has effected or promised to effect a counter performance in his favour, has procured beneficial interest without valuable consideration, the prerequisites for the need or the duty to support must have ensued in the person of the first settlor and/or of the third party concerned.

The preceding regulations shall be applied accordingly in the case of mixed donations without valuable consideration.

The action by the heirs for reduction on grounds of violation of the compulsory portion, rescission by the creditors and claims for enrichment of the parties in need of or entitled to support against the enriched party who is no longer a beneficiary is reserved.

§ 90

ii. Division and
consolidation
aaa. In general

The division of beneficial interests as a whole, the alienation or charging of such a part and the consolidation of several independent beneficial interests or parts thereof which amount to more than an entire beneficial interest in the hands of one party shall, in the absence of any other trust directive or regulation of the law, without prejudice to the rights of other beneficiaries, be admissible only with the assent of the trustees engaged in the conduct of business.

Provided a trust enterprise with a special system of succession is not involved, the assent may, for important reasons, upon application of the beneficiaries, be substituted by the Register Office, after hearing the trustees engaged in the conduct of business and, possibly, other legally interested parties.

If a register is kept of the beneficiaries or the participants in the case of liability and liability to make further contributions and, accordingly, a list of participants is also kept, the changes brought about by division or consolidation also, in particular, the joint representative, shall be entered in the register.

§ 91

If several such parts of beneficial interest are consolidated in adequate quantity in the hands of one party, they shall, by virtue of the law, be accorded the same rights as an undivided beneficial interest and in the case of the consolidation of several hitherto independent beneficial interests a corresponding increase of rights shall ensue in the absence of any other directive.

bbb. Effect

Where beneficial interests are simultaneously combined with obligations, the part beneficiaries shall, after the division, be liable jointly and severally for the obligations including the outstanding amounts only insofar as these assets embrace payments to the trust fund or a joint and several liability or liability to make further contributions exists and without prejudice to possible rights of recourse.

When several independent beneficial interests are consolidated, the obligations also increase accordingly. In this event, the relevant provisions concerning several shares in the case of registered cooperative societies shall be applied with regard to liability and liability to make further contributions.

Upon demand of the trust enterprise, such beneficiaries with part claims shall appoint a mutual representative; otherwise, the trust enterprise may undertake against one of them all declarations of intent and other legally significant acts, with validity for and against all, which concern them all or, upon application of the trustees who conduct business, the Register Office may appoint such a representative, at the expense of the beneficiaries involved.

§ 92

kk. Statute of limitations

A statutory limitation of the reversionary interest or the possession of the beneficial interest may only ensue in favour of the reserve fund for balance sheet and/or accounting losses, with reservation of the regulations concerning the devolution of the assets to the state, etc.

A statutory limitation of the reversionary interest as such only commences to run from the time when the rights associated with the beneficial interest could have been exercised by virtue of devolution upon the reversioner concerned but were not exercised.

The possession of beneficial interest as a whole is subject, moreover, to the ordinary statute of limitations unless the law permits an exception.

§ 93

II. Redemption sum

Where in the case of trust enterprises which do not pursue commercial activities a beneficiary is entitled to the payment of a redemption sum as the result of notice of termination, exclusion and similar and security documents have not been issued, the claim, in case of doubt, shall be comprised of that amount in cash with which, according to the value of the trust enterprise's payment, a corresponding pension could be acquired from a sound annuity institution.

In the case of trust enterprises with commercial activities or with security documents, the redemption sum shall, in case of doubt, be determined on the basis of a winding up balance, without liquidation having to take place because of this.

If important reasons exist, however, the judge may determine the settlement in a different manner.

§ 94

d. Rights and obligations arising from the beneficial interest
aa. In general

In general, rights and obligations of the beneficiaries are determined pursuant to the law or the trust instrument, if the case arises, pursuant to the terms of the security documents issued in relation to the beneficial interest and, supplementally, pursuant to the regulations concerning trusts in general.

In the case of identical prerequisites and identical performances of the beneficiaries, their rights and obligations may, in the absence of any other directive, without their assent, only be treated in the same manner, in particular, with respect to amendment, restrictions or rescission and individual beneficiaries may not be favoured to the detriment of others.

In the absence of any other directive, beneficiaries shall have no right to dissolve the trust enterprise, to individual elements of trust assets or to divide these.

If a beneficiary makes contributions or undertakes to make contributions to the trust fund and the law does not indicate otherwise, the said beneficiary as settlor is in this regard simultaneously subject to these relevant regulations.

§ 95

Where a beneficiary with a claim to payment from yield and elements of capital is paid amounts without further information concerning their character, it shall be assumed that they are in the nature of yield, with reservation, nevertheless, of the obligation of possible restitution pursuant to the principles concerning unjustifiable enrichment, if necessary, pursuant to the rules concerning the gradual distribution of trust assets.

bb. Distribution of beneficial interest and substitute claims

Where a holder of beneficial interest loses the right of beneficial interest during a term of administration or lapses during such a term, following the conclusion of which the regular yield or another beneficial interest is distributed and no security documents have been issued, the earnings from the beneficial interest shall be distributed after the conclusion of the duration of their period of possession during the term of administration to the lapsed holders of beneficial interest and/or the predecessor's universal successors in title and the successors in possession of beneficial interest, pursuant to the regulations concerning withdrawal and distribution of assets and yield. This shall also apply in particular in the case of family trust enterprises.

In the case of security documents, the yield or other payment of assets shall, in the absence of any other directive, be paid to the

bearer of the securities at the due time of payment of the claim concerned.

The amounts to be distributed to the beneficiaries may be rounded down insofar as the result of a liquidation or redemption is not involved or nothing otherwise has been determined.

Where in the common interest an entitled beneficiary has incurred expenses and as a result of this others actually enjoy benefits, the said entitled beneficiary shall, with due announcement of the said expenses to the trustees engaged in the conduct of business, have a right in preference to other beneficiaries to commensurate reimbursement from the beneficial interest concerned before distribution, possibly also for that which is otherwise not obtainable from an entitled beneficiary.

§ 96

cc. Undue delay

If security documents relating to beneficial interests have not been issued and the trust instrument does not provide otherwise, the relevant provisions in the case of membership under the general regulations concerning legal entities and, supplementally, those of the Code of Obligations shall apply to the beneficiary's delay in performance.

The trust instrument may provide that in the case of a beneficiary's or third party's delay in performance the beneficial interest acquired on the basis of this obligation to perform may be declared void in favour of the reserve fund for balance sheet or accounting losses, without release from the beneficiary's' or third party's obligation to the trust enterprise.

Where concerning the security documents issued in connection with the beneficial interest performances are in arrears, the trustees engaged in the conduct of business may, by operation of law, declare the beneficiary's entire rights accruing from the security documents concerned to be forfeited pursuant to the regulations concerning undue delay on the part of the shareholder, without the beneficiary being released as a result of this from the remainder of his obligation to perform, insofar as the said obligation to perform relates to the trust fund or the liability or liability to make further contributions.

§ 97

In the absence of any other trust directive a beneficiary may ward off the obligations arising from the beneficial interest to make further contributions to the trust enterprise, insofar as the said contributions are not intended for the trust fund, by leaving his alienable beneficial interest in the hands of the trust enterprise in a written statement in favour of the reserve fund, for balance sheet or accounting losses, whereby his predecessors in the beneficial interest are also released from the obligation to effect contributions overdue from the time of their beneficial interest.

dd. Conversion and right of redemption

Where pursuant to a certain arrangement reversioners are present by virtue of the right of succession, these reversioners, after they have been informed in writing by the trustees engaged in the conduct of business or possibly the other office authorised pursuant to the trust instrument of the undue delay in performance or of the death of a beneficiary or defaulting third party, shall have the right, according to the sequence of their reversionary entitlement, to redeem these beneficiary or reversionary entitlements in return for the fulfilment or, where admissible, in return for appropriate security for the defaulted performance (right of redemption).

If the right of redemption is not exercised pursuant to the foregoing paragraph and in all other cases, the spouse or the beneficiary's issue may exercise the said right of redemption pursuant to the directive of the Register Office. If there are several parties entitled to redeem who are unable to agree, these shall also exercise the right of redemption pursuant to the directive of the Register Office.

§ 98

Within the frame of their rights pursuant to the trust instrument and the law, entitled beneficiaries and reversioners, individually or in groups or all together, may demand the observance and/or the fulfilment of their rights by the trust enterprise and the trustees or others under obligation in this respect and, for this purpose, also safeguarding measures.

ee. Assertion of rights
aaa. Beneficiaries' rights

Entitled beneficiaries, individually or in groups or all together also, equally, reversioners may only assert their claim against third parties otherwise insofar as the law makes provision for this or the third parties themselves are under obligation to them or have committed a tortious act.

The defendant may apply for a security deposit pursuant to the regulations concerning voidability action in the case of legal entities.

By means of the trust instrument trustees or third parties may be entrusted exclusively with the protection of the rights accruing from the possession of beneficial interest or reversionary entitlement against non-beneficiaries, insofar as the assertion of the rights of beneficiaries among one another is not considered or the interests of the trust enterprise are not in opposition to the rights of the beneficiaries.

§ 99

bbb. Rights of
the trust
enterprise

The entitled beneficiaries and reversioners, individually or in groups or all together, may, on behalf and in favour of the trust enterprise, demand from the trustees or other persons or offices under obligation in this regard observance of the regulations, in particular the fulfilment of their trust duties pursuant to the law or the trust instrument and the cancellation of inadmissible measures, or may take direct safeguarding measures against acts or omissions of such acts which endanger the rights of the trust enterprise.

Where trustees fail to assert in accordance with their duty and the circumstances a due or not due but endangered claim of the trust enterprise against participants or third parties as, in particular, the claim on grounds of disturbance or withdrawal of possession or ownership of trust property, individual entitled beneficiaries and/or entitled reversioners or groups or all together may, moreover, in the absence of any other directive, themselves call upon the dilatory trustees to assert the claims within a reasonable period of time to be determined or request the Register Office to call upon them after the expiry of this period of time or, in the

case of inadequate assertion on the part of the trustees, the entitled parties concerned may assert their claim on behalf and in favour of the enterprise.

The regulations concerning the lodging of security in the case of voidability action shall be applied accordingly in favour of the defendants.

§ 100

Where an organisation of the beneficiaries is provided for in the trust instrument and is implemented or is ordered by the Register Office, the powers of the beneficiaries may be applied pursuant to this organisation and with reservation of possible minority rights and such rights as those to which only the individual is entitled, in particular established rights, such as the right to due yield or similar income.

ccc. In the case of an organisation

Insofar as they are not already entitled to this, the organisation as well as possible minorities shall have the capacity in official proceedings, in which they shall be represented by authorised representatives in conformity with the articles or otherwise, to be a party in and to conduct legal proceedings.

Resolutions passed by a meeting of entitled beneficiaries and/or reversioners including the preferentially or similarly entitled parties, summoned on the basis of such an organisation may, pursuant to the regulations concerning the rescission of resolutions of the supreme body, under the general regulations concerning legal entities, be rescinded by the participants concerned or cancelled ex officio, particularly if the said resolutions are unlawful, immoral or endanger the state.

Furthermore, resolutions may be rescinded in the same manner if they oppose the interests of the trust enterprise, the entirety of the beneficiaries or a special category of these as, for instance, the preferentially entitled beneficiaries, and are only suitable for causing loss to a minority or individuals.

The implementation of the proceedings concerned shall be expedited by the competent authority.

§ 101

ddd. Exceptions,
etc.

The regulations concerning the assertion of rights when an organisation exists shall not be applicable if the certificate holders act jointly by operation of law, pursuant to the regulations concerning the community of creditors in the case of bonds or if, in the case of trust enterprises with non-profit making or similar objects, the interests of the beneficiaries are taken care of by the representative of public law.

Where in a trust enterprise there are beneficial interests other than for persons (firms or legal entities), everyone except the representative of public law may, with the assent of the Register Office, demand their fulfilment pursuant to the object of the enterprise (impersonal beneficial interest).

§ 102

e. Register of
beneficiaries
aa. Obligation to
keep a register
and examina-
tion

Where beneficial interest is not combined with a bearer paper or the designation of beneficiaries is not left to the unqualified discretion of the trustees, other offices or third parties or a trust enterprise with a non-profit making or similar object with undesignated recipients of beneficial interest is not otherwise present or impersonal beneficial interests do not exist, the trustees engaged in the conduct of business, particularly in the case of family trust enterprises, in the absence of other offices under obligation pursuant to the trust instrument to fulfil this duty, shall set up a register of the specifically designated entitled beneficiaries and/or living entitled reversioners. The register shall be kept regularly and corrected continuously.

The register shall be available for every entitled party to examine and copy in good faith at the expense of the entitled party, either at the premises of those under obligation to keep the register or at the Register Office during the usual hours of business if the register is deposited there for examination.

If the register is not deposited at the Register Office for examination an entitled beneficiary may, at his own expense, demand from those under obligation to keep the register a certificate (certification of receipt of beneficial interest, certificate of reversionary interest) which confirms his right accruing from the beneficial interest or the reversionary interest.

In the event of the certified right being dropped or amended, such a certificate shall, if the case arises, be returned to those under obligation to keep the register in order that it may be corrected.

§ 103

In particular, the register shall contain: Name, first name, place of residence, also the date and place of birth if at all possible, if security documents are not issued, and/or company name and domicile of the holder of beneficial interest, if applicable of the living entitled reversioners including the same information concerning their possible joint representative, the date of acquisition or loss of possession of the beneficial interest or the reversionary interest, the kind of beneficial interest and similar information.

bb. Registration

The entry of a transfer of the beneficial and/or the reversionary interest shall ensue, in the absence of any other directive, on the basis of an identification document relating to the transfer, correct with respect to form, in the succession upon death, upon announcement of the heir, legatee, executor or administrator and/or the probate authority and, in the case of the dissolution of a firm or legal entity, upon announcement of other universal successors in title or of the liquidators or the trusteeship in bankruptcy or the probate administration.

In the case of refusal to register, this shall ensue if there are important reasons upon application of those entitled to apply pursuant to the directive of the Register Office.

§ 104

As soon as such a register has been set up, only that person shall be deemed to be entitled with respect to the exercise of the rights and obligations accruing to the holder of beneficial interest or to the entitled reversioner who is entered in the register.

cc. Effect

The acquiring party must acknowledge the legally significant acts undertaken against the said acquiring party by the trust enterprise before the registration of the transfer vis-a-vis the transferor or, conversely, by the latter vis-a-vis the trust enterprise with regard to the beneficiary relationship.

The transferor and the acquiring party shall be liable jointly and severally for the performances outstanding from the beneficiary relationship at the time of registration.

Pursuant to the regulations concerning responsibility, the trustees or others under obligation in this regard shall be liable jointly and severally for losses caused by the register being kept inadequately or by an unjustified refusal to register.

§ 105

- 2. Designation of the beneficiaries
- a. In the case of no directive or an inadequate directive
- aa. In general

In the absence of any other trust directive or if for any reason the regulations concerning the beneficial interest cannot be suitably implemented, if, in particular, the rights accruing from the beneficial interest do not devolve upon or are not accepted by the persons (firms or legal entities) considered in one way or the other, it shall be assumed in the case of trust enterprises other than non-profit making or similar trust enterprises that during his lifetime only the settlor has the right to hold the beneficial interest and if the settlor does not order otherwise by disposition *inter vivos* or *mortis causa* concerning the succession, that only the legal heirs shall have the right of succession pursuant to their title to an inheritance to the beneficial interest also, in particular, to the assets (implied ownership of beneficial interest and implied succession).

Should the settlor have been under obligation to form a trust enterprise on grounds of assets paid in by a third party without valuable consideration or should the beneficial interest have been acquired only under these conditions, it shall be assumed in the case of lacking or inadequate directive that this third party is the holder of beneficial interest and/or his universal successors in title are implied successors (implied beneficial interest in the case of indirect settlorship).

Where persons other than natural persons should be entitled to the beneficial interest, the further designation of the beneficiaries in the case of the termination of the firm or legal entity shall, in the absence of any other directive, conform with the regulations concerning the devolution of membership resulting from the

dissolution of firms or legal entities in the case of registered cooperative societies.

Where a quite general non-profit making or charitable or similar object is provided for in the trust articles, without details being stated concerning the manner in which it shall be fulfilled, alone or in addition to other objects, the Government, upon application of the interested parties or upon notice from other authorities or ex officio, of its own accord, shall direct in administrative proceedings as required to implement this only generally stated object, as far as possible within the intendment of the trust instrument.

§ 106

The following rules for interpretation shall be applied regarding beneficiaries:

1. Where children of a certain person are designated as beneficiaries, these shall be deemed to be the issue of the said person who are entitled to inherit and the spouse shall be deemed to be the surviving spouse, if and as long as the said spouse has not remarried;
2. the estate, heirs, successors in title, family, relatives, next of kin or similar of a person shall be deemed to be the descendants entitled to inherit and the surviving spouse if and as long as the said spouse has not remarried and, in the absence of such, those persons (firms or legal entities) who are entitled to inherit the estate of that other person.

A reversioner who was not yet born but already procreated at the time of devolution of the beneficial entitlement from the holder hitherto to the next successor pursuant to the law or trust instrument shall be deemed to have been born before the case of succession.

The rules of interpretation of the law of succession concerning the heirs and if necessary the legatees shall be applied supplementally.

bb. Interpretation rules, etc.
aaa. With regard to the beneficiaries

§ 107

bbb. Concerning
the beneficial
interest shares

In case of doubt, the following shall apply with respect to beneficial interest shares:

1. Should the title of the beneficial interest devolve upon issue entitled to inherit and the surviving spouse as beneficiary, the legal succession shall also be valid. If, however, other heirs are designated as beneficiaries, it shall devolve upon them pursuant to their title to inherit.
2. Should other persons, not entitled to inherit, be designated as beneficiaries without their share being defined, they shall be entitled to the beneficial interest in equal parts.
3. Where a beneficial interest lapses due, for example, to the predecease of the settlor, owing to refusal by the beneficiaries, revocation of the beneficial interest or similar, this share shall devolve upon the other beneficiaries in equal parts.

Where issue entitled to an inheritance, a spouse, parents, grandparents, brothers and sisters are the beneficiaries, the title of the beneficial interest shall devolve upon them, even though they do not enter upon the settlor's inheritance.

Where the expression of a directive concerning beneficial interest is questionable, it shall be interpreted in such a manner as to ensure that the beneficial interest may be exercised with the least possible hindrance.

The rules of the law of succession relating to the interpretation of shares of an inheritance or of legacies if the case arises shall be applied supplementally.

§ 108

b. Special system
of succession
in the case of
family trust
enterprises
aa. In general

By means of the trust instrument or an office empowered for this purposes, a system of succession may be provided which deals with the holding of beneficial interest or parts thereof permanently with or without liability on the part of the current holder of beneficial interest to effect compensation for the excluded, equally close or similar relatives in such a manner that either the first-born from the older line of descent of the settlor or another person and/or the youngest from the youngest line, or

the next succession-eligible relative of the last holder of beneficial interest, with preference for the eldest and/or youngest among several equally close relatives or, irrespective of the line and the degree of relationship to the last holder, the oldest and/or the youngest from the whole family or another settlor or other persons shall be entitled to succeed (entailed trust enterprise).

Apart from the system of succession, further special provisions may be drawn up concerning succession eligibility; in this case, the regulations concerning the revocation of the beneficial interest are reserved.

The special system of succession including a possible special succession eligibility related to the holding of beneficial interest may be noted or annotated pursuant to the provisions concerning the restriction of alienation of trust property.

Security documents relating to beneficial interest as a whole may not be issued in the case of family trust enterprises with a special system of succession including, if the case arises, a special succession eligibility. Such security documents may, however, be issued concerning individual claims which are already due.

§ 109

In the case of the rule of primogeniture from the older line of relationship, the younger line, in the absence of any other directive, acquires beneficial interest only after the lapse of the older, so that, for example, the issue of the last holder of beneficial interest takes precedence over the brother or sister of the latter. This order of succession is assumed in case of doubt.

bb. Interpretation
rules

Where in the event of the beneficial interest being intended for a family other than that of the settlor, the trust instrument designates that party which is closest in degree of relationship either to the settlor or the acquirer of beneficial interest or the last bearer of beneficial interest, in case of doubt consideration shall be given more to the higher degree of relationship to the last holder of beneficial interest rather than to the settlor or to the first acquiring party and among several having an equal degree of relationship, seniority of age shall be decisive.

Where it is directed that the beneficial interest shall always devolve upon the next in the family, the person concerned in case of doubt shall be deemed to be that person who is the next pursuant to customary legal succession from the issue of the settlor or the person to be considered (entailed trust enterprise) and where there are several equally close relatives the beneficial interest shall be divided between them, and the regulations concerning the division of beneficial interests shall be applicable supplementally.

In the absence of any other trust directive, preferential treatment of the male vis-a-vis the female shall not ensue and the waiver of an entitlement to beneficial interest or of a reversionary interest shall be valid only with respect to the said holder of beneficial interest or to the said reversioner but not, however, with respect to other persons or to his issue.

Otherwise, the rules for interpretation shall be applied accordingly in the case of no directive or an inadequate directive.

§ 110

cc. In the case of several family trusts

Where special trust enterprises or other trusts have been formed by the same or different settlors for several lines of the same family, so that in addition to a family trust for the line of the first-born child there exist one or several trusts for the lines of the children born later, the holder of beneficial interest, in case of doubt, shall acquire beneficial interest from the first trust and his issue shall receive beneficial interest from another trust only provided no issue designated as beneficiary exists in the other lines and the various possessions of beneficial interest remain combined in one person only until a further two or several unprovided lines come into being.

Where in the case of several trusts equipped in this way with a system of succession the second line becomes extinct, the terminated possession of beneficial interest, in the absence of any other directive, shall devolve upon a designated unprovided line and in the absence of such shall revert to the first line and shall remain there united with the beneficiary until further lines come into being.

In the absence of any other directive, several lines shall come into being only if the head of the line, who has acquired the beneficial interest held by the extinct line, has died and left several descendants eligible to succeed to the title.

§ 111

The determination of the acquisition (the conferment) or loss of beneficial interest and the possible beneficiaries thereof may, pursuant to the trust instrument, be entrusted to other offices of third parties (collators) instead of to the discretion of the trustees; if necessary, where a directive is lacking or inadequate, with appropriate application of the interpretation rules. A public announcement may be made if necessary concerning application for beneficial interest or similar.

- c. Right of nomination and right of conferment (patronage of beneficial interest)
- aa. In general

The trust instrument may, with exclusion of participating third parties, concede a right to or, with their assent, impose a duty upon the trustees, other offices or third parties to propose the persons (firms or legal entities) to be considered for the conferment of beneficial interest (beneficial interest patronage).

The parties entitled to propose or those under obligation to do so (the nominating parties) and, equally, the trustees, if other offices have the right to confer, shall in case of doubt also have the duty and/or the corresponding right to supervise the conferment and to take appropriate steps regarding the correctness of the conferment and the implementation of the beneficial interest.

§ 112

In the case of a public announcement concerning application for beneficial interest being made in the journals which publish announcements and, when necessary, official statements, or of another announcement or something similar most appropriate to the purpose being made by the trustees or other offices, it shall, in particular, contain: the object of the beneficial interest, the obligations of the beneficiaries which may be connected with the said

- bb. Public Announcement

beneficial interest, the circle of parties designated pursuant to the trust instrument, with the most accurate possible description as well as information concerning the period of time allowed for the valid submission of an application.

§ 113

cc. Effect

The conferment of the beneficial interest shall have effect from the time when the beneficiary concerned is notified.

However, the beneficial interest may not be handed over before the expiration of the unused period of one month at the earliest, for the judicial or otherwise admissible rescission, from the time of conferment or after finality of the rendered decision unless important reasons justify an exception.

Where as the result of rescission of the conferment of beneficial interest another applicant is appointed beneficiary, the trust enterprise shall be entitled to a claim for enrichment against those parties who may have drawn beneficial interest wrongfully. The said claim shall be in favour of the trust reserve fund for balance sheet or accounting losses.

Should these proposing or conferring offices or third parties fail to exercise their authority or duty in due time, this said authority or duty shall, upon application of the participants and/or, in the case of trusts with non-profit making or similar purposes, upon application of the representative of public law, in the individual case and in the absence of any other directive, devolve upon the Register Office after the latter has allowed a reasonable period of time. In this case, the procedure may ensue, if necessary, pursuant to the regulation concerning the tracing of beneficiaries (substitute proposal and substitute conferment).

Otherwise, the regulations concerning the revocation of the right to propose in the case of designation by trustees shall be applied accordingly to the revocation of the right or the duty to confer beneficial interest or to propose beneficiaries as well as the relevant provisions concerning compensation for damage.

§ 114

Rights and duties arising from beneficial interest and of the beneficiaries (certificate holders) may, pursuant to an express directive, be combined with the ownership of a security document such as an ordinary or a preferred trust certificate, beneficial interest certificate, supplementary certificate, bonus certificate, interim certificate, credit note, depositing certificate or similar types or kinds of securities to which, in the absence of any other provision, the regulations concerning securities shall be applied accordingly and, in addition, those concerning membership securities under the general regulations concerning legal entities, in the event that the said securities embody membership rights.

- d. Security documents concerning the trust beneficial interest
- aa. In general

Where the trust instrument provides for the issuance of security documents without indication as to whether they should be issued to a named person, to the bearer or whether they should be made out to order or where the beneficiaries are liable to effect recurring performances or be liable or liable to make further contributions, security documents should be issued only to a named person and should be transferable only with the assent of the trust enterprise.

The security documents may not be designated in a manner which, owing to the lack of legal prerequisites, may lead to confusion with security documents without payment of contributions or without other obligations towards the trust enterprise, with a different form of undertaking or with the securities such as shares, bonus shares, bonds or similar, issued with respect to that different undertaking, or otherwise to deception.

Security documents concerning beneficial interest may be issued within the Principality of Liechtenstein by organising a public subscription of contributions to the trust enterprise only provided the regulations concerning the obligation to issue a prospectus in the case of bonds are observed and, in addition, only with the assent of the Register Office.

By way of a statutory instrument, the Government may restrict or forbid the issuance of security documents concerning beneficial interest pursuant to the existing regulations relating to securities.

§ 115

bb. Registration
in the Trust
Register

In the case of trust enterprises with obligation to register and of those which register voluntarily, the Trust Register must be notified of the authority to issue security documents pursuant to the trust instrument and an excerpt from this together with a security form shall be enclosed with the notification. The Register shall enter data in the Trust Register in the form of excerpts and publish them.

If necessary, it shall be stated in the application to the Trust Register whether the security documents, made out for a certain nominal amount and recording a contribution to the trust fund, may be issued above or below the nominal value or, possibly, successively.

§ 116

cc. Consequences
of an irregular
issuance

Where security documents have been issued contrary to the provisions of the law, the Registrar may, within three years from the time of issue, upon application by the interested parties, in particular the subscribers or acquiring parties or ex officio, take action against the issuing party with the means of compulsion admissible in extrajudicial proceedings and, in a public announcement, designate the security documents and, if necessary, the relevant provisions of the trust instrument as null and void.

Furthermore, the issuing party and all those who participated in the issuance shall be liable jointly and severally to the bona fide certificate holders for all damage.

§ 117

dd. Form and
content
aaa. In general

In the absence of any other directive, the security document shall, as far as possible, be made out for a proportion of the relevant beneficial interest as, for instance, a proportion of the yield or the assets or both. In case of doubt, identical proportions shall be assumed where several beneficiaries are concerned.

The security document may be issued to the bearer only when the possession is not combined with obligations on the part of the bearer towards the trust enterprise or the trust enterprise's creditors.

In the absence of express designation, the document issued concerning the beneficial interest shall not be valid as a security but only as a means of proof.

§ 118

Apart from the express designation as "security", the security document shall include, furthermore, the special rights derived from the beneficial interest, possibly with a reference to the related provisions of the trust instrument, the number of securities issued in each case and, if need be, the following additionally:

bbb.Special data

1. In the case of security documents issued to a named person, whose transfer, pursuant to the law or the trust instrument, is tied to the assent of participants or third parties, the adoption of the related provisions and the necessity of such a transfer, in accordance with the trust instrument;
2. in the event of various types of securities being issued to the beneficiaries, the reference to the various types of ordinary or preferred securities as well as the designation of the type to which the security concerned belongs;
3. if the trust beneficiaries in the case of shares issued to a named person or shares made out to order are under obligation as settlors to effect recurring performances or the holders of certificates are liable or liable to make further contributions, the provision concerning this obligation and the scope of the performance;
4. the sum of the part performance which may have been contributed to the trust fund and, if possible, the amount still outstanding on the security not fully paid up as well as the consequences of the delayed payment of the balance or of the recurring performances;
5. in the event that the signing of the security document is made dependent in the trust instrument upon the observance of a certain form, the information concerning these provisions relating to form and the signature of at least one of the trustees engaged in the conduct of business or otherwise of a repre-

sentative authorised to sign, the signature being signed personally or produced in the manner customary in day-to-day business.

§ 119

- 3. Tracing of beneficiaries
- a. In general

Beneficiaries who are unknown or uncertain according to their residence, existence or name may be summoned by public citation by the Register Office upon application by the trustees engaged in the conduct of business or other participants.

If a legal adviser or a similar legal representative has not already been appointed for individual beneficiaries, an official trustee shall be appointed for the unknown or uncertain beneficiaries at the expense of the trust property after hearing the trustees engaged in the conduct of business. The appointment of the said official trustee shall ensue pursuant to the regulations of the Code of Civil Procedure concerning the proceedings administrator.

§ 120

- b. Content of the summons

The summons shall ensue by public announcement which, at the discretion of the Register Office, may also ensue in foreign journals or in an otherwise suitable manner, pursuant to the regulations concerning the court proceedings relating to missing persons and presumption of death.

The announcement shall state the relevant circumstances such as name and domicile of the trust enterprise, the date of formation, the name, first name and residence or company name and domicile of the settlor as well as the next appointed beneficiaries and similar parties. The announcement shall also contain the summons to inform the Register Office or the trust enterprise or the officially appointed or other trustees of appointed, but unknown or uncertain beneficiaries.

In addition, the announcement shall, if possible, also state what shall happen to the beneficial interest after expiration of the stated time limits if the entitled beneficiary fails to report within one year of the announcement or within a further year following the contestation fails to prove finally and conclusively in expe-

dited proceedings his contested entitlement. A warning may be issued, for instance, to the effect that until beneficiaries with greater entitlement emerge others may be appointed to receive beneficial interest without the obligation to reimburse, or that the beneficial interests may be declared by the trustees engaged in the conduct of business to be forfeited in favour of the reserve fund, for the balance sheet or accounting losses, or that the cancellation of the trust enterprise, the amendment of its objects or its governing bodies may ensue.

Where security documents have been issued, the relevant summons may ensue only after the expiration of five years following the last withdrawal or other utilisation of the beneficial interest accruing from the securities concerned, with the warning that the latter may be declared to be forfeited.

§ 121

Should, following the implementation of preliminary proceedings, beneficial interests be declared to be forfeited, this may only ensue, notwithstanding the beneficiary's possible obligation to effect contributions or to accept liability or to make further contributions up to the day of the related announcement and with reservation of the claim on account of unjust enrichment against the party who has been enriched as a result of the forfeiture by an entitled beneficiary reporting subsequently, within the statutory period of limitation of three years from the date of the declaration of forfeiture.

The trust enterprise shall not be responsible for the obligations which may be associated with the declared forfeiture of the beneficial interests and shall reduce accordingly the possibly still outstanding performances in favour of the trust fund, without liquidation.

Where as a result of the preliminary proceedings all the beneficial interests are declared forfeited, immediately or gradually, in favour of the reserve fund for balance sheet or accounting losses or the trust enterprise, the regulation concerning the accrual of all beneficial interests to the trust enterprise, drawn up for the case of the gradual distribution of assets, shall be applied accordingly.

c. Statement of
forfeiture

The regulations concerning the declaration of invalidity of securities and special provisions of the law and the trust instrument remain unaffected.

§ 122

- 4. Alienation, charge and transfer
- a. In general

If not provided otherwise in the case of family trust enterprises with or without a system of succession or other trust enterprises as, for example, in the case of the inalienability of the beneficial interest or where, by transfer to another party the content of the performance is changed, the beneficial interest as a whole as well as individual rights and obligations arising from the possession of beneficial interest, including that from the reversionary interest shall be alienable, transferable and inheritable and the beneficial interest as well as individual rights therefrom may be charged with limited rights in rem and pursuant to the regulations concerning the beneficiaries' creditors may be included in the levy of execution and writ and in the bankruptcy or administration proceedings.

Even if pursuant to the trust instrument the beneficial interest as such is inalienable or non-transferable, individual due claims may, with reservation of irrevocability and in the absence of any other directive, be alienated or charged and transferred by transaction.

The transfer of the beneficial interest as a whole or individual rights shall ensue, in the absence of any other provision of the law or trust instrument or as long as no security documents have been issued, pursuant to the regulations concerning the assignment of claims and, in the event that obligations are combined with the beneficial interest, pursuant to those concerning the assumption of debt or, if the case arises, pursuant to the regulations of the law of matrimonial property or the law of succession or a similar law.

To be effective vis-a-vis the trust enterprise in the case of assignment or charging with limited rights in rem, it is necessary for the trustees engaged in the conduct of business to be notified in writing by the assignor or the assignee and/or by the beneficiary to be charged or the usufructuary, pledgee or the like and in the case of the assumption of debt the written assent of the trustees

engaged in the conduct of business shall be required in the absence of any other directive.

Where security documents have been issued concerning the beneficial interest, the assignment or the charging shall ensue, in the absence of a deviating directive of the law, pursuant to the regulations valid with respect to securities.

§ 123

Other concurrence with the transfer of the rights accruing from the beneficial interest by the trustees engaged in the conduct of business, other offices or third parties is required otherwise only in those cases where provided for by the law or the trust instrument.

- b. When other assent is needed and its substitution

The assent to the transfer, provided the transfer is admissible at all, may, for important reasons, upon application of the beneficiary, the executor, administrator, the heirs of the legatee, in the case of acquisition as the result of the right of matrimonial property or in levy of execution and writ or bankruptcy or administration proceedings, insofar as a beneficial interest or a reversionary interest is under the purview of these, be replaced by the Register Office, with analogous application of the regulations applicable to the transfer of a part requiring assent in the case of a company limited by shares.

In addition to the previously mentioned cases, assent may, for important reasons, upon application of the entitled parties, also be granted and/or replaced by the Register Office after hearing the trustees engaged in the conduct of business or, if necessary, other offices and possibly other lawfully interested parties.

§ 124

An organisation exists among the entitled beneficiaries and entitled reversioners or for individual groups (categories) such as ordinary or preferred beneficiaries only if provided in the trust instrument or the law.

- 5. Organisational matters
 - a. In general

The exercise of the rights of the beneficiaries or groups of beneficiaries may be transferred by the trust instrument to a spe-

cial body such as a family council or a council of beneficiaries or a family executor or committee whose members are subject to the basic principles of the commission and the participants may be bound by its resolutions or directives analogously pursuant to the regulations concerning resolutions of the supreme body in the case of legal entities.

Moreover, in the absence of any other directive, the regulations concerning the application, in the case of bonds, of the community of loan security creditors to the security document holders, who are legally on the same footing as the trust enterprise, the creation of a special organisation by the beneficiaries for the safeguarding their rights between themselves, the provisions concerning family resolutions and concerning involuntary cooperative societies are reserved.

§ 125

- b. Consultation
- aa. In general

Where the trustees may act at their discretion, they shall be empowered, even if such an organisation is lacking, to summon, pursuant to the regulations concerning the supreme body, at the expense of the trust property, all the entitled beneficiaries and entitled reversioners, insofar as their rights are affected in the individual case, in order to consider the directives to be issued by the trustees, or to call upon the Register Office to summon them in the event that their views cannot be ascertained at a universal general meeting or in writing by circular letter.

Upon application by the beneficiaries concerned or ex officio the Register Office may, in public citation proceedings, summon these to a meeting, with notification of the items of agenda, the place and date of the meeting and under these circumstances, in the absence of any other trust directive, may appoint, upon application by the beneficiaries or ex officio, for the entitled parties who may not be present at the meeting, at the expense of the trust property, an official trustee to safeguard the rights of the unknown or uncertain beneficiaries whose legally significant acts, in case of doubt, shall require the approval of the Register Office which in this case may be compared with an advisory board in guardianship matters.

§ 126

Insofar as various types of entitlements or obligations exist as, for instance, ordinary or preferred beneficial interest, with or without related security documents, special meetings may be held and resolutions passed, with analogous application of the foregoing regulations, provided the legal relationships of the entitled parties belonging to the categories concerned are affected.

bb. In the case of special types of entitlements or obligations

§ 127

Meetings may also be replaced by the passing of related resolutions as the opinion of the entitled beneficiaries concerned by means of signed assent to a proposal deposited with the trustees or elsewhere.

cc. Deposited proposals

The related public notice or other announcement shall, in addition, contain information concerning the proposal, the place where it is deposited, the period of time allowed for the signed assent to be given and, after the expiration of this period of time, the manner in which the said signed assent may be substituted for the unknown or uncertain beneficiaries by the delegation of the official trustee.

§ 128

Insofar as the affairs of the trust enterprise are not required to be taken care of by the trustees or another body or other offices, or the law or the trust instrument makes no other provision, they may be settled by family resolutions as concurring, binding statements of entitled beneficiaries or entitled reversioners without a definite system of succession in the holding of a beneficial interest or a relationship between the beneficiaries being required.

c. Family resolutions
aa. In general

The following provisions must be applied when passing binding family resolutions where the trust instrument or a binding family resolution does not determine to the contrary or in the event that not all the entitled beneficiaries including all the entitled reversioners or their representatives are in agreement with a family resolution at a universal meeting or in a vote by circular letter pursuant to the related regulations concerning the holding

of consultations and, supplementally, pursuant to the provisions concerning the passing of resolutions by the supreme body under the general regulations concerning legal entities, separated if necessary according to types of beneficial interests.

The adoption of such family resolutions, which, in the absence of any other directive or assent of the Register Office, shall, for important reasons, be passed unanimously, shall not be ruled out by the fact that only a single beneficiary is present.

Within the frame of the trust instrument and the law, the rightful petitioners in the formulation of a family resolution shall be the trustees engaged in the conduct of business or the majority of the remaining trustees or one-fifth of all the considered entitled voters as well as the Register Office, insofar as the latter for important reasons does not take official steps.

The amendment ex officio of the organisation or the object pursuant to the regulations drawn up for family foundations also remains reserved.

§ 129

bb. Convening,
Submission to
Trust Register,
etc.

Insofar as the law or the Register Office does not determine to the contrary, the convening of the entitled participants shall ensue with the enclosure of a copy of the draft of the family resolution. In case of doubt, the convening notice shall be dispatched by means of registered letter by the trustees engaged in the conduct of business.

In the case of registered trust enterprises, a draft of the family resolution shall be submitted to the Register Office before the resolution is passed, together with a list of all the beneficiaries to be convened, when the family resolution is not adopted at a universal meeting without a convening notice being issued or the Register Office does not take official steps of its own accord.

After adoption and, if need be, approval of the resolution, the prescribed entry shall ensue, with enclosure of an excerpt concerning the amendment to the registered facts and circumstances, inasmuch as the registered facts and circumstances relating to registered trust enterprises have been amended as a result of the said resolution.

Where in the case of non-registered trust enterprises facts and circumstances liable to registration are amended, the Register Office shall be notified accordingly.

§ 130

Insofar as their rights or obligations are involved, all entitled beneficiaries or entitled reversioners and/or their representatives authorised in writing are entitled to participate in the meeting provided they prove their entitlement by public document or by a document issued by the trustees engaged in the conduct of business or by another competent office or, finally, by the entry in the Register of entitled parties kept by the trust enterprise or by a certification of the said entry or if all other entitled parties who are present to pass the family resolution and the trustees acknowledge them to be entitled to participate.

cc. Right of participation

Where there is no reason to assume that other parties entitled to participate exist in addition to the known and summoned parties, the written assurance of the trustees engaged in the conduct of business to the effect that there are no known beneficiaries who should be taken into account shall be sufficient; otherwise, the family resolution may be passed only after the entitled parties, whose existence, residence or name is unknown or uncertain, have been excluded with their objection by way of public citation proceedings, insofar as an official trustee has not been appointed for them upon application of participants or ex officio.

Should, by means of a written notice to the trust enterprise, an objection be raised against the entitlement to participate, the trust enterprise shall request, in writing, the person against whom the objection is raised to take action within one month of the receipt of the request to participate against those who dispute the entitlement. The purpose of the action shall be to establish expeditiously the right to participate, failing which the family resolution taken without consulting the said person shall be non-appealable for that person.

An entitled voter may not participate in a family resolution and may not exercise a voting right for another for the same reasons as those which exclude a member from the right to vote at a

meeting of the supreme body in the case of a legal entity. This shall apply, moreover, if the entitled voter's special rights and obligations are involved.

§ 131

dd. Public citation
proceedings
(official tracing)

The tracing of unknown or uncertain entitled beneficiaries shall ensue pursuant to the regulations concerning the tracing of beneficiaries, insofar as the provisions provided here do not indicate deviations.

In addition to the subject matter of the family resolution, the public announcement shall also contain a statement to the effect that the beneficiaries concerned may object in writing, at the latest within a certain period of time which shall not be less than one month from the day the announcement is made, to the trust enterprise concerning the passing of the family resolution or against the entitlement to participate in the said family resolution, failing which they shall be excluded with their objection and the family resolution shall be legally binding upon them.

§ 132

ee. Passing and
approval of the
resolutions

The passing of the family resolution shall ensue in a public document or in a document signed by all participants and/or the official trustees.

The adoption of a family resolution in this form may ensue only provided the foregoing regulations are observed, the relevant time limit has expired and in the case of action concerning entitlement to participate, initiated in due time, a final and conclusive decision has been reached, insofar as in the latter case a special trustee did not cooperate temporarily in place of those whose right to participate is in dispute.

In the absence of any other trust directive, the family resolution shall require the assent of the Register Office where an official trustee has assisted for unknown or uncertain entitled beneficiaries or entitled reversioners or where the law prescribes approval even for the acts of legally or otherwise officially appointed representatives.

§ 133

In the absence of a trust directive to the contrary the Register Office may, where organisation is lacking or inadequate, for important reasons as, in particular, the mutual safeguarding of rights, establish upon application and at the expense of the participants an involuntary organisation with analogous application of the regulations concerning small cooperative societies, for all beneficiaries or certain groups (categories).

d. Involuntary cooperative society

Before establishing the cooperative society, the applicants, the trustees engaged in the conduct of business also the beneficiaries concerned and/or a trustee appointed by the Register Office for the unknown or uncertain beneficiaries shall, if possible, be heard and, following the issuance of a public citation with information concerning the purpose of summoning the beneficiaries, the trustee appointed by the Register Office may possibly be engaged with the warning that after the expiration of an appropriate period of time he may act on their behalf in a legally binding manner.

Within the frame of the trust instrument, the Register Office shall, by operation of law and with effect for and against the trust enterprise, participants and third parties, be empowered to take all the steps necessary for the formation of such a compulsory organisation, in particular, for drawing up the articles with determination of the obligation to effect contributions towards the costs, for the appointment of a board of directors and other bodies which may otherwise be necessary.

With the assent of the Register Office, such a compulsory cooperative society may be dissolved or cancelled by a resolution passed by an absolute majority of the members of the cooperative society, furthermore, by operation of law, with the lapse of all the beneficiaries or the termination of the trust enterprise and, unless important reasons justify an exception, without liquidation.

§ 134

In the absence of any other directive, the relevant regulations concerning the trust in general shall be applied analogously, within the frame of the law, to the legal position of the creditors of the participants as such in injunction, levy of execution and writ, bankruptcy or administration proceedings.

V. Creditors of the participants
1. In general

A trust enterprise which does not conduct commercial activities, whose objects are family welfare, usefulness in the public interest or charity, may assert its claims against participants as such, also in the subsequent execution in the same way as a ward, without prejudice to the other position of the trust property in the case of execution against the participants and in their bankruptcy or administration proceedings.

The regulations of the law concerning rescission as well as those concerning rescission order, the law concerning gifts and the law of succession are reserved where no provision is made for an exception.

§ 135

2. Creditors of the settlors

Where payment enforcement is applied unsuccessfully against a settlor by a creditor other than the trust enterprise or bankruptcy proceedings are initiated against the said settlor, the promise of a gratuitous contribution by the settlor in favour of the creditors or the trusteeship in bankruptcy or the administration of estate shall be null and void in the case of a trust enterprise where as a result of a directive of the settlor the beneficial interest is acquired without valuable consideration.

Where a settlor in his capacity as trustee of a trust enterprise formed by another person or in fulfilment of an obligation entered into in favour of a third party, for which the said third party has contributed or promised to contribute assets without valuable consideration, has secured for the said third party beneficial interest without valuable consideration, then the prerequisites for the invalidity of the promise must be present in the case of the first settlor and/or of the third party concerned.

§ 136

3. Creditors of the beneficiaries
a. Non-withdrawability (protective trust)
aa. In general

The creditors of an entitled beneficiary or a reversioner entitled to a succession may not withdraw from these their beneficial interest or reversionary interest acquired on grounds of the trust instrument without valuable consideration and/or individual claims therefrom, by way of injunction, levy of execution and writ, bankruptcy or administration proceedings.

Where in the case of a beneficial interest obtained on grounds of the trust instrument for valuable consideration, the said trust instrument contains, in particular, the provision that this shall be inalienable, but may, however, be transferred by way of universal succession, or a party shall no longer be entitled to it or no longer have a claim to it as soon as the said party is insolvent or wishes to assign or charge the beneficial interest, or that from a certain date the beneficial interest may or shall be bestowed by the trustees or other bodies upon the former entitled beneficiary, the latter's spouse or issue or other persons or in any other way at the absolute discretion of the said trustees or other bodies, or where a similar provision exists, the beneficial interest shall likewise not be withdrawable by the creditors of the beneficiaries or the reversioners, under reservation of the regulations concerning rescission order, the law concerning gifts and the law of succession.

The beneficial interest obtained from trust enterprises whose objects are non-profit making or charitable shall under no circumstances be withdrawn.

§ 137

Where the reversioners have acquired their rights pursuant to the foregoing paragraphs but not, however, their predecessors or the present holders of beneficial interest, the rights of the latter, notwithstanding those of the other reversioners, may be withdrawn only insofar as they extend over the period of the related entitlement to enjoyment.

bb. Special cases

Where beneficiary or reversionary rights acquired pursuant to the foregoing paragraphs exist only in part, the foregoing regulations shall be applied accordingly in the absence of a further trust directive.

Where as the result of revocation owing to trust unworthiness or as the result of the assertion of claims on grounds of violation of the duty to support or on grounds of the need for support, the beneficial interest is transferred to a party other than the settlor, the possible feature of non-withdrawability shall nevertheless remain in existence.

§ 138

- b. Withdraw-ability
- aa. Possession of beneficial interest

Where the prerequisites concerning non-withdrawability do not apply, the proprietary claims accruing from the beneficial interest and the beneficial interest itself may be withdrawn pursuant to the following regulations by way of injunction, levy of execution and writ, bankruptcy or administration proceedings, insofar as the beneficiary has rights himself and inasmuch and as long as the said beneficiary may dispose of these, the existence of the rights of others is not questioned and the obligations which may be tied to the beneficial interest are accepted by the acquiring party in the absence of any other directive.

Insofar as the handing over to the beneficiary of an element of capital in consequence of the beneficiary's right to terminate, dissolution or other similar reasons is provided for in the trust instrument, the creditor and/or the trusteeship in bankruptcy or the administration may exercise the right of termination in place of the beneficiary and demand the handing over of the element of capital with analogous application of the related regulations concerning termination in the case of registered cooperative societies, insofar as a deviation does not result in consequence from the provision concerning the redemption sum.

Where the inalienable beneficial interest acquired on the basis of the trust instrument for valuable consideration may be transferred to another person only by way of universal succession, nothing shall oppose the non-withdrawability of the creditor's satisfaction in respect of claims arising from intentional and unlawful injury committed by the beneficiary concerned.

In spite of the non-withdrawability of the beneficial interest, the injured party may seek satisfaction for claims against a beneficiary arising from acts or omissions committed with malicious intent and unlawfully if the loss of the beneficial interest obtained without valuable consideration is for some reason not provided for or the trust instrument does not determine otherwise and by the application of such a claim does not prejudice the rights of others or the defrayal of reasonable maintenance (food, clothing and accommodation) and the reasonable upbringing of the culpable beneficiary, the said beneficiary's spouse who has not remarried, minors or other issue without means.

Where it is incumbent upon the beneficiary profiting from the non-withdrawability to fulfil an obligation under family law to support, the entitled parties may have recourse to the beneficial interest or to individual claims therefrom for the duration of the obligation to support insofar as the necessary maintenance is not withdrawn by this.

Where the settlor is at the time the sole first beneficiary or he has acquired the beneficial interests later for valuable consideration, without reversioners with right of succession being present or, if it so happens, any other person alone having acquired for valuable consideration all the rights accruing from the beneficial interests, regardless of whether he is also the sole trustee (one-man trust) or not, the regulations concerning the special creditor in the case of the individually owned enterprise with limited liability¹⁾ shall be applied accordingly.

§ 139

Before the devolution of the beneficial interest, a reversionary entitlement having a current net asset value may be withdrawn by way of injunction, levy of execution and writ, bankruptcy or administration proceedings only provided it is alienable and no other provision is indicated in the law or the trust instrument, as for the possession of beneficial interest, otherwise every direction to the contrary is null and void.

bb. Reversionary interest

Where a possession of beneficial interest and a reversionary interest related thereto are claimed simultaneously by the creditors, the creditor of the holder of the beneficial interest may only assert his claims without prejudice to the rights of the reversioner's creditors

§ 140

Should execution and writ be levied against the right derived from the beneficial interest as such or bankruptcy proceedings are initiated concerning the beneficiary's assets, a reversioner desig-

c. Right of entry

¹⁾ The provisions concerning the individually owned enterprise with limited liability (Art. 834-896a) were cancelled by the law dated 15 April, 1980 LGBl. 1980, No. 39.

nated by name or otherwise, with right of succession may, in the absence of any other legal directive, enter the trust relationship. This shall require the assent of the holder of the beneficial interest and/or in the case of the reversionary interest of the entitled reversioner against whom payment enforcement is being exercised or, for important reasons, instead of that, the assent of the Register Office, against payment of the cash value of the beneficial interest concerned to the creditor enforcing payment or the bankrupt's estate in place of the beneficiaries concerned.

If no entitled successor or reversioner designated by name is present, the spouse and the issue of the holder of the beneficial interest shall be entitled to the same right, jointly or individually; in case of dispute, pursuant to the directive of the Register Office.

Entry shall ensue by written announcement of the party with right to enter to the trust enterprise and to the creditor and/or the trusteeship in bankruptcy. This announcement may ensue only within one month after the party with right to enter has received advice of the commencement of levy of execution and writ or the initiation of bankruptcy proceedings and only as long as realisation has not ensued.

The related regulations concerning bankruptcy proceedings shall be applied to the administration proceedings accordingly.

§ 141

- J. Responsibility
- I. In general

Where the law does not determine to the contrary, the regulations concerning responsibility in the case of companies with legal personality shall be applied accordingly to trust enterprises which pursue commercial objects. The other provisions concerning responsibility under the general regulations relating to legal entities as well as to the trust enterprise, the participants and third parties shall be applied to other trust enterprises accordingly.

Where pursuant to the foregoing paragraph the law makes reference to members of legal entities, these shall be deemed to be the beneficiaries of the trust enterprise who are to be taken into consideration and, where the law makes reference to major participants, these shall be deemed to be those beneficiaries with corresponding beneficial interest shares, instead of the said members of legal entities.

The responsible parties may not, on grounds of the obligations arising from their responsibility, take into account those advantages they have procured from the trust enterprise in another manner for the trust enterprise or for the party that has a liability claim arising otherwise from the responsibility (no adjustment of advantages).

NB. Concerning the above, Dr. Klaus Biedermann in "Die Treuhanderschaft des Liechtensteinischen Rechts, dargestellt an ihrem Vorbild, dem Trust des Common Law" writes as follows:

It is evident that TrUG Art. 141 para. 3 is intended to adopt the rule valid in the English-American Trust Law according to which the profits accruing from one breach of trust may not be taken to offset the losses arising from another breach of trust. The wording, however, is rather ambiguous ("... advantages they have procured from the trust enterprise in another manner ...").

Where it is not determined to the contrary, several responsible parties shall be liable jointly and severally to the parties entitled to claim. The said responsible parties shall bear the loss arising from the responsibility in equal parts. Similarly, they shall have rights of recourse in the same proportions with appropriate allowance being made, however, for the benefits drawn by the individual parties, insofar as claims arising from malicious intent are not involved.

Deviating from the provisions of this law concerning responsibility, the trust instrument may declare those provisions concerning responsibility under the general regulations concerning legal entities to be solely applicable analogously.

Insofar as no other provision is indicated by the law, the trust instrument or the relevant legal relationship, members of other bodies or persons active pursuant to the trust instrument shall be responsible pursuant to the regulations relating to the task.

§ 142

- II. Trustee responsibility
- 1. In general

In addition to the cases which are otherwise provided for by law, the trustees engaged in the conduct of business, insofar as they are concerned in the individual case, shall be under obligation to the trust enterprise, other participants and third parties to comply correctly with the law, the trust instrument, the resolutions or directives of competent offices, third parties, the Court or the Register Office and shall be responsible for the loss arising from the culpable non-fulfilment of their duties (breach of trust) in the same way as the members of the governing body of a company with legal personality.

The trustees not engaged in the conduct of business shall be responsible for the loss arising from the inadequate supervision of the trustees engaged in the conduct of business and, where they have themselves appointed these or employees for the conduct of business or other bodies or offices, they shall also be responsible for the loss arising from the involvement in the appointment (selection) as well as from the inadequate employment of the employees.

The responsibility of the trustees on grounds of gross negligence or intent cannot be excluded in advance by the trust instrument or resolutions and directives of the competent offices.

§ 143

- 2. Special cases of liability
- a. In the case of co-trustees

In the absence of any other directive, a co-trustee is also particularly responsible on grounds of breach of trust for the loss occurring as the result of the acts or omissions of another trustee:

1. Where he hands over to another trustee trust property received or permits such a trustee alone to receive the said trust property without taking the precautions, prescribed or necessary, having regard to the circumstances in the individual case, for faithful administration and application, or fails to supervise the trustee appropriately,
2. in the event that he gains knowledge of an attempted or committed breach of faith on the part of his co-trustee and fails to undertake the steps necessary and appropriate under the cir-

cumstances for the prevention of the breach of trust and/or for the assertion of the claims arising from this on behalf of the trust enterprise or similar undertaking.

Where together with others a trustee has signed a confirmation of receipt without, however, having personally received anything and where the receiving trustee has applied that which he has received in a wrongful manner, the co-signatory shall not be responsible, notwithstanding his obligations arising from the violation of the obligation to supervise or from a similar duty.

Where one of several trustees has alone received and wrongfully applied trust property or otherwise derived benefit from it unlawfully or in the event that a breach of trust has been committed solely as the result of the advice of a co-trustee appointed as expert for the enterprise or where, in any case, only one of the trustees alone is to blame, this trustee alone shall, in the absence of any other trust directive, compensate for the loss.

§ 144

A trustee appointed subsequently shall cause himself to be guilty of a breach of trust with liability for damages if he fails to assert, at the expense of the trust enterprise and in a manner appropriate to the circumstances, the claims of the trust enterprise for compensation known to him, arising from the breach of trust committed by one of his predecessors.

b. In the case of succeeding and resigning trustees

A trustee resigning from his post shall be responsible for the damages arising from a breach of trust if he withdraws with the intention of thereby enabling the said breach of trust to be committed.

§ 145

Where co-beneficiaries suborn a trustee to commit a breach of trust or, alone, in their simultaneous capacity as trustees, have committed or assented to such a breach of trust, they alone shall be liable to the extent of their rights to beneficial interest and, in addition to this, jointly with other suspected persons, to the other parties entitled to claim for the damages caused. The trust, how-

III. Responsibility of the beneficiaries

ever, insofar as it is entitled to claim, shall have a lien on the beneficial interest unless this may have been declared inalienable.

In the absence of any other directive and with reservation of the right to offset and the right of retention, this lien on the beneficiaries' right shall not extend to the claims to which the beneficiary is entitled from another trust, even if they are contained in the same trust instrument.

The regulations concerning the responsibility of third parties are reserved.

§ 146

IV. Responsibility
of third parties
as constructive
trustees

Where a third party acts on behalf of the trust enterprise with the fraudulent misrepresentation that as a trustee he is empowered to do so or interferes otherwise, without authority, in the conduct of business or in the pretended capacity of trustee or, in the knowledge of a breach of trust committed by another, he receives trust assets in an inadmissible manner or draws benefit from trust property in a manner which is otherwise unlawful or in conflict with loyalty and good faith or in other cases the third party knowingly helps the trustees to commit a breach of trust, he shall be liable in the same way as a trustee and, like the latter, shall be under obligation to furnish information.

Representatives, employees, other auxiliary and similar persons of a trust enterprise shall also be deemed to be third persons.

Otherwise, a third party purchaser of trust property shall not be under obligation to ensure that his counter performance is applied pursuant to the law and the trust instrument.

§ 147

V. Release from
responsibility
1. In general

Where in spite of committing a breach of trust a trustee proves that he acted in good faith and under the prevailing circumstances was no longer able to obtain the assent of the parties authorised to give such assent, other competent offices or the instructions of the Register Office, the Court or the official office otherwise competent may, if a claim is asserted, decide at its absolute discretion whether liability exists to make good a loss and whether other consequences shall ensue or not.

Where an entitled beneficiary causes a trustee to commit a breach of trust, consents to or cooperates in this, there shall be no responsibility on the part of the trustee towards the beneficiary concerned and, where the said entitled beneficiary is the sole beneficiary, also towards the trust enterprise, provided the latter is not over-indebted.

The waiver of the claim arising from the responsibility where petty blame is involved, or a possible exoneration on the part of all parties entitled to claim or other offices so authorised is reserved if the creditors of the trust enterprise do not suffer loss thereby.

§ 148

In the absence of any other directive, claims arising from responsibility shall become statute barred within three years of the time when the act or the omission which established the responsibility took place and this no longer continues.

Where, however, the claim arises from a punishable act or an omission for which criminal law provides a longer statutory period of limitation, this shall also be valid with respect to the claim arising from the responsibility.

As long as a trustee occupies the position, the statute of limitation only commences to run in his favour if petty blame is involved and he no longer has in his possession trust property or its equivalent value from the breach of trust.

- 2. Statute of limitations
- a. In general

§ 149

Rights of recourse of the responsible parties between themselves are subject to the basic principles of that legal relationship which is decisive in the individual case and become statute-barred after the expiration of the above-mentioned time limits which, however, only commence to run from the time when one of the jointly responsible parties is made finally and conclusively responsible.

- b. In the case of rights of recourse

§ 150

- VI. Securing and preventive measures
- 1. Directive of the Register Office

In the case of well-founded doubt concerning the admissibility of the execution or omission of a certain act to be implemented currently or concerning the interpretation of the trust instrument regarding, for instance, the setting aside of capital and yield, or a similar matter, the trustees engaged in the conduct of business may, at the expense of the trust enterprise, with or without consulting other participants and with submission of the facts and circumstances, approach the Register Office for an instruction. In complying with this instruction, no claim arising from responsibility may be asserted against the said trustees engaged in the conduct of business (official instruction).

In urgent cases or for other important reasons, this right may be exercised by all trustees, even where the trust instrument determines otherwise.

§ 151

- 2. Liability insurance and right of refusal

The trustees engaged in the conduct of business shall be empowered to take out, at the expense of the trust enterprise, appropriate liability insurance against all the obligations arising from responsibility, insofar as these do not occur as the result of gross negligence or intent (trustee liability insurance).

Where the law does not allow exceptions regarding instructions of the entitled beneficiaries, the trustees engaged in the conduct of business may refuse to implement the provisions of the trust instrument, the resolutions or instructions of other competent participants, offices or third parties authorised in this regard if these contravene the law or lawfully admissible provisions of the trust instrument and their implementation would render themselves responsible pursuant to the regulations provided here or elsewhere (right of refusal).

§ 152¹⁾

- 3. Periodical auditing

Where neither an audit authority nor a special supervisory trust or similar office is provided for and the trust instrument

¹⁾ § 152 in the version of the law dated 15 April, 1980, LGBl, 1980, No. 39.

does not contain a provision to the contrary, the trustees, notwithstanding the otherwise legally admitted official audit, shall be empowered to instruct that an audit be carried out from time to time, at the expense of the trust enterprise. Other measures pursuant to the law or trust instrument remain reserved.

§ 153

The trust instrument may provide for or allow or the Register Office may, for important reasons, after hearing participants, direct that trustees may not take up their duties or further exercise them before they have lodged, at their expense, an appropriate security for the faithful and conscientious exercise of their function and for possible claims for compensation. The said security may be provided by means of a promissory note or a suretyship or some other form of guarantee.

4. Lodging of security, etc.

In the event that the security is not lodged within a reasonable period of time or, if necessary, within a period of time determined by the Register Office, it shall be assumed that the person appointed or already acting as trustee does not desire to accept the office or has renounced the further exercise of duty. In this case, instructions shall be given concerning the possibly necessary entry in the Trust Register and claims for compensation shall be reserved.

Trustees engaged in the conduct of business as well as individual trustees or employees may, for important reasons, renounce all further responsibility arising from the administration of the trust assets by transferring the trust assets, as far as admissible, at the expense of the trust enterprise to the Landesbank or, with the assent of the Register Office, to another suitable authority for appropriate administration and application.

The foregoing provisions shall be applied accordingly to members of other bodies or offices appointed pursuant to the trust instrument.

§ 154

- K. Official supervisory and auditing trust office
- I. Official supervisory trust office
- 1. Appointment

The Register Office may, for important reasons, appoint a supervisory trust office for trust enterprises which do not undertake commercial activities. Such an appointment may be made upon application by participants or such persons or offices that have a right to appoint or remove or to propose trustees or have a right of nomination for or conferment of beneficial interest, or of the universal successors in title or the settlor's executors, who have provided without valuable consideration the entire trust fund for the beneficial interest.

Otherwise, such an office may also be appointed by order of the settlor without, however, the Register Office having to make such an appointment in the absence of important reasons.

A supervisory office may be appointed regardless of whether the otherwise prescribed number of trustees is present or not.

In the absence of any other directive, consideration should, if possible, be given to the Liechtenstein Landesbank as public trustee when appointing a supervisory office.

§ 155

- 2. Cancellation

After considering all the circumstances, the Register Office may, upon application by the supervising or other trustees, partly or completely cancel the supervisory trust office, particularly if this is the unanimous wish of all the entitled beneficiaries of the trust or in the event that this appears to be appropriate for other important reasons and the trust instrument does not determine to the contrary.

§ 156

- 3. Rights and duties
- a. In general

Insofar as the law or the trust instrument does not determine otherwise, the supervisory office shall have those rights and duties determined by the Register Office at the time of appointment or subsequently, but at least those which the supervisory board has in the case of a company limited by shares and, additionally, the members shall have the position of supplementary trustees.

When exercising their rights and duties, the supervising trustees shall, as far as possible, take into consideration not only the type and the position of the other trustees but also the wishes of beneficiaries, insofar as they are compatible with the law or the trust instrument or the instruction of the Register Office.

Where no deviations have been drawn up otherwise for the supervising trustees or nothing to the contrary is indicated by the purpose of the supervisory office, the regulations concerning the other trustees shall be applied accordingly. The supervising trustees, however, shall pass resolutions with an absolute majority of the votes.

§ 157

In the relationship with other trustees (engaged in the conduct of business), the supervising trustees, without prejudice to the rights and duties of other participants or third parties, shall supervise the entire trust enterprise, in particular the assets, any securities, documents, etc., on the understanding that the other trustees shall at all times during the normal hours of business have access to the assets, securities, documents, etc., and may make the necessary copies at the expense of the trust enterprise.

- b. Relationship to the other trustees
- aa. In general

The direct asset administration activities of the other trustees and the exercise by the other trustees of their powers pursuant to the law or the trust instrument or the instructions of the Register Office are safeguarded.

The supervising trustees shall cooperate in this regard and undertake whatever is necessary to enable the other trustees to exercise their powers and fulfil their duties, unless the cooperation calls for a breach of trust or could lead to a personal liability for the supervising trustees.

§ 158

In the absence of any other directive, the right or duty of the other trustees to appoint trustees, to propose or remove or similar rights and duties shall be exercised jointly with the supervising trustees.

- bb. Participation in the appointment of trustees, etc.

Provided there is no danger in delay or not only a temporary measure is involved, the supervising trustees shall be heard before trustees are appointed or removed or similar measures taken by the Register Office upon application by participants or third parties or ex officio.

§ 159

cc. Regarding trust assets and yield

Notwithstanding the other trustees' engagement in the conduct of business, the supervising trustees shall take particular care that the trust assets and their yield are appropriately administered and applied, as though they alone were trustees.

In the absence of any other trust directive, payments from the trust assets or the yield shall ensue through the supervising trustees. Similarly, payments to the trust enterprise shall be made to the supervising trustees.

These, however, may permit payments to the trust enterprise to be received by other trustees or third parties, without the supervising trustees being liable for the possible fault of these other trustees or third parties, insofar as the supervision is not defective.

§ 160

4. Responsibility

The regulations concerning the responsibility of other trustees shall be applied to supervising trustees accordingly, subject to the proviso that they shall not be responsible for the acts or omissions of other trustees or offices, insofar as a fault in the supervision does not apply to them personally.

Where in the determination of beneficiaries and the payment of beneficial interests the supervising trustees act in good faith on the basis of written statements by the other trustees or otherwise competent offices, no responsibility shall devolve upon them, notwithstanding the possible responsibility of the other trustees.

§ 161

Where important reasons exist, one or several impartial third parties may be appointed as auditors by the Register Office, upon application by participants or the universal successors in title or executors of the settlor who has provided the trust fund without valuable consideration for the beneficial interest of others or the supervisory trust office or upon application of endangered creditors of the enterprise or ex officio.

These auditors shall be removed by the Register Office upon the unanimous application of entitled beneficiaries if their appointment did not ensue ex officio or upon application by endangered creditors.

For important reasons, they may be removed upon application by participants or other persons who occasioned the appointment.

In the event of cessation before the audit has been completed, as the result of removal, death, bankruptcy or insolvency or where the auditors are incapable of fulfilling their duties or for other important reasons, a successor may be appointed in the same manner as the predecessor.

- II. Official audit
- 1. Appointment and removal of auditors

§ 162

The officially appointed auditors shall have all the rights and duties stated in the law as well as all those rights and duties which the Register Office orders as necessary for the fulfilment of their tasks.

In the absence of any other directive, the auditors shall examine the entire trust enterprise, in particular the management, the position and the investment of the assets as well as the accountancy.

All trustees and employees are required upon demand to provide the auditors with information concerning all the facts and circumstances. Otherwise, they shall bear responsibility for the loss as well as for the costs and, in the case of avoidance (failure to provide such information) they shall be removed pursuant to the regulations concerning the obligation to disclose.

- 2. Rights and duties
- a. In general

Other participants or third parties otherwise engaged in the conduct of business who have trust assets or books of account or business papers in their possession are also under obligation to provide information. The provisional decision of the Register Office may be invoked in the event of refusal to furnish such information.

§ 163

b. Audit report

In addition to a clearly arranged balance sheet or, in the case of an enterprise which does not undertake commercial activities, in addition to a clearly arranged statement of accounts relating to the trust assets, the auditors must submit an auditors' report with a statement which indicates whether the management has acted pursuant to the regulations, and in particular, has kept the accounts correctly, has invested and administered the assets correctly or not.

The balance sheet (statement of accounts) together with the auditors' report must be submitted to the Register Office and, in addition, the auditors must deliver a copy to those who applied for an official audit and to the trustees.

Pursuant to the regulations concerning the obligation to disclose, each beneficiary may, at his own expense, during normal business hours, inspect the balance sheet (statement of accounts) and the auditors' report, examine these and take copies or excerpts. Alternatively, the beneficiary's representative may undertake the inspection and take copies and/or excerpts.

§ 164

3. Reference

The regulations concerning the official audit under the general regulations concerning legal entities shall otherwise be applied accordingly also, in particular, with respect to the expenses and remuneration of the auditors.

§ 165

The trust instrument may provide for its amendment including the correction by one or other of the participants or by all the participants together or by third parties.

With the assent of all the parties to be considered in each case or pursuant to the regulations concerning the family resolution, the trust instrument may, for important reasons, after all the circumstances have been carefully considered and with the assent of the Register Office, be amended or corrected in every case, even if the amendment is excluded or forbidden. However, in the absence of any other provision of the law or the trust instrument, the trust enterprise cannot be cancelled.

Upon application by and after hearing the participants concerned, particularly the trustees engaged in the conduct of business, the Register Office may, in the absence of any other regulation, effect a straightforward correction of the trust instrument.

In the absence of known entitled beneficiaries, the amendment may nevertheless ensue only with reservation of the later appearance of such entitled beneficiaries within the period of limitation if the rights of others may be violated and the trust instrument does not determine otherwise.

Should the power of revocation of the trust articles be reserved for a participant or a third party, this shall not in case of doubt empower the said participant or third party to amend trust articles if the Register Office for important reasons or the law does not allow an exception.

- L. Amendment of the trust instrument, conversion and merger, etc.
- I. Amendment

§ 166

The trust instrument may provide for the conversion of a trust enterprise into an undertaking (firm or legal entity) having another legal form or the merger with such an undertaking or another trust enterprise or another trust undertaking, without liquidation of the trust enterprise, pursuant to detailed regulation with observance of the regulations otherwise in existence for the other legal form.

- II. Conversion and merger

The conversion of a trust enterprise without legal personality into a trust enterprise with legal personality or, conversely, of a trust enterprise of the latter type into one of the former type without further amendment of the trust articles may, in the absence of any other directive, be undertaken at any time by operation of law by the trustees engaged in the conduct of business without liquidation.

Supplementally, the regulations drawn up for registered co-operative societies shall be applied accordingly to the conversion and merging of trust enterprises whose participants or third parties have liability or liability to make further contributions.

In addition, the admissible conversion or merging resulting from a change of governing bodies or of the purpose/object provided by operation of law is reserved.

§ 167

III. Form

Where the law does not make any other provision, each amendment of the trust instrument shall be drawn up in writing by the parties empowered to do so and registered by them in the Trust Register through the trustees engaged in the conduct of business and, if required, the Registrar shall enter the said amendment and publish it. Insofar as this concerns the registered facts and circumstances, an excerpt from the amendment document shall be deposited with the Trust Register at the time the amendment is registered.

Where the trust instrument amendment concerns a trust enterprise which is not entered in the Trust Register, each amendment shall be reported to the Register Office, insofar as notifiable facts and circumstances are concerned and the Register Office did not take part or the files are not otherwise deposited with the Register Office.

The foregoing regulations shall be applied accordingly in the case of merger or conversion unless the law provides otherwise or the relevant provisions concerning another form of undertaking are to be applied.

§ 168

The special liability of the assets of the dissolved or amended trust enterprise engaged in commercial activities, with possible participants and third parties, for the obligations of the trust enterprise accruing up to the time of the amendment, merger or voluntary conversion shall remain in existence for one year from that time and in the case of a merger, unless the Register Office allows an exception or liabilities do not exist, the assets of the dissolved trust enterprise shall be administered separately and a separate account shall be kept accordingly.

IV. Effect

Up to this time, in the case of a merger, the assets taken over shall still be deemed to be the assets of the dissolved enterprise as far as the relationship of the creditors of the dissolved trust enterprise to the trust enterprise taking over and to its other creditors is concerned and execution may be levied against the trust enterprise taking over and special bankruptcy or special administration proceedings may be initiated, with restriction to the assets taken over.

The trust instrument may determine that the certificate holders are under obligation to return their security documents to the new form of undertaking against a possible corresponding claim, otherwise they may be deprived of their rights, with or without compensation.

The provisions concerning the lapse of the liability of the participants or third parties or of the liability of these to make further contributions in the case of conversion or fusion are reserved.

§ 169

Where a trustee appointed by the Register Office has taken part in the amendment, conversion or cancellation for unknown or uncertain beneficiaries and the right of such a beneficiary has been seriously violated, the said beneficiary may apply to the Register Office in extrajudicial proceedings for the approval to be declared withdrawn and the approved act to be declared null and void and for the former state of affairs to be restored or, in the event that the latter no longer appears to be possible, the ag-

V. Withdrawal of approval and declaration of nullity

grieved party may demand compensation from the party unjustifiably enriched as a result of the course of events in question.

The withdrawal and declaration of nullity may only ensue after the other participants have been heard and shall have no influence on the validity of the direction concerning the trust assets, carried out on the basis of the approval, as far as bona fide third parties are concerned.

§ 170

M. International law and trust enterprises subject to foreign law, etc.

In the absence of a deviating order of the law, the provisions of international law under the general regulations concerning the legal entity shall be applied to the trust enterprise accordingly also, in particular, the regulations concerning the legal representative. ...¹⁾)

¹⁾ § 170 para. 2, 3 and 4 cancelled by the law dated 15 April 1980, LGBl. 1980, No. 39.

Fifth Part
Twentieth Title
Business Accountancy

Art. 1045

Whosoever has the duty to enter his company in the Public Register shall be required to keep an orderly inventory, draw up balance sheets and keep books of account which show the company's financial position and the individual debit and credit relationship associated with the business as well as the undertaking's economic situation.

- A. Observance of accounting regulations
- I. In general

In addition, the party required to register has the duty to retain copies of dispatched business letters and to keep these copies, as well as business letters received, in an orderly manner.

The extent to which a budget estimate, an annual rendering of account and an audit are required, in addition to the inventory, the balance sheets and the accounting, is determined in the law, the articles and, in the absence of such, by commercial practice in the appropriate branch of business or in the relevant form or type of undertaking.

Insofar as public law so directs, community undertakings and other legal entities under public law shall be subject to the following provisions.

Art. 1046

For the individual proprietor, the duty begins with the commencement of business; in the case of others, such as individual proprietors with limited liability, registered companies or legal entities, upon coming into existence.

- II. Beginning and end

The duty ends with the discontinuance of the undertaking or, when a business which came into existence upon entry in the Public Register is no longer operated, upon deregistration in the Public Register.

Art. 1046A¹⁾

The member of the administration of a legal entity who fulfils the prerequisites pursuant to Article 180a is required to ensure that the books of account are available, within a reasonable period of time, for official examination at the company' domicile.

Art. 1047

- B. Rules conc. inventory and balance sheet
- I. Duty to prepare inventory and balance sheet
- 1. Opening inventory and balance sheet, annual inventory and annual balance sheet

Whosoever is under obligation to enter his company in the Public Register shall, at the commencement of his undertaking, draw up an opening inventory and an opening balance sheet and then, on the dates determined by law, the deed of partnership or the articles, an inventory (annual inventory) and a balance sheet (annual balance sheet, a balance sheet for a going concern or a profit and loss account).

The annual balance sheet shall show the financial state of the undertaking having regard to its business result since the last balance sheet was drawn up. The said annual balance sheet shall be drawn up in accordance with generally acknowledged business principles and the special regulations laid down by law, in particular for individual undertakings with limited liability²⁾, general partnerships (Kollektivgesellschaften) or limited partnerships (Kommanditgesellschaften), companies with legal personality and establishments.

Art. 1048

- 2. Description of opening inventory and annual inventory

The opening inventory shall be an accurate schedule of all assets and liabilities whose balance forms the company capital.

The annual inventory, on the other hand, shall be an accurate schedule of all assets and liabilities, but in this case the assets shall be entered as going values, taking into consideration this law, the deed of partnership or the Articles.

¹⁾ Art. 1046^A inserted by the law dated 15 April, 1980 LGBl 1980, No. 39

²⁾ The provisions concerning the individually owned firm with limited liability (Art. 834-896a) were repealed by the law dated 15 April, 1980, LGBl. 1980, No. 39.

Art. 1049

Balance sheets and inventories shall be drawn up annually and shall be complete within six months at the latest of the close of the business year.

3. Fixed dates

As a rule, the business year shall coincide with the calendar year and, in case of doubt or if the Register does not permit otherwise, may not exceed twelve months.

Should the party with the obligation have a warehouse or the like for which, owing to the nature of the undertaking, it may not be possible to make an inventory every year, it shall be sufficient if an inventory of the warehouse is made every two years.

In times of economic crises and the like, the government, by way of statutory instrument, may fix different dates.

Moreover, the Registrar may, if there are important reasons, extend the fixed dates in individual cases, in extrajudicial proceedings.

Art. 1050

The inventory and the balance sheet must be drawn up in the national currency. A foreign currency may also be used and this shall be shown in a separate column, next to the national currency.

4. Currency

Domiciliary enterprises may draw up the inventory and the balance sheet solely in a foreign currency.

Further exceptions, provided by law or permitted by the Registrar, are reserved.

Art. 1051

The annual balance sheet must be drawn up in accordance with recognised business rules, completely, clearly, truthfully, and distinctly, thus providing the most certain possible insight into the economic situation of the party (parties) under obligation to draw up a balance sheet. Reservation is made concerning the commercially customary hidden reserves.

II. Balance sheet principles for the annual balance sheet

1. Completeness of the annual balance sheet

Art. 1052

- 2. Individual items
- a. Permanent assets

Assets of permanent service to the operation of the company, such as buildings, land, power plants, machines, vehicles, tools, furniture, rights, concessions, patents, processes, licences, companies, trade marks and other assets may, at the most, only be entered in the balance sheet at the cost of acquisition or manufacture, after deduction, appropriate to the circumstances, of the necessary depreciation.

Depreciation may also be taken into consideration by the establishment of amortisation and renewals funds.

If the installations are insured, the insurance sum should be noted next to the balance sheet value.

Art. 1053

- b. Stock and other assets to be sold

Raw materials, semi-finished products, goods and other real assets intended to be sold may, at the most, only be valued at the acquisition or manufacturing costs plus interest and expenses. If, however, on the balance sheet date, these are higher than the generally valid market price at the place of purchase, including purchase expenses, the latter value, at the most, shall be taken.

In the case of assets which do not have a market value, the latter shall be replaced by the purchase price valid on the balance sheet date.

Art. 1054

- c. Securities and own shares

Quoted securities may only be valued at the acquisition price plus interest, at the most. If, however, the average price for the last month before the balance sheet date is lower, only the latter, lower price may be taken.

Unquoted securities shall be entered at the original value, at the most, taking the current yield into consideration, if necessary (interest, dividends); a possible decrease in value shall be taken into consideration.

The foregoing provisions shall apply by analogy to own membership shares (own shares and similar).

Deviating government regulations concerning the valuation of securities which concern securities for pledging the covering

capital funds of undertakings and concerning life insurance and similar insurance branches requiring cover are reserved.

Art. 1055

Securities and claims in a currency other than the balance sheet currency and redeemable within a year as well as liability commitments in a foreign currency entered into by the party under obligation to draw up a balance sheet, which are subject to notice of termination by the creditor or are due within a year shall be converted, at the most or at least, at the average rate which the foreign currency has maintained during the last month within the country, in Switzerland or in another country determined by the Government.

d. Valuation of values in a currency other than the balance sheet currency

Should claims or securities in a foreign currency be involved which are redeemable in a period longer than one year, the decrease in value suffered by the foreign currency shall be taken into consideration at least to the same extent as is necessary for the adjustment of the decrease in value in the case of the uniform distribution of the depreciation over the term still remaining up to the occurrence of possible repayment.

An increase in the value of a foreign currency shall be taken into consideration in an analogous manner when the liability commitments of the party under obligation to draw up a balance sheet are terminable or due in a period which is longer than a year.

The Government shall be empowered to issue deviating provisions insofar as special circumstances justify this.

Art. 1056

Claims acquired from third parties shall be entered in the balance sheet at the acquisition price at the most and doubtful claims shall be assessed at their probable value, uncollectable claims, however, shall be written off.

e. Claims

Claims with conditions, a time limit or instructions shall be included at their mature value, taking such incidental provisions into consideration.

Art. 1057

f. Own capital,
special funds
and balance

The capital resources of the party (parties) under obligation to draw up a balance sheet as well as the various funds (reserves, amortisation, renewals and welfare funds) shall be entered with the appropriate amounts on the debit side, insofar as an exception respecting the capital resources is not provided or allowed, as in the case of companies limited by shares and other undertakings.

The profit or loss resulting from the comparison of all the assets and all the liabilities, including the items to be entered on the liabilities side, must be stated in a specific item at the end of the balance sheet and, in addition, in accordance with the circumstances and commercial practice, a profit and loss account relating to this asset or liability balance shall be drawn up.

Art. 1058

g. Bonds issued

Bonds (debt certificates) issued by the party under obligation to draw up a balance sheet shall be entered on the liability side with a sum representing the full repayment amount.

The difference between the issue price and the repayment amount may be allocated to the assets in the case of the issue price being below the nominal value; however, by marking down annually, it must be amortised by the due date at the latest.

Where repayment ensues by means of invariable annual drawing, the premiums in excess of the nominal value, which must be paid at the time of repayment, may also only be paid out of the profit from the year in which the bonds are repaid.

Art. 1059

h. Silent obligations and
privileges

Silent obligations such as asset losses, probably resulting from subsequent fulfilment, acceptance and delivery obligations as well as suretyships and special pledging in favour of individual creditors, shall be listed in an appendix to the balance sheet or, in the case of the individual balance sheet items, in the text column in a total sum in each case.

Silent privileges, such as long term delivery privileges, the conclusion of specifications and the like may also be dealt with in the same manner.

Art. 1060

Where no provision is made for exceptions or exceptions do not ensue as the result of the circumstances, the winding-up balance shall be comprised on the one hand, of the assets and, on the other, of the debts to third parties, as liabilities; own resources, special funds without legal personality or without fiduciary application are excluded from these.

III. Winding up
balance

In the winding up balance, the realisation value at the time the balance is struck shall be authoritative for the valuation of all items of property, without distinction.

The equalising distribution with respect to time of organisation costs, of price losses which result when bonds are issued and of marking down is inadmissible.

Similarly, hidden reserves may no longer be retained.

Art. 1061

The balance sheet and the inventory shall be signed by the business proprietor or his legal representative or, if appropriate, by all the personally liable partners or by the bodies responsible pursuant to the articles or the law.

IV. Responsibility

The parties under obligation shall be responsible for the observance of the accounting regulations, regardless of whether they personally attend to the accounting or whether they assign this work to others, in particular to employees.

Art. 1062

For the keeping of books or their substitute, cards, etc., and for otherwise necessary records, the party under obligation shall use a living language and the characters of a modern language. However, insofar as provision is made for submission to the Public Register or for publicity otherwise, the balance sheet must be submitted or published in German.

C. In general
I. External form

Books of account may be replaced by loose-leaf systems, long-term accounts and the like.

The original text of an entry may not be made illegible by crossing out or by any other method, nothing may be erased and,

alterations which by their nature give reason to doubt whether these were made at the time of the original entry or later may not be made.

Where in this law reference is made to books of account, the regulations relating to these shall apply analogously to the loose-leaf system of bookkeeping or similar and to the inventory and the balance sheet.

Art. 1063¹⁾

II. Obligation to preserve

Whosoever is required to keep books of account shall preserve these, the business papers and the accounting records for a period of ten years.

The originals of the operating account and the balance sheets shall be preserved; the other books of account may be preserved as records on image recording media, business papers and accounting records as records on image and data recording media, provided the records agree with the documentation and can be made legible at any time. The Government shall determine the prerequisites in detail by statutory instrument.

The period of preservation, i.e., of safe keeping, shall commence with the expiration of the calendar year in which the last entries were made, the business papers were received or dispatched and the accounting records came into being.

Art. 1063A²⁾

II. Obligation to declare

Juridical persons and trust enterprises entered in the Public Register that do not undertake commercial activities and whose articles do not permit the pursuit of such activities shall submit to the Public Register, within six months of the close of the business year, a declaration signed or jointly signed by the member of the administration who fulfils the prerequisites pursuant to Article 180a, in which it is confirmed that the statement for the business year concluded is to hand and that during that business year commercial activities were not undertaken.

¹⁾ Art. 1063 in the version of the law of 10 November, 1976, LGBl. 1976, No. 67

²⁾ Art. 1063A inserted by the law of 15 April, 1980, LGBl. 1980, No. 39

The obligation to submit the declaration mentioned in paragraph 1 shall not apply where pursuant to other provisions an annual account must be submitted every year to the Tax Administration.

The Public Register Office shall supervise the punctual fulfilment of the duty to declare mentioned in para. 1 of this Article. Should the declaration not be submitted within the appointed period, the Public Register Office shall remind the defaulting company and if default continues for at least twelve months dissolution and liquidation proceedings shall be initiated ex officio. Pursuant to § 66, the imposition of an administrative penalty is reserved.

For a period of two years, the Public Register Office shall have the right to examine within the intendment of para. 5 and 6 the declaration submitted pursuant to para. 1. An examination shall be waived if the declaration is confirmed by a licenced auditor or a company of chartered accountants.

Should an examination establish that a statement within the intendment of para. 1 cannot be submitted, the Public Register Office shall determine a period of grace for the submission of the said statement or a confirmation pursuant to para. 4 and after the expiration of the period of grace shall initiate dissolution and liquidation proceedings ex officio.

Should an examination of the statement show that the company has undertaken commercial activities, the Public Register Office shall notify the Tax Administration.

Art. 1064

Whosoever is under obligation to keep books of account may, in the event of disputes concerning the legal relationships arising from the operation of a business, be required to produce these as well as the business letters received, telegrams and copies, upon petition or ex officio. Records submitted on image or data recording media shall be readable without the use of aids.¹⁾

III. Obligation to submit, law of evidence and exclusion of levy of execution and writ

¹⁾ Art. 1064 para. 1 supplements pursuant to law dated 10 November, 1976, LGBl. 1976, No. 67.

The judge shall assess the probative value of the books and business papers at his discretion.

The special regulations, in particular contentious, extrajudicial and non-contentious proceedings concerning the submission of documents shall remain unaffected.

Unless the undertaking as a whole were to be transferred and they were indispensable for the continuation, the books and their substitute may not be utilised either by way of levy of execution and writ or in bankruptcy proceedings. A right of retention may not be asserted.

Art. 1065

IV. Duty of disclosure

Where in official proceedings the books or the notes which take their place are submitted, their content, insofar as this relates to the subject matter of the case, shall be examined, possibly in the presence of the parties and, if appropriate, an excerpt shall be prepared.

The remaining content of the accounting records shall be disclosed to the court only to the extent necessary in order to verify that they have been kept in an orderly manner.

In the case of disputes involving assets, particularly relating to matters concerning inheritance communities, communities of goods and company partition or where otherwise there is an obligation to submit accounts or provide information, the judge may, in extrajudicial or contentious proceedings, direct that the books of account or their substitute be submitted in order that their contents may be noted.

Art. 1066¹⁾

D. International law

The domestic branch establishments of foreign companies shall be subject to the provisions of this law concerning accountancy.

The probative value of the books of account and their substitute within the Principality of Liechtenstein and also of foreign books of account shall conform with Liechtenstein law.

¹⁾ Art. 1066 para. 1 amended by the law dated 30. October, 1996, LGBl. 1997, No. 19.

Where an obligation under public law, subject to penalty, is involved, the obligation to submit books and the like shall be adjudged pursuant to the laws applicable for the establishment of a place of business; on the other hand, the obligation to submit books of account to a party in contentious or extrajudicial proceedings shall be adjudged pursuant to the law of the court before which the action is tried.

Art. 1067¹⁾

An appeal may be lodged with the Government within 14 days of service against decisions and orders of the competent government office. The same period of time shall apply in the case of transmission to the administrative court.

Right of appeal

¹⁾ Art. 1067 inserted by the law dated 16. December, 1994, LGBl. 1995, No. 25.

**Laws embodied in this Volume
concerning further Entities:**

Law

of 21 October 1992

**on Banks and Finance Companies
(Banking Act – Bankengesetz)**

Law

of 6 December 1995

**on the Supervision of
Insurance Undertakings
(Versicherungsaufsichtsgesetz; VersAG)**

Law

of 3 May 1996

**on Investment Undertakings
(Gesetz über Investmentunternehmen – IUG)**

Law

of 22 May 1996

**on professional due diligence in
the acceptance of assets
(Due Diligence Act – Sorgfaltspflichtgesetz)**

Law

of 23 October 1997

**on the Provision, Control and Distribution
of the Prospectus to be published on the Occasion
of the Public Offer of Securities (Prospectus Law)**

Liechtenstein Legal Gazette

1992

No. 108

published on 15 December 1992

Law of 21 October 1992 on Banks and Finance Companies (Banking Act)

I hereby grant My Consent to the following Resolution adopted by the Diet:

I. Object, Definitions and Scope

Art. 1

Object and Scope

This law describes the organisation and the transactions and has as its object the protection of the creditors of banks and finance companies and the safeguarding of confidence in the Liechtenstein monetary and banking sector

Art. 2

Scope

Banks, finance companies and bank groups are governed by this Act.

Art. 3

Definitions

1) Banks are companies which conduct transactions as specified in Para. 4 as a professional activity.

2) Finance companies within the intendment of this Act are companies which conduct transactions as specified in Para. 4 Sub-Paras. b, d or e as a professional activity.

3) Bank groups consist of undertakings which according to the degree of control and their activities or on account of a de facto obligation to assist may be considered as a single company.

4) Banking transactions are:

- a) the acceptance of deposits and other repayable funds;
- b) the lending of customers' deposits to an unspecified circle of borrowers;
- c) the security deposit business
- d) all other off-balance-sheet banking transactions;
- e) participations in securities' issues and the services associated with this.

II. Business activities of Banks and Finance Companies

Art. 4

Own Capital Resources (Equity)

1) The own capital resources (equity) of banks and finance companies prescribed by law must be in an appropriate ratio to the risks associated with the balance-sheet and the off-balance-sheet transactions. The Government shall set the minimum ratio between the equity and the total liabilities in an Executive Order.

2) In the case of a bank group, the capital resources (equity) prescribed must be available for each bank and finance company governed by this law and on a consolidated basis for the entire bank group.

3) In justified cases, the Government may grant relief or impose stricter conditions.

Art. 5

Liquidity

1) Banks and finance companies shall ensure an appropriate ratio between short-term liabilities and available funds and readily negotiable assets. The Government shall set the minimum ratios in an Executive Order.

2) An appropriate liquidity must be assured within a bank group.

3) In justified cases, the Government may grant relief or order stricter conditions.

Art. 6

Legal Reserve Fund

Banks and finance companies must pay deposits into a reserve fund pursuant to the regulations of the Liechtenstein Law concerning Persons and Companies (PGR).

Art. 7

Deposit Security

1) Banks must ensure adequate security of the deposits, especially on savings books and salary and current accounts.

2) The Government may permit participation in foreign security schemes.

3) The Government shall specify the detailed regulations in an Executive Order.

Art. 8

Spreading of Risks

1) The claims of a bank on individual persons or undertakings and their participations in an individual undertaking or in individual landed properties must be in an appropriate ratio to their own capital resources (equity). The Government shall set the maximum ratios in an Executive Order.

2) Individuals and undertakings that are associated with each other through the participation capital in excess of 50% shall be treated as one unit.

3) In the case of the transactions of the undertakings of a bank group the ratio pursuant to para. 1 shall be calculated with respect to the consolidated capital resources.

4) In justified cases, the Government may grant relief or impose stricter conditions.

Art. 9

Transactions of Governing Bodies

Transactions of Banks with members of their bodies and auditors, with their majority shareholders and with persons and companies associated with these three categories must be in accord with the generally recognised principles of banking.

Art. 10

Business Report and Interim Balance Sheets

Banks and finance companies must submit the business report (annual accounts and annual report) to the Bank Supervisory Office and publish the same within four months of the end of the business year.

2) In addition, bank groups must submit a consolidated business report to the Bank Supervisory Office within six months of the end of the business year.

3) If not determined otherwise by this Act and the Executive Orders pertaining thereto, the annual accounts and the interim balance sheets shall be prepared in accordance with the provisions of the Liechtenstein Law on Persons and Companies.

4) The Government shall determine the form, content and publication of the company reports and interim balance sheets of banks, finance companies and bank groups by Executive Order.

5) Business reports, interim balance sheets and the information necessary for the conduct of the monetary, credit and currency policy and for banking statistics are to be submitted to the Bank Supervisory Office.

Art. 11

External Audit Obligation

1) Banks and finance companies must have their business activities audited each year by an auditor who is independent of them and is recognised by the Government.

2) Banks and finance companies must provide the auditor with all the information necessary for an appropriate audit;

3) Banks and finance companies must

- a) keep available for the auditor the documents necessary for the determination and valuation of the assets and liabilities;
- b) allow the auditor to inspect their books, vouchers, business correspondence and minutes of the Board of Directors and of the company management;
- c) submit to the auditor the internal audit reports.

Art. 12

Repledging

1) A bank wishing to repledge a pledge or to continue it must obtain authority in a special deed from the pledgor for every individual case.

2) The bank may only repledge the pledge or give it in continuation for the sum for which it holds the pledge.

3) The bank must have their creditor confirm in writing that

- a) the pledge is exclusively for the securing of the claim associated with the repledging or the carry-over business;
- b) third parties cannot be granted any rights to the pledge.

Art. 13

Promotional Activities

Banks and finance companies may not conduct misleading or importunate promotional activities in Liechtenstein or other countries and especially not in connection with their Liechtenstein domicile or Liechtenstein facilities.

Art. 14

Banking Secrecy

1) The members of the bodies of banks and finance companies, their staff and persons acting on behalf of such companies are obliged to maintain confidentiality about facts which are entrusted to them or to which they have access through business connections with customers. The obligation of secrecy is not limited in time.

2) Should facts which are subject to banking secrecy become known to representatives of authorities in the course of their official duties, they must maintain banking secrecy as an official secret.

3) Contraventions shall be punished pursuant to Art. 63 Para. 1.

4) The legal regulations on the obligation to give evidence or information before criminal courts are reserved.

III. Concessions

Art. 15

Obligation to obtain a Concession

Banks and finance companies must obtain a concession from the Government before commencing their business activities. For the concession to be valid, the agreement of the Diet is required.

Art. 16

Designations of Companies

Designations suggesting an activity as a bank or finance company may be used in the name, in the designation of the object of the company and in business advertising only for companies which have received from the Government a concession as a bank or finance company.

Art. 17

General Conditions

The concession for the operation of a bank or finance company shall be granted subject to agreement by the Diet when the conditions specified in Art. 18 to 25 are met.

Art. 18

Legal Form

Banks and finance companies may only be established in the legal form of a company limited by shares (Aktiengesellschaft). The Government may make an exception in justified cases

Art. 19

Guarantee of Satisfactory Business Conduct

The persons entrusted with the administration and business management of a bank or finance company must at all times offer the guarantee of satisfactory business conduct in professional and personal respects.

Art. 20

Incompatibility

The persons entrusted with the administration and business management of a bank or finance company may not be a member of the Government.

Art. 21

Scope of Operations

1) The Articles of Association and Regulations must precisely define the material and geographical scope of operations of the bank or finance company .

2) Non-bank activities must be expressly mentioned in the Articles of Association.

3) For their validity in law, the Articles of Association and Regulations require the approval of the Bank Supervisory Office.

Art. 22

Organisation

1) Banks and finance companies must be organised according to their scope of operations.

2) Banks and finance companies must have

- a) a Board of Directors for senior management, supervision and control and
- b) a Business Management.

3) Depending on the nature and extent of their scope of operations, banks and finance companies must have

- a) a Business Management consisting of several members who shall conduct their activities in a joint manner and may not belong at the same time to the Board of Directors and
- b) an Internal Audit Department reporting to the Board of Directors.

4) The division of responsibilities between the Board of Directors and the Business Management must assure an appropriate supervision of the conduct of business.

Art. 23

Duties of the Board of Directors

1) The Board of Directors shall be responsible for the senior management, supervision and control of the bank or finance company.

2) In particular, the Board of Directors shall exercise the following duties which are non-transferable:

- a) the determination of the organisation and the issuance of the necessary instructions;
- b) the organisation of the Accounts Department, budgetary control and financial planning if this is necessitated by the nature and extent of the business activities;
- c) the appointment and dismissal of the persons entrusted with the business management and representation;
- d) the supervision of the persons entrusted with the business management, also in regard to the observance of the provisions of law, the Articles of Association and regulations and the financial development of the undertaking;
- e) the preparation of the business report, the approval of the interim balance sheets, the preparation of the General Meeting and the execution of its resolutions.

Art. 24

Share Capital

1) The share capital for banks must be at least ten million francs and for finance companies at least two million francs and must be fully paid up.

2) Depending on the the nature and range of the scope of operations, the Government may prescribe a higher share capital.

Art. 25

Domicile

At least one member of the Board of Directors and of the Business Management must have their domicile in Liechtenstein and have adequate authority to represent the bank or finance company in relations with the administrative authorities or before the courts.

Art. 26

Obligation to Notify

1) Banks and finance companies must notify the Bank Supervisory Office of the following:

- a) the composition of the Board of Directors, the Business Management and the Management of the Internal Audit Department;
- b) the Articles of Association and Regulations;
- c) the organisation;
- d) the subsidiary companies, branches and agencies;
- e) participations in companies operating in the finance area;
- f) the ownership relations of the voting capital;
- g) the auditor.

2) Banks and finance companies must notify the Bank Supervisory Office without delay of amendments to the facts specified in Para. 1. Such notification must ensue before any public announcement is made.

3) Amendments to the Articles of Association and Regulations concerning the scope of operations, share capital, the organisation or a change of auditor shall also require the approval of the Bank Supervisory Office. In this regard, entries in the Public Register shall be admissible only after the Bank Supervisory Office has given its approval.

Art. 27

Lapse of Concessions

Concession shall lapse:

- a) when business activities do not commence within a period of one year;
- b) when business activities have ceased for at least one year;
- c) when the concession is waived in writing.

Art. 28

Withdrawal of Concessions, Dissolution and Cancellation

1) Concessions shall be withdrawn and the withdrawal published if the conditions for the granting of such are no longer fulfilled.

2) For banks and finance companies, the withdrawal of the concession shall cause their dissolution and deregistration in the Public Register.

3) A company which exercises an activity within the intentment of Art. 3 without a concession may be dissolved by the Government if the object of this law so requires. In urgent cases, this may take place without prior notice and without the setting of a period of time.

4) The Bank Supervisory Office shall supervise the liquidator.

Art. 29

Revocation of Concessions

Concessions may be modified or revoked by the Government when the holder of the concession has obtained the granting of such by the submission of incorrect information or when important circumstances were not known to the Government.

Art. 30

Fees

1) Fees shall be charged for concessions, decisions, orders and special services.

2) The fees shall be charged according to fee regulations determined by the Government.

IV. Supervision of Banks

Art. 31

Organisation and Implementation

The following shall be entrusted with the implementation of this law:

- a) the Government;
- b) the Bank Commission;
- c) the Bank Supervisory Office;
- d) the Auditors;
- e) the Princely Liechtenstein Court of Justice.

A. The Government

Art. 32

Scope of Duties

- 1) The Government shall be the supreme supervisory authority.
- 2) It shall grant, withdraw or revoke concessions.
- 3) The Government shall be the penal authority for administrative offences pursuant to Art. 63 Para. 3.

B. Bank Commission

Art. 33

Duties

- 1) The Bank Commission is the advisory body of the Government for the supervision of banks, finance companies and bank groups. It shall concern itself with all the fundamental questions of bank supervision and shall report to the Government on the state of the supervision as required, but at least once annually.
- 2) In particular, the Bank Commission is authorised:
 - a) To expound its views to the Government on the granting, withdrawal or revocation of a concession;
 - b) to inspect the files and documents of the Bank Supervisory Office in discharge of its duties.
- 3) The Bank Commission may publish its reports.

Art. 34

Composition

1) The Bank Commission shall be comprised of the president and four other members. It shall be elected by the Diet for a period of four years.

2) The Bank Supervisory Office shall be at the disposal of the Bank Commission as its secretariat.

3) The members of the Bank Commission must be experts. They may not be members of the Government, a court, the Board of Directors of a Liechtenstein bank or a finance company, the Board of Directors or company management of an auditor of Liechtenstein banks, finance companies or investment funds or of the internal audit department of banks, finance companies or investment funds.

4) The members of the Bank Commission shall be subject to the regulations concerning official secrets.

C. Bank Supervisory Office

Art. 35

Duties

1) The Bank Supervisory Office shall supervise the implementation of this law and the executive orders issued in relation thereto and shall take the necessary steps.

2) In particular, the Bank Supervisory Office may:

- a) Demand information and clarifications necessary for the implementation of the law, from banks and finance companies and their auditors;
- b) order extraordinary audits or itself carry out audits of certain statements of facts;
- c) issue and, after due warning, publish legally valid decisions and orders should the bank or finance company oppose such decisions and orders.

3) In particular, the Bank Supervisory Office is responsible for:

- a) The assessment of requests for concessions and approvals submitted to the Government;
- b) the approval of the Articles of Association and regulations of banks and finance companies and of amendments thereto;
- b) the verification of audit reports.

Art. 36

Official Information

1) The communication of official information by the Government or the Bank Supervisory Office to foreign bank supervisory authorities is permissible when:

- a) Public order, other essential national interests and bank secrecy are not violated by this;
- b) the information is not contrary to the object of this law;
- c) it is ensured that the state requesting the information would grant a similar Liechtenstein request;
- d) it is ensured that the information obtained shall only be used for bank supervision;
- e) it is ensured that the staff of the authorities concerned and the persons commissioned by the authorities concerned are subject to professional secrecy obligations.

2) Should this be necessary pursuant to the object of this law the Government or the Bank Supervisory Office may at any time obtain information about the activities of Liechtenstein banks and finance companies in other countries and about the economic situation of foreign banks whose activities may affect the Liechtenstein monetary and banking system.

3) The provisions of Paras. 1 and 2 may be applied only if there is no provision to the contrary in inter-governmental agreements.

D. Audit Companies

Art. 37

Recognition

- 1) Audit companies which audit banks and finance companies must have a licence from the Government for such activity.
- 2) The licence shall be granted to audit companies when
 - a) their company management, the senior auditors and the organisation ensure that they carry out audit commissions in a continuous and appropriate manner and
 - b) are organised as a company limited by shares (Aktiengesellschaft) and have an appropriate share capital at their disposal.
- 3) The audit companies shall concern themselves exclusively with audit activities and the transactions directly associated therewith. In particular, they may not conduct any assets management activity.
- 4) The audit companies must be independent of the banks and finance companies to be audited.
- 5) The Government shall determine the details of the provisions by Executive Order.

Art. 38

Duties

- 1) The audit companies shall verify whether
 - a) the business activities of the bank or finance company comply with the law, the Articles of Association and the regulations;
 - b) the conditions for the granting of the concession are permanently met and
 - c) the business report complies with the legal requirements.
- 2) In the case of banks and finance companies without an internal audit department, the auditor shall carry out interim audits each year without prior notification.
- 3) The audit report shall be sent simultaneously to the Board of Directors of the bank or finance company, to the audit authority according to the provisions of the Liechtenstein Law on Persons and Companies and to the Bank Supervisory Office.

Art. 39

Objections

1) If the audit company finds infringements of the provisions of law or other irregularities, it shall set the bank or finance company an appropriate deadline for the restoration of a situation which complies with the law. If the deadline expires without result, the auditor must notify the Bank Supervisory Office.

2) The audit company must notify the Bank Supervisory Office immediately if there appears to be no useful purpose in setting a deadline or if it finds that criminal offences have been committed by the company management or that other serious irregularities exist which are contrary to the object of this law (Art. 1).

Art. 40

Auditing Costs

1) Banks and finance companies shall bear the costs of auditing. Auditing fees shall be calculated in accordance with the tariff issued by the Government by Executive Order.

2) The arrangement of a lump-sum remuneration or of a certain expenditure of time for the audit is prohibited.

E. The Princely Court of Justice

Art. 41

Prosecutory Authority

The Princely Court of Justice is the prosecutory authority for offences specified in Art. 63 Paras. 1 and 2.

V. Reorganisation and Liquidation

A. Moratorium

Art. 42

Conditions and Applications

1) A bank which is unable to meet its commitments in time may apply to the Court of Justice for the granting of a moratorium.

2) At the same time, the bank must submit to the Court of Justice a financial statement, its last annual accounts, its last interim balance sheet and the last audit report.

3) Legally significant acts carried out by the bank after the closing of its counters or after the submission of its application and until the appointment of a provisional commissioner shall be invalid for its creditors.

Art. 43

Approval

1) After hearing the Bank Supervisory Office, the Court of Justice shall approve a moratorium for a period of one year provided the bank is not overindebted. In justified cases, the moratorium may be extended for a further year.

2) The moratorium shall be published.

Art. 44

Provisional Commissioner

1) The Princely Court of Justice shall appoint a provisional commissioner who shall have the same powers as the ordinary commissioners until a decision is made concerning the request or until bankruptcy proceedings are opened.

2) The auditor as stipulated by banking legislation may be designated as the provisional commissioner.

Art. 45

Commissioner

1) Should the Court of Justice approve the moratorium, it shall appoint reliable and expert persons of good character as commissioners of the bank. A bank or a trust company may also be appointed as a commissioner.

2) When several commissioners are appointed, one commissioner must act as the supervisor.

3) Partners and former partners who have resigned in the last year prior to the opening of bankruptcy proceedings may not be appointed as commissioners.

4) The commissioner shall be subject to the supervision of the Court of Justice and for serious reasons may be dismissed by it.

Art. 46

Duties of the Commissioner

Immediately after his appointment, the commissioner together with the auditor, must establish the financial situation of the bank, report on this to the Princely Court of Justice and the bank and take the steps necessary for the maintenance of operations.

Art. 47

Conduct of Business

1) During the moratorium, the bank shall continue its business operations under the supervision of the commissioner and in accordance with his instructions.

2) The bank may not carry out any legally significant acts by which the justified interests of the creditors are impaired or which favour individual creditors at the expense of others.

3) The bank must allow the Court of Justice and the commissioner to inspect all the books and vouchers and must give all the explanations demanded.

4) The commissioner must be invited to attend all the discussions of the bodies of the bank; he may also arrange such discussions himself.

Art. 48

Payments to Creditors

1) Payments to creditors may only be made with the agreement of the commissioner.

2) The commissioner shall be empowered to order at his discretion payments to creditors to be made from the receipts of claims of the bank which become due. Consideration shall thereby be given to the interests of creditors privileged by legally valid transactions or by the law also to those of small creditors.

3) Such payments may not exceed half of those sums for which cover is available according to the determination of the assets carried out by the commissioner.

Art. 49

Further Measures

1) After hearing the Bank Supervisory Office, the Court of Justice may take further steps at any time during the moratorium as required by the situation and in the interests of the bank or the creditors.

2) In particular, the Court of Justice may order that the conclusion of new transactions, the alienation of landed property, the creation of liens or the acceptance of guarantees shall require the approval of the commissioner in order to be valid.

3) The Princely Court of Justice must publish such orders.

Art. 50

Executions

1) During the moratorium period, executions against the debtor may only be implemented up to attachment and valuation.

2) A petition for realisation or bankruptcy may not be granted.

3) The periods for the submission of applications for realisation shall be prolonged by the duration of the moratorium. Similarly, the liability of the real estate mortgage for the interest of the mortgage debt (Art. 290 para. 1 subsection 3 of the law of property) shall be prolonged by the period of the moratorium.

Art. 51

Extrajudicial Reorganisation

1) Should the bank seek an extrajudicial reorganisation or an settlement agreement, the commissioner must assess the bank's applications for the bodies of the company, the creditors or the Court of Justice.

2) Should it become apparent during the moratorium that an extrajudicial reorganisation is possible for the bank, the Court of Justice, as an exceptional measure, may prolong the moratorium by a further six months.

Art. 52

Revocation of Moratorium

1) On the application of the commissioner or of a creditor, the Court of Justice must revoke the moratorium if the bank:

- a) Obtained the moratorium on the basis of incorrect information;
- b) is acting in contravention of the instructions of the commissioner;
- c) is prejudicing the justified interests of the creditors;
- d) favours individual creditors at the expense of others.

2) The Court of Justice must publish the revocation of the moratorium.

Art. 53

Lapse of Moratorium

1) On the application of the commissioner the Court of Justice may declare the moratorium as lapsed when in the judgment of the latter it is no longer necessary.

2) The Court of Justice must publish the lapse of the moratorium.

B. Special Provisions concerning Bankruptcy

Art. 54

Opening of Bankruptcy

1) Should the bank prove to be over-indebted during the moratorium or be considered to be unable to meet its liabilities at the due date after the end of the period of extension or to carry out an extrajudicial reorganisation, the Court of Justice, after hearing the Bank Supervisory Office, shall instruct the commissioner to apply for the immediate opening of bankruptcy proceedings, unless the bank opens an administration order procedure.

2) A deferment of the bankruptcy shall not be permissible.

3) The claims shown in the books of the bank shall be considered as registered.

Art. 55

Trustee in Bankruptcy

1) The Court of Justice shall appoint the trustee in bankruptcy. He may be appointed from the circle of the ordinary commissioners.

2) The trustee in bankruptcy may exercise all powers.

Art. 56

Savings Deposits

In the event that a bank should become bankrupt, the deposits on savings books and on savings and salary accounts shall be classified in the third class over and above the deposit insurance scheme laid down in Art. 7 up to a sum of 50,000 francs.

**C. Special Provisions concerning
the Administration Order Procedure**

Art. 57

Application; Provisional Administrator

1) Should the bank submit an application for an administration moratorium, the Court of Justice shall appoint a provisional administrator who shall have the same powers as the ordinary administrator until a decision is taken on the application or until bankruptcy proceedings are opened.

2) The auditor as stipulated by banking legislation may be designated as the provisional administrator. If a commissioner has already been appointed, he shall be the provisional administrator.

Art. 58

Administrator

Should the Court of Justice accede to the application for an administration moratorium, it shall definitively appoint an administrator if a commissioner has not already been appointed.

Art. 59

Administration Moratorium

1) The administration moratorium shall be for six months. If necessary, it may be extended by a further six months.

2) The claims shown in the books of the bank shall be considered as registered.

3) Legally significant acts carried out by the bank after the closing of its counters or after the submission of its application and until the appointment of a provisional administrator shall be invalid for its creditors.

Art. 60

Administration Agreement

1) The creditors shall be publicly called upon to lodge any objections to the draft administration agreement open for their inspection. A creditors' meeting shall not be held.

2) The administration agreement shall be approved when the sum offered is in a correct ratio to the remedies of the debtor and the completion of the administration agreement and the complete satisfaction of the recognised privileged creditors is assured and when in addition, after the examination of all the circumstances, it is found that the interests of the totality of the creditors are better served by the administration agreement than by the bankruptcy liquidation.

3) Payment of the claims covered by pledges may be deferred in an appropriate manner in the administration agreement.

VI. Procedure and Remedies

Art. 61

Decisions and Dispositions

When infringements of the provisions of this law or of the executive orders issued in connection with it are found and are not remedied despite a warning and the setting of a reasonable deadline, the competent authority shall take the appropriate decisions and dispositions.

Art. 62

Remedies

1) An appeal against decisions and dispositions of the Bank Supervisory Office may be lodged with the Government within 14 days of the service of such.

2) An appeal against decisions and dispositions of the Government may be lodged with the Administrative Court within 14 days of the service of such.

VII. Penal Provisions

Art. 63

Offences and Violations

1) Violations by the following persons shall be punished by the Court of Justice with imprisonment of up to six months or a fine of up to 360 daily income units:

- a) Whoever as a member of a governing body and as an employee or any other person acting for a bank or finance company, as an auditor or as a member of the Bank Commission or as an employee of the Bank Supervisory Office violates the obligation to observe confidentiality or induces or attempts to induce others to do this;
- b) whoever exercises an activity within the intendment of Art. 3 without a concession.

The two punishments may be taken together.

2) Infringements by the following persons shall be punished by the Court of Justice with fines up to 100 000 francs:

- a) Whoever violates the conditions imposed for a concession or permit;
- b) whoever uses in a prohibited manner designations suggesting an activity as a bank;
- c) whoever fails to make the prescribed allotments to the reserve fund;
- d) whoever, contrary to the provisions of Art. 12, repledges pledges or gives them in continuation;
- e) whoever provides the Bank Supervisory Office or the auditor with false information;
- f) whoever fails to maintain the company books in a proper manner or fails to keep company books and records;
- g) whoever as an auditor grossly violates his obligations, in particular in the audit report states false facts or conceals important facts or omits to warn the bank as prescribed or does not provide the reports and information prescribed;

3) Infringements by the following persons shall be punished by the Government with fines up to 50 000 francs:

- a) Whoever fails to draw up or publish the business report or an interim balance sheet in accordance with the regulations;
- b) whoever fails to have carried out the ordinary audit or an audit prescribed by the Bank Supervisory Office;
- c) whoever fails to carry out his obligations towards the auditor;
- d) whoever fails to provide the prescribed information to the Bank Supervisory Office;
- e) whoever fails to comply with a demand to establish the proper state of affairs in conformity with the law or with another disposition of the Bank Supervisory Office;
- f) whoever conducts misleading or importunate promotional activities, especially in connection with a Liechtenstein domicile or Liechtenstein facilities.

4) In the case of negligent perpetration, the upper limit of penalties shall be reduced by half.

5) The facts of the irregularity named in Para. 1 shall fall under the statutes of limitation after two years.

6) The general part of the Penal Code shall apply analogously otherwise.

Art. 64

Responsibility

Should the infringements be committed in the business operations of a juridical person or of a general or limited partnership or a single-person firm, the penal provisions shall apply to the persons who have acted for these or should have acted for them, but with the joint and several liability of the juridical person, the company or the single-person firm for the fines and costs.

Art. 65

The Public Prosecutor's Obligation to Notify

The Public Prosecutor shall notify the Bank Supervisory Office by a complete copy of all judgments and discontinuation decisions concerning members of the administration or management of banks, finance companies and auditors.

VIII. Transitional Provision

Art. 66

Concessions

Concessions for the operation of a bank or finance company which do not meet the requirements of this law and the Executive Orders relating thereto shall be adapted to the new law within one year after the entry into force of the enactments in question or, if need be, shall be withdrawn or revoked.

IX. Final Provisions

Art. 67

Executive Orders

The Government shall issue the Executive Orders necessary for the implementation of this law, in particular concerning:

- a) Own capital resources (equity) (Art. 4);
- b) liquidity (Art. 5);
- c) the spreading of risk (Art. 8);
- d) the business report and interim balance sheets (Art. 10);
- e) the charging of fees (Art. 30) and the tariff concerning auditing costs (Art. 40);
- f) the requirements to be met by the auditors (Art. 37).

Art. 68

Repeal of Previous Legislation

The following shall be repealed:

- a) The law of 21 December 1960 concerning banks and savings banks, LGBl. 1961 No. 3;
- b) the law of 18 November 1964 concerning the amendment of the law concerning banks and savings banks, LGBl. 1965 No. 3;
- 4) the law of 10 July 1975 concerning the amendment of the law concerning banks and savings banks, LGBl. 1975 No. 41;

Art. 69

Entry into Force

This law shall enter into force on 1 January 1993.

signed *Hans-Adam*

signed *Hans Brunhart*
Head of the Princely Government

Liechtenstein Legal Gazette

1996

No. 23

published on 22 February 1996

Law

of 6 December 1995

on the Supervision of Insurance Undertakings (Versicherungsaufsichtsgesetz; VersAG)

I hereby grant My Consent to the following Resolution adopted by the Diet:

I. Object, Scope and Definitions

Art. 1

Object

This law describes the organisation and content of the supervision of insurance undertakings and, in particular, has the object of protecting policy holders and maintaining confidence in the Liechtenstein insurance and financial sector.

Art. 2

Scope, Principle

1) Undertakings offering direct insurance or reinsurance (insurance undertakings) in the Principality of Liechtenstein shall be subject to insurance supervision as specified by this law.

2) The Supervisory Authority shall be authorised to exempt, wholly or partly, individual undertakings from supervision if in the individual case there is no need for supervision and the interests of the insured shall not be endangered by this.

3) Special rulings by State treaties are reserved.

Art. 3

Indemnity Insurance

- 1) The insurance of third party liability cases and against property losses is divided into individual branches; such branches are listed in Appendix 1.
- 2) For compulsory building insurance, the relevant special decrees continue to apply.
- 3) Concerning compulsory third-party motor vehicle insurance, the special laws and decrees are reserved.

Art. 4

Life Insurance

- 1) Life insurance comprises in particular endowment insurance, whole-life insurance, mixed insurances and supplementary insurance for life insurance.
- 2) The limitation of life insurance and specifically those business activities which may not be pursued in the form of life insurance shall be regulated by Executive Order.
- 3) The classification of insurance branches is contained in Appendix 2.

Art. 5

Reinsurance

Insurance undertakings having their head office in a foreign country and only carrying out reinsurance transactions in the Principality of Liechtenstein shall be exempt from supervision.

Art. 6

Self-Insurance (Captive)

- 1) Self-insurance may be conducted as direct insurance or reinsurance.
- 2) Insurance undertakings may conduct self-insurance and the insurance of third parties at the same time.
- 3) Exemption from supervision may be granted in individual cases as specified in Art. 2 Para. 2.

Art. 7

Insurance Holding Companies

Insurance holding companies are not subject to this law if they do not themselves conduct direct insurance or reinsurance.

Art. 8

Health Insurance

1) For health insurance, the legislation on health insurance whose regulations are compulsory for all health insurance contracts is to be observed.

2) The provisions of this law on the taking up and exercise of business activities by insurance undertakings are reserved.

Art. 9

Accident Insurance

1) Insurance undertakings wishing to conduct accident insurance (for accidents at work, non-occupational accidents, industrial diseases) are also subject to the legislation on compulsory accident insurance.

2) If the legislation on compulsory accident insurance contains provisions which deviate from this law and do not merely concern voluntary accident insurance, these shall take precedence.

Art. 10

Company Pension Schemes

1) Company pension schemes for old-age, invalidity and dependents do not fall under this law; these are covered by the relevant special legislation.

2) The administration of international provident organisations does not fall under this law either.

Art. 11

Definitions

1) The head office, an agency or a branch office of the insurance undertaking is defined as a business establishment. An office

is equated with an agency or branch establishment when the said office

- a) is managed by the insurance undertaking's own staff or
- b) is managed as an agency on a permanent basis by an independent person on behalf of the insurance undertaking.

2) A state for which the Agreement on the European Economic Area has come into force is deemed to be a signatory state to the EEA Agreement.

3) The following is considered as the state in which the risk is situated:

- a) In the case of the insurance either of buildings or of buildings and the objects therein if these are covered by the same insurance contract, the state in which the objects are situated;
- b) in the case of the insurance of vehicles of all kinds, the state in which the vehicle is registered (state of registration);
- c) in the case of a contract for the insurance of travel and holiday risks lasting not more than four months, the state in which the policy holder has concluded the contract (irrespective of the insurance branch in question);
- d) in all other cases, the state in which the policy holder has his usual place of residence or, when the policy holder is a legal entity, the state in which the business establishment of this legal entity is situated, to which the contract refers.

4) The state in which the insurance undertaking covering the risk is located shall be deemed to be the state of the business establishment.

5) The state in which the risk is situated, which is covered by an insurance undertaking established in another state, shall be deemed to be the state in which the service is performed.

6) The state in which the policy holder has his usual place of residence or, when the policy holder is a legal entity, the state in which the business establishment of this legal entity is situated, to which the contract refers, shall be deemed to be the state of the liability.

7) The state in which the head office of the insurance undertaking covering a risk is located shall be deemed to be the home state.

8) The risks named in Appendix 3 shall be deemed to be major risks.

9) The direct or indirect holding of at least ten per cent of the capital or of the voting rights of an undertaking or any other possibility of exercising a determining influence on the management of an undertaking in which the holding exists shall be deemed to be a qualified participation.

II. Assumption and Conditions of Business Activities

Art. 12

Obligation to obtain Authorisation

1) Insurance undertakings subject to supervision require from the Government an authorisation for every individual insurance branch for the assumption of their business activities .

2) Insurance undertakings with a head office in a signatory state to the European Economic Area Agreement do not require an authorisation if they meet the special conditions as specified in Art. 28 to 30; the special legislation concerning individual branches of compulsory insurance is reserved.

Art. 13

Application for Authorisation

1) Insurance undertakings wishing to obtain an authorisation for business activities must submit an application, together with the business plan, to the Supervisory Authority. This must contain the following details and proofs:

- a) Extract from the Public Register according to which the undertaking is required to demonstrate the legal form of a company limited by shares or a co-operative;
- b) object and governing bodies of the undertaking, the object being restricted to insurance activities and to those transactions which are directly connected with this;

- c) necessary details on solvency and the submission of an activity plan as specified in Para. 2;
 - d) Articles of Association;
 - e) balance sheet, annual accounts or, if need be, the opening balance sheet and proof of the minimum sum for the guarantee fund;
 - f) details of identity of and participations held by shareholders and members of co-operatives having a qualified participation in the insurance undertaking;
 - g) proof of the professional qualifications and personal integrity of the company officers for the management of an insurance undertaking;
 - h) details necessary for the assessment of the reliability and professional suitability of the actuary in the life insurance department responsible for actuarial matter;
 - i) details of funds at the disposal of the undertaking for the performance of assistance services, insofar as an application is made for an authorisation to provide tourist assistance in the insurance branch;
 - j) contracts or other agreements by which marketing, management assistance, the processing of benefits, accounting or assets administration is wholly or largely transferred to another undertaking (functional separation), although the head office of the insurance undertaking must remain in the Principality of Liechtenstein;
 - k) declaration concerning membership of the Liechtenstein Insurance Office and the domestic guarantee fund insofar as an insurance undertaking intends to be active in the insurance branch of third-party liability for self-propelled land vehicles;
 - l) submission of all other documents and details necessary for due supervision as demanded by the Supervisory Authority.
- 2) The plan of action must contain details and proofs concerning the following points:
- a) Planned insurance branches and type of risks which the insurance undertaking intends to cover;

- b) planned reinsurance and, for reinsurance undertakings, a retrocession plan;
- c) composition of the minimum guarantee fund;
- d) probable costs for establishing the administration, the agency network and the resources available for this (organisation fund);
- e) estimates for the first three years of business relating to commission expenditure and other administrative costs, probable premium and/or contribution income, probable expenditure for insurance cases and the probable liquidity situation;
- c) statements relating to the first three years of business concerning the financial resources available for covering obligations and the solvency margin.

Art. 14

Minimum Capital

1) An insurance undertaking with its head office in the Principality of Liechtenstein must have a capital of which under all circumstances a minimum sum of 500,000 francs must be paid up.

2) The Supervisory Authority shall determine in the individual case the necessary minimum capital which must be fully paid up and which it shall fix in consideration of the insurance branch in which the insurance undertaking intends to be active. It may adjust the minimum sum stated in Para. 1 to adapt to any possible fluctuations in monetary value.

Art. 15

Solvency Margin and Guarantee Fund

1) Insurance undertakings must show free and unburdened own funds amounting to at least one solvency margin. One-third of the solvency margin shall be deemed to be the guarantee fund.

2) The Government shall determine the allowable own funds and issue regulations on the amount and the calculation:

- a) of the solvency margin on the basis of the total business;
- b) of the guarantee fund which corresponds to a certain fraction of the solvency margin and may not be less than the minimum guarantee fund;
- c) of the minimum guarantee fund on the basis of the capital requirement of the particular insurance branch.

Art. 16

Actuarial Reserves

1) Insurance undertakings are obliged to form sufficient actuarial reserves for the entire business activities.

2) The Government shall issue regulations concerning the types and scope of the provisions and the capital investments relating to such.

Art. 17

Organisation Fund

1) In addition to the minimum capital, an insurance undertaking must have at its disposal an organisation fund for the formation and setting-up costs or for an exceptional expansion of business.

2) The Government shall issue supplementary provisions concerning the amount, creation, maintenance period and restoration of the organisation fund.

3) The Supervisory Authority shall fix the amount of the organisation fund in the individual case; in exceptional cases, exemption may be granted from the obligation to set up the organisation fund.

Art. 18

Granting of Authorisation

1) The authorisation shall be granted when the insurance undertaking satisfies the requirements of law and the business plan can be approved.

2) The authorisation shall be granted separately for each insurance branch or collectively for several insurance branches. For insurance undertakings with domicile in the Principality of Liechtenstein, it shall cover the area of the signatory states to the EEA Agreement. The authorisation may be granted subject to conditions.

Art. 19

Refusal of Authorisation

The authorisation to assume insurance activities may be refused if

- a) the application for authorisation is not complete;
- b) facts are known from which it follows that the officers of an insurance undertaking do not offer the guarantee of reliability and professional suitability; or
- c) according to the business plan and the other documentation the interests of the policy holders are not adequately met or the obligations arising from the insurances are not shown to be capable of fulfilment in the long term.

Art. 20

Non-Insurance Business

1) Apart from insurance business, insurance undertakings may only pursue business which is directly connected with insurance. Non-insurance activities are not permissible.

2) Major holdings by insurance undertakings in non-insurance undertakings require an authorisation. The Government shall determine the details in the Executive Order.

Art. 21

Separation of Insurance Branches

1) Insurance undertakings engaged in direct life insurance may not be active in any other branches of insurance apart from supplementary insurance for accidental death, sickness and invalidity, also health and invalidity insurance.

2) An insurance undertaking which provides insurance for legal costs together with other insurance branches must transfer benefit adjustment in legal costs insurance to another undertaking (claims adjustment undertaking). The transfer is considered as a functional separation. The claims adjustment undertaking may not conduct any other insurance business apart from insurance for legal costs and may not adjust benefits in other insurance branches.

3) Art. 19 shall apply analogously to the officers of the claims adjustment undertaking as specified in Para. 2. Such officers may not work at the same time for an insurance undertaking which carries on other insurance business apart from legal costs insurance.

Art. 22

Brokerage

Brokerage in favour of insurance undertakings which are subject to insurance supervision and which have no authorisation to operate in the Principality of Liechtenstein is prohibited.

Art. 23

Board of Directors and Management

1) At least one member of both the board of directors and the management must be resident in the Principality of Liechtenstein and have sufficient authority to represent the insurance undertaking vis-a-vis the administrative authorities or the courts.

2) In the case of a branch office or an agency of a non-EEA undertaking within the intendment of Art. 31 Para. 1, it shall be sufficient if the general representative resides in Liechtenstein and is authorised as described in Para. 1.

III. Activities in Other Countries of Liechtenstein Insurance Undertakings

Art. 24

Assumption of Business Activities

1) Insurance undertakings domiciled in the Principality of Liechtenstein may conduct direct insurance business in another signatory state to the EEA Agreement through a branch office or by providing services as specified in the following provisions.

2) The insurance undertaking must notify the Supervisory Authority of its intention to establish a branch office, stating the name of the state concerned, which has signed the EEA Agreement.

3) The notification required in Para. 2 must contain:

- a) Details of which insurance branches are to be operated and which risks of an insurance branch are to be covered, and the insurance coverage must be stated;
- b) estimates for the first three years of business with regard to commission expenditure and other administrative costs, probable premium and/or contribution yield, probable expenditure for insurance cases and the probable liquidity situation;
- c) statements relating to the first three years of business concerning the financial resources available for covering obligations and the solvency margin;
- d) probable costs for establishing the administration and the agency network and the resources available for this (organisation fund);
- e) details of the organisation structure of the branch office;
- f) name of the proposed general representative who must have sufficient authority;
- g) name and address of the branch office;
- h) the draft of a declaration stating that the undertaking has become a member in the other state of the national insurance office and of the national guarantee fund insofar as it intends to be active in the insurance branch dealing with third-party liability for self-propelled land vehicles.

Art. 25

Procedure for Setting Up a Business Establishment

1) Within a period of three months following the receipt of the details contained in Art. 24, the Supervisory Authority shall verify not only the sufficiency in law of the project, but also the adequacy of the administrative structure and the financial situation of the undertaking, also the executive manager's and the business establishment's competent management's compliance with the conditions specified in Art. 13 Para. 1 Sub-Para. g.

2) If it is quite safe, it shall forward to the Supervisory Authority of the other state,

a) these documents;

b) a certificate which states that the insurance undertaking has at its disposal own funds equivalent to the solvency margin; and at the same time informs the insurance undertaking of this.

3) Amendments to the details specified in Art. 24 Para. 3 must be communicated to the Supervisory Authority at least one month before the intended implementation.

Art. 26

International Service Operations by Domestic Insurance Undertakings

1) If an insurance undertaking wishes to be active in international service operations, it must give notice of this, stating the signatory state to the EEA Agreement concerned. At the same time, it must be stated what insurance branches are to be operated abroad and what risks are to be covered.

2) If health insurance is to be conducted, the details as specified in Art. 28 Para. 3 must be stated additionally.

3) It is a question of international service operations within the intendment of this law when an insurance undertaking with its domicile in the Principality of Liechtenstein or in another signatory state to the EEA Agreement covers risks by direct insurance from its domicile or its business establishment in a signatory state to the EEA Agreement which are situated in another signatory

state to the EEA Agreement, without the undertaking making use of a business establishment there.

Art. 27

Procedure when assuming Service Operations

1) The Supervisory Authority shall verify the sufficiency in law of the project within one month of receipt of the details designated in Art. 26.

2) If it is quite safe, it forwards to the Supervisory Authority of the other state, informing the insurance undertaking of this at the same time,

- a) the necessary documents;
- b) a certificate stating that the insurance undertaking disposes of the necessary solvency margin for all its activities and may conduct business in the state in question;
- c) a certificate stating the insurance branches in which the undertaking conducts business and which risks it may cover.

IV. Domestic Activities of Foreign Insurance Undertakings

A. Insurance Undertakings with Domicile in a Signatory State to the EEA Agreement

Art. 28

Assumption of Business Activities

1) Insurance undertakings domiciled in another state which has signed the EEA Agreement (home state) may conduct direct insurance business in Liechtenstein through a branch office or in service transactions as specified in the following provisions.

2) The assumption of the business activities through a business establishment is only permissible when the Supervisory Authority of the home state supplies the following details and confirms to the Liechtenstein Supervisory Authority:

- a) That the insurance undertaking is authorised to conduct insurance business in the home state and that it has a legal form which is admissible in the country of domicile;
- b) that the undertaking is entitled to operate a business establishment in the Principality of Liechtenstein;
- c) a draft of an activity plan describing in particular the planned business activities and the management of the business establishment;
- d) name and address of the business establishment;
- e) name of the adequately authorised executive manager of the business establishment; in the case of Lloyd's, proof of the executive manager's authority to appear in this capacity on behalf of the individual participating insurers before a court of law and to enter into commitments;
- f) that the insurance undertaking has at its disposal of the necessary funds as specified in Art. 15;
- g) a draft of a declaration stating that the insurance undertaking has become a member of the Liechtenstein Insurance Office and of the Liechtenstein Guarantee Fund, insofar as it intends to be active in the insurance branch of third-party liability for self-propelled land vehicles;

3) In the case of health insurance and compulsory insurance being provided, the general and special conditions of insurance are also to be submitted to the Supervisory Authority before they are applied.

Art. 29

Procedure

1) If the competent authority of the home state raises no objections to the intended business establishment of the insurance undertaking, it communicates the details required by Art. 28 Para. 2 to the domestic Supervisory Authority within three months of the submission of the insurance undertaking's application. The Supervisory Authority then has at its disposal a period of a further two months after receipt of this communication in which to inform the competent authority of the home state and

the insurance undertaking, if applicable, of other conditions which must be fulfilled before the branch office commences business.

2) The branch office may start its activities in Liechtenstein as soon as the periods of time stated in Para. 1 have expired and provided the Supervisory Authority does not impose further conditions.

3) Amendments to the details prescribed in Art. 28 Para. 2 must be communicated in writing to the Supervisory Authority and to the competent authority of the home state at least one month before they are implemented.

Art. 30

International Service Operations by Foreign Insurance Undertakings

1) Should an insurance undertaking wish to conclude international service transactions with reference to the inland market, the assumption and exercise of such an activity shall be permissible only if the Supervisory Authority of the home state has communicated the following details and confirmations to the inland Supervisory Authority:

- a) A certificate according to which the insurance undertaking has at its disposal the necessary solvency margin for all its activities and may conduct business outside the country of domicile and/or the state in which the business establishment is situated;
- b) a certificate concerning the insurance branches in which the undertaking may conduct business;
- c) a list describing type and nature of the risks which the undertaking wishes to cover within the country.

2) The insurance undertaking may assume its activities from the time when the inland Supervisory Authority is demonstrably in possession of the documents mentioned in Para. 1.

3) In the case where health insurance and compulsory insurances are provided, the general and special conditions of insurance are also to be submitted to the Supervisory Authority before they are applied.

**B. Insurance Undertakings Domiciled outside the States
that have signed the EEA Agreement**

Art. 31

Obligation to obtain Authorisation

1) Insurance undertakings which are not domiciled in a state that has signed the EEA Agreement (non-EEA undertakings) require an authorisation as specified in Art. 12 and 13 in order to assume insurance activities within the country.

2) In addition, the special provisions of Art. 32 to 34 and, in a supplemental manner, also the other regulations of this law shall apply to such insurance undertakings.

Art. 32

Special Conditions

1) A non-EEA undertaking may only be authorised to conduct insurance business in Liechtenstein when it fulfils the following additional conditions:

- a) It must be authorised to conduct insurance activities according to the law of the country in which it is domiciled;
- b) it must establish an agency or a branch office in the Principality of Liechtenstein and appoint as its head an executive manager whose nomination shall require the approval of the Supervisory Authority;
- c) it must undertake to keep separate accounts at the domicile of the agency or branch office of its business activities within the country and keep all the relevant business documents available for inspection;
- d) at its head office it must have at its disposal a minimum capital within the intentment of Art. 14 and show a solvency margin as specified in Art. 15 which is related to the extent of business in the Principality of Liechtenstein;
- e) it must have at its disposal in the Principality of Liechtenstein an organisation fund as specified in Art. 17 and corresponding assets;

- f) it must have at its disposal in the Principality of Liechtenstein assets equivalent to at least half of the minimum guarantee fund;
- g) it must deposit as a security bond one quarter of the sum calculated according to sub-para. f.

2) In the case where health insurance and compulsory insurances are provided, the general and special conditions of insurance are also to be submitted to the Supervisory Authority before they are applied.

Art. 33

Granting and Refusal of Authorisation

The authorisation is granted when the non-EEA undertaking satisfies the legal requirements; Art. 18 and 19 apply accordingly and the authorisation is valid only within the country.

Art. 34

Authorisation in Several States that have signed the EEA Agreement

1) Non-EEA undertakings which have applied for or received authorisation to conduct insurance business in several states that have signed the EEA Agreement may apply for the following advantages to be granted; these may only be granted together:

- a) Calculation of the solvency margin on the basis of the total business activities in the area of the states that have signed the EEA Agreement, only the business of the agencies and branch offices located in this area may be taken as a basis for this calculation;
- b) deposition of the security bond as specified in Art. 32 para. 1 sub-para. g only in a state that has signed the EEA Agreement;
- c) situs of the assets forming the subject of the guarantee fund in any of the states that have signed the EEA Agreement, in which the insurance activities are to be conducted.

2) The application for the granting of the advantages specified in Para. 1 shall be submitted to all the competent authorities of the signatory states to the EEA Agreement in which an authorisation has been sought or granted. These authorities shall agree on the ultimately competent supervisory authority after this authority has declared its readiness to assume the supervision of the solvency for the entire business activities of the agencies and branch offices located in signatory states to the EEA Agreement.

3) The advantages granted as specified in this Article shall be simultaneously revoked by all these states upon the initiative of one or more of the states concerned.

V. Supervision of the Business Activities of Insurance Undertakings

A. Routine Supervision in General

Art. 35

Principle

1) The Supervisory Authority shall supervise the total business activities of the insurance undertakings.

2) It shall monitor the observance of the laws, the maintenance of the solvency of the insurance undertakings, the formation of the necessary reserves and the adequate protection of the interests of policy holders.

Art. 36

Observance of the Business Plan

1) The Supervisory Authority shall monitor the observance of the authorised business plan.

2) If parts of the business plan are amended, such amendments may not be introduced by the insurance undertaking until they have been approved by the Supervisory Authority.

3) The Supervisory Authority may demand that the business plan be modified before new insurance contracts are concluded. Should it appear necessary for the protection of policy holders, the Supervisory Authority may change or cancel a business plan, with effect for existing or not yet implemented insurance relationship.

Art. 37

Monitoring of Own Resources

1) If of an insurance undertaking's own resources are less than the solvency margin, the undertaking must, upon request, submit to the Supervisory Authority for approval a plan for the restoration of sound financial conditions (solvency plan).

2) If the own resources of an insurance undertaking are less than the guarantee fund or are not creditable to the necessary extent, the undertaking must, upon request, submit to the Supervisory Authority for approval a plan for the short-term procurement of the necessary own funds (funding plan).

3) If a further deterioration in the financial situation threatens, the Supervisory Authority may, notwithstanding its other powers, restrict or prohibit the free disposal of the assets of the undertaking. The same shall apply accordingly if an insurance undertaking does not form sufficient actuarial reserves or does not sufficiently cover its reserves or fails in any other way to comply with the legal and official regulations relating to the provision and investment of capital.

Art. 38

Supervision of Holdings

If an insurance undertaking with domicile in the Principality of Liechtenstein has a holding in another undertaking which is not subject to insurance supervision and if the holding by its nature or extent is likely to endanger the insurance undertaking, the Supervisory Authority may forbid the insurance undertaking to continue the holding or may bind this to certain conditions.

Art. 39

Balance Sheet and Reporting

1) Insurance undertakings domiciled in the Principality of Liechtenstein must prepare their balance sheet annually, by the 31 December. In addition, they must submit a report on the concluded business year together with the balance sheet to the Supervisory Authority by 30 April every year. The balance sheet and the report must conform with the regulations and directives issued by the Government and the Supervisory Authority.

2) For non-EEA undertakings, Para. 1 shall apply analogously insofar as such undertakings are required to submit a report as specified in Art. 32 Para. 1 Sub-Para. c.

3) In the case of insurance undertakings conducting reinsurance business only, the period specified in Para. 1 for the submission of the balance sheet and the business report shall be extended to 31 October if the business year coincides with the calendar year.

4) Insurance undertakings must publish the balance sheet and the business report.

Art. 40

External Audit Requirement

1) Insurance undertakings must have their business activities audited every year by an auditor who is independent of them and recognised by the Government. The insurance undertakings are required to provide the auditor with all the information necessary for an appropriate audit.

2) For the auditor, the insurance undertakings must, in particular:

- a) Keep available for inspection those documents which are necessary for the determination and assessment of the assets and liabilities;
- b) permit inspection of their books, accounting records, business correspondence and minutes of the board of directors and of the company management;
- c) they must submit the reports of the internal audit.

3) In the case of non-EEA undertakings which have an agency or a branch office in the Principality of Liechtenstein at their disposal, the audit carried out at the domicile of the head office shall be recognised provided it satisfies the requirements contained in this law and the domestic agency or branch office is also included in the audit. Art. 41 Para. 2 is reserved.

4) The Government shall determine by Executive Order the more detailed provisions concerning the recognition of auditors.

Art. 41

Duties of Auditors

1) Auditors shall verify whether

- a) the business activities of the insurance undertaking comply with the legal requirements and the articles;
- b) the conditions for the granting of the authorisation including actuarial requirements are continuously met; and
- c) the business report meets the legal requirements.

2) The audit report shall be sent simultaneously to the board of directors of the insurance undertaking, to the Audit Authority pursuant to the provisions of the Liechtenstein Law on Persons and Companies and to the Supervisory Authority.

3) Other details shall be regulated by the issuance of Executive Orders.

Art. 42

Duty of Disclosure and Authority to Examine

1) Insurance undertakings must disclose all the necessary information to the Supervisory Authority and submit the books of account and business data for inspection.

2) The Supervisory Authority may at any time examine the business management and the assets position of an insurance undertaking in order to determine whether the annual accounts and business reports coincide with the facts and whether the prescribed reserves have been formed and invested and administered as specified by the regulations.

3) Third parties are obliged to supply information to the Supervisory Authority to the extent necessary for the supervisory activities of the authority.

Art. 43

Duty to Report and Submit

1) Insurance undertakings must notify the Supervisory Authority without delay of changes in the activity plan, the nominal capital, the company management, the auditor and in the case of qualified participations. This notification must ensue before a public announcement.

2) In addition, amendments to the articles which concern the sphere of business, the nominal capital or the organisation also a change of auditor require the assent of the Supervisory Authority. In this regard, entries in the Public Register shall be admissible only after such assent has been granted.

3) Upon demand, an insurance undertaking must submit to the Supervisory Authority the general and special insurance conditions, the tariffs applied, the forms and any other documents used.

4) In the case where health insurance and compulsory insurance are to be provided, the general and special conditions of insurance shall be submitted to the Supervisory Authority before they are employed.

5) The Supervisory Authority may demand that communications and details concerning business activities in the Principality of Liechtenstein be made in the German language.

Art. 44

Professional secrecy

1) The members of the governing bodies of insurance undertakings, their staff and other persons acting on behalf of such undertakings shall be obliged to maintain secrecy about facts not publicly known which are communicated to them or to which they have access due to business relations with clients. The obligation to maintain secrecy is not limited in time.

2) Should facts subject to professional secrecy become known to representatives of public authorities in the course of their duties, they shall treat insurance secrets as official secrets.

3) The legal regulations on the duty to testify and duty of disclosure to court authorities are reserved. Insurance undertakings are likewise not restricted by the obligation of secrecy in the discharging of their legal and contractual responsibilities.

4) The Supervisory Authority may grant release from the obligation of insurance secrecy if there is a proven interest for such, e.g. for the ascertainment and verification of insurance risks. In such a case, the Supervisory Authority shall consult the data protection officer.

Art. 45

Obligations to Notify Policy Holders

Before the conclusion and during the term of insurance contracts, special items of information shall be communicated to policy holders for their information and protection. The content and scope of these obligations to notify are regulated in Appendix 4.

Art. 46

Charges

Charges are levied for the work of the Insurance Supervisory Authority. These are determined in an Executive Order issued by the Government.

Art. 47

Measures

1) For the performance of its control and supervisory duties, the Supervisory Authority may decree the necessary measures.

2) In particular, the Supervisory Authority may issue orders which are necessary and appropriate for the avoidance or elimination of irregularities.

3) If the interests of policy holders cannot be protected in any other manner, the Supervisory Authority may transfer powers to which the governing bodies of the undertaking are entitled according to the law or the articles wholly or partly to a special representative qualified to exercise such powers.

B. Special Provisions for International Service Transactions

Art. 48

Additional Conditions applicable to Third-Party Motor Vehicle Insurance

1) Should an insurance undertaking engaged in international services transactions in the Principality of Liechtenstein wish to provide third-party motor vehicle insurance, it must:

- a) appoint a representative resident in Liechtenstein with responsibility for the handling of damage or loss claims;
- b) become a member of the Liechtenstein Insurance Office and the Liechtenstein Guarantee Fund and participate in the financing of these institutions.

2) The Government shall issue the necessary implementing provisions and, in particular, define the position, rights and duties of the representative specified in Para. 1.

Art. 49

Obligations to Notify Policy holders

In international services transactions, special information shall be communicated to policy holders; the content and scope of these obligations to notify are governed in Appendix 4.

Art. 50

Obligations to Notify Supervisory Authorities

Changes concerning international services transactions must be communicated to the responsible authorities. In this regard, the procedures specified in Art. 27 and 30 shall be observed.

VI. Termination of Business Activities

Art. 51

Principle

The supervision shall embrace the liquidation of an undertaking and also the winding up of existing insurances if the business activities are prohibited or voluntarily terminated or if the authorisation to conduct business is revoked.

Art. 52

Voluntary Transfer of Insurance Portfolio

1) Every contract through which the insurance portfolio of an undertaking is to be transferred, wholly or partly, with rights and obligations, to another insurance undertaking which is subject to supervision, shall require the approval of the Supervisory Authorities competent with respect to the participating undertakings.

2) The insurance undertaking taking over the portfolio must demonstrate that after the transfer it possesses own funds equivalent to the solvency margin. Moreover, Art. 19 shall apply analogously. The approval of the Supervisory Authority shall be refused if the interests of policy holders are not assured.

3) The approval of the transfer of the portfolio shall be published at the expense of the undertakings concerned.

Art. 53

Rights of Policy holders

1) After every portfolio transfer, policy holders shall have the right to cancel the insurance contract within three months following the transfer.

2) The insurance undertaking taking over the portfolio shall be obliged individually to inform the policy holders concerned of the portfolio transfer.

Art. 54

*Insurance Contracts concluded by a Foreign Business
Establishment or in Service Transactions*

Should an insurance undertaking domiciled in Liechtenstein wholly or partly transfer an insurance contract portfolio concluded in a signatory state to the EEA Agreement by a business establishment or in service transactions to an undertaking domiciled in such a state, only the approval of the inland Supervisory Authority shall be necessary. Provided grounds for refusal are not contained in Art. 52, approval shall be granted if

- a) proof is furnished by a certificate issued by the Supervisory Authority of the head office which states that the undertaking taking over the portfolio possesses own funds equivalent to the solvency margin after the transfer has been effected;
- b) the Supervisory Authorities of the signatory states in which the risks exist are in agreement and
- c) in the case of the transfer of the insurance portfolio of a business establishment the Supervisory Authority of this state has been heard.

Art. 55

Withdrawal of the Authorisation

1) The Government may revoke the authorisation for the business activity of individual insurance branches or the entire business activity if

- a) an insurance undertaking no longer meets the conditions for the granting of the authorisation;
- b) the undertaking has infringed in a serious manner the obligations incumbent upon it pursuant to the supervisory regulations or the business plan;
- c) such serious irregularities have arisen that a continuation of the business activities would endanger the interests of policyholders, or
- d) the insurance undertaking does not make use of the authorisation to conduct business within twelve months or expressly waives this or if it has ceased to do business for more than six months.

2) The Government may revoke the authorisation for the entire business operation if the undertaking is unable within a set period of time to adopt the measures set out in the solvency plan or the funding plan as specified in Art. 52 Para. 2.

3) If the authorisation is revoked, the Supervisory Authority shall take all the measures appropriate for safeguarding the interests of policy holders. In particular, it may restrict or prohibit the free disposal of the assets of the undertaking and transfer the management of the assets to appropriate persons. The Supervisory Authority shall also inform the competent authorities of the other signatory states to the EEA Agreement.

4) Should facts justifying the revocation of the authorisation become known to the Supervisory Authority, it may require instead, the removal of those managers to whom the facts relate and also prohibit such managers from exercising their function.

Art. 56

Measures relating to Insurance Undertakings domiciled in another Signatory State to the EEA Agreement

1) If it is found that an insurance undertaking from a signatory state to the EEA Agreement, which has a branch office or is active in services transactions in the Principality of Liechtenstein, is not observing Liechtenstein legal provisions, the Supervisory Authority shall require the undertaking to discontinue such irregularities.

2) Should the insurance undertaking fail to take the necessary steps, the competent authorities of the home state shall be informed and requested to initiate proceedings against the undertaking.

3) In the event that infringements of Liechtenstein legislation continue, the Supervisory Authority may prohibit the insurance undertaking from conducting any further business in Liechtenstein and order the necessary action to be taken.

Art. 57

Waiving of Authorisation

1) Should an insurance undertaking waive the authorisation, it shall be released from supervision by the Government. Bonds

paid shall be returned as soon as all the obligations arising from the law on supervision have been met.

2) Should an insurance undertaking which is renouncing the authorisation no longer satisfy the legal requirements, the Supervisory Authority may demand that the undertaking restore the legal state despite the waiver.

Art. 58

Publication

Should the authorisation be withdrawn from an insurance undertaking or if it waives the authorisation or, in the case of a waiver, it fails to restore the legal state, policy holders shall be informed of this in a publication.

Art. 59

Foreign Insurance Undertakings' Obligation to Notify

Insurance undertakings domiciled in another country and conducting business in the Principality of Liechtenstein must notify the Supervisory Authority without delay if in another country their authorisation to provide insurance business is withdrawn.

VII. Authorities, Procedures and Legal Remedies

Art. 60

Organisation and Performance of Insurance Supervision

1) The Government is the Supreme Supervisory Body. It shall grant, withdraw and revoke authorisations.

2) Where it is not expressly stated that the Government shall be responsible, the supervision and the power of decision shall be exercised by the Office for National Economy or by another office designated by the Government in an Executive Order as the Supervisory Authority in place of the Office for National Economy.

3) The Government may transfer by Executive Order the powers specified in Art. 12 Para. 1 to the Supervisory Authority.

Art. 61

Collaboration with Foreign Supervisory Authorities

1) If need be, the Supervisory Authority may collaborate with the competent foreign authorities in that it may in particular, process data, information, reports and documents or itself communicate these to abroad.

2) The communication of official information by the Government or the Supervisory Authority shall be admissible when:

- a) Public order and professional secrecy are not infringed thereby;
- b) the information does not conflict with the object of this law;
- c) it is assured that the requesting state would grant a similar request from Liechtenstein;
- d) it is assured that the information provided will be used only for insurance supervision;
- e) it is assured that the staff of the competent authorities and persons acting on behalf of the competent authorities are bound to observe official secrecy.

3) When this is necessary according to the object of this law, the Government or the Supervisory Authority may at any time obtain information on the activities of Liechtenstein insurance undertakings in other countries and on the financial situation of foreign insurance undertakings whose activities might affect the Liechtenstein insurance sector.

Art. 62

Decisions and Dispositions

Should infringements of the regulations of this law or of the Executive Orders pertaining thereto come to light, the competent authority shall make the appropriate decisions and dispositions.

Art. 63

Legal Remedies

1) An appeal against decisions and dispositions of the Supervisory Authority may be lodged with the Government within 14 days of service.

2) An appeal against decisions and dispositions of the Government may be lodged with the Administrative Court within 14 days of service.

VIII. Penal Provisions

Art. 64

Offences and Violations

1) The following offences shall be punished by the Court of Justice by imprisonment for up to six months or by fines of up to 360 daily income units:

- a) The violation of professional secrecy or the subornation of another to do so or the attempt to suborn another to do so;
- b) the exercise of insurance business covered by this law without authorisation.

The two punishments may be combined.

2) For the following offences the Court of Justice shall punish by fines of up to 100,000 francs:

- a) Whoever violates the conditions linked to an authorisation;
- b) whoever violates the provisions on capital resources and the formation of reserves;
- c) whoever makes false statements to the Supervisory Authority, especially in order to obtain for an insurance undertaking the authorisation to conduct business, the authorisation to conduct services transactions or the authorisation to change the business plan or to transfer the insurance portfolio;
- d) whoever communicates false information to the auditor;
- e) whoever fails to keep company books of account properly or to keep company book of account and documentary material in safe custody;

- f) whoever as auditor grossly neglects his duties, in particular, makes false statements or withholds important facts in the audit report or omits to make a prescribed request to the insurance undertaking or fails to submit prescribed reports and information;
- g) whoever as responsible actuary in life insurance or as special representative grossly neglects his duties;
- h) whoever as claims adjustment undertaking conducts other insurance business or adjust benefits in other branches of insurance apart from the adjustment of benefits from insurance against legal costs;
- i) whoever fails to adhere to the approved business plan;
- j) whoever conducts non-insurance business.

3) For the following offences the Government shall punish by fines of up to 50,000 francs:

- a) Whoever fails to prepare or publish the annual account or the business report in accordance with the regulations;
- b) Whoever fails to have the ordinary audit or an audit prescribed by the Supervisory Authority carried out;
- c) whoever fails to perform his duties towards the auditor;
- d) whoever fails to provide the Supervisory Authority with the prescribed information or to comply with the obligations to submit;
- e) whoever fails to comply with the a request to establish the condition of the undertaking in compliance with the law or with any other instruction of the Supervisory Authority;
- f) whoever mediates or concludes insurance contracts in direct business for an insurance undertaking not authorised to conduct business in Liechtenstein and is subject to insurance supervision.

4) The upper limits of punishments shall be reduced by half in the event that such offences have been committed negligently.

5) The offences listed in Para. 1 shall expire by limitation after two years.

6) Otherwise, the general part of the Penal Code shall apply analogously.

Art. 65

Public Prosecutor's Obligation to Notify

The Public Prosecutor shall notify the Supervisory Authority of all judgments and orders for a stay of proceedings, in their entirety, which concern members of the administration or management of insurance undertakings and auditors.

IX. Transitional and Concluding Provisions

Art. 66

Authorisations

Authorisations for the conduct of an insurance undertaking which do not comply with the requirements of this law and the Executive Orders relating thereto shall be adapted to the new law within one year of the coming into force of the relevant decrees or, as the case may be, shall be withdrawn or revoked.

Art. 67

Executive Orders

The Government shall issue the Executive Orders necessary for the implementation of this law.

Art. 68

Entry into Force

This law shall enter into force on 1 January 1996.

signed *Hans-Adam*

signed *Dr. Mario Frick*
Head of the Princely Government

Appendix 1

**Division of the Risks in Loss Insurance according to
Insurance Branches as specified in Art. 3 Para. 1**

1. Accidents (including accidents at work and occupational diseases)
 - non-recurring benefits
 - recurring benefits
 - combined benefits
 - conveyance of persons
2. Sickness
 - non-recurring benefits
 - recurring benefits
 - combined benefits
3. Comprehensive insurance for land vehicles (without rail vehicles)
All damage to
 - power-driven and/or motor vehicles
 - land vehicles without self propulsion
4. Comprehensive insurance for rail vehicles
All damage to rail vehicles
5. Comprehensive insurance for aircraft
All damage to aircraft
6. Comprehensive insurance for sea, inland waterway and river navigation
All damage to:
 - vessels
 - inland waterway vessels
 - seagoing vessels.
7. Goods in transit (including merchandise, baggage and any other goods)
All damage to goods in transit, irrespective of the means of conveyance used in each case

8. Fire and damage caused by the forces of nature
All property damage (if it not covered by branches 3, 4, 5, 6 or 7) caused by
 - fire
 - explosion
 - storm
 - other losses caused by the forces of nature excluding storm
 - nuclear energy
 - subsidence and landslides
9. Other property damage
All property damage (if not covered by branches 3, 4, 5, 6 or 7) caused by hail or frost or resulting from causes of any kind (such as theft, for example) unless these causes are covered under Number 8
10. Third-party liability for self-propelled land vehicles
Third-party liability of all kinds (including carrier third-party liability) resulting from the use of self-propelled land vehicles
11. Third-party liability for aircraft
Third-party liability of all kinds (including carrier third-party liability) resulting from the use of aircraft
12. Third-party liability for sea, inland waterway and river navigation
Third-party liability of all kinds (including carrier third-party liability) resulting from the use of river, inland waterway and seagoing vessels.
13. General third-part liability
All other third-party liability cases which do not fall under Numbers 10, 11 and 12
14. Credit
 - general insolvency
 - export credit
 - instalment transactions
 - mortgage loans
 - agricultural loans
15. Security Bond
 - direct security bond
 - indirect security bond

16. Various financial losses

- occupational hazards
- insufficient income (general)
- adverse weather
- loss of profits
- current expenses of a general nature
- unforeseen business expenses
- depreciation
- loss of rent or income
- indirect commercial losses except those already mentioned
- non-commercial money losses
- other financial losses

17. Insurance for legal costs

Insurance for legal costs

18. Tourist assistance

Assistance payments in favour of persons who run into difficulties on journeys or during absence from their place of residence or usual abode.

Designation of authorisation granted simultaneously for several branches (collective designations)

If the authorisation simultaneously covers

- a) the branches 1 and 2, it is granted under the designation "Accidents and Sickness";
- b) the branches 1 (fourth dash), 3, 7 and 10, it is granted under the designation "Motor vehicle insurance";
- c) the branches 1 (fourth dash), 4, 6, 7 and 12, it is granted under the designation "Sea and Transport Insurance";
- d) the branches 1 (fourth dash), 5, 7 and 11, it is granted under the designation "Aircraft insurance";
- e) the branches 8 and 9, it is granted under the designation "Fire and other Property Damage";
- f) the branches 10, 11, 12 and 13, it is granted under the designation "Third-Party Liability";
- g) the branches 14 and 15, it is granted under the designation "Credit and Security Bond".

Appendix 2

**Division of the Risks in Life Insurance according to
Insurance Branches as specified in Art. 4 Para. 3**

1. Life insurance
 - pure endowment and insurance on death
 - pensions insurance
 - supplementary insurance for accidental death, invalidity and sickness
2. Marriage insurance, birth insurance
3. Share or unit-linked life insurance
4. Health insurance (including insurance against invalidity)
5. Tontine insurance
6. Capitalisation transactions

Appendix 3

Major Risks as specified in Art. 11 Para. 8

The following are considered as major risks:

- a) The risks classified under branches 4, 5, 6, 7, 11 and 12 of Appendix 1;
- b) the risks classified under branches 14 and 15 of Appendix 1 when the policy holder pursues gainful employment in the industrial or trade sector or a self-employed activity and the risk is related thereto;
- c) the risks classified under branches 3, 8, 9, 10, 13 and 16 of Appendix 1 if the policy holder exceeds the upper limits in the case of at least two of the three following criteria
 - balance sheet sum: 6.2 million ECU
 - net turnover: 12.8 million ECU
 - average number of employees in the course of the business year: 250-

If the policy holder is a member of a group of companies for which a consolidated balance sheet is prepared, the above-mentioned criteria shall be applied to the consolidated balance sheet.

**Obligations to Notify Policy holders
as specified in Art. 45 and 49**

When a natural person is involved, insurance undertakings must inform the policy holder of the facts and rights which are important for the insurance relationship before the signing of the contract and during the term of a contract as specified in the following provisions. For the insurance of major risks, it shall be sufficient to state the applicable law and the competent Supervisory Authority. Such information must be communicated in writing.

Section I

1. Information necessary for all branches of insurance:
 - a) Name, address, legal form and domicile of the insurance undertaking and of a possible business establishment through which the contract is to be concluded;
 - b) the general insurance conditions applicable for the insurance relationship including the tariff provisions and the law applicable to the contract shall be stated;
 - c) details of the nature, scope and date of maturity of the benefit to be paid by the insurance undertaking insofar as general insurance conditions or tariff provisions are not applicable;
 - d) information concerning the duration of the insurance relationship;
 - e) information concerning the premium sum, with the premiums listed individually when the insurance relationship is to cover several independent insurance contracts, and concerning the mode of payment of premiums as well as information concerning any possible supplementary charges and additional expenses, also information concerning the total sum to be paid;

- f) information concerning the period of time for which the applicant is to be bound to the application;
 - g) instruction about the right to revoke or to withdraw;
 - h) the address of the competent Supervisory Authority to which the policy holder may refer in the event of complaints about the insurance undertaking.
2. Information additionally necessary for life insurances and accident insurances with premium refund guarantee:
- a) Details of the basis of calculation and of the standards valid for determining the surplus and the surplus participation;
 - b) details of the surrender value;
 - c) details of the minimum insurance sum for a conversion to an insurance free of premium and of the benefits from an insurance free of premium;
 - d) details of the extent to which benefits according to sub-para. b and c are guaranteed;
 - e) in the case of fund linked insurance, details of the fund on which the insurance is based and the type of assets contained therein;
 - f) general details of the tax regulations applicable to this type of insurance.

Section II

Information to be provided by the insurance undertaking during the term of an insurance contract:

- 1. Changes in the name, address, legal form and domicile of the insurance undertaking and of any possible business establishment through which the contract was concluded;
- 2. changes in the information provided as specified in Section 1 No. 1 sub-para. c to e and No. 2 sub-para. a to e if these ensue from amendments to provisions of law;
- 3. annual notification concerning the state of the surplus participation in life insurance and accident insurance with premium refund.

Liechtenstein Legal Gazette

1996

No. 89

published on 10 July 1996

Law

of 3 May 1996

on Investment Undertakings (IUG)

I hereby grant My Consent to the following Resolution adopted by the Diet:

I. Object, Scope and Definitions

Art. 1

Object and Scope

1) This law covers the organisation and activities of investment undertakings and has the object of protecting the investors and safeguarding the confidence in Liechtenstein monetary and banking system.

2) Investment undertakings which are domiciled in Liechtenstein or sell their shares in Liechtenstein or publicly offer or distribute their shares from Liechtenstein are subject to this law.

3) Special internal assets of banks or finance companies which correspond to the definitions as specified in Art. 2 Para. 1 are not subject to this law if promotion is addressed to their current clients only. In this case, the bank or finance company is required to point out that it is not an investment undertaking within the intendment of this law.

Art. 2

Definitions

1) Funds which are raised by the public following public advertising for the purpose of a collective capital investment and are usually invested and managed for the collective account of the unit-holders according to the principle of risk-spreading are deemed to be an investment undertaking.

2) Any advertising, without regard to the form and provided that it is not only addressed to a strictly defined circle of persons, is deemed to be public advertising.

3) A closed-end investment undertaking is an investment undertaking which is not obliged to re-purchase the shares.

4) Investment undertakings may be divided into segments which are distinguished by the nature and object of the investments.

5) A distinction is drawn between the following types of investment undertakings according to the nature of the investment:

- a) Investment undertakings securities;
- b) Investment undertakings for other assets;
- c) Investment undertakings for real estate.

Art. 3

Legal Form

1) An investment undertaking is either an investment fund or an investment company.

2) An investment fund is an investment undertaking in the legal form of the trusteeship (Art. 897 to 932 of the Law on Persons and Companies PGR).

3) An investment company is an investment undertaking in the legal form of the limited company (Art. 261 to 367 PGR).

4) The Government may permit, as an exception, other legal forms for investment undertakings provided the object of the law is not thereby endangered.

II. Business Activity

A. General Provisions

Art. 4

Investment Regulation

1) The investment regulation to be issued for each investment undertaking shall describe the obligations and rights of investors, the investment undertaking and the custodian bank.

2) In particular, the investment regulations shall contain provisions concerning:

- a) The name and domicile of the investment undertaking, its management and the custodian bank.
- b) the duration of the investment undertaking and the period of notice for the the management of the fund and the custodian bank;
- c) the guidelines of the investment policy;
- d) the calculation of issue and redemption prices;
- e) the suspension of the redemption of the units;
- f) the use of interest earnings and capital profits;
- g) the nature and calculation of all remittances charged to the investment undertaking;
- h) the unit of account of the investment undertaking;
- i) the financial year;
- k) the agencies issuing the prospectus, investment regulations and the business report;
- l) the official gazette for notices and their form;
- m) the subdivision of the investment undertaking into segments.

3) The investment regulations shall take effect after approval by the Bank Supervisory Office.

Art. 5

Amendment of the Investment Regulation

1) The Bank Supervisory Office shall approve amendments to the investment regulations on application by investment undertakings when such amendments correspond to the provisions of this law.

2) Amendments are to be published in the official gazette of the investment undertakings. The attention of investors is to be drawn to the possibility of returning their units if so desired.

Art. 6

Duty of Allegiance

1) The management of investment undertakings, the custodian banks and any agents thereof shall exclusively observe the interests of the investors.

2) In connection with the acquisition and alienation of property and rights for investment undertakings, the management of investment undertakings, the custodian banks and any agents thereof may not accept pecuniary advantages of any kind either for themselves or for third-parties; the remunerations provided for in the investment regulations are excepted from this.

3) The management of investment undertakings, the custodian banks, any agents thereof and persons acting for them and affiliated to them may only take over assets from the investment undertaking for their own account at the market price and may only cede to it assets from their own holdings at the market price.

Art. 7

Advertising

1) Any advertising for the acquisition of units in an investment undertaking must refer to the existence of a brochure and designate the agencies issuing the prospectus.

2) The paying office is responsible for publications and advertising of foreign investment undertakings in Liechtenstein and from Liechtenstein outwards. Its name is to be stated in every publication.

Art. 8

Prospectus

1) Investment undertakings must publish a prospectus and, when important amendments are made, must keep it up to date.

2) Investment undertakings must provide the prospectus free of charge.

3) The prospectus must contain the necessary information for investors to be able to make a reasoned appraisal of the investments proposed to them. The Government shall specify in an Executive Order the minimum content of the prospectus.

4) The prospectus shall take effect after approval by the Bank Supervisory Office.

Art. 9

Periodic Reports

1) Investment undertakings must publish a business report within four months of the end of a financial year and a half-yearly report within two months of the end of the first six months of a financial year and shall submit such reports to the Bank Supervisory Office.

2) The business report and the half-yearly report must contain all the information necessary for investors to be able to make a reasoned appraisal of the development and the results of the investment undertaking.

3) A short report by the auditors on the most important items in the business report is to accompany the business report.

4) Investment undertakings must report the development of the assets managed by them to the Bank Supervisory Office every quarter.

5) The Government shall lay down in an Executive Order the content and arrangement of the business report and half-yearly report, of the reports pursuant to Para. 4 and of the short report by the auditors.

Art. 10

Confidentiality

1) The members of the bodies of investment undertakings, their staff and any other persons acting for such companies are bound to observe secrecy concerning facts which are communicated to them or of which they acquire knowledge by reason of the business relations with clients. This obligation of secrecy shall not be limited in terms of time.

2) Should facts subject to the maintenance of secrecy pursuant to Para. 1 become known to representatives of authorities in the course of their duties, they shall consider such facts as official secrets.

3) Contraventions shall be penalised pursuant to Art. 66 Para. 1 Sub-Para. a.

4) The legal regulations concerning the obligation to give testimony or information before penal courts are reserved.

B. Investors

Art. 11

Acquisition and Redemption of Units

1) Through their deposits, investors acquire claims against an investment undertaking for a share in the assets and earnings of the investment undertaking.

2) Investors may demand the payment of their share in cash if no provision otherwise is contained in the investment regulations.

3) With segmented investment undertakings, earnings and expenditure for investors must be separately calculated for each department.

4) In the interests of all the investors, the Government shall determine by Executive Order in what cases the investment regulations may provide for a delay in time for the repayment of the units.

5) In exceptional circumstances and with due account taken of the interests of investors, the Bank Supervisory Office may grant a delay in time for the repayment of the units. The Government shall determine by Executive Order the reasons for and maximum period of a delay.

6) The right to the repayment in cash of the units shall apply to investment undertakings for other assets only subject to Art. 29 and to investment undertakings for real estate only subject to Art. 31. It shall not apply to closed-end investment undertakings pursuant to Art. 2 Para. 3.

Art. 12

Right to Information

1) Investors have a right to information concerning important business matters.

2) Investors may apply to the Bank Supervisory Office for the investigation of certain facts and circumstances. The Bank Supervisory Office may entrust a recognised auditor with the investigation pursuant to Art. 54.

Art. 13

Right to Performance

1) Should the fund management, investment company or custodian bank fail to perform their obligations or fail to perform them properly, investors may sue for performance, even if the judgment may have consequences for all investors.

2) Should the fund management, investment company or custodian bank or the natural or juridical persons acting for them or affiliated to them have illegally removed or withheld assets from the investment undertaking or caused prejudice to it in other ways, the action for performance shall be brought against the investment undertaking.

Art. 14

Remuneration of Management and Custodian Bank

1) The management and custodian bank shall be entitled to the remuneration provided for in the investment regulations, to exemption from commitments which they have undertaken by complying with the investment regulations as well as to the reimbursement of expenditure which they have incurred in the fulfilment of such commitments.

2) These claims shall be met from the resources of the investment undertaking. A personal liability of the investors shall be excluded.

C. The Management of Investment Undertakings

Art. 15

Duties

- 1) The management of an investment undertaking shall perform its activities in accordance with the directives and provisions of the investment regulations.
- 2) Such activities must be limited to the management of the investment undertaking.
- 3) The management may delegate individual duties which it is required to perform.

Art. 16

Calculation of the Net Assets and of the Issue and Redemption Prices

- 1) The net assets shall correspond to the current market price of the assets, less any liabilities of the investment undertaking and any taxes which will probably be due on the liquidation of the assets.
- 2) The issue price of new units shall be equivalent to the current market price of the net assets at the time of issue divided by the number of units in circulation. It shall be paid on purchase. The redemption price shall be calculated analogously at the time of redemption.
- 3) The issue price and the redemption price shall be published at each purchase and sale of units, but at least twice monthly.
- 4) The Bank Supervisory Office may authorise exceptions, depending on the nature of the assets.

Art. 17

External Auditing Obligation

- 1) Investment undertakings shall have their business activities audited every year by an independent audit company which is recognised by the Government.

2) The fund management and the investment company must supply to the auditors all the information necessary for an appropriate audit.

3) In particular, the fund management and the investment company:

- a) Shall make available to the auditors the documents which are necessary for the determination and evaluation of the assets and liabilities;
- b) shall allow the auditors to inspect their books, receipts, business correspondence and the minutes of the Board of Directors and the company management.

Art. 18

Obligations to Notify

1) The following must be notified or submitted to the Bank Supervisory Office by investment undertakings:

- a) The Board of Management and its agents;
- b) the investment regulation;
- c) the prospectus and the periodic reports;
- d) the custodian bank and the external auditors;
- e) the ownership relations in the case of the capital of the fund management and investment company carrying voting rights;
- f) the creation and closure of segments which must be noted without delay both in the prospectus and in the investment regulations;
- g) the intended public sale of units abroad.

2) Investment undertakings shall be required to inform the Bank Supervisory Office immediately of changes in the facts specified in Para. 1. This report shall be made before a public notice is published.

3) Changes in the Board of Management, the custodian bank or the auditors shall require the approval of the Bank Supervisory Office.

D. The Custodian Bank

Art. 19

Duties of the Custodian Bank

1) The custodian bank shall keep in safe custody the assets of the investment undertaking as a deposit transaction in line with banking practice. It may entrust third-parties with the safe custody of the assets in Liechtenstein or in other countries. The liability of the custodian bank is not cancelled by this.

2) For investment undertakings for securities, the custodian bank shall handle in particular the issue and redemption of the units and the money transfers and shall ensure that the management of the investment undertaking observes the law and the investment regulations.

3) The custodian bank must carry out the instructions of the management of the investment undertaking.

E. Special Provisions for Investment Companies

Art. 20

Units

The units of an investment company with variable capital shall carry the name of the holder and shall not have a nominal value.

Art. 21

Changes in Share Capital

1) For investment companys in the legal form of the limited company, it shall be possible for changes to be made in the share capital without the restrictions provided for in Art. 362, Art. 363 Paras. 1 to 3 and Art. 367 of the Liechtenstein Persons and Companies Act (PGR).

2) The subscription right of existing shareholders shall not apply for the issue of new shares.

Art. 22

Reserve Fund

Investment companies shall not need any reserve fund.

F. Special Provisions for Foreign Investment Undertakings

Art. 23

Concession Obligation

1) An investment undertaking domiciled in a foreign country and wishing publicly to offer or distribute its units in Liechtenstein or from Liechtenstein shall require a concession pursuant to Art. 36.

2) Investment undertakings from states with which corresponding treaties or reciprocal legal agreements exist shall not need a concession, but shall only be required to notify the Bank Supervisory Office of the intended distribution and of the paying office pursuant to Art. 25 Para. 1.

Art. 24

Conditions

A public distribution activity shall only be permissible if:

- a) It has been ensured that the investment undertaking is subject in its country of domicile to a supervisory body equivalent to that in Liechtenstein;
- b) a Liechtenstein bank or finance company or the management of a Liechtenstein investment undertaking or a trustee has been appointed as the paying agent of the investment undertaking with responsibility for the issuing and redemption of the units;
- c) the information for investors in Liechtenstein meets the requirements of this law and a prospectus is available;
- d) the name of the investment undertaking does not give rise to deception or confusion.

Art. 25

Obligations of the Paying Office (Agent)

1) The paying agents of foreign investment undertakings shall be the representatives of these in Liechtenstein in regard to the investors and the supervisory authorities. The power of representation may not be restricted.

2) The place of performance and legal venue in Liechtenstein shall continue to exist even after the dissolution of the foreign investment undertaking.

G. Investment Regulations

1. Investment undertakings for Securities

Art. 26

Principle

1) Investment undertakings for securities may only invest in securities issued in large numbers and in non-documented rights with the same function (value rights) which are traded on a stock exchange or another regulated market open to the public.

2) The Government may permit other investments for investment undertakings for securities, namely those which pursuant to EEA legislation are permitted for undertakings for collective investment in securities.

3) Investment undertakings may also hold deposits at banks which are registered in Liechtenstein, Switzerland or an EEA member-state or in another investment undertaking and also, to a limited extent, hold other securities, value rights and reasonable liquid resources.

Art. 27

Risk-Spreading

- 1) Investment undertakings for securities may:
- a) Only take up loans temporarily and up to a maximum proportion of the net assets;
 - b) invest not more than a part of the net assets with the same issuer;
 - c) only acquire securities and value rights carrying voting rights from the same issuer up to a maximum proportion;
 - d) invest not more than a part of the net assets or the entire assets with another investment undertaking for securities;

- e) lend investments from the assets only in accordance with generally recognised principles of banking practice;
- f) use derivative financial instruments only within the scope of proper asset management or for protection against investment risks.

2) Para. 1 Sub-Para. b shall not apply for investments which are guaranteed by a member-state of the OECD, its territorial entities or international organisations.

3) For segmented investment undertakings, the maximum proportions pursuant to Para. 1 Sub-Para. a to d on a consolidated basis shall apply.

4) The Government shall determine the details pursuant to Para. 1 in an Executive Order.

2. Investment Undertakings for Other Assets

Art. 28

Investments

1) Investment undertakings which are neither investment undertakings for securities nor investment undertakings for real estate shall be deemed to be investment undertakings for other assets within the intendment of this section.

2) Investment undertakings for other assets may also invest in assets which are only marketable to a limited extent, are subject to marked price fluctuations, are characterised by limited risk-spreading or whose valuation is difficult. In particular, investments in precious metals, commodities and derivative financial instruments are permissible.

3) The Government may specify by Executive Order stricter conditions according to the special features of the various types of investments.

4) If investments of the investment undertaking for other assets contain a particular risk which is not comparable to the risk of investment undertakings for securities, special attention shall be drawn to this.

Art. 29

Redemption of Units

Depending on the nature of the investments, investment undertakings for other assets may provide for appropriate restrictions for the redemption of the units. These restrictions must be clearly designated in the investment regulations and in the prospectus.

3. Investment Undertakings for Real Estate

Art. 30

Risk-Spreading

1) Investment undertakings for real estate shall invest their resources with due attention paid to the principle of risk-spreading in real estate property.

2) Investment undertakings for real estate may not invest more than a certain part of their net assets, calculated at the time of the purchase, in the same investment. The Government shall determine the proportion by Executive Order.

Art. 31

Re-Purchase of Units

Investors may return their units at the end of each financial year, with due observance of a period of notice of twelve months. Otherwise Art. 11 Para. 5 shall be reserved.

Art. 32

Valuation of Real Estate

1) At the close of every financial year, the current market value of the investments must be audited by an independent expert. The Government shall specify this in detail by Executive Order.

2) The current market value estimated at the end of the preceding financial year shall apply in each case for the current year unless the general economic development or the condition of a landed property requires a new appraisal.

3) If the price at the purchase or sale of real estate should vary substantially from the estimated value, this is to be justified in detail in the next periodic report.

Art. 33

Loans

The sum of the loans or credits raised by an investment undertaking for real estate may not exceed on average a certain part of the current market value of all the immovable property. The Government shall specify this in detail by Executive Order.

Art. 34

Auditing of Accounts

The business reports of investment undertakings for real estate and the real estate companies controlled by them shall be audited by the same auditor.

Art. 35

Additional Details in Prospectus

1) The prospectus must contain detailed information about the calculation and charging of the remittances due to or owed by the investment undertaking for real estate.

2) The prospectus must describe the risks associated with the investment policy of the investment undertaking for real estate.

III. Concessions

A. Granting of Concessions

Art. 36

Concession obligation

Before taking up their business activities, investment undertakings shall obtain a concession from the Government.

Art. 37

Designations

Designations suggesting an activity as an investment undertaking may only be used in the name, the designation of the object of the company and in business advertising for companies which have received a concession as an investment undertaking within the intendment of Art. 36.

Art. 38

General Conditions

The concession for the operation of an investment undertaking is granted when the conditions pursuant to Art. 39 to 44 are met.

Art. 39

The Governing Bodies of Investment Undertakings

- 1) An investment undertaking shall have a board of management and a custodian bank.
- 2) In the case of an investment fund, the duties of the board of management shall be performed by the fund management.
- 3) The managing staff of the fund management or investment company on the one hand and the custodian bank on the other must be juridically separate from each other and independent in their right to give instructions.
- 4) The investment undertaking must have suitable governing bodies for the performance of its tasks.
- 5) If an investment undertaking is divided into segments, the same management, the same custodian bank and the same auditors must be responsible for all segments.

6) The principal administration of an investment undertaking must have its domicile in Liechtenstein.

Art. 40

Custodian Bank

Only a bank registered in Liechtenstein may act as a custodian bank.

Art. 41

Legal Form of the Fund Management

1) The fund management of an investment fund must be constituted as a company limited by shares (Aktiengesellschaft) or as an establishment (Anstalt) according to Liechtenstein law.

2) The share capital must be at least one million francs and be fully paid up. The Government may allow relief if it is guaranteed that the fund management has sufficient funds to perform its activities in due form as well as to meet its liabilities. The capital may not be less than CHF 500 000.- in any case.

Art. 42

Guarantee of Satisfactory Business Conduct

The persons entrusted with the administration and business management of an investment undertaking must offer at all times the guarantee of satisfactory business conduct in professional and personal respects.

Art. 43

Net Assets

1) The net assets of an investment fund or an investment company must attain a certain minimum sum not later than six months after the granting of the concession. The Government shall specify the minimum sum by Executive Order.

2) With segmented investment undertakings, Para. 1 shall apply to every segment.

Art. 44

Fees

Fees shall be charged for concessions, decisions, dispositions and special services of the Bank Supervisory Office or of the auditors entrusted by it with the performance of tasks. The fees shall be fixed in the scale of fees determined by the Government.

B. Revocation, Cancellation, Withdrawal and Dissolution

Art. 45

Revocation

Concessions may be amended or revoked if the holder of the concession has obtained the granting of such by false information or important circumstances were not known.

Art. 46

Cancellation

Concessions shall be cancelled:

- a) If six months after the granting of the concession the minimum net assets pursuant to Art. 43 have not been achieved;
 - b) if after the redemption of all units no new units are issued for at least one year;
 - c) if the holder of the concession waives it in writing and no units are in circulation.
- 2) The cancellation of a concession shall be published.

Art. 47

Withdrawal, Dissolution and Deregistration

1) Concessions shall be withdrawn and the withdrawal published if the conditions for the granting of such are no longer met or the holder of the concession grossly violates the legal or contractual duties.

2) With the withdrawal of the concession, the management loses the right of disposal over the assets and rights of the investment undertaking. The withdrawal of the concession also leads to the dissolution and deregistration of the investment undertaking in the Public Register.

3) A company exercising an activity within the intendment of Art. 2 without a concession may be dissolved by the Government if such should be necessitated by the purpose of this law. In urgent cases, this may ensure without prior warning and without the fixing of a time limit.

4) The Bank Supervisory Office shall supervise the liquidator.

Art. 48

Grounds for Dissolution

1) Investment undertakings shall be dissolved if:

- a) Their duration as specified in the investment regulations has expired;
- b) the concession has been cancelled or the Government withdraws the concession;
- c) the fund management or the custodian bank resigns and their succession cannot be settled before the expiry of the period of notice.

2) Notice of resignation and dissolution must be published.

Art. 49

Prohibition of the Issue and Redemption of Units

1) Should the fund management or the custodian bank give notice of resignation or if an application is made for the premature dissolution of the investment undertaking or in the case of the withdrawal or revocation of the concession for the exercise of the business activities, no more units may be redeemed or issued.

2) The prohibition of the issue and redemption of units shall apply until there is no longer any question of the dissolution of the investment undertaking.

IV. Supervision of Investment Undertakings

A. Organisation and Enforcement

Art. 50

Principle

The following bodies shall be entrusted with the enforcement of this law:

- a) The Government;
- b) the Bank Commission;
- c) the Bank Supervisory Office;
- d) the Audit companies;
- e) the Princely Court of Justice.

1. Government

Art. 51

Scope of Duties

1) Supervision shall be in the hands of the Government. In particular, it shall be responsible for granting, withdrawing or revoking concessions and permits.

2) The Government shall be the penal authority for administrative infringements pursuant to Art. 66 Para. 3.

3) The Government may delegate its duties pursuant to Art. 3 Para. 4, Art. 36, Art. 41 Para. 2 and Art. 48 Para. 1 Sub-Para. b subject to the legal process by Executive Order to the Bank Supervisory Office or another public office.

2. Bank Commission

Art. 52

Duties

1) The Bank Commission shall be the advisory organ of the Government for the supervision of the investment undertakings. It shall concern itself with all fundamental questions relating to

the supervision of investment undertakings and when necessary, but at least once annually, shall report to the Government on the state of supervisory matters.

2) The Bank Commission shall be authorised for the performance of its duties to inspect the files and documents of the Bank Supervisory Office.

3) The Bank Commission may publish its reports.

3. Bank Supervisory Office

Art. 53

Duties

1) The Bank Supervisory Office shall supervise the enforcement of this law, the Executive Orders issued in relation to such law and the observance of the regulations and shall take the steps necessary.

2) In particular, the Bank Supervisory Office may:

- a) Demand all the information and clarification necessary for the enforcement of this law from the investment undertakings, their auditors and the custodian banks;
- b) order exceptional audits or itself carry out audits in relation to certain facts;
- c) issue unappealable decisions and Executive Orders and publish such after prior warning, should the investment undertaking resist such measures.

3) In particular, the Bank Supervisory Office is responsible for:

- a) The assessment of applications for concessions and permits for the attention of the Government;
- b) the approval of the investment regulations and prospectuses of investment undertakings and their amendments;
- c) the examination of audit reports;
- d) the appointment of trustees and decisions on their remuneration.

4) If there is reason to assume that an activity subject to this law is being exercised without a concession, the Bank Supervisory Office may demand from the persons concerned information and documents as though these persons were subject to this law.

4. Auditors

Art. 54

Recognition

1) Auditors auditing investment undertakings require a permit from the Government for this activity.

2) A permit shall be granted to auditors if their management, the senior auditors and the organisation ensures that they can continuously and professionally perform the audit commissions.

3) The auditors must concern themselves exclusively with their audit activities and the business directly associated therewith. In particular, they may not carry out any asset management activities.

4) The auditors must be independent of the investment undertakings to be audited.

5) The Government shall determine the detailed provisions by Executive Order.

Art. 55

Duties

1) The auditors shall verify that

- a) the business activities of the investment undertakings correspond to the law, the articles and the investment regulations,
- b) the conditions for the granting of the concession are continuously observed and
- c) the business report corresponds to the requirements of law.

2) The auditors of the investment undertaking must collaborate with the audit department of the custodian bank.

3) The audit report shall be sent simultaneously to the board of directors of the fund or investment company and of the custodian bank, to the audit authority pursuant to the provisions of the Liechtenstein Law on Persons and Companies (PGR) and to the Bank Supervisory Office.

Art. 56

Irregularities

1) Should the auditor identify infringements of legal regulations, or other irregularities, the said auditor shall give the investment undertaking a reasonable period of time in which to correct these so as to conform with the law. If corrections are not made within this period of time, the auditor shall notify the Bank Supervisory Office.

2) The auditor must immediately advise the Bank Supervisory Office if setting such a period of time appears pointless or if it is found that punishable actions have been committed by the business management or that other serious irregularities exist which conflict with the purpose of this law.

Art. 57

Audit Charges

1) The investment undertaking shall bear the audit charges. Audit charges shall be determined according to the tariff issued by the Government by Executive Order.

2) The agreement of a lump-sum remuneration or the spending of a certain period of time for the auditing is prohibited.

5. Princely Court of Justice

Art. 58

Penal Authority

The Princely Court of Justice is the penal authority for offences and infringements pursuant to Art. 66 Para. 1 and 2.

B. Supervisory Measures

Art. 59

Official Information

1) The communication of official information by the Government or the Bank Supervisory Office to foreign supervisory authorities is permissible when cumulatively:

- a) Public order, other important national interests and bank secrecy are not violated by this;
- b) the information is not contrary to the object of this law;
- c) it is ensured that the state requesting such information would meet a Liechtenstein request of the same nature;
- d) it is ensured that the information received will only be used for the supervision of investment undertakings;
- e) it is ensured that the staff of the competent authorities and persons acting on the instructions of the competent authorities are required to observe official and professional secrecy.

2) The Government or the Bank Supervisory Office may at any time obtain information about the activities of Liechtenstein investment undertakings abroad and about the financial situation of foreign investment undertakings whose activities could affect the Liechtenstein monetary and banking system, if this is necessary according to the purpose of this law.

3) The provisions of Para. 1 and 2 may only be used when no provision otherwise is contained in international agreements.

Art. 60

Appointment of a Trustee

1) The Bank Supervisory Office shall appoint a trustee for an investment undertaking which is incompetent to act.

2) The appointment of a trustee must be communicated to investors by the fund management or the investment company.

3) Within one year, the trustee shall request the approval of the Bank Supervisory Office for a new fund management or in-

vestment company management or for the dissolution of the investment undertaking.

4) The Bank Supervisory Office shall decide the remuneration of the trustee.

V. Liability

Art. 61

Principle

1) Whoever, as the management of an investment undertaking, custodian bank, paying office, auditor, assessor, liquidator or trustee of an investment undertaking, commits a breach of his obligations shall be liable to the investors for the prejudice which results.

2) He is also liable for his assistants and persons acting on his instructions.

3) A limitation of this liability is excluded.

Art. 62

Joint and Several Liability and Recourse

1) If more than one person is liable to pay damages for a prejudice, each of them shall be jointly and severally liable with the other(s) to the extent that the prejudice is personally attributable to each of them by reason of his or her own negligence and the circumstances.

2) In due consideration of all the circumstances, the judge shall determine the recourse between the parties concerned.

Art. 63

Statutory Limitation

Claims to damages shall expire by limitation after a period of ten years from the occurrence of the prejudice, but at the latest one year after the redemption of a unit.

VI. Procedure and Remedies

Art. 64

Decisions and Dispositions

Should infringements of the regulations of this law or of the Executive Orders issued in connection with it be found and should such infringements not be corrected despite a warning and the setting of a period of time for such corrections to be carried out, the competent authority shall take the appropriate decisions and issue the corresponding dispositions.

Art. 65

Remedies

1) Appeals against decisions and dispositions of the Bank Supervisory Office may be lodged with the Government within 14 days of the service of such.

2) Appeals against decisions and dispositions of the Government may be lodged with the Administrative Court within 14 days of the service of such.

VII. Penalty Provisions

Art. 66

Violations and Infringements

1) Violations by the following persons shall be punished by the Princely Court of Justice with imprisonment of up to six months or a fine of up to 360 daily income units:

- a) Whoever as a member of a governing body and employee and any other person acting for an investment undertaking or a custodian bank, as an auditor or as a member of the Bank Commission or as an employee of the Bank Supervisory Office violates the obligation to observe confidentiality or induces or attempts to induce others to do this;
- b) whoever exercises an activity within the intendment of Art. 2 without a concession.

The two punishments may be taken together.

2) Infringements by the following persons shall be punished by the Court of Justice with fines up to 100 000 francs:

- a) Whoever violates the conditions associated with a concession or permit;
- b) whoever uses in a prohibited manner designations suggesting an activity as an investment fund or investment company;
- c) whoever provides the Government, the Bank Supervisory Office or the auditor with false information;
- d) whoever fails to keep the company books in a proper manner or does not keep company books and records in safe custody;
- e) whoever as auditor grossly violates his obligations, in particular in the audit report states false facts or conceals important facts or omits to warn the investment undertaking as prescribed or does not make the reports and notifications prescribed;
- f) whoever in the periodic reports, the prospectus or other information quotes false facts or conceals important facts;
- g) whoever as a fund manager pursues business other than fund business.

3) Infringements by the following persons shall be punished by the Government with fines up to 50 000 francs:

- a) Whoever fails to draw up or publish the periodic reports in accordance with the regulations;
- b) whoever does not have the ordinary audit or an audit prescribed by the Bank Supervisory Office carried out;
- c) whoever does not carry out his/her obligations towards the auditor;
- d) whoever does not make the prescribed notifications to the Bank Supervisory Office;
- e) whoever does not comply with a demand to establish the proper state of affairs in conformity with the law or with another disposition of the Bank Supervisory Office;
- f) whoever makes improper, false or misleading statements in advertising for an investment undertaking.

4) In the case of negligent commission, the upper limit of penalties shall be reduced by half.

5) The facts of the irregularity specified in para. 1 shall fall under the statutes of limitation after two years.

6) The general part of the Penal Code shall apply analogously otherwise.

Art. 67

The Public Prosecutor's Obligation to Notify

The Public Prosecutor shall notify the Bank Supervisory Office by a complete copy of all judgments and discontinuation decisions which concern members of the administration or management of funds, investment companies and auditors.

VIII. Transitional and Final Provisions

Art. 68

Transitional Provisions

Concessions and permits pursuant to the law up to now which do not meet the requirements of this law and the Executive Orders relating thereto shall be adapted to the new law or, if need be, withdrawn or revoked within one year of the coming into force of the corresponding decrees.

Art. 69

Execution Orders

The Government shall issue the necessary orders for the implementation of this law, especially concerning:

- a) the content of the prospectus (Art. 8 Para. 3);
- b) The content and layout of the business report, half-yearly report (Art. 9 Para. 2), the short report of the auditors (Art. 9 Para. 3) and of the report on the development of the assets managed (Art. 9 Para. 4);
- c) the reasons and the maximum duration of a delay in the redemption of the units (Art. 11 Para. 4 and 5);

- d) the proportions for various investments (Art. 27 Para. 4);
- e) the conditions for certain investments (Art. 28 Para. 3);
- f) the proportion of the placement in the same investment (Art. 30 Para. 3);
- g) the requirements to be met by the experts (Art. 32 Para. 1);
- h) the proportions for loans or credits taken up (Art. 33);
- i) the minimum sum of the net assets (Art. 43 Para. 1);
- k) the fees (Art. 44);
- l) the delegation of duties (Art. 51 Para. 3);
- m) the detailed permit conditions for auditors (Art. 54 Para. 5);
- n) the tariff for audit costs (Art. 57 Para. 1).

Art. 70

Cancellation of Previous Laws

The following shall be cancelled:

- a) Law of 21 December 1960 on capital investment companies, investment-trust and investment funds, LGBL 1961 No. 1;
- b) Law of 12 November 1986 concerning the prolongation of the term of validity of the law on capital investment companies, investment trusts and investment funds, LGBL 1986 Nr. 84.

Art. 71

Entry into Force

This law shall come into force on the day of announcement.

signed *Hans-Adam*

signed *Dr. Mario Frick*
Head of the Princely Government

Liechtenstein Legal Gazette

1996

No. 116

published on 22 August 1996

Law

of 22 May 1996

on professional due diligence in the acceptance of assets (Due Diligence Act – Sorgfaltspflichtgesetz)

I hereby grant My Consent to the following Resolution adopted by the Diet:

I. General Provisions

Art. 1

Object

The object of the law is the professional duty of due diligence of the natural and juridical persons subject to this law concerning the acceptance of assets for passing on, safe custody, management and investment.

Art. 2

Scope

- 1) The following are subject to this law:
- a) Banks and finance companies with a concession as specified in the Law on Banks and Finance Companies (Bank Act);
 - b) attorneys-at-law who are registered in the Lawyers' List as specified in the Law concerning Advocates;
 - c) natural and juridical persons with an authorisation as specified in the Trustees Act and members of the business management or responsible representatives of a fiduciary company holding an authorisation as specified in Art. 180a PGR;

- d) investment companies with an authorisation as specified in the Law on Investment Companies;
 - e) insurance undertakings holding a concession as specified in the Law on the Supervision of Insurance Undertakings which conduct direct life insurance.
- 2) The Government shall maintain lists of the persons subject to Para. 1 of this law.

Art. 3

Post and Telecommunications Undertakings

The post and telecommunications undertakings which are subject to special provisions in relation to duties of due diligence are exempted from the provisions of this law.

II. Identification of the Contract Customer and Determination of the Financial Beneficiary

Art. 4

Identification of the Contract Customer

1) The persons subject to this law are obliged to identify their contract customer from an evidential document on establishing a business relationship within the intendment of Art. 1. Such duty of identification shall not apply when the contract customer is known personally.

2) The identification of the contract customer may be waived when:

- a) A cash transaction is carried out in which a maximum value of 25 000 francs is not exceeded, irrespective of whether the transactions is carried out in a single operation or in several operations between which there obviously appears to be a connection;
- b) the sum of a periodic insurance premium is less than the sum of 1500 francs annually;
- c) a non-recurring insurance premium is less than 4000 francs or less than 4000 francs are paid into a premium deposit;

d) it is a question of pension insurance contracts which are concluded by reason of an employment contract or of the professional activity of the policy holder insofar as the contracts do not contain a surrender clause or may not serve as security for a loan;

3) The persons subject to this law in the case of juridical persons and trusts are also obliged to identify the persons who bring in assets when a business relationship within the intendment of Art. 1 is established

- a) with foreign banks, accountants, audit companies, fiduciary companies or lawyers not belonging to a recognised professional organisation or not listed in any corresponding public register or
- b) with persons who do not belong to the circle of persons specified in Art. 2.

The Government shall regulate by Executive Order the further details concerning the recognition of professional organisations and public registers within the intendment of this law. The identification of these persons is to be carried out from an evidential document. In the case of personal acquaintance, the noting of the name shall suffice.

4) Persons contributing assets as specified in Para. 3 are equated with contract customers within the intendment of this law.

5) Passports and identity cards and other documents designated in Executive Orders by the Government shall be recognised as evidential documents.

Art. 5

Determination of the Financial Beneficiary

1) The persons subject to this law are obliged to identify the financial beneficiary and to note the name and address in their files on establishing a business relationship within the intendment of Art. 1 when:

- a) There are doubts as to whether the contract customer is the financial beneficiary; or

- b) a cash or insurance transaction is carried out in which a maximum value as specified in Art. 4 Para. 2 is exceeded; or
- c) the business relationship with a natural person is opened by correspondence ; or
- d) it is a question of a juridical person or trust which does not conduct any trading or manufacturing enterprise or other trade in a commercial manner in the country of domicile.

2) In the case of collective accounts or collective deposits, the contract customer must give a complete address list of the financial beneficiaries and report every change promptly.

3) Those persons who are beneficiaries of the assets in question are considered as financial beneficiaries within the intentment of this law.

Art. 6

Exceptions from the Duty of Determination

1) The duty to determine the financial beneficiary shall not apply:

- a) When the financial beneficiary is already sufficiently well known to the person with the duty of determination;
- b) when the financial beneficiary is a juridical person whose equities are quoted on a stock exchange or belongs to a group of companies with at least one company whose equities are quoted on a stock exchange;
- c) in business transactions between banks subject to the directive 91/308/EEC or to an equivalent ruling;
- d) in business transactions between business partners subject to Art. 2 of this law;
- e) in business transactions of natural and juridical persons who/which are subject to this law as specified in Art. 2 with a contract customer who/which is not a juridical person subject to this law insofar the latter is represented contractually or as a company executive by a natural or juridical person subject to the law.

2) There is no obligation to determine the financial beneficiary in connection with accounts or deposits which are kept in the name of lawyers registered in Liechtenstein on behalf of clients if the lawyers are acting as trustees in bankruptcy, liquidators or in any other forensic capacity.

Art. 7

Repetition of Identification and Determination

If in the course of the business relations doubts arise as to the identity of the contract customer or about the financial beneficiary, the identification of the contract customer or the determination of the financial beneficiary must be repeated.

Art. 8

Deception

1) If there is strong suspicion that they were deceived in the identification of the contract customer or in the details about the financial beneficiary, the persons subject to this law

- a) may end the business relations if this is possible without endangering the assets;
- b) may continue the business relations if the necessary correct information is supplied without delay.

2) If the business relations are ended, the withdrawal of the assets must be adequately documented.

Art. 9

Suspicion of Money Laundering

1) If from the nature and circumstances of a transaction it must be assumed that it is connected with money laundering within the intentment of the Penal Code, the financial background, the purpose of the transaction and the origin of the assets must be clarified.

2) When, after the special clarifications as specified in Para. 1 have been undertaken, the strong suspicion that the transaction is

connected with money laundering still remains, the persons subject to this law must notify the Bank Supervisory Office without delay. At the same time, they may also inform the Public Prosecutor.

3) In the case of Para. 2, the Bank Supervisory Office shall order special measures, usually within five weekdays but at the most within eight weekdays, such as the blocking of accounts for not more than four weeks or notification of the Public Prosecutor. The persons subject to this law have the right to block and hold back the assets in question until the necessary dispositions of the Bank Supervisory Office are received or until the period of eight weekdays has expired without action having been taken.

4) The persons subject to this law may not advise the contract customer or third parties that they have notified the Bank Supervisory Office or the Public Prosecutor or that investigations are being carried out by these until a disposition of the Bank Supervisory Office is received or until the period of eight weekdays has expired without action having been taken.

III. Documentation, Control and Supervision by the Bank Supervisory Office

Art. 10

Duty of Documentation

1) The persons subject to this law must prepare documents and records concerning the customer relations within the intentment of Art. 1, the identification of the contract customer pursuant to Art. 4, the determination of the financial beneficiary pursuant to Art. 5 and the special obligations pursuant to Art. 7, 8 and 9 which enable expert third parties to form a reliable judgment on the observance of the provisions of this law.

2) The documents and records are to be prepared and kept in such a manner that any dispositions in regard to information and confiscation issued by a court of law may be obeyed within a reasonable time.

3) After the ending of the business relationship or after the completion of the transaction, the documents and records are to be kept for ten years. Further provisions concerning the obligation to keep the business books are reserved.

4) In those cases in which pursuant to Art. 4 Para. 2 no identification of the contract customer is to be carried out or pursuant to Art. 6 the obligation to determine the financial beneficiary does not apply, the name of the contract customer and the reason for the non-determination of the financial beneficiary are to be documented. This shall not apply to cash transactions of less than 25 000 francs or to interbank transactions.

Art. 11

Organisational Measures

The persons subject to this law must take the necessary organisational measures and arrange for suitable internal control and supervisory measures and appropriate instruction of the staff.

Art. 12

Control

1) The banks and finance companies shall instruct their auditors as prescribed under banking law, investment companies their auditors as prescribed under investment law and insurance undertakings their auditors as prescribed under supervisory insurance law to spot check the observance of the provisions of this law on the occasion of the ordinary audit.

2) All other persons subject to this law shall be spot checked by government-authorized, admitted, auditors or audit companies instructed by the Bank Supervisory Office, respecting the observance of this law. The juridical and natural persons mentioned may deposit with the Bank Supervisory Office two proposals for admitted auditors or audit companies which undertake the check on the instruction of the Bank Supervisory Office.

3) The admitted auditors and audit companies shall verify whether all the data and documents prescribed by law concerning the identification of the contract customer and the determination of the financial beneficiary are available in full.

4) The admitted auditors or audit companies charged with this may not have any connection with the persons to be checked.

5) The costs for the control activities by the admitted auditors or audit companies and the administrative costs associated with this shall be borne by the natural and juridical persons checked.

Art. 13

Reporting

1) The admitted auditors or audit companies charged with the control are obliged to submit their report in an anonymous form. Any violations found are to be reported immediately to the Bank Supervisory Office.

2) The admitted auditors or audit companies charged with the audit are enjoined to secrecy concerning the findings made in the course of their control activities. Art. 13 Para. 1 and Art. 14 are reserved.

Art. 14

Supervision

1) The Bank Supervisory Office supervises the enforcement of this law and the Executive Orders issued in connection with it and shall take the necessary measures. In particular, it may:

- a) Order audits within the intendment of Art. 12;
- b) order a more comprehensive and repeated verification in regard to the quality of the identification of the contract customer and of the determination of the financial beneficiary when there are doubts as to the observance of the obligations under this law;
- c) in the case of repeated and serious violations of individual provisions of this law and for the avoidance of further violations, prohibit the taking up of new business relations for a certain time;

d) apply to the competent authority for the appropriate disciplinary steps to be taken; the Bank Supervisory Office is to be informed periodically of the state of the proceedings in progress.

2) It may demand all the information and documents needed for the performance of the supervisory function from the persons subject to this law and from the admitted auditors or audit companies charged with the audit pursuant to Art. 12.

3) Information communicated in accordance with this law may only be used for combatting money laundering.

4) The Bank Supervisory Office shall report violations of this law to the authorities pursuant to Art. 15 and 16.

5) The Bank Supervisory Office shall submit an annual report to the Government.

IV. Penal Provisions and Administrative Measures

A. Penal Provisions

Art. 15

Court of Justice

1) For offences, the Court of Justice shall punish with imprisonment for up to six months or fines of up to 360 daily income units any person who deliberately:

- a) Does not identify the contract customer as specified in Art. 4;
- b) does not determine the financial beneficiary as specified in Art. 5;
- c) does not repeat the identification of the contract customer and the determination of the financial beneficiary as specified in Art. 7;
- d) does not carry out the special clarification as specified in Art. 9 Para. 1;
- e) omits to notify the Bank Supervisory Office as specified in Art. 9 Para. 2;
- f) does not prepare and keep the documentation as specified in Art. 10;

- g) does not have the control carried out by accountants or audit companies as specified in Art. 12;
- h) as an admitted auditor or audit company as specified in Art. 12 commits a gross breach of his/its obligations, especially in the audit reports states untrue facts or conceals important facts or does not make the reports prescribed to the Bank Supervisory Office.

2) The Court of Justice shall punish with imprisonment for up to six months or fines of up to 360 daily income units any person who as an admitted auditor or an auditor of an audit company commits a breach of the obligation of secrecy as specified in Art. 13.

Art. 16

Government

The Government shall punish with fines of up to 100 000 francs any person who:

- a) Refuses information to, states false facts to or conceals important facts from the Bank Supervisory Office or an admitted auditor or an audit company;
- b) does not comply with the demand to establish the state which complies with the law or with another disposition of the Bank Supervisory Office.

Art. 17

Applicability of other Penal Codes

The penal liability by reason of other penal codes is reserved.

Art. 18

Responsibility

If the contraventions are committed in the business operations of a juridical person or of a trust, the penal provisions shall apply to the persons who acted or should have acted for them, but with the joint and several liability of the juridical person or trust property for fines, penalties and costs.

B. Administrative Measures

Art. 19

Reservation of Further Measures

1) Measures as specified in the Bank Act, the Law on Investment Undertakings, the Supervisory Insurance Law, the Law on Trustees, the Law concerning Advocates and the Liechtenstein Persons and Companies Act are reserved.

2) Measures against the audit departments of banks and finance companies, investment companies and insurance undertakings and against admitted auditors and audit companies are also reserved as specified in the relevant special laws.

C. Notifications by the Public Prosecutor

Art. 20

The Public Prosecutor's Obligation to Notify

The Public Prosecutor shall notify the Bank Supervisory Office of all decisions to drop proceedings or of judgments pronounced by reason of proceedings as specified in Art. 15.

V. Concluding Provisions

Art. 21

Implementation

1) The Government shall issue the Executive Orders necessary for the implementation of this law, especially on:

- a) The recognition of documents and identity papers for the identification of the contract customer (Art. 4);
- b) the conditions for the recognition of professional organisations and public registers (Art. 4 Para. 3);
- c) the procedure for the determination of the financial beneficiary (Art. 5);
- d) the procedure for the repetition of identification and determination (Art. 7).

Art. 22

Transitional Provision

Art. 7, 8 and 9 also apply to customer relations which already existed when this law came into force.

Art. 23

Entry into Force

This law shall come into force on 1 January 1997.

signed *Hans-Adam*

signed *Dr. Mario Frick*
Head of the Princely Government

Liechtenstein Legal Gazette

1997

No. 210

published on 19 December 1997

Law

of 23 October 1997

on the Provision, Control and Distribution of the Prospectus to be published on the Occasion of the Public Offer of Securities (Prospectus Law)

I hereby Grant My Consent to the following Resolution adopted by the Diet:

Art. 1

Object

This law regulates the conditions for the provision, control and distribution of the prospectus to be published on the occasion of the initial public offer of securities.

Art. 2

Definitions

1) A public offer is declaration of intent, not addressed to certain persons, to dispose of securities.

2) Securities within the intendment of this law shall be shares, participation certificates, dividend-right certificates, bonds, mortgage bonds, medium-term notes (Kassaobligationen, Kassascheine) and other securities if these are exchangeable, also non-documented rights having the same function (value rights).

3) Issuers are companies, other juridical persons and all undertakings whose securities are the subject of a public offer.

- 4) Euro securities are securities.
 - a) which are securely taken over and sold by a consortium, two members of which, at least, are domiciled in different states
 - b) of which at least 30 % of the issue are issued in one or more than one state which is not the state of the issuer and
 - c) which may be subscribed or initially acquired through only one bank or finance company.

Art. 3

Obligation to Provide a Prospectus

1) An initial public offer of securities in Liechtenstein may ensue only if the person making the offer has published a prospectus which has been prepared and controlled in accordance with the provisions of this law.

2) The prospectus must be published or be available to the public at the time the offer is opened, at the latest.

3) If the public offer relates to only a part of an issue, a new prospectus need not be published if the remaining part of the securities is to be the subject matter of a later public offer.

4) Should one of these prospectuses pursuant to the law have been published less than twelve months previously, it shall suffice in the case of an offer, for which a prospectus is prescribed, involving the acquisition of other securities from the same issuer, if the amendments made since the last publication, which may influence the assessments of these securities, are published in accordance with the same terms of procedure as in the original prospectus. This prospectus may only be submitted together with the complete prospectus to which it refers, or with a reference to this.

5) Every new occurrence or every inaccuracy of the prospectus must, if these could have a decisive influence on the evaluation of the securities and take place or are determined in the time between the publication of the prospectus and when the offer is finally closed, be mentioned or reported in a supplement to the prospectus, in accordance with the same terms of procedure as those in the original prospectus.

6) Before its publication, the prospectus must be submitted to the competent offices in every member state of the European Economic Area in which the securities are offered publicly for the first time.

7) Announcements, notices, placards and documents in which the public offer is announced and those from the person who submitted the public offer, distributed or kept it available for the public, must also be submitted to these offices beforehand, in case the latter undertake a preliminary check. The supporting documents must state that a prospectus is provided and where this prospectus was published.

Art. 4

Exemptions from the Obligation to Provide a Prospectus

The obligation to provide a prospectus pursuant to Art. 3 shall not apply in the case of:

- a) Securities of the State or the Communes;
- b) securities of a state or one of its territorial entities or an international organisation under public law which belongs to at least to one member state of the European Economic Area;
- c) securities which are only offered to a restricted category of people, known to the offerer individually;
- d) securities which are offered to persons within the framework of their professional or trade activities,
- e) securities in the case of which the selling price of the entire issue does not exceed 40,000 ECU or the corresponding equivalent sum;
- f) securities which, subdivided, are offered at 40,000 ECU at least, or the corresponding equivalent sum or securities which cannot be acquired below this value by an individual investor;
- g) bonds or medium-term notes which are issued continuously or repeatedly by Liechtenstein banks, by banking institutions admitted to a member state of the European Economic Area or banks subject to a regulation of equal value;
- h) bonds whose term does not exceed one year;

- i) participation certificates which are offered by investment undertakings other than the closed-end type. In the case of these participations the obligations to provide a prospectus shall be in accordance with the law on investment undertakings;
- k) securities which are offered in the case of a public conversion offer or in the case of a fusion of corporations,
- l) shares which are allocated to a bearer of shares without valuable consideration;
- m) shares or securities on an equal footing with shares which are offered in place of shares of the same company, without the offer of these new securities effecting an overall increase in the company capital;
- n) securities which an employee or an associated undertaking offers to his (its) present or former employees or in their favour;
- o) securities which originate from the conversion of convertible bonds or from the exercise of rights from subscription warrants, or shares which are issued in exchange for interchangeable bonds, insofar as a prospectus is issued for the public offer or the admission to the stock exchange with respect to these convertible or interchangeable bonds or these subscription warrants;
- p) Euro securities which are not publicly advertised and are not canvassed.

Art. 5

Content of the Prospectus

1) The prospectus must be written in the German language and must contain all the information necessary to enable the investor to form a sound judgment concerning the assets, financial and earnings situation of the issuer and his prospects of development, also concerning the rights associated with the securities.

2) The prospectus must bear the date of issue and must be signed by the issuer.

3) The prospectus must be drawn up in accordance with the provisions in the appendix in a manner which renders the prospectus readily understandable and simplifies its evaluation.

4) The Bank Supervisory Office may determine that certain items of information need not be included in the prospectus if:

- a) These data are of minor importance and are not likely to influence the assessment of the issuer's asset, financial and income situation and the prospect of his development;
- b) the distribution of these items of information are not in the public interest or would cause the issuer considerable harm, insofar as in the latter case the non-publication does not mislead the public concerning the facts and circumstances essential for the assessment of the securities.

Art. 6

Approval of the Prospectus

1) The prospectus and possible amendments pursuant to Art. 3 para. 4 and 5 must be approved by the Bank Supervisory Office before being published.

2) The Bank Supervisory Office must reach a decision concerning approval within eight weeks of the prospectus being submitted.

Art. 7

Publication of the Prospectus

1) The Prospectus shall be published:

- a) By means of a full reproduction in the Liechtenstein newspaper; or
- b) by being held in readiness, free of charge, at the domicile of the issuer and at the paying offices mentioned in the prospectus.

2) In addition, a notice shall be printed in the Liechtenstein newspapers stating where the prospectus is published and where it is available to the public.

3) When individual conditions relating to the offer, such as the selling price or the interest rate, are not determined until shortly before the offer is published, the prospectus may be published without this information when this circumstance is pointed out in the prospectus and the lacking information will be published in the same way as the prospectus itself. As soon as these items of information have been determined, they must be signed, checked and published in the same way as the prospectus.

Art. 8

Recognition of Prospectus Admitted to the Stock Exchange and Others

1) The person who submits the public offer may also provide a prospectus whose content is determined with regard to the particularities of public offers pursuant to the guideline 80/390/EEC. Such a prospectus, drawn up in the German language or translated into the German language, shall be deemed to be adequate within the intendment of Art. 5 para. 1.

2) If at the time of the public offer, at the latest, the issuer has submitted an application for the admission of the securities included in the public offer for official quotation on a stock (securities) exchange in one of the other member states of the European Economic Area, a prospectus which is drawn up in the German language or translated into the German language, and whose content as well as the conditions of its control and distribution take into account the particularities of public offers pursuant to the guideline 80/390/EEC shall be deemed to be adequate within the intendment of Art. 5 para. 1.

3) A prospectus of an issuer from a third country outside the European Economic Area, which fulfils the requirements of this law, is drawn up in German language or has been translated into the German language and has been approved by the competent office shall be deemed to be adequate withing the intendment of Art. 5 para. 1.

4) The prospectus shall include additional information which relates specifically to the Liechtenstein market pursuant to Art. 10 para. 5.

Art. 9

Competance

1) The Bank Supervisory Office shall supervise the implementation of this law and to this end shall take then necessary measures.

2) In particular, the Bank Supervisory Office shall be responsible for the checking and approval of the prospectus.

3) The Bank Supervisory Office shall cooperate with the corresponding offices of the member states of the European Economic Area within the framework of its duties and authority and shall exchange the information necessary for this, insofar as official secrecy is assured.

Art. 10

Cooperation within the European Economic Area

1) If public offers for the same securities are made simultaneously or almost simultaneously in several member states of the European Economic Area, the Bank Supervisory Office shall be responsible for the approval of the prospectus when the issuer is domiciled in Liechtenstein and Liechtenstein is affected by the public offer.

2) If the securities of an issuer whose domicile is in a member state of the European Economic Area other than Liechtenstein form the subject matter of an offer which must be accompanied by a prospectus and if this offer is issued simultaneously or almost simultaneously in Liechtenstein and in another member state of the European Economic Area, a prospectus within the intendment of Art. 5 para. 1 shall be deemed to be adequate,

- a) if it has been drawn up in the German language or translated into the German language, and
- b) has been approved by the office competent in the state in which the issuer is domiciled, and
- c) this state provides a prospectus control which is equal in quality to the provisions of this law,

d) an application for official quotation of the securities has been submitted in this state or a public offer has ensued.

3) If the state of domicile does not provide prospectus control within the intendment of para. 2 or the official quotation of the securities on a stock (securities) exchange domiciled there cannot be applied for, or no public offer ensues, the prospectus may also be approved by the competent offices of any other member state of the European Economic Area, insofar as this state provides a prospectus control which is equal in quality to the provisions of this law and admission for official quotation of the securities was applied for or a public offer ensued.

4) The confirmation of approval of the competent office shall be sent to the Bank Supervisory Office together with the prospectus so as to be to hand on the day of publication, at the latest.

5) The prospectus shall include additional information which relates specifically to the Liechtenstein market concerning, in particular, the fiscal treatment of the yield, the banks operating in Liechtenstein as paying agents also the manner in which the announcements concerning securities are published.

6) Should a public offer of securities ensuing in Liechtenstein establish, by way of a subscription right, access to the capital of an undertaking domiciled in another member state of the European Economic Area and if the participation papers of this issuer are already admitted for official quotation in this member state, the Bank Supervisory Office shall consult the competent offices of this member state before approving the prospectus.

Art. 11

Official Information

1) The provision of official information by the Bank Supervisory Office shall be admissible when:

- a) The public order, other essential state interests and banking secrecy are not violated thereby;
- b) the information does not oppose the object of this law;

- c) it is assured that the state seeking information would comply with Liechtenstein's similar request for information;
- d) it is assured that the information would only be used for the purposes of foreign laws which are comparable with this law;
- e) it is assured that the employees of the competent authorities also the persons instructed by the competent authorities are subject to professional secrecy.

2) If, according to the object of this law, this should be necessary, the Government or the Bank Supervisory Office may at any time call for information concerning the activities of Liechtenstein companies abroad and the financial relations of foreign companies.

3) The provisions of para. 1 and 2 shall be applied only provided interstate agreements do not determine to the contrary.

Art. 12

Maintenance of Secrecy

1) If, during the course of their official activities representatives of authorities gain knowledge of facts which are subject to the maintenance of secrecy, they shall treat these secrets as official secrets.

2) Non-compliance shall be punished in accordance with Art. 4.

3) The legal provisions concerning the duty to testify or disclose before penal courts are reserved.

Art. 13

Liability

If information in a prospectus to be provided pursuant to this law is incorrect or incomplete or if a prospectus in accordance with these provisions was not provided, the persons who provided the prospectus or should have provided it shall be jointly and severally liable to all the investors for the damage resulting from this.

Art. 14

Penal Provisions

1) Violations by the following persons shall be punished by the Court of Justice with imprisonment of up to six months or a fine of up to 360 daily income units.

- a) Whoever as an employee of the Bank Supervisory Office violates the obligation to observe confidentiality or induces others to do this;
- b) whoever in connection with a public offer of securities for which, pursuant to this law, a prospectus must be provided, furnishes incorrect information in the published prospectus or withholds disadvantageous facts with respect to important circumstances relevant to the decision concerning acquisition.

2) The court of Justice shall punish on grounds of infringement, with a fine of up to 100,000 francs whoever, in connection with a public offer of securities for which, pursuant to this law, a prospectus must be provided, offers securities without publishing in due time a controlled prospectus in the prescribed form.

Art. 15

Repeal of Provisions in the Law on Persons and Companies

Art. 282 and 298 also § 80 and § 80a Concluding Section of the Law on Persons and Companies shall be repealed.

Art. 16

Entry into Force

This law shall enter into force on the 1 January 1998

signed *Hans-Adam*

signed *Dr. Mario Frick*
Head of the Princely Government

Appendix

Minimum Content of the Prospectus Pursuant to Art. 5

In addition to the legally required content the prospectus must contain at the least the following:

A. General Requirements

- 1. Information concerning the persons assuming responsibility for the prospectus**
 - 1.1 Name and position of these persons, in the case of juridical persons, company name, legal form and domicile;
 - 1.2 declaration that to their knowledge the information contained in the prospectus is correct and no facts that could change the statements in the prospectus have been withheld.
- 2. Information concerning the Public Offer and the securities offered**
 - 2.1 The kind of securities offered;
 - 2.2 the amount and the purpose of the issue;
 - 2.3 the number of securities issued;
 - 2.4 the rights associated with the securities;
 - 2.5 the tax deducted at source on the yield;
 - 2.6 period of time fixed for the subscription;
 - 2.7 commencement of the dividend entitlement;
 - 2.8 persons who have firmly acquired the offer or have guaranteed to do so;
 - 2.9 restriction of the negotiability of the securities offered;
 - 2.10 markets where the securities may be traded;
 - 2.11 facilities which function as paying and depositing offices;
 - 2.12 the price at which the securities will be offered, if this is known;
 - 2.13 terms of procedure and time scale for the determination of the price if this is not known at the time the prospectus is drawn up;

- 2.14 terms of payment;
- 2.15 manner of exercising the subscription rights;
- 2.16 terms of procedure and time limits for the delivery of the securities.

3. Information concerning the Issuer and his Capital

- 3.1 Name of the company;
- 3.2 domicile;
- 3.3 date of formation;
- 3.4 legal form and valid legal system;
- 3.5 Purpose (object) of business;
- 3.6 information concerning Register and Register entry number;
- 3.7 amount of capital subscribed;
- 3.8 number and main features of the shares which represent this capital;
- 3.9 amount of subscribed capital not paid in;
- 3.10 the amount of the convertible bonds, exchangeable bonds or option loans with information concerning the conversion, exchange or subscription conditions;
- 3.11 details of the concern to which the issuer belongs;
- 3.12 all the shares not representing the capital;
- 3.13 the amount of approved capital and the duration of the authorisation;
- 3.14 details of the shareholders who exercise or may exercise, directly or indirectly, a dominating role in the management of the issuer.

4. Information concerning the Issuer's Main Spheres of Activity

- 4.1 Description of the main activities;
- 4.2 details of extraordinary occurrences which influenced the activity;
- 4.3 dependence upon patents, licences or agreements, if these factors are of important significance;
- 4.4 information concerning current investments of considerable extent;
- 4.5 details of court proceedings which have a considerable influence on the issuer's financial situation.

5. Information concerning the Issuer's Asset, Financial and Income Position

- 5.1 Annual accounts and, where appropriate, consolidated financial statement;
if the issuer only prepares a consolidated annual account, he shall include this in the prospectus. If the issuer prepares not only a non-consolidated, but also a consolidated annual account, he shall include both in the prospectus. However, he need only include one of these if the annual account not included does not contain any essential additional statements;
- 5.2 interim survey in the event that one has been published since the conclusion of the previous business year;
- 5.3 name and address of the persons entrusted with the audit;
- 5.4 if the auditors made reservations or declined to certify the account, this fact and reasons for it must be stated.

6. Details of the members of the board of directors, the management and the supervisory bodies of the issuer

- 6.1 Name;
- 6.2 address;
- 6.3 position;
- 6.4 in the case of a public offer of shares of a corporation reimbursement (salaries, profit sharing, reimbursement of expenditure, commission, performance of additional services, etc.) of the members of the administrative bodies and/or the management and supervisory bodies.

7. Details of the most recent course of business and the prospects of business of the issuer, insofar as this information is of essential significance for a possible assessment of the issuer

- 7.1 The most important and most recent tendencies with respect to the course of the issuer's business since the conclusion of the previous business year;
- 7.2 details of the prospects of the issuer, at least for the current year;

B. Further Provisions

1. If the public offer relates to bonds which are guaranteed by one or several juridical persons, the information provided for under the sub-items A. 3. to 7. must also apply to the guarantor(s).
2. If the public offer relates to convertible bonds, exchangeable bonds, option loans or subscription warrants additional information must be provided concerning the kind of shares or bonds to which the right of subscriptions applies, also concerning the conditions and terms of procedure of the conversion, the exchange or the subscription. If the issuer of the shares or the bond is not the same issuer as the issuer of the bonds or the subscription warrants, the information provided for under the sub-items A. 3. to 7 must also apply to the issuer of the shares or the bonds.
3. If the time during which an issuer has been active is shorter than the periods of time stated under the sub-item A, the information must be furnished only for the time during which the issuer has been active.
4. Insofar as the information required under sub-item A concerning the activity or the juridical form of the issuer, or concerning the kind of securities offered proves to be inappropriate, a prospectus must be prepared containing information of equal value.

GLOSSARIUM

GLOSSARY

A

Angabe	statement, declaration, specification
Abteilung	division
allenfalls	at all events, if need be, at most, at best, possibly, perhaps
Amtsbelehlsverfahren	injunction proceedings
Amtsstelle	government office
Androhung und Wirkung	warning and effect
Anfall	devolution
Anfallberechtigten	allottees
anfechten	challenge
Anfechtung	rescission
Anfechtungsklage	action to rescind action for avoidance
Anfechtungsordnung	voidance order, e.g. of creditors
anmelden	register, apply
Ansprecher	claimant
Anteilinhaber	unit holder (law on investment undertakings)
Anteilsgesellschaft	unusual form of legal entity, with members holding shares of no par value, members may also have membership dues similar to an as- sociation (see Art.375 German text- not translated)
Antrag	petition, application
Anwärter	reversioner
Anzeige	announcement
Anzeiger	informer
Aufgebot	application for a public citation
Aufgebotsverfahren	public citation proceedings sum- moned by public citation
Aufhebung	cancellation

Aufhebungsverfahren	cancellation proceedings
Auflagen	conditions (tied to a condition)
Aufsichtsrat	supervisory board
Ausführungsbestimmung	implementing provision
Ausgestaltung	structure
Auslösung	redemption
Auslösungssumme	redemption sum
Ausscheidung	setting aside, withdrawal
Ausschliessung	exclusion

B

Bestimmung	provision
bedingt, befristet	qualified, limited
beendete Verbandsperson	terminated legal entity
begründend	establishing
Begünstigung	beneficial interest
bei sonstiger Exekution	otherwise distraint shall be levied
Beistand	legal adviser
Beistatuten	by-articles, by-statute, by-laws (binding non-public dispositions)
Beizug	in consultation with
Belastung	charge
Berechtigung	entitlement right
Beschlagnahme	seizure
Buchprüfer/Wirtschaftsprüfer	auditor/duly admitted auditor (Please note this distinction was effected by the law dated 9.12.1992 and applies to all laws and regulations since then)

C

cessio legis	assignment by operation of the law
conditio sine qua non	(absolute) condition (precedent)
culpa in contrahendo	faulty happening prior to conclusion of contract

D

Dauer	duration
Dauerdelikt	continuing offence
Depotgeschäft	security deposit business
dinglich	real, in rem

E

Ermächtigung	power of authority
Eigenkapital	capital resources
Eigenvermögen	own assets
Einlösungsrecht	right of redemption
Einschränkung	limitation
Entscheid	rule, adjudication by means of adjudication
Ergänzung (Law)	amendment
Erledigung eines Verfahrens	the case is finally disposed of
Erlös	proceeds
Errichtungsurkunde	formation deed
Ersatztreuhänder	substitute trustee
Erstgeborenenrecht	rule of primogeniture
Ertrag	yield
Erträgnis	income
etwas anderes bestimmt	unless determined otherwise
EWK	EEA (European Economic Area)

F

Firma	firm's name, firm
die Fehlbaren	the suspected persons or culpable parties
freihändig	by private contract
Fürstl. Landrichter	Princely Judge

G

Gemeinschaft der Gläubiger bei Anleihenobligationen	community of loan security creditors; the law relating to the rights of bondholders
gegen jedermann	seffective with respect to all parties
Gegner	opposing party
Geldleistung	monetary payments
Gemeinschuldner	common debtor
gemischte Genossenschaft	mixed co-op soc.
geregelt	ordered
Gerichtsstand	legal venue or court of jurisdiction
Gesamtrechtsnachfolger	universal successor(s) in title
Gewerbe	business
Gewinn	profit, gain, earnings
ggf.	in that case, if need be, if necessary, if the case arises, if it so happens
Gläubigerausschuss	creditors committee
Gläubigerschaft	creditors, community of creditors
Grundbuch	Land Register
Gutgläubiger Besitzer	bona fide owner

H

Habe	belongings, possessions
Habe/bewegliche	personal estate, movables
Haftanordnung	remand order, order for arrest
haftbar	liable
Haftentschädigung	compensation payment for deprivation of liberty
Haftgrund	reason for arrest
Haftprüfungsrichter	remand judge
heilen	cure
Herkunftsstaat	home state
bei sonstiger Hinfälligkeit	being otherwise invalid
Hinterleger	bailor, depositor
hinterlegt	deposited
Hinterlegung	depositing

I

Inhalt	terms, content
Immaterialgüter	intangibles, intangible assets
Inanspruchnahme	utilisation, availment
Inanspruchnahme der Quote	drawings on the quota
Inanspruchnahme einer Garantie	implementation of a guarantee
Inhaber der Gründerrechte	bearer of the founder's rights
Inhaberaktie	bearer share
Inhaberanteilschein	investment certificate made out to bearer
Inkasso	cash against documents
Inpfandnahme	accepting a pledge
Inverzugsetzung	giving notice of default

J

Jahreserhebung	annual assessment
Junktin-Klausel	reciprocal clause or joint performance clause

K

Kollegialorgan	body forming a board
Kollektivgesellschaft	general partnership
Konkursverwaltung	trusteeship in bankruptcy administration of a bankrupt's estate
Kontrollstelle	audit authority

L

Fürstl. Landgericht	Princely Court of Justice, Court of Justice
Liquidationsmasse	liquidation assets
Liquidationsstelle	liquidation body

M

Massgabe mit der Massgabe	instruction, directive on the understanding that, on the condition that, subject to
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N

Nachholung nach Massgabe	retrieval pursuant to, etc.
Nachbarstellung	vicinal position
Nachlassverfahren	administration proceedings, probate proceedings

Nachlassverfahren als Ausgleichsverfahren	administration proceedings as settlement procedure
Niederlassung	business establishment
Nutzung	use, utilization, emoluments

O

Obligationsrecht	Code of Obligations
öffentliche Urkunde	authenticated deed or publicly notarised deed
ohne Geschäftsbetrieb	inactive or dormant company
Ordnung	provisions
Organe	bodies

P

Personenkreis	category of beneficiaries
Persönlichkeit	(legal personality)
Prozesskurator	proceedings administrator
Prozesskurator	proceedings trustee

R

Rechtsschutz	protection of the law
Rechtsfürsorgerverfahren	extra-judicial proceedings
rechtskräftig	finally and conclusively
Rechtsöffnungverfahren	summary proceedings
Regelung	ruling
Registerführer	Registrar
Retentionsrecht	right of retention
richten, sich richten nach	shall conform with, shall be in harmony with

S

stillschweigend	implicit (tacit)
Satzung	Articles
Sicherheitsleistung	security deposit
Sicherungsbot	interim injunction, interlocutory injunction
Sitz	domicile (head office)
Stiftungsrat	foundation council

T

Treuhandbrief	unilateral trust instrument
Treuanordnung	trust instrument
Treuepflicht	duty to be loyal, allegiance
treugeberisch	mandatory
Treugeschäft	trust transaction
Treugut	trust property
das stillschweigende Treuhandverhältnis	the implied trust relationship
das vermutete Treuhandverhältnis	the presumed trust relationship
treuhänderisches Treuhänderschaft	trust
Unternehmen	fiduciary undertaking
Treuhänderrat	board of trustees
Treuhandstelle	trust body
Treuhandurkunde	trust deed
Treusatzung	trust articles
Treustiftung	trust foundation
Treuurkunde	trust instrument
Trödelvertrag	consignment contract

U

Umlageverfahren
unanfechtbar
contribution proceedings
non-appealable, incontestable
(ins)

V

Verbandsperson
bei sonstiger
Verantwortlichkeit
veräussern
Verbindlichkeit
Verjährung
Verletzung der Treuepflicht
Vermittleramt
Vermögensanfall
Vermögensteile
Vernichtbarkeitsverfahren
Vernichtung
Verordnung
Verordnungsweg
Verrechnungswesen
Vertragspartner
Verwalter
Verwaltung
Verwaltungsklage
Verwaltungsrat
Verwaltungszwangsverfahren
bei sonstiger Verwirkung
dieses Rechts
legal entity
or otherwise bear responsibility
alienate, dispose of
indebtedness
statutory limitation
breach of trust
mediator office
accession of property
elements of capital
voidability proceedings
(also) voidability
executive order, by way of
statutory instrument
by way of statutory instrument
clearing system
contract customer
(duty of due diligence act)
administrator
board of administration
Administrative Court action
board of directors
the applic. of admin. compulsion
otherwise this right shall be for-
feited, save for this right being
otherwise forfeited
restriction of transferability
restriction on transfer of shares

Vollmacht	power of agency, power of attorney
Vollstreckbarkeitserklärung vorhanden	writ of execution present
Vorschrift	regulation

W

wesentlich	essential
wiederkehrende Vergütungen	periodic payments
Willensvollstrecker	Executor

Wirtschaftlich berechtigte Person	financial beneficiary
Wirtschaftsprüfer/Buchprüfer	duly admitted auditor/auditor (Please note this distinction was effected by the Law dated 9.12.1992 and applies to all Laws and Regulations since then)
wohlerworbene Rechte	vested rights

Z

Zustiftung	foundation without legal personality
zusätzl. Treuhänder	additional trustee
Zusicherung	undertaking
Zwangsverwalter	sequestrator
zwingend	obligatory