

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



TABLE OF CONTENTS

PRELIMINARY CHAPTER: SCOPE OF THIS UNIFORM ACT	117
PART ONE: GENERAL PROVISIONS GOVERNING COMMERCIAL COMPANIES ...	118
BOOK ONE: FORMATION OF COMMERCIAL COMPANIES	118
TITLE 1– DEFINITION OF THE COMPANY	118
TITLE 2 –CAPACITY TO BE A MEMBER	118
TITLE 3 – ARTICLES OF ASSOCIATION	119
CHAPTER 1 FORM OF ARTICLES OF ASSOCIATION	119
CHAPTER 2 CONTENTS OF THE ARTICLES OF ASSOCIATION – MANDATORY 119 INFORMATION	119
CHAPTER 3 COMPANY NAME	120
CHAPTER 4 OBJECT OF THE COMPANY	120
CHAPTER 5 REGISTERED OFFICE	121
CHAPTER 6 DURATION – EXTENSION	121
Section 1 Duration	121
Section 2 Extension	122
CHAPTER 7 CONTRIBUTIONS	122
Section 1 General Provisions	122
Section 2 Types of Contributions	123
Section 3 Realization of Cash Contributions	123
Section 4 Realization of Non-cash Contributions	123
CHAPTER 8 COMPANY SHARES	124
Section 1 Principle	124
Section 2 Nature	124
Section 3 Rights and Obligations attached to Shares	124
Section 4 Nominal Value	125
Section 5 Negotiability – Transferability	125
Section 6 Sole ownership of Shares	126
CHAPTER 9 REGISTERED CAPITAL	126
Section 1 General Provisions	126

Section 2 Amount of Registered Capital.....	126
Section 3 Modification of Capital.....	127
CHAPTER 10 AMENDMENT OF THE ARTICLES OF ASSOCIATION	127
CHAPTER 11 DECLARATION OF REGULARITY AND CONFORMITY OR THE 127NOTARIAL STATEMENT OF SUBSCRIPTION AND PAYMENT	127
CHAPTER 12 NON-COMPLIANCE WITH FORMALITIES – RESPONSIBILITIES.....	128
TITLE 4 PUBLIC CALL FOR CAPITAL.....	129
CHAPTER 1 SCOPE OF PUBLIC CALL FOR CAPITAL	129
CHAPTER 2 PROSPECTUS.....	130
TITLE 5 REGISTRATION – LEGAL PERSONALITY.....	133
CHAPTER 1 GENERAL PROVISIONS	133
CHAPTER 2 COMPANIES UNDER FORMATION AND FULLY FORMED BUT 133UNREGISTERED COMPANIES.....	133
Section 1 Definitions.....	133
Section 2 Commitments made on behalf of the company under formation prior to incorporation	134
Section 3 Commitments made on behalf of the fully formed company prior to registration.....	135
CHAPTER 3 UNREGISTERED COMPANIES	135
CHAPTER 4 BRANCHES	136
BOOK 2: FUNCTIONING OF THE COMMERCIAL COMPANY.....	136
TITLE 1 POWERS OF THE COMPANY EXECUTIVES	136
GENERAL PRINCIPLES.....	136
TITLE 2 COLLECTIVE DECISIONS	137
GENERAL PRINCIPLES.....	137
TITLE 3 ANNUAL SUMMARY FINANCIAL STATEMENTS - ALLOCATION OF EARNINGS	139
CHAPTER 1 ANNUAL SUMMARY FINANCIAL STATEMENTS	139
Section 1 Principle	139
Section 2 Approval of annual summary financial statements	139
CHAPTER 2 RESERVES – DISTRIBUTABLE PROFITS.....	140
CHAPTER 3 DIVIDENDS.....	140

CHAPTER 4 DISPUTES BETWEEN MEMBERS AND BETWEEN ONE OR MORE MEMBERS AND THE COMPANY	141
TITLE 4 ALARM PROCEDURE.....	141
CHAPTER 1 ALARM BY THE AUDITOR	141
Section 1 Companies other than Public Limited Companies.....	141
Section 2 Public Limited Companies.....	142
Chapter 2 Alarm by Members	143
Section 1 Companies other than Public Limited Companies.....	143
Section 2 Public Limited Companies.....	143
TITLE 5 EVALUATION OF MANAGEMENT.....	143
BOOK 3 THE CIVIL LIABILITY OF COMPANY EXECUTIVES	144
TITLE 1 INDIVIDUAL SUITS	144
TITLE 2 ACTION IN THE INTEREST OF THE COMPANY.....	145
BOOK 4: LEGAL RELATIONSHIP BETWEEN COMPANIES	146
TITLE 1 CONSORTIUMS	146
TITLE 2 INVESTING IN ANOTHER COMPANY.....	146
TITLE 3 PARENT COMPANY AND SUBSIDIARY	147
BOOK 5: TRANSFORMATION OF A COMMERCIAL COMPANY	147
BOOK 6: MERGER – DIVISION PARTIAL TRANSFER OF ASSETS	149
BOOK 7: DISSOLUTION - LIQUIDATION OF A COMMERCIAL COMPANY	152
TITLE 1 DISSOLUTION OF THE COMPANY.....	152
CHAPTER 1 CAUSES OF DISSOLUTION.....	152
CHAPTER 2 EFFECTS OF DISSOLUTION	152
TITLE 2 LIQUIDATION OF A COMMERCIAL COMPANY.....	153
CHAPTER 1 GENERAL PROVISIONS	153
CHAPTER 2 PROVISIONS SPECIFIC TO LIQUIDATION ORDERED BY COURT	156
BOOK 8: NULITY OF THE COMPANY AND COMPANY ACTS OF A COMPANY	159
BOOK 9: FORMALITIES – PUBLICATION.....	162
TITLE 1 GENERAL PROVISIONS	162
TITLE 2 FORMALITIES FOR THE FORMATION OF A COMPANY	163

TITLE 3 FORMALITIES FOR THE AMENDMENT OF THE ARTICLES OF ASSOCIATION	164
TITLE 4 FORMALITIES FOR THE TRANSFORMATION OF A COMPANY	165
TITLE 5 FORMALITIES FOR THE LIQUIDATION OF A COMPANY	165
TITLE 6 SPECIFIC FORMALITIES APPLICABLE TO PUBLIC LIMITED COMPANIES.....	166
PART 2 : PROVISIONS SPECIFIC TO COMMERCIAL COMPANIES	167
BOOK 1:PRIVATE COMPANIES.....	167
TITLE 1 GENERAL PROVISIONS	167
TITLE 2 MANAGEMENT.....	168
CHAPTER 1 APPOINTMENT OF THE MANAGER	168
CHAPTER 2 POWERS OF THE MANAGER	168
CHAPTER 3 REMUNERATION OF THE MANAGER.....	169
CHAPTER 4 REMOVAL OF THE MANAGER	169
TITLE 3 COLLECTIVE DECISIONS	170
TITLE 4 ANNUAL GENERAL MEETING.....	170
TITLE 5 CONTROL BY MEMBERS.....	171
TITLE 6 TERMINATION OF A PRIVATE COMPANY	171
BOOK 2 : SLEEPING PARTNERSHIP	172
TITLE 1 GENERAL PROVISIONS	172
TITLE 2 MANAGEMENT.....	173
TITLE 3 COLLECTIVE DECISIONS	174
TITLE 4 ANNUAL GENERAL MEETING.....	174
TITLE 5 CONTROL BY PARTNERS.....	175
TITLE 6 DISSOLUTION OF THE SLEEPING PARTNERSHIP	175
BOOK 3: PRIVATE LIMITED COMPANY	176
TITLE 1 FORMATION OF A PRIVATE LIMITED COMPANY	176
CHAPTER 1 DEFINITION OF A PRIVATE LIMITED COMPANY	176
CHAPTER 2 SUBSTANTIVE CONDITIONS	176
Section 1 Registered Capital	176
Section 2 Valuation of non-cash contributions.....	176

Section 3 Deposit and release of Funds	177
CHAPTER 3 CONDITIONS OF FORM.....	177
TITLE 2 FUNCTIONING OF A PRIVATE LIMITED COMPANY	178
CHAPTER 1 TRANSACTIONS RELATING TO COMPANY SHARES.....	178
Section 1 Transfer of Company Shares.....	178
Subsection 1 Share transfer inter vivos	178
Paragraph 1 Form of transfer	178
Form of Transfer	178
Terms of Transfer	178
Sub paragraph 1 - Transfer between members.....	178
Sub-paragraph 2- Transfer to third parties	179
Subsection 2 Transfer due to Death	179
Section 2 Pledge of Company Shares	180
CHAPTER 2 MANAGEMENT.....	180
Section 1 Organization of Management.....	180
Subsection 1 Appointment of Managers	180
Subsection 2 Term of Office	180
Subsection 3 Remuneration	180
Sub-section 4 Removal from office	181
Subsection 5 Resignation	181
Section 2 Powers of Managers.....	182
Section 3 Liability of Managers.....	182
CHAPTER 3 COLLECTIVE DECISIONS OF MEMBERS	182
Section 1 Organization of collective decisions	182
Subsection 1 General principles.....	182
Paragraph 1 Conditions.....	182
Paragraph 2 Representation of the members.....	183
Subsection 2 Convening of general meetings	183
Paragraph 1 Right to convene meetings.....	183
Paragraph 2 Conditions for convening meetings	183

Paragraph 3 Sanctions for improper convening of meetings	184
Subsection 3 Consultation in writing	184
Subsection 4 Chairing of meetings	184
Subsection 5 Minutes of meetings	184
Section 2 Members' rights	185
Subsection 1 Principle.....	185
Subsection 2 Right to be served company documents	185
Subsection 3 Right to dividend	185
Section 3 Ordinary collective decisions.....	186
Subsection 1 The ordinary annual general meeting	186
Paragraph 1 Periodicity	186
Paragraph 2 Rules governing voting by members	186
Subsection 2 Agreements between the company and one of its managers	187
Paragraph 1 Regulated agreements	187
Paragraph 2 Prohibited agreements.....	188
Section 4 Extraordinary collective decisions	188
Subsection 1 General rules relating to voting by members	189
Paragraph 1 Principle	189
Paragraph 2 Exceptions.....	189
Subsection 2 Decisions relating to a variation of capital	189
Paragraph 1 Increase of capital	189
Paragraph 2 Reduction of capital	190
Paragraph 3 Variation of shareholders' equity	191
Subsection 3 Transformation of the company.....	192
CHAPTER 4 AUDIT OF THE COMPANY	192
Section 1 Appointment of an auditor	192
Subsection 1 Companies concerned.....	192
Subsection 2 The auditor.....	192
Subsection 3 Incompatibilities	193
Subsection 4 Term of office of the auditor.....	193

Subsection 5 Penalties attendant on condition of appointment	193
Section 2 Conditions governing the performance of the duties of auditor	193
TITLE 3 MERGER – DIVISION	194
TITLE 4 DISSOLUTION OF A PRIVATE LIMITED COMPANY.....	194
BOOK 4 : PUBLIC LIMITED COMPANY	195
TITLE 1 GENERAL PROVISIONS	195
SUBTITLE 1 FORMATION OF A PUBLIC LIMITED COMPANY.....	195
CHAPTER 1 GENERAL.....	195
Section 1 Definition	195
Section 2 Authorized capital	195
CHAPTER 2 FORMATION WITHOUT NON-CASH CONTRIBUTIONS AND WITHOUT STIPULATION OF SPECIAL BENEFITS	196
Section 1 Preparation of allotment letter.....	196
Section 2 Deposit of funds and notarial statement of subscription and payment	197
Section 3 Drawing up of the Articles of Association	197
Section 4 Withdrawal of funds.....	198
CHAPTER 3 FORMATION WITH NON-CASH CONTRIBUTIONS AND/OR STIPULATION OF SPECIAL BENEFITS	198
Section 1 Principle	198
Section 2 intervention of shares valuer	198
Section 3 Constituent general meeting.....	199
SUBTITLE 2 ADMINISTRATION AND MANAGEMENT OF A PUBLIC LIMITED COMPANY	201
CHAPTER 1 GENERAL PROVISIONS	201
CHAPTER 2 PUBLIC LIMITED COMPANY WITH THE BOARD OF DIRECTORS	202
Section 1 Board of Directors.....	202
Subsection 1 Composition of the Board of Directors	202
Paragraph 1 Number and appointment of directors	202
Paragraph 2 Term of office of directors	203
Paragraph 3 Nomination of the permanent representative of a corporate person who is a member of the board of directors and his term of office.....	203

Paragraph 4 Elections.....	203
Paragraph 5 Vacancy on the board of directors.....	204
Paragraph 6 Remuneration.....	205
Paragraph 7 End of the duties of director	206
Subsection 2 Powers of the board of directors.....	206
Paragraph 1 Scope.....	207
Paragraph 2 Regulated agreements	207
Paragraph 3 Securities, sureties and guarantees.....	209
Paragraph 4 Prohibited agreements.....	209
Paragraph 5 Other powers of the board of directors	210
Subsection 3 Functioning of the board of directors	210
Paragraph 1 Convening and proceedings of the board of directors	210
Paragraph 2 Report of the board of directors	211
Section 2 Chairperson Managing Director.....	212
Paragraph 1 Appointment and term of office.....	212
Paragraph 2 Duties and remuneration of the Chairperson Managing Director.....	212
Paragraph 3 Impediment and dismissal of the Chairperson Managing Director	213
Paragraph 4 Assistant Managing Director	213
Section 3 Chairperson of the board of directors and the General Manager	214
Subsection 1 Chairperson of the board of directors.....	214
Paragraph 1 Appointment and term of office of the chairperson of the board of directors	214
Paragraph 2 Duties and remuneration of the chairperson of the board of directors	215
Paragraph 3 Impediment and dismissal of the chairperson of the board of directors	215
Subsection 2 General Manager	216
Paragraph 1 Appointment and term of office of the General Manager.....	216
Paragraph 2 Duties and remuneration of the General Manager.....	216
Paragraph 3 Impediment and dismissal of the General Manager	217
CHAPTER 3 PUBLIC LIMITED COMPANY WITH MANAGING DIRECTOR.....	217
Section 1 General Provisions	217
Section 2 Appointment and duration of mandate of the Managing Director	217

Section 3 Duties and remuneration of the Managing Director	218
Section 4 Regulated agreements	219
Section 5 Securities, sureties and guarantees.....	220
Section 6 Prohibited agreements.....	220
Section 7 Impediment and dismissal of the Managing Director.....	220
Section 8 Assistant Managing Director.....	221
SUBTITLE 3 GENERAL MEETINGS	221
CHAPTER 1 RULES COMMON TO ALL MEETINGS OF SHAREHOLDERS.....	221
Section 1 Convening of meetings	221
Section 2 Right to consult and to obtain copies of documents	224
Section 3 Holding of the general meeting.....	225
Section 4 Representation of shareholders and voting rights.....	226
CHAPTER 2 ORDINARY GENERAL MEETING	228
Section 1 Powers.....	228
Section 2 Meeting, quorum and majority.....	229
CHAPTER 3 EXTRAORDINARY GENERAL MEETING.....	229
Section 1 Powers.....	229
Section 2 Meeting, quorum and majority.....	230
CHAPTER 4 SPECIAL MEETING	230
Section 1 Powers.....	230
Section 2 Meeting, quorum and majority.....	231
CHAPTER 5 SPECIAL CASE OF A PUBLIC LIMITED COMPANY WITH SOLE SHAREHOLDER	231
SUBTITLE 4 VARIATION OF CAPITAL.....	232
CHAPTER 1 GENERAL PROVISIONS	232
Section 1 Conditions for increase of capital	232
Section 2 Pre-emptive right of subscription.....	233
Paragraph 1 Usufruct	234
Paragraph 2 Withdrawal of pre-emptive right of subscription.....	235
Section 3 Issue price and report	236

Section 4 Renunciation of the pre-emptive right of subscription	237
Section 5 Publicity prior to subscription.....	237
Section 6 Preparation of allotment letter.....	238
Section 7 Paying up of shares	239
Section 8 Notarial statement of subscription and payment.....	240
Section 9 Withdrawal of funds.....	240
CHAPTER 2 SPECIAL PROVISIONS RELATING TO INCREASE OF CAPITAL BY NON-CASH CONTRIBUTIONS AND/OR STIPULATION OF SPECIAL BENEFITS	241
CHAPTER 3 REDUCTION OF CAPITAL.....	242
CHAPTER 4 SUBSCRIPTION – PURCHASE – ACCEPTANCE BY THE COMPANY OF ITS OWN SHARES AS SECURITY	243
CHAPTER 5 REDEMPTION OF CAPITAL	246
Section 1 Conditions of redemption.....	246
Section 2 Rights attached to redeemed shares and conversion of redeemed shares into capital shares.....	247
SUBTITLE 5 VARIATION OF SHAREHOLDERS’ EQUITY	248
SUBTITLE 6 MERGER – DIVISION AND TRANSFORMATION.....	249
CHAPTER 1 MERGER AND DIVISION.....	249
Section 1 Merger	249
Section 2 Division	252
CHAPTER 2 TRANSFORMATION	253
SUBTITLE 7 AUDIT OF PUBLIC LIMITED COMPANY	254
CHAPTER 1 CHOICE OF AUDITOR AND HIS ALTERNATE	254
CHAPTER 2 APPOINTMENT OF THE AUDITOR AND HIS ALTERNATE.....	256
CHAPTER 3 DUTIES AND RIGHTS OF THE AUDITOR.....	257
Section 1 Duties of the auditor.....	257
Section 2 Rights of the auditor.....	258
CHAPTER 4 LIABILITY OF THE AUDITOR	260
CHAPTER 5 TEMPORARY AND PERMANENT INCAPACITY OF AUDITOR TO PERFORM	260
SUBTITLE 8 WINDING UP OF PUBLIC LIMITED COMPANY.....	261

SUBTITLE 9 CIVIL LIABILITY.....	262
CHAPTER 1 LIABILITY OF PROMOTERS.....	262
CHAPTER 2 LIABILITY OF DIRECTORS.....	262
TITLE 2 TRANSFERABLE SECURITIES	263
CHAPTER 1 COMMON PROVISIONS	263
Section 1 Definition	263
Section 2 Form of securities.....	263
Section 3 Pledge of securities	264
CHAPTER 2 PROVISIONS RELATING TO SHARES.....	264
Section 1 Different classes of shares.....	264
Section 2 Rights attached to shares.....	265
Paragraph 1 Voting rights.....	265
Paragraph 2 Right to dividend	265
Paragraph 3 Pre-emptive right of subscription	266
Section 3 Negotiability of shares	266
Section 4 Transfer of shares	267
Section 5 Limitation to the transfer of shares	267
Section 6 Pledge of shares	268
Section 7 Failure to pay up shares	268
Section 8 Redemption of shares.....	269
CHAPTER 3 PROVISIONS RELATING TO BONDS.....	270
Section 1 General provisions	270
Paragraph 1 Definition.....	270
Paragraph 2 Conditions of issue.....	270
Paragraph 3 Groups of bondholders.....	270
Section 2 General meeting of bondholders	272
Paragraph 1 Convening.....	272
Paragraph 2 Compulsory particulars	272
Paragraph 3 Agenda	273
Paragraph 4 Representation	273

Paragraph 5 Conduct of meeting.....	273
Paragraph 6 Voting rights.....	274
Paragraph 7 Resolutions of the meeting	274
Paragraph 8 Individual bondholder’s right	275
Paragraph 9 Guarantees in respect of bonds	275
CHAPTER 4 OTHER TRANSFERABLE SECURITIES.....	276
TITLE 3 PROVISIONS SPECIFIC TO PUBLIC LIMITED COMPANY MAKING PUBLIC CALL FOR CAPITAL	277
CHAPTER 1 GENERAL PROVISIONS	277
CHAPTER 2 FORMATION OF THE COMPANY	277
CHAPTER 3 FUNCTIONING OF THE COMPANY.....	279
Section 1 Administration of the company.....	279
Section 2 Shareholders’ meetings	280
Section 3 Modification of registered capital	280
Section 4 Investment of bonds	283
Section 5 Bondholders’ meetings.....	284
Section 6 Publicity	285
Subsection 1 Annual publicity	285
Subsection 2 Publicity at the end of the first semester	285
Subsection 3 Publicity – Subsidiaries of listed companies	286
BOOK 5 : THE JOINT VENTURE.....	287
TITLE 1 GENERAL PROVISIONS	287
TITLE 2 RELATIONS AMONG PARTNERS	287
TITLE 3 RELATIONS WITH THIRD PARTIES.....	288
TITLE 4 WINDING UP OF THE JOINT VENTURE	288
BOOK 6 : DE FACTO PARTNERSHIP	288
BOOK 7 : THE ECONOMIC INTEREST GROUP.....	289
TITLE 1 GENERAL PROVISIONS	289
TITLE 2 ADMINISTRATION.....	291
TITLE 3 AUDIT	291

TITLE 4 TRANSFORMATION	291
TITLE 5 DISSOLUTION	292
PART 3: PENAL PROVISIONS.....	293
TITLE 1 OFFENCES RELATING TO THE FORMATION OF COMPANY	293
TITLE 2 OFFENCES RELATING TO THE MANAGEMENT AND ADMINISTRATION OF COMPANY	294
TITLE 3 OFFENCES RELATING TO GENERAL MEETINGS	294
TITLE 4 OFFENCES RELATING TO VARIATION OF CAPITAL OF PUBLIC LIMITED COMPANY	295
CHAPTER 1 INCREASE OF CAPITAL	295
CHAPTER 2 REDUCTION OF CAPITAL.....	296
TITLE 5 OFFENCES RELATING TO THE AUDIT ODCOMPANIES	296
TITLE 6 OFFENCES RELATING TO THE DISSOLUTION OF COMPANIES.....	296
TITLE 7 OFFENCES RELATING TO THE LIQUIDATION OF COMPANIES	297
TITLE 8 OFFENCES RELATING TO PUBLIC CALL FOR CAPITAL	298
PART 4 : FINAL AND TRANSITIONAL PROVISIONS	299
BOOK 1: MISCELLANEOUS PROVISIONS	299
BOOK 2: TRANSITIONAL AND FINAL PROVISIONS	299



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

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

Mindful of the report of the OHADA Permanent Secretariat and the observations of the State Parties;

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

The State Parties present have deliberated upon and unanimously adopted the Uniform Act set out below:

PRELIMINARY CHAPTER SCOPE OF THIS UNIFORM ACT

IV

ARTICLE 1

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

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

Commercial companies and economic interest groups shall likewise be subject to the laws applicable in the States Parties in which their registered office is situated, provided that such laws are not contrary to the provisions of this Uniform Act.

ARTICLE 2

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

ARTICLE 3

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

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

PART 1
GENERAL PROVISIONS GOVERNING COMMERCIAL
COMPANIES

BOOK 1
FORMATION OF A COMMERCIAL COMPANY

TITLE 1
DEFINITION OF THE COMPANY

ARTICLE 4

A commercial company shall be formed by two or more persons who agree, by contract, to assign assets in cash or in kind to an activity for the purpose of sharing profits or benefiting from savings that may accrue therefrom. The members of the company shall bear the losses in accordance with the conditions laid down by this Uniform Act.

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

ARTICLE 5

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

ARTICLE 6

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

Private companies, sleeping partnerships, private limited companies and public limited companies are commercial companies by virtue of their form, irrespective of their object.

TITLE 2
CAPACITY TO BE A MEMBER

ARTICLE 7

Any natural or corporate person not under any prohibition, incapacity or incompatibility as defined especially in the Uniform Act Relating to General Commercial Law may be a member of a commercial company.

ARTICLE 8

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

ARTICLE 9

A husband and wife may not be members of a company in which they shall joint and severally have unlimited liability for the company's debts.

TITLE 3 ARTICLES OF ASSOCIATION

CHAPTER 1 FORM OF THE ARTICLES OF ASSOCIATION

ARTICLE 10

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

ARTICLE 11

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

ARTICLE 12

The Articles of Association shall either be a contract between members of a company where there are several members, or a unilateral deed of intent, in the case of sole proprietorship.

CHAPTER 2 CONTENTS OF THE ARTICLES OF ASSOCIATION - MANDATORY INFORMATION

ARTICLE 13

The Articles of Association shall contain the following information:

- 1°) the form of the company;
- 2°) the name of the company, followed by its acronym where necessary;
- 3°) the nature and field of the company's activity which constitute its object;
- 4°) the company's registered office;
- 5°) its duration;
- 6°) the identity of contributors in cash and, for each of them, the amount of their contribution and the number and value of the shares handed over in exchange for each contribution;
- 7°) the identity of contributors in kind, the nature and value of the contribution made by each of them, the number and value of the shares handed over in exchange for each contribution;
- 8°) the identity of persons enjoying special benefits and the nature of such benefits;
- 9°) the amount of the registered capital;

- 10°) the number and value of shares issued, stating, where necessary, the various classes of shares;
- 11°) provisions relating to the distribution of profits, the constitution of reserves and the distribution of the bonus after liquidation;
- 12°) the rules governing the functioning of the company.

CHAPTER 3 COMPANY NAME

ARTICLE 14

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

ARTICLE 15

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

ARTICLE 16

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

ARTICLE 17

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

ARTICLE 18

The name of the company may be altered in accordance with the conditions laid down by this Uniform Act for the amendment of the Articles of Association of such a company.

CHAPTER 4 OBJECT OF THE COMPANY

ARTICLE 19

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

ARTICLE 20

Every company shall have a lawful object.

ARTICLE 21

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

ARTICLE 22

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

CHAPTER 5 REGISTERED OFFICE

ARTICLE 23

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

ARTICLE 24

The company shall have its registered office either at its principal place of activity or at the place where its administrative and financial services are concentrated. The choice of location shall be made by the members.

ARTICLE 25

The registered office may not consist solely in a postal address. It shall be identifiable by an address and a sufficiently specific geographical location.

ARTICLE 26

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

ARTICLE 27

The registered office may be moved under the conditions stipulated in this Uniform Act for amending the Articles of Association for each form of company. However, it may be transferred to a different location in the same town by a simple decision of the company's management or administration.

CHAPTER 6 DURATION - EXTENSION

Section 1 Duration

ARTICLE 28

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

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

ARTICLE 29

Except otherwise provided by this Uniform Act, the existence of a company shall commence on the date on which it is registered in the Trade and Personal Property Rights Register.

ARTICLE 30

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

ARTICLE 31

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

Section 2 Extension

IV

ARTICLE 32

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

ARTICLE 33

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

ARTICLE 34

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

ARTICLE 35

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

ARTICLE 36

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

CHAPTER 7 CONTRIBUTIONS

Section 1 General provisions

ARTICLE 37

Each member shall contribute to the capital of the company.

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

ARTICLE 38

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

ARTICLE 39

The provisions of this chapter shall apply to contributions made whenever there is an increase in capital during the lifetime of the company.

Section 2

Types of contribution

ARTICLE 40

Each member may contribute to the company:

- 1°) money, as a cash contribution;
 - 2°) services, as a supply of labour;
 - 3°) rights on movable or immovable, tangible or intangible property, as a non-cash contribution.
- Any other contribution shall be prohibited.

Section 3

Realization of cash contributions

ARTICLE 41

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

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

ARTICLE 42

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

ARTICLE 43

Where there is a delay in payment, the balance due to the company shall automatically bear interest at the official rate from the date payment was due, without prejudice to the payment of damages as the case may be.

ARTICLE 44

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

Section 4

Realization of Non-cash Contributions

ARTICLE 45

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

Non-cash contributions shall be fully paid up at the time of formation of the company.

ARTICLE 46

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

ARTICLE 47

Where the contribution is in the form of leasehold, the contributor shall stand surety for the company just as the lessor for the lessee.

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

ARTICLE 48

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

ARTICLE 49

Members shall evaluate the non-cash contributions.

In the cases provided for by this Uniform Act, such valuation shall be crosschecked by a contributions valuer.

ARTICLE 50

The Articles of Association shall state the value of non-cash contributions under the conditions laid down in this Uniform Act.

CHAPTER 8 COMPANY SHARES

Section 1 Principle

ARTICLE 51

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

Section 2 Nature

ARTICLE 52

Company shares shall constitute personal property.

Section 3 Rights and obligations attached to shares

ARTICLE 53

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

1°) a right to a share of the company's profits whenever they are distributed;

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

ARTICLE 54

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

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

ARTICLE 55

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

Section 4 Nominal value

ARTICLE 56

Shares issued by a company shall have the same face value.

Section 5 Negotiability - Transferability

ARTICLE 57

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

ARTICLE 58

Public limited companies shall issue negotiable shares.

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

ARTICLE 59

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

Section 6
Sole ownership of shares

ARTICLE 60

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

IV

CHAPTER 9
REGISTERED CAPITAL

Section 1
General provisions

ARTICLE 61

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

ARTICLE 62

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

ARTICLE 63

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

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

ARTICLE 64

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

Section 2
Amount of registered capital

ARTICLE 65

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

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

ARTICLE 66

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

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

Section 3 Modification of the capital

ARTICLE 67

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

ARTICLE 68

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

ARTICLE 69

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

ARTICLE 70

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

ARTICLE 71

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

CHAPTER 10 AMENDMENT OF THE ARTICLES OF ASSOCIATION

ARTICLE 72

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

It shall be forbidden to increase a member's commitments without his consent.

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

ARTICLE 73

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

This document shall be known as the “Declaration of regularity and conformity”.

Provided that the application for registration of the company in the Trade and Personal Property Rights Register shall be rejected save upon presentation of the said document.

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

ARTICLE 74

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

CHAPTER 12

NON-COMPLIANCE WITH FORMALITIES - RESPONSIBILITIES

ARTICLE 75

Where the Articles of Association do not contain all the information stipulated by this Uniform Act, or where a formality prescribed by this Act for the formation of the company has not been, or has been improperly satisfied, any interested party may apply to the competent court within whose area of jurisdiction the company’s registered office is located for an order directing that the company be formed in full compliance with the law under pain of a periodic pecuniary penalty to be determined by the court while the default continues.

The legal Department may also bring action for the same purpose.

ARTICLE 76

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

ARTICLE 77

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

ARTICLE 78

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

ARTICLE 79

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

ARTICLE 80

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

TITLE 4 PUBLIC CALLS FOR CAPITAL

CHAPTER 1 SCOPE OF PUBLIC CALLS FOR CAPITAL

ARTICLE 81

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

1. Getting the shares of a company to be listed on the Stock Exchange of a State Party, with effect from the date of registration of such shares;
2. Resorting to credit establishments or stock brokers or the use of any form of publicity or canvassing in order to offer any type of shares to the public in a state party;

The distribution of shares to more than one (100) persons shall also constitute a public call for capital.

Provided that in determining this figure, each company or collective body offering transferable securities shall be considered as a single entity.

ARTICLE 82

Companies not authorized by this Uniform Act shall be prohibited from making public calls for capital by registering their securities on the stock exchange of a State Party or by offering their shares as part of an issue.

ARTICLE 83

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

ARTICLE 84

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

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

ARTICLE 85

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

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

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

CHAPTER 2 PROSPECTUS

ARTICLE 86

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

ARTICLE 87

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

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

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

ARTICLE 88

The prospectus need not contain information:

- 1°) which is of little importance and is unlikely to influence the appraisal of the assets, financial performance or prospects of the issuer;
- 2°) the disclosure of which is contrary to public interest;
- 3°) the disclosure of which may cause serious harm to the issuer and where the failure to publish same would not mislead the public;
- 4°) to which the person making the offer does not have access and where such person is not the issuer.

ARTICLE 89

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

The said prospectus shall then be supplemented by an operational memorandum comprising:

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

ARTICLE 90

The draft prospectus shall be submitted for the approval of the stock exchange control authority of the State Party in which the registered office of the issuer is located and, where necessary, where necessary, in the other State Parties in which the public calls for capital are made. Where there is no such authority, it shall be submitted to the minister in charge of finance of the said State Parties for endorsement.

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

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

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

The authorities referred to in this article shall grant the approval provided for in paragraph 1 within a period of one month following the date of acknowledgement of receipt of the prospectus. This time limit may be extended to two months where the authorities request further investigations. The acknowledgement of receipt of the prospectus shall be issued on the day the prospectus is received.

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

ARTICLE 91

Approval shall not be granted upon failure to meet the demands made by the stock exchange control authority or, in the absence of such authority, by the minister in charge of finance of the State Party of the issuer's registered office, and, where applicable, of the other State Parties where public calls for capital are made or where the operation entails acts contrary to the interests of the investors in the State Party of the registered office or, where applicable, of the other State Parties where the public call is made.

ARTICLE 92

Where important supervening events likely to affect the valuation of the public issue occur between the date of approval and the beginning of the planned operation, the issuer or the initiator of the offer shall draw up an additional updated prospectus which, before circulation,

shall be submitted for approval to the stock exchange control authority or, failing this, to the minister in charge of finance of the State Party of the issuer's registered office and, as the case may be, of the other State Parties in which the public call is launched.

ARTICLE 93

The prospectus shall be effectively circulated in the following forms in the State Party of the issuer's registered office and, where necessary, in the other State Parties where the public call is made:

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

ARTICLE 94

Advertisements of the operation shall mention the existence of the approved prospectus and how it can be obtained.

ARTICLE 95

A prospectus shall not be required where:

- 1°) the offer is intended for persons within the framework of their professional activities;
- 2°) the total amount of the offer is less than fifty million (50,000,000) CFA francs;
- 3°) the offer concerns shares or stock of collective bodies investing transferable securities other than closed-end ones;
- 4°) the offer is intended as transferable securities in return for contributions made during a merger or as partial contributions of capital;
- 5°) the issue concerns capital stock allotted freely during the payment of dividend or capitalization of reserves;
- 6°) the transferable securities offered come from the exercise of a right over transferable securities whose issue gave rise to the drawing up of a prospectus;
- 7°) the transferable securities are issued as a substitute for shares in the same company and their issue does not entail an increase of capital by the issuer.

ARTICLE 96

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

TITLE 5

REGISTRATION - LEGAL PERSONALITY

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 97

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

ARTICLE 98

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

ARTICLE 99

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

CHAPTER 2

COMPANIES UNDER FORMATION AND FULLY FORMED BUT UNREGISTERED COMPANIES

Section 1

Definitions

ARTICLE 100

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

ARTICLE 101

A company shall be deemed to be formed from the date of signature of its Articles of Association. Prior to its registration, the company shall not plead its existence or non-existence against third parties. However, third parties may in such case plead the existence of the company.

ARTICLE 102

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

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

ARTICLE 103

Founders of a company shall have an official address on the territory of one of the State Parties.

Such address shall not consist solely in a post box. It shall be identifiable by an address and a sufficiently specific geographical location.

ARTICLE 104

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

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

ARTICLE 105

Between the date on which a company is formed and that on which it is entered in the Trade and Personal Property Rights Register, relations among the members shall be governed by the Articles of Association and by general principles relating to the law of contracts.

Section 2

Commitments made on behalf the company under formation prior to its incorporation

ARTICLE 106

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

Such acts and commitments shall be set out in a statement referred to as “Statement of acts done and commitments made on behalf of the company under formation” which shall specify the nature and extent of the company’s liability should it decide to adopt and make them its own.

ARTICLE 107

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

ARTICLE 108

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

ARTICLE 109

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

ARTICLE 110

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

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

Section 3

Commitments made on behalf of a fully formed company prior to its registration

ARTICLE 111

Members may, in the Articles of Association or in a separate deed, as the case may be, authorize one or more company executives to enter into commitments on behalf of the company which, though fully formed, has not yet been entered in the Trade and Personal Property Rights Register.

Registration of the company in the Trade and Personal Property Rights Register shall entail its adoption of such commitments, provided that they are specifically set out and the terms and conditions for their application are spelt out in the authorising instrument.

ARTICLE 112

Except otherwise provided by the Article of Association, any acts done beyond the scope of the mandate given or which are unrelated to such mandate may be adopted by the company, provided they have been approved by an ordinary meeting of shareholders under the conditions laid down by this Uniform Act for each type of company. The members involved in such acts shall not vote and their votes shall not be taken into account in determining the quorum and the majority.

ARTICLE 113

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

CHAPTER 3 UNREGISTERED COMPANIES

ARTICLE 114

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

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

ARTICLE 115

Where, contrary to the provisions of this Uniform Act, the Articles of Association or the unilateral deed of intent as the case may be, is not in writing thereby making registration impossible, the company shall be referred to as a “de facto company”. It shall not have legal personality.

De facto companies shall be governed by the provisions of Articles 864 et seq. of this Uniform Act.

CHAPTER 4 BRANCHES

ARTICLE 116

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

ARTICLE 117

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

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

ARTICLE 118

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

ARTICLE 119

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

ARTICLE 120

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

BOOK 2 **FUNCTIONING OF A COMMERCIAL COMPANY**

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

ARTICLE 121

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

ARTICLE 122

The company shall be bound by the acts of its managers, directors and administrators which are unrelated to the company's object, unless it can prove that the third party was aware of this fact,

or that, given the circumstances, the third party could not have been unaware of it; publication of the Articles of Association shall not alone suffice to constitute such proof.

ARTICLE 123

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

Such limitations shall not be binding on third parties acting in good faith.

ARTICLE 124

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

IV

TITLE 2

COLLECTIVE DECISIONS

GENERAL PRINCIPLES

ARTICLE 125

Except otherwise provided by this Uniform Act, each member shall have a right to participate in taking collective decisions. Any contrary provisions in the Articles of Association shall be disregarded.

ARTICLE 126

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

This Uniform Act or the Articles of Association may restrict the number of members and the number of votes a proxy may represent.

ARTICLE 127

Except otherwise provided by the Articles of Association, joint owners of shares or stocks shall be represented by a single authorized person chosen from among the joint owners. Where there is disagreement, a proxy shall on the application of the more diligent joint owner be appointed by the competent court within whose jurisdiction the registered office is located.

ARTICLE 128

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

ARTICLE 129

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

ARTICLE 130

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

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

ARTICLE 131

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

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

ARTICLE 132

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

ARTICLE 133

Under the conditions specifically laid down for each form of company, collective decisions may be reached either at a general meeting or by correspondence.

ARTICLE 134

Minutes shall be taken in all the meetings of members. The minutes shall indicate the time and place of the meeting, the full names of members present, agenda, documents and reports submitted for discussion, a summary of the discussions, the terms of resolutions put to the vote and the outcome of such voting. The minutes shall be signed under the conditions provided by this Uniform Act for each form of company.

Where consultation is in writing, mention shall be made of that fact in the minutes to which shall be appended the reply of each member and which shall be signed in accordance with the conditions laid down by this Uniform Act for each form of company.

ARTICLE 135

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

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

ARTICLE 136

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

TITLE 3

ANNUAL SUMMARY FINANCIAL STATEMENTS

ALLOCATION OF EARNINGS

CHAPTER 1

ANNUAL SUMMARY FINANCIAL STATEMENTS

Section 1

Principle

ARTICLE 137

At the end of each fiscal year, the manager, the board of directors or the managing director, as the case may be, shall draw up a financial statement closing the accounts for the year in accordance with the provisions of the Uniform Act governing the organisation and harmonisation of accounting systems.

Section 2

Approval of annual summary financial statements

ARTICLE 138

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

ARTICLE 139

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

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

ARTICLE 140

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

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

ARTICLE 141

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

CHAPTER 2 RESERVES - DISTRIBUTABLE PROFITS

ARTICLE 142

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

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

ARTICLE 143

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

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

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

CHAPTER 3 DIVIDENDS

ARTICLE 144

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

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

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

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

ARTICLE 145

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

ARTICLE 146

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

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

CHAPTER 4
DISPUTES BETWEEN MEMBERS OR BETWEEN ONE OR MORE MEMBERS AND THE COMPANY

ARTICLE 147

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

ARTICLE 148

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

Where the parties so decide, the arbitrator or the arbitration tribunal, as the case may be, may pass a ruling as conciliator with no option of appeal.

ARTICLE 149

Arbitration shall be regulated by the provisions of the Uniform Act on Arbitration.

TITLE 4
ALARM PROCEDURE

CHAPTER 1
ALARM BY THE AUDITOR

Section 1
Companies other than public limited companies

ARTICLE 150

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

ARTICLE 151

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

ARTICLE 152

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

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

Section 2 **Public limited companies**

ARTICLE 153

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

ARTICLE 154

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

ARTICLE 155

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

The invitation referred to in the preceding paragraph shall be in the form of a hand-delivered letter against a receipt or registered letter with a request for acknowledgement of receipt dispatched within fifteen (15) days after receiving the reply of the chairman of the board of directors, the chairman and managing director, or the managing director, as the case may be, or the observation that there is no reply within the time limits provided in the preceding article.

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

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

ARTICLE 156

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

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

CHAPTER 2 ALARM BY THE MEMBERS

Section 1 Companies other than public limited companies

ARTICLE 157

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

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

Section 2 Public limited companies

ARTICLE 158

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

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

TITLE 5 EVALUATION OF MANAGEMENT

ARTICLE 159

One or more members holding at least one-fifth of the company's authorized capital may, either individually or as a group formed in any manner, petition to the president of the competent court

of the registered office of the company to designate one or more experts to make a report on one or more management operations.

ARTICLE 160

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

BOOK 3

THE CIVIL LIABILITY OF COMPANY EXECUTIVES

TITLE 1

INDIVIDUAL SUITS

ARTICLE 161

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

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

ARTICLE 162

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

Such action shall be instituted by the victim of the injury.

ARTICLE 163

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

ARTICLE 164

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

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

TITLE 2

ACTIONS IN THE INTEREST OF THE COMPANY

ARTICLE 165

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

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

ARTICLE 166

An action is said to be in the interest of the company where it is for damages suffered by the company as a result of a tort committed by a company executive or executives in the performance of their duties.

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

ARTICLE 167

One or more members may institute an action in the interest of the company where the competent bodies fail to react to their formal notice within a time limit of thirty days. The applicants may sue for damages for injury suffered by the company. Where judgment is entered in favour of the company, the court shall award it damages.

ARTICLE 168

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

ARTICLE 169

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

ARTICLE 170

The court competent to hear such action shall be the one within whose jurisdiction the registered office of the company is situated. An action in the interest of the company shall be barred after three years following commission of the tort, or following its disclosure where the tort was hidden. For felonies, the prescription shall be ten years.

ARTICLE 171

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

ARTICLE 172

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

BOOK 4
LEGAL RELATIONSHIP BETWEEN COMPANIES

TITLE 1
CONSORTIUMS

IV

ARTICLE 173

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

ARTICLE 174

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

ARTICLE 175

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

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

TITLE 2
INVESTING IN ANOTHER COMPANY

ARTICLE 176

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

ARTICLE 177

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

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

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

ARTICLE 178

Where a company other than a public limited company or a private limited company has amongst its members a public limited company or private limited company with more than 10% of its

capital, the former shall not hold shares and stocks in the latter.

Where the contribution of the public limited company or private limited company in the company is equal to or less than 10%, it shall not hold more than 10% of the capital of the public limited company or private limited company.

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

TITLE 3 PARENT COMPANY AND SUBSIDIARY

ARTICLE 179

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

The latter shall be the subsidiary of the former.

ARTICLE 180

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

1° own separately, directly or indirectly through corporate persons, a sufficient proportion of the joint subsidiary company's capital to warrant that no extraordinary decision be taken without their approval;

2° take part in the management of the joint subsidiary company.

BOOK 5 **TRANSFORMATION OF A COMMERCIAL COMPANY**

ARTICLE 181

Transformation of a company shall be an operation whereby the company changes its legal form by decision of its members.

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

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

ARTICLE 182

The transformation shall take effect from the day the decision to record it is taken. However, it

may only be invoked against third parties after compliance with the publication formalities provided in Article 265 of this Uniform Act.

Transformation shall have no retrospective effect.

ARTICLE 183

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

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

ARTICLE 184

The decision to transform the company shall put an end to the powers of its administrative or management authorities.

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

ARTICLE 185

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

ARTICLE 186

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

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

ARTICLE 187

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

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

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

ARTICLE 188

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

BOOK 6

MERGER – DIVISION - PARTIAL TRANSFER OF ASSETS

ARTICLE 189

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

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

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

ARTICLE 190

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

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

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

ARTICLE 191

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

The members may eventually receive, in exchange for their contributions, a complementary financial payment which shall not exceed 10% of the exchange value of the shares or stocks allotted them.

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

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

ARTICLE 192

A merger or a division shall take effect:

- 1°) in case of the creation of one or more new companies, on the date of registration of the new company or of the last of the companies in the Trade and Personal Property Rights Register; each of the new companies shall be formed according to the rules governing the form of company adopted.
- 2°) in other cases, on the date of the last general meeting which approved the operation, unless

the contract provides that the operation shall take effect on another date, which shall not be later than the closing date of the current fiscal year of the beneficiary company or companies, or earlier than the closing date of the last fiscal year of the company or companies transferring their assets.

ARTICLE 193

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

The said document shall contain the following information:

- 1°) the form, name and registered office of all the participating companies;
- 2°) the reasons and terms of the merger or division;
- 3°) a description and an evaluation of the assets and liabilities to be transferred to the acquiring or new companies;
- 4°) the terms of transfer of the shares or stocks and the date from which such shares or stocks give entitlement to profits, as well as any special conditions relating to such entitlement, and the date from which the operations of the acquired or split company shall be considered completed from the accounting standpoint by the companies receiving the contributions;
- 5°) the dates on which the accounts of the companies concerned which were used to establish the terms of the operation were adopted;
- 6°) the report on the exchange of company entitlements and, where necessary, the amount of the cash adjustment;
- 7°) the projected amount of the merger or division bonus;
- 8°) the rights other than shares, the rights granted to members having special rights, as well as special benefits, where necessary.

ARTICLE 194

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

Such notice shall contain the following information:

- 1°) for each of the companies involved in the operation, the company name followed, where necessary, by its acronym, the form, registered office address, the amount of registered capital and the registration numbers in the Trade and Personal Property Rights Register;
- 2°) the company name followed, where necessary, by its acronym, the form, registered office address and the amount of the registered capital of the new company or companies which will emerge from the operation or the capital of existing companies;
- 3°) a valuation of the assets and liabilities to be transferred to the acquiring or new companies;

4°) the report on the exchange of company entitlements;

5°) the projected amount of the merger or division bonus.

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

ARTICLE 195

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

ARTICLE 196

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

ARTICLE 197

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

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

ARTICLE 198

Under penalty of being declared null and void, the companies taking part in a merger, division or partial transfer of assets shall be required to deposit at the court registry a statement in which they recount all the actions taken towards the conclusion of the transaction and by which they affirm that the transaction was carried out in conformity with this Uniform Act.

ARTICLE 199

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

BOOK 7
DISSOLUTION - LIQUIDATION OF A COMMERCIAL
COMPANY

TITLE 1
DISSOLUTION OF THE COMPANY

CHAPTER 1
CAUSES OF DISSOLUTION

ARTICLE 200

A company shall come to an end:

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

CHAPTER 2
EFFECTS OF DISSOLUTION

ARTICLE 201

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

Dissolution of a company with several members shall as of right entail liquidation of the company.

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

Dissolution of a company in which all the shares are held by one person shall entail a total transmission of the assets and liabilities of the company to such person without resorting to liquidation. Creditors may object to the liquidation before the competent court within a period of thirty days following its publication. The court shall reject the objection or order the settlement

of debts or the provision of guarantees if the company offers any and if they are deemed sufficient. The transmission of the assets and liabilities and the winding up of the company shall be effective only after the expiry of the time limit for objection or where the objection has been declared inadmissible or if the settlement of debts has been effected or guarantees provided.

ARTICLE 202

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

TITLE 2 LIQUIDATION OF A COMMERCIAL COMPANY

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 203

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

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

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

ARTICLE 204

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

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

ARTICLE 205

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

ARTICLE 206

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

- 1°) in case of private companies, unanimously by the members;
- 2°) in case of sleeping partnerships, unanimously by the general partners and by the majority capital of the active partners;
- 3°) in case of limited liability companies, by the majority required for the amendment of the Articles of Association;

4°) in case of public limited companies, under the quorum and majority conditions provided for extraordinary general meetings.

ARTICLE 207

The liquidator may be chosen from among the members or third parties. The liquidator may be a corporate person.

ARTICLE 208

Where the members are unable to appoint a liquidator, a court may designate one at the request of any interested party as provided for under Articles 226 and 227 of this Uniform Act.

ARTICLE 209

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

However, they shall prepare and present a joint report.

ARTICLE 210

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

ARTICLE 211

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

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

ARTICLE 212

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

The appointment and dismissal of the liquidator shall be relied upon against third parties only with effect from the date of publication.

Neither the company nor third parties shall rely on any irregularity in the appointment or dismissal of the liquidator to avoid responsibility provided such appointment or dismissal has been duly published.

ARTICLE 213

Except upon the unanimous consent of the members, the transfer of all or part of the assets of a company under liquidation to a person who has had in the company the capacity of partner in name, active partner, manager, member of the board of directors, managing director or auditor may not take place except with the authorization of the competent court which prior to its authorisation shall hear the liquidator and the auditor.

ARTICLE 214

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

ARTICLE 215

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

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

ARTICLE 216

Liquidation shall be completed within a period of three years from the date of dissolution of the company.

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

ARTICLE 217

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

Failing this, any member may petition the president of the competent court, who shall by summary ruling designate a representative to convene the members.

ARTICLE 218

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

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

ARTICLE 219

The final accounts drawn up by the liquidator shall be filed as an annex in the Trade and Personal Property Rights Register at the registry of the Court in charge of commercial matters.

The decision taken in the meeting of members on the liquidation accounts, the discharge of the liquidator in respect of the performance of his duties and on the terms of reference, or failing this, the decision referred to in the preceding article shall be filed as an annexure in the Trade and Personal Property Rights Register.

ARTICLE 220

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

ARTICLE 221

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

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

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

ARTICLE 222

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

CHAPTER 2

PROVISIONS SPECIFIC TO LIQUIDATION ORDERED BY THE COURT

ARTICLE 223

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

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

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

Members may agree that the provisions of Articles 224 to 241 of this Uniform Act shall be applicable where they decide on voluntary winding up.

ARTICLE 224

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

ARTICLE 225

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

ARTICLE 226

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

ARTICLE 227

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

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

ARTICLE 228

Within a period of six months from the date of his appointment, the liquidator shall convene a meeting of members where he shall give a report on the assets and liabilities of the company, the conduct of the liquidation and the length of time required to complete the exercise. Where necessary, he shall also seek any authorizations he may need.

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

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

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

ARTICLE 229

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

ARTICLE 230

The liquidator shall represent the company and everything he does in the course of the liquidation shall be binding on the company.

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

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

ARTICLE 231

The liquidator shall be authorized to pay creditors and distribute the balance available among the members.

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

ARTICLE 232

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

ARTICLE 233

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

Where the meeting does not take place, the written report of the liquidator shall be deposited at the registry in charge of commercial matters.

ARTICLE 234

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

ARTICLE 235

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

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

Where the required majority cannot be obtained, the president of the competent court shall take a decision through summary proceedings at the request of the liquidator or any interested party.

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

Members who are liquidators shall take part in the vote.

ARTICLE 236

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

ARTICLE 237

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

ARTICLE 238

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

ARTICLE 239

The sums allocated for distribution among the members and creditors shall be deposited within a period of fifteen days following the decision to distribute the funds, in an account opened in a bank domiciled in the State Party of the registered office in the name of the company in liquidation.

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

ARTICLE 240

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

ARTICLE 241

The liquidator shall, subject to the rights of the creditors, decide on whether the available funds can be distributed in the course of the liquidation.

Where formal notice to the liquidator to distribute the funds remains unheeded, any interested party may apply to the president of the competent court to rule through summary proceedings on the advisability of distribution of funds in the course of the liquidation.

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

ARTICLE 242

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

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

ARTICLE 243

Nullity of limited liability companies and public limited companies may not arise from lack of consent or from incapacity of a member, unless such incapacity affects all the founding members.

ARTICLE 244

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

ARTICLE 245

In sleeping partnerships or private companies, compliance with the formalities of publication shall be compulsory under penalty of nullity of the company, acts, decisions or deliberations, as

the case may be, with no possibility for the members and the company to rely on the cause of the nullity as against third parties.

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

ARTICLE 246

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

ARTICLE 247

The court before which an action for nullity is brought may, on its own motion, fix a time limit for the nullity to be cured. It may not pronounce the nullity less than two months after the date on which the suit is filed.

Wherefore the purpose of curing a nullity, a meeting has to be convened and where the normal convening of such meeting is justified, the court shall, by judgment, grant the time needed for the members to take a decision.

Where, on the expiry of the time limit provided for under the preceding paragraphs, no decision has been taken, the court shall give a ruling on the application of the more diligent party.

ARTICLE 248

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

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

ARTICLE 249

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

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

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

ARTICLE 250

Where annulment of the acts, decisions or deliberations of the company is based on the breach of regulations governing publication, any person interested in regularization may, by extra-judicial act, by hand-delivered letter against a receipt or by registered letter with a request for

acknowledgement of receipt, give notice to the company to regularize within a period of thirty days following such notice.

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

ARTICLE 251

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

An action for annulment of the acts, decisions or deliberations of the company shall be barred after three years with effect from the day on which the cause of the nullity arose, except where the nullity is based on the illegality of the object of the company and subject to the forfeiture referred to in Article 248 of this Uniform Act.

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

ARTICLE 252

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

ARTICLE 253

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

ARTICLE 254

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

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

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

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

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

ARTICLE 255

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

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

ARTICLE 256

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

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

The removal of the cause of the nullity shall not be a bar to a civil action claiming damages caused by the defect in the company, the acts or deliberations. Such action shall lapse three years after the date on which the cause of the nullity was removed.

BOOK 9

FORMALITIES - PUBLICATION

TITLE 1

GENERAL PROVISIONS

ARTICLE 257

The following shall be empowered to publish announcements:

- on the one hand, the Official Gazette and newspapers empowered by the competent authorities to publish them;
- on the other hand, national news dailies in the State Party of the registered office of the company which show proof of effective sales through subscriptions, depositaries or vendors, provided further that :
 - 1°) they have been appearing for more than six months;
 - 2°) they are distributed nationwide.

ARTICLE 258

Publication through the deposit of deeds or other documents shall be done at the registry of the Court with jurisdiction in commercial matters at the place of the registered office of the company.

ARTICLE 259

Publication formalities shall be carried out at the instance and on the responsibility of the legal representatives of each company.

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

ARTICLE 260

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

TITLE 2

FORMALITIES FOR THE FORMATION OF A COMPANY

ARTICLE 261

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

ARTICLE 262

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

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

For public limited companies, the notice shall also include:

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

IV

TITLE 3

FORMALITIES FOR THE AMENDMENT OF THE ARTICLES OF ASSOCIATION

ARTICLE 263

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

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

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

ARTICLE 264

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

- 1°) depositing at the registry of the court having jurisdiction in commercial matters situated

where the registered office is located, of a certified true copy of the proceedings of the meeting which decided on or authorized the increase or reduction of capital, within one month of the holding of the said meeting;

2°) depositing, as the case may be of the decision of the board of directors, the managing director or the manager who effected the increase of capital;

3°) depositing at the court registry of a certified true copy of the notarial statement of subscription and payment appended to the Trade and Personal Property Credit Registry.

TITLE 4

FORMALITIES FOR THE TRANSFORMATION OF A COMPANY

IV

ARTICLE 265

Where a transformation decision is taken:

1°) it shall be published in a newspaper empowered to publish legal notices in the State Party of the registered office and, as the case may be, in the State Parties where a public call for capital is made;

2°) two copies of the minutes of the meeting which decided on the transformation and of the decision to appoint the members of the new organs of the company shall be deposited at the registry of the court in charge of commercial matters at the registered office of the State Party;

3°) the amendments shall be entered in the Trade and Personal Property Rights Register.

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

Notice of the transformation shall be deposited at the office in charge of mortgages where the company owns landed property falling within the category of real estate in respect of which all transactions have to be published.

TITLE 5

FORMALITIES FOR THE LIQUIDATION OF A COMPANY

ARTICLE 266

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

It shall include the following information:

1°) the name of the company and, where necessary, its acronym;

2°) the form of the company, followed by the words "company in liquidation";

- 3°) the amount of registered capital;
- 4°) the address of the registered office;
- 5°) the registration number in Trade and Personal Property Right Register;
- 6°) the cause of liquidation;
- 7°) the usual full names and address(es) of the liquidator(s);
- 8°) where necessary, provisions relating to the limitations to their powers;
- 9°) the place where correspondence should be sent and the place where acts and other documents concerning the liquidation should be notified;
- 10°) the court in charge of commercial matters whose registry shall be the depositary of the acts and documents relating to the liquidation which shall be filed as annexes in the Trade and Personal Property Rights Registry.

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

ARTICLE 267

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

ARTICLE 268

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

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

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

TITLE 6 SPECIAL FORMALITIES APPLICABLE TO PUBLIC LIMITED COMPANIES

ARTICLE 269

Public limited companies shall within one month following approval by the general meeting of shareholders, deposit at the registry of the court as an annex to the Trade and Personal Property Rights Register, the summary financial statements, consisting of the balance-sheet, the statement

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

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

PART 2

SPECIAL PROVISIONS RELATING TO COMMERCIAL COMPANIES

BOOK 1

PRIVATE COMPANIES

TITLE 1

GENERAL PROVISIONS

ARTICLE 270

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

ARTICLE 271

The company's creditors may only bring an action against a member for the payment of private company's debts after the expiry of a period of sixty (60) days where such claim has unsuccessfully been notified the company through an extra-judicial act.

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

ARTICLE 272

The private company shall be known by a company name which shall be immediately preceded or followed by the word "Private Company" or by the abbreviation "P.C.", written in bold characters.

ARTICLE 273

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

ARTICLE 274

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

Any provision to the contrary shall be disregarded.

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

ARTICLE 275

The transfer of shares shall be evidenced in writing.

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

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

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

TITLE 2 MANAGEMENT

CHAPTER 1 APPOINTMENT OF MANAGER

ARTICLE 276

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

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

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

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

CHAPTER 2 POWERS OF THE MANAGER

ARTICLE 277

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

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

Where are several managers, each one of them shall have the same powers as if he were the sole manager of the company.

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

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

CHAPTER 3 REMUNERATION OF THE MANAGER

ARTICLE 278

Except otherwise provided by the Articles of Association or by a resolution of the members, the manager's remuneration shall be determined by the majority in number and capital of the members.

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

CHAPTER 4 REMOVAL OF THE MANAGER

ARTICLE 279

Where all the members are managers or where a member is appointed manager by the Articles of Association, the removal of one of them shall only be by unanimous decision of the other members.

The removal shall lead to the dissolution of the company, unless its continuation in business is provided for in the Articles of Association or the decision of the other members was not unanimous.

ARTICLE 280

The managing member removed may decide to withdraw from the company by applying for the refund of his dues the value of which, failing agreement between the parties, shall be determined by an expert appointed by the competent court through summary proceedings.

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

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

ARTICLE 281

Where the manager is removed without just cause, the removal may give rise to an award of damages

ARTICLE 282

Any provision contrary to the two preceding articles shall be disregarded.

TITLE 3 COLLECTIVE DECISIONS

ARTICLE 283

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

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

ARTICLE 284

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

ARTICLE 285

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

ARTICLE 286

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

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

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

ARTICLE 287

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

Where consultation is in writing, this shall be mentioned in the minutes which shall be signed by the managers and to which shall be attached the response of each member.

TITLE 4 ANNUAL GENERAL MEETING

ARTICLE 288

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

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

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

Any provision contrary to this article shall be disregarded.

TITLE 5 CONTROL BY MEMBERS

ARTICLE 289

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

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

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

TITLE 6 TERMINATION OF A PRIVATE COMPANY

ARTICLE 290

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

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

Where the company continues in business and one or more of the heirs or successors of the deceased member are dependent minors, the latter's liability for the company's debts shall not exceed the value of their inherited shares.

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

ARTICLE 291

The private company shall also be dissolved when judgment to liquidate property, declare bankruptcy, or forbid the exercise of a commercial activity has been passed in respect of a

member, unless the company's Articles of Association provide for continuation or the other members unanimously decide in favour of continuation.

ARTICLE 292

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

In the cases provided for in the preceding paragraph where the members have to redeem the membership shares, the liability of members shall be joint and several and unlimited.

IV

BOOK 2 SLEEPING PARTNERSHIP

TITLE 1 GENERAL PROVISIONS

ARTICLE 293

A sleeping partnership is one in which the capital is made up of shares and in which one or more partners, known as "active partners", whose liability for the company's debts is unlimited, joint and several coexist with one or more partners known as "sleeping partners" whose liability for the company's debts is limited by shares.

ARTICLE 294

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

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

ARTICLE 295

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

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

ARTICLE 296

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

However, the Articles of Association may stipulate:

- 1°) that the shares held by the sleeping partners shall freely be transferable between partners;
- 2°) that the shares held by sleeping partners may be transferred to third parties outside the

sleeping partnership with the consent of all the active partners and by a majority in number and capital of the sleeping partners;

3°) that an active partner may transfer part of his shares to a sleeping partner or to a third party outside the partnership with the consent of all the active partners and the majority in number and capital of the sleeping partners.

ARTICLE 297

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

It may be binding on the company only after any one of the following formalities has been fulfilled:

1°) notification to the company of the transfer by means of a bailiff's act;

2°) acceptance of the transfer by the company in a notarial deed;

3°) deposit of the original deed of transfer at the registered office against an attestation of deposit issued by the manager.

The transfer of shares may be binding on third parties only after the fulfilment any one of the above formalities and after publication by entry in the Trade and Personal Property Rights Register.

TITLE 2 MANAGEMENT

ARTICLE 298

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

ARTICLE 299

A sleeping partner or sleeping partners may not perform any act of external management, even by virtue of a power of attorney.

ARTICLE 300

In the event of violation of the prohibition mentioned in the preceding article, the liability of the sleeping partner(s) shall, be unlimited, joint and several with that of the active partners for the company's debts and commitments resulting from any acts of management performed by them.

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

ARTICLE 301

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

TITLE 3 COLLECTIVE DECISIONS

ARTICLE 302

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

The Articles of Association shall make provision for the taking of collective decisions by the partners with respect to the consultation procedure either in general meetings or by written consultation as well as in respect of quorums and majorities.

However, the meeting of all the partners shall hold as of right where requested by an active partner or by one-quarter, in number and capital, of the sleeping partners.

ARTICLE 303

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

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

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

ARTICLE 304

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

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

ARTICLE 305

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

Any provision stipulating stricter majority conditions shall be disregarded.

TITLE 4 ANNUAL GENERAL MEETING

ARTICLE 306

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

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

The annual general meeting shall validly hold only where it is attended by a majority of the partners representing half of the registered capital. It shall be presided over by the member who himself has or as a representative holds the greatest number of partnership shares.

Any provision contrary to the provisions of this article shall be disregarded.

TITLE 5 CONTROL BY PARTNERS

ARTICLE 307

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

IV

TITLE 6 DISSOLUTION OF THE SLEEPING PARTNERSHIP

ARTICLE 308

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

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

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

BOOK 3
PRIVATE LIMITED COMPANY

TITLE 1
FORMATION OF A PRIVATE LIMITED COMPANY

CHAPTER 1
DEFINITION OF A PRIVATE LIMITED COMPANY

ARTICLE 309

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

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

ARTICLE 310

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

CHAPTER 2
SUBSTANTIVE CONDITIONS

Section 1
Registered capital

ARTICLE 311

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

Section 2
Valuation of non-cash contributions

ARTICLE 312

The Articles of Association shall contain the valuation of each non-cash contribution and a stipulation of special benefits.

The valuation shall be carried out by a non-cash contribution valuer where the value of the contribution or the benefits in question, or the value of the overall contributions or benefits in question is more than five million (5 000 000) CFA francs.

The valuer who shall be chosen from a list of non-cash contributions valuers following the procedure laid down in Article 694 et seq. of this Uniform Act, shall be unanimously designated by the future members or, failing this, by the president of the competent court, on the application of all or one of the company's founders.

The valuer shall draw up a report to be attached to the Articles of Association.

In the absence of a valuation made by a non-cash contribution valuer or where such valuation is disregarded, the liability of members shall be unlimited, joint and several for the valuation made of the non-cash contributions and the special benefits stipulated for a period of five years.

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

Section 3

Deposit and release of funds

ARTICLE 313

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

ARTICLE 314

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

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

In the case where the company is not registered in the Trade and Personal Property Rights Register within a period of six months from the initial deposit of the funds at the bank or at a notary's office, the investors may either individually or collectively through an agent, request the president of the competent court to authorize withdrawal of the amount of their contributions.

CHAPTER 3

CONDITIONS OF FORM

ARTICLE 315

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

ARTICLE 316

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

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

TITLE 2 FUNCTIONING OF A PRIVATE LIMITED COMPANY

CHAPTER 1 TRANSACTIONS RELATING TO COMPANY SHARES

Section 1 Transfer of company shares

Sub-section 1 Share transfers inter vivos

Paragraph 1 Form of transfer

ARTICLE 317

The transfer of company shares inter vivos shall be evidenced by a written document.

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

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

The transfer shall be binding on third parties only after compliance with one of the above formalities, amendment of the Articles of Association and publication in the Trade and Personal Property

Rights Register.

Paragraph 2 Terms of transfer

Sub-paragraph 1 Transfer between members

ARTICLE 318

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

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

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

ARTICLE 319

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

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

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

Where the company refuses to consent to the transfer, the liability of members shall be unlimited, joint and several, within a period of three months following notification of the refusal to the transferor member, to acquire the shares at a price which, failing an agreement between the parties, shall be fixed by an expert appointed by the president of the competent court at the request of the most diligent party.

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

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

ARTICLE 320

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

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

ARTICLE 321

The Articles of Association may provide that in case of the death of a member, one or more of heirs or a successor may become members only after they have been accepted under the conditions laid down by the Articles of Association.

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

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

In case of non-acceptance, the provisions of Articles 318 and 319 of this Uniform Act shall apply and where no solution provided for under this article is implemented within the prescribed time

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

Section 2
Pledge of company shares

ARTICLE 322

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

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

CHAPTER 2
MANAGEMENT

Section 1
Organization of management

Sub-section 1
Appointment of managers

ARTICLE 323

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

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

Sub-section 2
Term of office

ARTICLE 324

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

Sub-section 3
Remuneration

ARTICLE 325

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

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

Sub-section 4
Removal from office

ARTICLE 326

Whether appointed in the Article of Association or not, a Manager may be removed from office by a decision of the members representing more than half of the company shares. Any provisions to the contrary shall be void. Where such removal from office is unjustified, it may give rise to the payment of damages.

Furthermore, the manager may at the instance of any member and upon good cause shown, be removed from office by the court in charge of commercial matters within whose jurisdiction the company's registered office is situated .

Sub-section 5
Resignation

ARTICLE 327

The manager(s) may freely resign. However, where such resignation is not justified, the company may bring legal action for the reparation of the damage suffered therefrom.

Section 2
Powers of managers

ARTICLE 328

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

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

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

ARTICLE 329

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

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

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

Section 3
Liability of managers

ARTICLE 330

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

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

ARTICLE 331

Apart from legal action for damages suffered by individuals, members representing one-quarter of the members and one-quarter of company shares may, individually or as a group, bring an action on behalf of company against the manager.

The plaintiffs shall be empowered to seek redress for all the damage suffered by the company for which as the case may be, reparation may be awarded.

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

No decision of the general meeting shall have the effect of extinguishing an action in liability brought against managers for a tort committed in the cause of the performance of their duties.

ARTICLE 332

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

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

CHAPTER 3
COLLECTIVE DECISIONS OF THE MEMBERS

Section 1
Organization of collective decisions

Sub-section 1
General principles

Paragraph 1
Conditions

ARTICLE 333

Collective decisions shall be taken at general meetings.

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

Paragraph 2
Representation of the members

ARTICLE 334

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

A member may be represented by a spouse, unless the company is a partnership comprising the two spouses.

Except where there are only two members, one member may be represented by the other member. He may be represented by another person only where this is allowed by the Articles of Association.

ARTICLE 335

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

ARTICLE 336

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

All provisions contrary to the provisions of Articles 334 and 335 of this Uniform Act and to those of this article shall be disregarded.

Sub-section 2
Convening of general meetings

Paragraph 1
Right to convene meetings

ARTICLE 337

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

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

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

Paragraph 2
Conditions for convening of meetings

ARTICLE 338

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

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

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

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

Paragraph 3
Sanctions for improper convening of meetings

ARTICLE 339

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

Sub-section 3
Consultations in writing

ARTICLE 340

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

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

Sub-section 4
Chairing meetings

ARTICLE 341

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

Sub-section 5
Minutes of meetings

ARTICLE 342

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

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

In case of consultation in writing, mention shall be made thereof in the minutes which shall be signed by the manager or managers and to which shall be annexed the response of each of the members.

ARTICLE 343

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

Section 2
Members' rights

Sub-section 1
Principle

ARTICLE 344

The members shall have the right to be permanently informed on the affairs of the company. Prior to the holding of general meetings, they shall have the right to be served with company documents.

Sub-section 2
The right to be served company documents

ARTICLE 345

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

The right to be served documents shall be exercised during the fifteen days preceding the holding of the general meeting.

From the date of service of the above documents, any member shall have the right to ask in writing questions which the manager shall be bound to answer during the general meeting.

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

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

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

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

Sub-section 3
Right to dividend

ARTICLE 346

Distribution of profit shall be done in accordance with the Articles of Association, subject to the mandatory provisions common to all companies.

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

Dividends not corresponding to real profits distributed to members may be recovered from them. The action for recovery shall be barred at the end of a period of three years from the date of commencement of distribution of the dividends.

Section 3
Ordinary collective decisions

ARTICLE 347

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

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

Sub-section 1
The ordinary annual general meeting

Paragraph 1
Periodicity

ARTICLE 348

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

Paragraph 2
Rules governing voting by the members

ARTICLE 349

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

Failure to attain this majority, and except otherwise stipulated by the Articles of Association, the members shall once more be convened or consulted, as the case may be, and decisions shall be taken by a majority vote irrespective of the proportion of the capital represented.

However, in all cases, managers may not be removed except by an absolute majority.

Sub-section 2
Agreements between the company and one of its managers

Paragraph 1
Regulated agreements

ARTICLE 350

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

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

The same shall apply to:

- agreements concluded with a sole proprietorship where the proprietor is simultaneously manager and shareholder in the private limited company;
- agreements concluded with a company in which one shareholder with unlimited liability, a manager, director, general manager or secretary general is also a manager or member of the private limited company.

ARTICLE 351

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

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

ARTICLE 352

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

Normal conditions shall mean the conditions that the company in question applies for similar agreements or, or as the case may be, those applied by companies in the same sector carried out by a company as part of its activities.

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

ARTICLE 353

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

- 1°) a list of the agreements submitted for the approval of the meeting;
- 2°) the identity of the parties to the agreement and the names of the managers or members concerned;
- 3°) the nature and subject matter of the agreements;

4°) the main terms of these agreements, particularly the prices or rates applicable, the discounts and commissions allowed, the deadlines for payment granted, the stipulated interest rates, guarantees given and, as the case may be, all other information that may enlighten the members on the need to conclude the agreements examined;

5°) the volume of materials supplied, services provided or amounts of payments made or received during previous fiscal years and carried over to the last fiscal year.

ARTICLE 354

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

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

ARTICLE 355

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

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

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

Paragraph 2 Prohibited agreements

ARTICLE 356

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

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

Section 4 Extraordinary collective decisions

ARTICLE 357

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

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

Sub-section 1
General rules relating to voting by members

Paragraph 1
Principle

ARTICLE 358

Amendments to the Articles of Association shall be decided by members representing at least three-quarters of the registered capital. Any clause contrary hereto shall be disregarded.

Paragraph 2
Exceptions

ARTICLE 359

A unanimous decision shall be required in the following cases:

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

Sub-section 2
Decisions relating to a variation of capital

Paragraph 1
Increase of capital

ARTICLE 360

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

ARTICLE 361

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

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

ARTICLE 362

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

ARTICLE 363

Where the increase of capital has been effected either partially or wholly by noncash contributions, the members shall designate a shares valuer where the value of each contribution

or each special benefit received, or the value of total contributions or total special benefits exceeds five million (5 000 000) CFA francs.

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

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

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

ARTICLE 364

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

ARTICLE 365

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

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

Paragraph 2 Reduction of capital

ARTICLE 366

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

ARTICLE 367

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

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

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

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

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

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

ARTICLE 368

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

ARTICLE 369

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

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

ARTICLE 370

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

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

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

Paragraph 3 Variation of shareholders' equity

ARTICLE 371

Should the losses recorded in the summary financial statements cause the shareholders' equity in the company to fall below half of the registered capital, the manager or the auditor, as the case may be, shall, within a period of four months following the approval of the accounts that revealed the losses, consult the members on the advisability of calling for a premature winding up of the company.

ARTICLE 372

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

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

ARTICLE 373

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

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

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

Sub-section 3
Transformation of the company

ARTICLE 374

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

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

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

ARTICLE 375

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

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

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

CHAPTER 4
AUDIT OF THE COMPANY

Section 1
Appointment of an auditor

Sub-section 1
Companies concerned

ARTICLE 376

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

- (1) the annual turnover exceeds two hundred and fifty million (250 000 000) CFA francs or
- (2) the permanent staff exceeds 50 persons,

shall be required to designate at least one auditor.

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

Sub-section 2
The auditor

ARTICLE 377

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

**Sub-section 3
Incompatibilities**

ARTICLE 378

The following persons may not be appointed auditor:

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

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

ARTICLE 379

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

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

**SUB-SECTION 5
PENALTIES ATTENDANT ON APPOINTMENT OR WORKING
CONDITIONS**

ARTICLE 380

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

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

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

ARTICLE 381

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

TITLE 3 MERGER - DIVISION

ARTICLE 382

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

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

ARTICLE 383

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

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

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

TITLE 4 DISSOLUTION OF A PRIVATE LIMITED COMPANY

ARTICLE 384

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

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

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

BOOK 4
PUBLIC LIMITED COMPANY

TITLE 1
GENERAL PROVISIONS

SUB-TITLE 1
FORMATION OF A PUBLIC LIMITED COMPANY

CHAPTER 1
GENERAL

Section 1
Definition

IV

ARTICLE 385

A public limited company shall be a company in which the liability of each shareholder for the debts of the company is limited to the amount of shares he has taken and his rights are represented by shares.

A public limited company may have only a single shareholder.

ARTICLE 386

A public limited company shall be known by a company name which shall immediately be preceded or followed in legible characters by the words: “public limited company” or the abbreviation: “plc” and the method of administration of the company as provided for in Article 414 below.

Section 2
Authorized capital

ARTICLE 387

The minimum authorized capital shall be fixed at ten million (10,000,000) CFA francs. It shall be divided into shares of a face value of not less than ten thousand (10,000) CFA francs.

ARTICLE 388

The capital of a public limited company shall be fully subscribed before the date of signature of its Articles of Association or holding of the constituent general meeting.

ARTICLE 389

At least one quarter of the face value of shares representing cash contributions shall be paid up during capital subscription.

The rest shall be paid up within a period of not more than three years from the date of registration of the company in the Trade and Personal Property Rights Register, in accordance with the terms and conditions laid down by the Articles of Association or by a decision of the board of directors or of the managing director.

Shares representing cash contributions which have not been fully paid up shall be registered shares.

As long as the capital is not fully paid up, the company may neither increase its capital, unless such increase of capital is by noncash contributions, nor issue bonds.

CHAPTER 2

FORMATION WITHOUT NONCASH CONTRIBUTION AND WITHOUT STIPULATION OF SPECIAL BENEFITS

Section 1

Preparation of allotment letters

IV

ARTICLE 390

Subscription for shares representing cash contributions shall be established by an allotment letter prepared by the founders of the company or by one of them and dated and signed by the subscriber or by his authorized agent who shall write out entirely in letters the number of shares subscribed.

ARTICLE 391

The allotment letter shall be prepared in two original copies, one of which shall be for the company being formed and the other for the notary responsible for drawing up the statement of subscription and payment.

ARTICLE 392

The allotment letter shall set out:

- 1°) the name of the company to be formed followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the amount of the authorized capital to be subscribed, stating the share of capital represented by noncash contributions and the share to be subscribed in cash;
- 4°) the address of the registered office;
- 5°) the number of shares issued and their face value, indicating, where necessary, the various categories of shares created;
- 6°) the terms and conditions of issue of shares subscribed in cash;
- 7°) the name or business name and address of the subscriber and the number of shares subscribed and the payments made;
- 8°) the indication of the depositary in charge of keeping the funds until the company is registered in the Trade and Personal Property Rights Register;
- 9°) the indication of the notary in charge of drawing up the statement of subscription and payment;
- 10°) the indication of handing over to the subscriber of a copy of the allotment letter.

Section 2

Deposit of funds and notarial statement of subscription and payment

ARTICLE 393

Funds derived from subscription for shares issued for cash shall be deposited by the persons who received them, on behalf of the company being formed, either with a notary or in a special account opened in the name of the company at a bank domiciled in the State Party of the registered office of the company being formed.

The funds shall be deposited within eight days following the receipt thereof.

The depositor shall hand over to the bank, at the time of depositing the funds, a list showing the identity of the subscribers and indicating, for each of them, the amount of money paid.

The depositary shall be bound, until the funds are withdrawn, to communicate the list referred to in paragraph 3 above to every subscriber who, after showing proof of his subscription, so requests. The applicant may study the list and obtain a copy thereof at his expense.

The depositary shall issue the depositor a certificate attesting the deposit of the funds.

ARTICLE 394

On presentation of allotment letters and, where necessary, a certificate issued by the depositary attesting the deposit of funds, the notary shall state in the act he shall draw up, referred to “notarial statement of subscription and payment,” that the amount of subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount paid corresponds to the total sums of money deposited in his chambers or, where necessary, appearing on the certificate referred to above. The certificate issued by the depositary shall be annexed to the notarial statement of subscription and payment.

The notary shall make the statement available to subscribers who may examine it and obtain a copy thereof in his chambers.

Section 3

Drawing up of the Articles of Association

ARTICLE 395

The Articles of Association shall be drawn up in accordance with the provisions of Article 10 of this Uniform Act.

ARTICLE 396

The Articles of Association shall be signed by all the subscribers personally or by an authorized agent specially empowered for the purpose, after the statement of subscription and payment has been drawn up.

ARTICLE 397

The Articles of Association shall contain the information provided for in Article 13, with the exception of item 6, above. They shall, in addition, mention:

1°) the chosen method of administration and management;

- 2°) as the case may be, either the full names, address, profession and nationality of natural persons who are members of the first board of directors of the company or permanent representatives of corporate persons that are members of the board of directors, or the full names, address, profession and nationality of the managing director and of the first auditor and his alternate;
- 3°) the business name, the amount of capital and the form of corporate persons that are members of the board of directors;
- 4°) the form of shares issued;
- 5°) provisions relating to the composition, functioning and powers of the organs of the company;
- 6°) where necessary, restrictions to the free negotiability and to the free transfer of shares, as well as the terms of approval and pre-emption of shares.

Section 4
Withdrawal of funds

ARTICLE 398

The withdrawal of funds derived from subscriptions in cash may take place only after registration of the company in the Trade and Personal Property Rights Register.

Withdrawal shall be done, depending on the case, by the chairman and managing director, the general manager or the managing director, on presentation to the depositary of the certificate issued by the court Registry attesting the registration of the company in the Trade and Personal Property Rights Register.

Any subscriber may, six months after payment of funds, bring an action before the president of the competent court sitting in chambers for the appointment of an agent responsible for withdrawing the funds to give back to the subscribers, subject to the deduction of his distribution costs where, on that date, the company is not registered.

CHAPTER 3
FORMATION WITH NON-CASH CONTRIBUTION AND/OR STIPULATION
OF SPECIAL BENEFITS

Section 1
Principle

ARTICLE 399

The formation of public limited companies shall, in addition to the provisions of the preceding chapter which are not to the contrary, be subject to the provisions of this chapter in case of non-cash contribution and/or stipulation of special benefits.

Section 2
Intervention of shares valuer

ARTICLE 400

Noncash contribution and/or special benefits shall be evaluated by a shares valuer.

The shares valuer, who shall be chosen from the list of auditors according to the procedure laid down in Articles 694 et seq. of this Uniform Act, shall be designated unanimously by the future

members of the company or, failing this, by the president of the competent court, at the request of the founders of the company or of one of them.

ARTICLE 401

The shares valuer shall be responsible for drawing up a report describing each of the contributions and/or special benefits, showing their value, stating the method of valuation chosen and the reasons for the choice, and asserting that the value of the contributions and/or special benefits corresponds to at least the face value of the shares to be issued.

ARTICLE 402

The shares valuer shall, in carrying out his task, enlist the assistance of one or more experts of his choice. The fees of these experts shall be borne by the company, unless otherwise provided for in the Articles of Association.

ARTICLE 403

The report of the shares valuer shall be deposited at the address of the registered office at least three days before the date of the constituent general meeting.

It shall be made available to the subscribers who may examine it or obtain a complete or partial copy thereof at their expense.

Section 3 Constituent general meeting

ARTICLE 404

The constituent general meeting shall be convened by the founders after the notarial statement of subscription and payment of funds has been drawn up.

Notice of the meeting shall be by hand delivered letter against acknowledgement of receipt or by registered letter with request for advice of delivery, indicating the agenda, venue, date and time of the meeting.

Notice of the meeting shall be addressed to each subscriber at least fifteen days before the date of the meeting.

ARTICLE 405

The proceedings of the meeting shall only be valid where the subscribers present or represented hold at least half of the shares issued. Where the quorum is not met, a second invitation shall be addressed to the subscribers no later than six days before the date fixed for the meeting.

On the second invitation, the proceedings of the meeting shall be valid only where the subscribers present or represented hold at least one quarter of the shares issued. Where this latter quorum is not met, the meeting shall be held within two months from the date fixed in the second invitation. The subscribers shall be convened at least six days before the date of the meeting.

On the third invitation, the proceedings of the meeting shall be valid only where the quorum conditions referred to in the second paragraph above are met.

ARTICLE 406

Decisions of the meeting shall be taken by a two-thirds majority of the votes of the subscribers present or represented, subject to the provisions of Articles 409 and 410 paragraph 2 of this Uniform Act.

Blank votes shall not be taken into consideration in computing the majority.

ARTICLE 407

The holding of the meeting shall be subject to the provisions of Article 529 et seq. of this Uniform Act that are not contrary hereto, in particular as concerns the constitution of its bureau and the rules of representation and participation in the meeting.

It shall be presided over by the shareholder with the highest number of shares or, failing this, by the oldest shareholder.

ARTICLE 408

Each non-cash contribution and each special benefit shall be the object of a special vote by the meeting.

The meeting shall approve or disapprove the shares valuer's report on the valuation of non-cash contributions and the grant of special benefits.

The shares of the contributor or of the beneficiary of special benefits, even where he is also a cash subscriber, shall not be taken into account when computing the quorum and the majority and the contributor or the beneficiary of special benefits shall not vote either by himself or as authorized agent.

ARTICLE 409

The meeting shall reduce the value of noncash contributions or of special benefits only unanimously by the subscribers and with the express consent of the contributor or the beneficiary.

The consent of the contributor or of the beneficiary shall be mentioned in the minutes where the value given the goods contributed or the special benefits provided for is different from the value adopted by the shares valuer. The shareholders and the directors or the managing director, as the case may be, shall be jointly liable vis-à-vis third parties for a period of five years for the value given the contributions and/or the special benefits.

ARTICLE 410

Furthermore, the constituent general meeting shall:

- 1°) ascertain that the capital is fully subscribed and that the shares are paid up under the conditions laid down in Articles 388 and 389 of this Uniform Act;
- 2°) adopt the Articles of Association of the company which it shall amend only unanimously by all the subscribers;
- 3°) appoint the first directors or managing director, as the case may be, as well as the first auditor;
- 4°) take a decision on the acts done on behalf of the company being formed, in accordance with the provisions of Article 106 of this Uniform Act, upon a report drawn up by the founders;

5°) give, where necessary, authority to one or more members of the board of directors or to the managing director, as the case may be, to enter into commitments on behalf of the company before its registration in the Trade and Personal Property Rights Register, under the conditions laid down in Article 111 of this Uniform Act.

ARTICLE 411

The minutes of the meeting shall indicate the date and venue of the meeting, the type of meeting, the method of convening it, the agenda, the quorum, the resolutions put to vote and, where necessary, the quorum and voting conditions for each resolution and the result of voting for each of them.

The minutes shall be signed, as the case may be, by the session chairperson and by one other member, or by the sole member, and shall be filed at the registered office, together with the attendance sheet and its annexures.

They shall indicate, where necessary, the acceptance of their appointments by the first members of the board of directors or by the managing director, as the case may be, as well as by the first auditor.

ARTICLE 412

Any constituent general meeting irregularly convened shall be annulled under the conditions laid down in Articles 242 et seq. of this Uniform Act.

However, no action for annulment of the meeting shall be admissible where all the shareholders were present or represented.

ARTICLE 413

The founders of the company responsible for the annulment of the constituent general meeting and the directors or the managing director, as the case may be, in office at the time when the annulment was pronounced may be declared jointly liable for damage suffered by third parties as a result of the nullity of the company.

SUB-TITLE 2 ADMINISTRATION AND MANAGEMENT OF A PUBLIC LIMITED COMPANY

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 414

The method of administration of each public limited company shall be clearly defined by its Articles of Association which shall choose between:

- a public limited company with a board of directors; or
- a public limited company with a managing director.

A public limited company may, while in existence, change its method of administration and management at any time.

The decision shall be taken by an extraordinary general meeting of shareholders which shall amend the Articles of Association accordingly.

The amendments shall be entered in the Trade and Personal Property Rights Register.

CHAPTER 2 PUBLIC LIMITED COMPANY WITH BOARD OF DIRECTORS

ARTICLE 415

A public limited company with a board of directors shall be managed either by a chairperson and managing director or by a chairperson of the board of directors and a general manager.

Section 1 Board of directors

Sub-Section 1 Composition of the board of directors

Paragraph 1 Number and appointment of directors

ARTICLE 416

A public limited company may be administered by a board of directors comprising not less than three and not more than twelve members.

ARTICLE 417

Not more than one-third of the members of the board shall be non shareholders of the company.

Directors who are not shareholders of the company shall be subject to the provisions of Articles 416 to 434 of this Uniform Act.

ARTICLE 418

The number of directors of a public limited company may be temporarily exceeded, in case of a merger with one or more companies, by up to the total number of directors who have been in office for more than six months in the companies merged; the number of directors shall however not exceed twenty-four.

Directors who are dead, dismissed or who have resigned may not be replaced and new directors may not be appointed, save during a new merger and as long as the number of directors in office has not been reduced to twelve.

ARTICLE 419

The first directors shall be designated by the Articles of Association or, where necessary, by the constituent general meeting.

While the company is in existence the directors shall be nominated by the ordinary general meeting.

However, in case of a merger, an extraordinary general meeting may appoint new directors.

Any appointment in violation of the provisions of this article shall be null and void.

Paragraph 2
Term of office of directors

ARTICLE 420

The term of office of directors shall be freely fixed by the Articles of Association, but shall not exceed six years in case of appointment while the company is in existence and two years in case of nomination by the Articles of Association or by the constituent general meeting.

Paragraph 3
Nomination of the permanent representative of a corporate person that is member of the board of directors and his term of office

ARTICLE 421

A corporate person may be appointed director. It shall, on its appointment, nominate, by hand-delivered letter with acknowledgement of receipt or by registered letter with acknowledgement of receipt addressed to the company, a permanent representative for its term of office. Although the permanent representative so nominated is not personally a director of the company, he shall be subject to the same conditions and obligations and shall incur the same civil and criminal liabilities as if he were director in his own name, without prejudice to the joint and several liability of the corporate person he represents.

A permanent representative may or may not be a shareholder of the company.

ARTICLE 422

The permanent representative shall perform his duties during the term of office of the corporate person he represents.

The corporate person shall, each time its term of office is renewed, state whether it maintains the same physical person as its permanent representative or nominate, on the spot, another permanent representative.

ARTICLE 423

Where a corporate person terminates the appointment of its permanent representative, it shall be bound to immediately notify the company, by hand-delivered letter with acknowledgement of receipt or by registered letter with acknowledgement of receipt delivery, of such termination as well as of the identity of its new permanent representative.

The same shall apply in the event of death or resignation of the permanent representative or for any reason that may prevent him from performing his duties.

Paragraph 4
Elections

ARTICLE 424

The conditions for the election of directors shall be freely laid down in the Articles of Association which may provide for the distribution of the seats according to the categories of shares. However, and subject to the provisions of this Uniform Act, such distribution shall neither deprive the shareholders of their eligibility to the board of directors nor a category of shares of its representation on the board.

The directors shall be eligible for re-election unless otherwise provided for in the Articles of Association.

Any appointment made in violation of the provisions of this article shall be null and void.

ARTICLE 425

A natural person who is director in his own name or permanent representative of a corporate person that is director shall not at the same time be a member of more than five boards of directors of public limited companies having their registered office on the territory of the same State Party.

Any natural person who, on taking up a new term of office, violates the provisions of the preceding paragraph shall, within a period of three months following his appointment, resign from one of the boards of directors.

At the expiry of this deadline, he shall be deemed to have given up the new term of office and shall refund all remuneration received in whatever form, without the validity of proceedings in which he took part being opened to question.

ARTICLE 426

Unless otherwise provided for in the Articles of Association, a worker of a company may be appointed director where his contract of employment corresponds to an effective job. Likewise, a director may conclude a contract of employment with the company where such contract corresponds to an effective job. In this case, the contract shall be subject to the provisions of Articles 438 et seq. of this Uniform Act

ARTICLE 427

The appointment of directors shall be registered in the Trade and Personal Property Rights Register.

The nomination of a permanent representative shall be subject to the same registration formalities as if he were a director in his own name.

ARTICLE 428

Decisions taken by an irregularly constituted board of directors shall be null and void. They shall be disposed of in accordance with the provisions of Articles 242 et seq. of this Uniform Act.

Paragraph 5 Vacancy on the board of directors

ARTICLE 429

In the event of one or more vacancies on the board of directors due to death or resignation, the board may co-opt, between two meetings, new directors.

Where the number of directors is below the statutory minimum or where the number of directors who are shareholders of the company is less than two-thirds of the members of the board, the board of directors shall, within a period of three months following the vacancy, appoint new

directors to complete the number. Decisions taken by the board during this period shall be valid.

Where the number of directors falls below the legal minimum, the remaining directors shall immediately convene an ordinary general meeting to complete the number of members of the board of directors.

Where the board fails to make the required appointments, or to convene a general meeting for this purpose, any party concerned may, by petition addressed to the president of the competent court, request the nomination of an agent charged with convening an ordinary general meeting to make the appointments provided for in this article or to ratify them.

The vacancy and appointments of new directors shall only take effect after the session of the board of directors held for this purpose.

Appointments by the board of directors of new directors shall be submitted to the very next ordinary general meeting for ratification.

Where the ordinary general meeting refuses to ratify the new appointments, the decisions of the board of directors shall nevertheless be valid and shall have all their effects with respect to third parties.

Paragraph 6 Remuneration

ARTICLE 430

The directors may not, apart from the sums of money paid them under a contract of employment, receive, for their duties, any remuneration, whether or not permanent, other than those referred to in Articles 431 and 432 of this Uniform Act.

The provisions of this article shall not apply to dividends that are regularly shared among shareholders.

Any statutory clause to the contrary shall be considered void. Likewise, any decision to the contrary shall be void.

ARTICLE 431

The ordinary general meeting may grant the directors, as remuneration for their activities, a fixed annual duty allowance which it shall freely determine.

Directors who are shareholders shall take part in voting by the meeting and their shares shall be taken into account in computing the quorum and the majority.

Unless otherwise provided for in the Articles of Association, the board of directors shall freely share the duty allowances among its members.

ARTICLE 432

The board of directors may also grant its members special remuneration for missions and tasks entrusted to them, or authorize the reimbursement of travel and subsistence costs and expenses incurred in the interest of the company, subject to the provisions of Articles 438 et seq. of this Uniform Act.

Such remuneration and costs shall be the object of a special report of the auditor to the meeting.

Paragraph 7
End of the duties of director

ARTICLE 433

Save in the case of resignation, dismissal or death, the duties of the directors shall end at the close of the ordinary general meeting held in the year during which their term of office expires to adjudicate upon the accounts of the fiscal year.

The directors may be dismissed at any time by the ordinary general meeting.

ARTICLE 434

The resignation or dismissal of a director shall be entered in the Trade and Personal Property Rights Register.

Sub-section 2
Powers of the board of directors

Paragraph 1
Scope

ARTICLE 435

The board of directors shall have the widest powers to act in all circumstances on behalf of the company.

It shall exercise its powers within the limits of the objects of the company and subject to those expressly conferred by this Uniform Act to meetings of shareholders.

The board of directors shall, in particular:

- 1° define the company's objectives and guidelines for its administration;
- 2° control, on a permanent basis, the management of the chairperson and managing director or of the general manager, depending on the method of management adopted;
- 3° adopt the accounts of each fiscal year.

The provisions of the Articles of Association or the decisions of the general meeting restricting the powers of the board of directors shall not be binding on third parties.

ARTICLE 436

The decisions of the board of directors, including those that do not relate to the objects of the company, shall be binding on the company in its relations with third parties, under the conditions and within the limits stipulated in Article 122 of this Uniform Act.

ARTICLE 437

The board of directors may entrust to one or more of its members any special tasks for one or more specific objects.

Paragraph 2
Regulated agreements

ARTICLE 438

All agreements between a public limited company and any of its directors, general managers or assistant general managers shall be subject to the prior authorization of the board of directors.

The same shall apply to agreements indirectly involving a director or general manager or assistant general manager, or in which he deals with the company through a third party.

Agreements between a company and an enterprise or a corporate body shall also be subject to the prior authorization of the board of directors where one of the directors or a general manager or an assistant general manager of the company is owner of the enterprise or a member with unlimited liability, manager, director, managing director, assistant managing director, general manager or assistant general manager of the contracting corporate person.

ARTICLE 439

Authorization shall not be necessary where the agreements concern ordinary transactions concluded under normal conditions.

Ordinary transactions shall be transactions habitually carried out by a company as part of its activities.

Normal conditions shall be conditions that are applied, for similar agreements, not only by the company in question, but also by the other companies in the same sector of activity.

ARTICLE 440

The director concerned shall be bound to inform the board of directors as soon as he is aware of an agreement subject to authorization. He shall not take part in voting on the authorization applied for.

The chairperson of the board of directors or the chairperson and managing director shall inform the auditor, within one month following their conclusion, of all agreements authorized by the board of directors and shall submit them for the approval of the ordinary general meeting adjudicating on the accounts of the past fiscal year.

The auditor shall submit a special report on these agreements to the ordinary general meeting which shall give a decision on the report and approve or disapprove the agreements authorized.

The report shall contain a list of agreements submitted for the approval of the ordinary general meeting, the name of the directors concerned, the nature and object of the agreements, their essential terms notably an indication of the price or rates in force, rebates or commissions granted, securities provided and, where necessary, any other information that would enable shareholders assess the interest in concluding the agreements examined. It shall also make mention of the quantity of supplies delivered and services rendered, as well as the sums of money paid or received during the fiscal year in implementation of the agreements referred to in the third paragraph of this article.

The party concerned shall not take part in voting and his shares shall not be taken into consideration when computing the quorum and the majority.

Where the implementation of the agreements concluded and authorized during preceding fiscal years is continued during the last fiscal year, the auditor shall be informed of such situation within one month following the close of the fiscal year.

ARTICLE 441

The auditor shall be responsible for ensuring compliance with the provisions of Articles 438 to 448 of this Uniform Act and shall denounce any violation thereof in his report to the general meeting.

ARTICLE 442

The auditor shall prepare and submit the special report provided for by Articles 438 and 448 of this Uniform Act to the registered office of the company no later than fifteen days before the session of the ordinary general meeting.

ARTICLE 443

Agreements approved or disapproved by the ordinary general meeting shall have their effects with respect to co-contractors and third parties except where such agreements are cancelled for fraud.

However and even where there is no fraud, the adverse consequences on the company of agreements disapproved by the general meeting may be borne by the director concerned and, eventually, by the other members of the board of directors.

ARTICLE 444

Without prejudice to the liability of the director concerned, the agreements referred to in Article 438 of this Uniform Act which are concluded without the prior authorization of the board of directors shall be annulled where they have had adverse consequences on the company.

ARTICLE 445

Action for annulment shall lapse after three years following the date of conclusion of the agreement. However, where the agreement had been concealed, the time limit shall start running from the day the agreement was disclosed.

ARTICLE 446

Action for annulment may be instituted by the authorities of the company or by any shareholder acting individually.

ARTICLE 447

The annulment may be avoided by a special vote of the ordinary general meeting upon a special report by the auditor stating the reasons why the authorization procedure was not followed.

The director or the general manager concerned shall not take part in the voting and his shares shall not be taken into consideration in computing the quorum and the majority.

ARTICLE 448

The provisions of Articles 438 to 448 of this Uniform Act shall be applicable to the general manager and the assistant general manager.

Paragraph 3 Securities, sureties and guarantees

ARTICLE 449

Securities, sureties, guarantees, and earliest demand guarantees provided by the company for commitments made by third parties shall be the subject of prior authorization of the board of directors.

The board of directors may authorize the chairperson managing director or the general manager, as the case may be, to provide securities, sureties, guarantees, or earliest demand guarantees for a total amount to be fixed by the board.

The authorization may also fix, for every commitment an amount above which security, surety, guarantee, or earliest demand guarantees of the company may not be provided.

Where a commitment exceeds either of the amounts so fixed, the authorization of the board of directors shall be required in each case.

The duration of the authorization provided for in the preceding paragraph shall not be more than one year no matter the duration of the commitments for which security, surety or guarantee has been provided.

Notwithstanding the provisions of the preceding paragraphs, the chairperson managing director or the general manager, as the case may be, may be authorized to provide, with respect to tax and customs services, securities, sureties, guarantees or earliest demand guarantees of an unlimited amount on behalf of the company.

The chairperson and managing director or the general manager, according to the circumstances, may delegate his powers in pursuance of the preceding paragraphs.

Where the securities, sureties, guarantees, or earliest demand guarantees have been provided for a total amount exceeding the maximum fixed for the current period, it shall not affect third parties who are unaware of this fact unless the amount of the commitment in question alone exceeds one of the maximum fixed by decision of the board of directors taken in pursuance of the provisions of this article.

Paragraph 4 Prohibited agreements

ARTICLE 450

Directors, general managers and assistant general managers, as well as their spouses, ascendants or descendants whether acting personally or through third parties shall, under pain of nullity of the agreement be prohibited from contracting, in any form whatsoever, loans from the company, to have the company grant them a current account overdraft or otherwise, to have it provide security or guarantee for their commitments towards third parties.

This prohibition shall not apply to corporate persons that are members of the board of directors. However, their permanent representative, when acting in his personal interest, shall also be subject to the prohibitions of the first paragraph of this article.

Where the company runs a banking or financial institution, such prohibition shall not apply to ordinary transactions concluded under normal terms.

Paragraph 5
Other powers of the board of directors

ARTICLE 451

The board of directors may decide to transfer the registered office of the company to a different place within the territory of the same State Party and amend the Articles of Association accordingly, subject to ratification of the decision by the very next ordinary general meeting. Such decision shall entail powers to amend the Articles of Association. The registration formalities referred to in Articles 263 and 264 of this Uniform Act shall be applicable to the decision.

Where the transfer of the registered office is not ratified by the general meeting, the decision of the board of directors shall be void. New publicity formalities shall therefore be performed in order to inform third parties of the return to the former registered office.

ARTICLE 452

The board of directors shall adopt the summary financial statements and the progress report of the company which shall be submitted to the ordinary general meeting for approval.

Sub-section 3
Functioning of the board of directors

Paragraph 1
Convening and proceedings of the board of directors

ARTICLE 453

The Articles of Association shall, subject to the provisions of this Uniform Act, lay down the rules governing the convening and the proceedings of the board of directors.

The board of directors shall, on the invitation of its chairperson, meet as often as possible.

However, where the board of directors has not met for more than two months, it may be convened by at least one third of its members who shall indicate the session's agenda.

The proceedings of the board of directors shall only be valid if all its members were duly invited to the meeting.

ARTICLE 454

The proceedings of the board of directors shall be valid only where at least half of its members are present. Any clause to the contrary shall be void.

Decisions of the board of directors shall be taken by a majority of the members present or represented, unless the Articles of Association provide for a higher majority. In case of a tie, the chairperson of the session shall have the casting vote, unless otherwise provided for in the Articles of Association.

Any decision taken in violation of the provisions of this article shall be null and void.

ARTICLE 455

Directors as well as any person invited to take part in meetings of the board of directors shall be bound by secrecy regarding information of a confidential nature considered as such by the chairperson of the session.

ARTICLE 456

Except where there is a clause to the contrary in the Articles of Association, a director may give, by letter, telex or telefax, a power of attorney to another director to represent him at a session of the board of directors.

Each director shall have, during the same session, only one single power of attorney.

The provisions of this article shall be applicable to permanent representatives of corporate persons.

ARTICLE 457

Sessions of the board of directors shall be presided over by the chairperson of the board of directors.

Where the chairperson of the board of directors is unable to attend, sessions of the board shall be chaired by the director with the highest number of shares or, in case of equality, by the oldest director, unless otherwise provided for by the Articles of Association.

Paragraph 2
Report of the board of directors

ARTICLE 458

Minutes of the proceedings of the board of directors shall be entered in a special register kept at the registered office of the company. It shall be numbered and initialled by the judge of the competent court.

However, minutes may be taken on loose-leaves which shall be numbered serially, initialled under the conditions laid down in the preceding paragraph and stamped by the authority that initialled them. Once a leaf has been filled, even partially, it shall be attached to the previously used leaves.

Any addition, removal, substitution or inversion of leaves is prohibited.

The minutes shall mention the date and venue of the board meeting and shall indicate the name of the directors present, represented or absent and not represented.

They shall equally mention the presence or absence of persons invited to the meeting of the board of directors by virtue of a legal provision and the presence of any other person who attended all or part of the meeting.

ARTICLE 459

Minutes of the board of directors shall be certified as true by the chairperson of the session and by at least one director.

Where the chairperson of the session is unable to attend, they shall be signed by at least two directors.

ARTICLE 460

Copies of or extracts from minutes of the board of directors shall be validly certified by the chairperson of the board, the general manager or, failing this, by an attorney-in-fact duly appointed to do so.

Where the company is being wound up, the copies of or extracts from the minutes shall be validly certified by the liquidator.

ARTICLE 461

Until the contrary is proved, minutes of the deliberations of the board of directors shall be presumed valid.

The production of a copy of or an extract from these minutes shall be sufficient proof of the number of directors in office as well as their presence or their representation at a session of the board of directors.

Section 2

Chairperson Managing Director

Paragraph 1

Appointment and term of office

ARTICLE 462

The board of directors shall appoint a Chairperson Managing Director from among its members.

Under penalty of the appointment being declared null, the Chairperson Managing Director shall be a natural person.

ARTICLE 463

The term of office of the Chairperson Managing Director shall not exceed his term of office as director.

The Chairperson Managing Director's mandate shall be renewable.

ARTICLE 464

No person shall hold simultaneously more than three offices as Chairperson Managing Director of public limited companies having their registered office on the territory of the same State Party.

Likewise, a term of office as Chairperson Managing Director shall not be held concurrently with more than two appointments as Managing Director or General Manager of public limited companies having their registered office on the territory of the same State Party.

The provisions of paragraphs 2 and 3 of Article 425 of this Uniform Act relating to the plurality of offices as director shall be applicable to the Chairperson Managing Director.

Paragraph 2

Duties and remuneration of the Chairperson Managing Director

ARTICLE 465 The Chairperson Managing Director shall chair the meetings of the board of directors and the general meetings of shareholders.

He shall ensure the general management of the company and represent same in its relations with third parties.

He shall, for the performance of his duties, be given the widest possible powers which he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on the general meetings or specially reserved for the board of directors by the laws and regulations in force.

The company shall, in its relations with third parties, be bound even by the acts of the Chairperson Managing Director which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of general meetings or of the board of directors restricting the powers of the Chairperson Managing Director shall not be binding on third parties acting in good faith.

ARTICLE 466

The Chairperson Managing Director may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

ARTICLE 467

The terms and amount of remuneration of the Chairperson Managing Director shall be determined by the board of directors under the conditions laid down in Article 430 of this Uniform Act.

Non-cash benefits granted him, where necessary, shall be fixed in the same manner as his remuneration.

The chairperson Managing Director shall receive no other remuneration from the company.

Paragraph 3

Impediment and dismissal of the Chairperson Managing Director

ARTICLE 468

Where the Chairperson Managing Director is temporarily prevented from attending to his duties, the board of directors may delegate the duties of Chairperson Managing Director to another director.

In the case of death, resignation or dismissal of the Chairperson Managing Director, the board shall appoint a new Chairperson Managing Director or delegate the duties of Chairperson managing Director to a director.

ARTICLE 469

The Chairperson Managing Director may be dismissed at any time by the board of directors.

Paragraph 4

Assistant Managing Director

ARTICLE 470

The board of directors may, on the proposal of the Chairperson Managing Director, appoint one or more natural persons as Assistant Managing Director to assist the Chairperson Managing Director.

ARTICLE 471

The board of directors shall freely fix the term of office of the Assistant Managing Director. Where he is a director, his term of office shall not exceed his term of office as director.

The mandate of the assistant managing director shall be renewable.

ARTICLE 472

The board of directors shall, in agreement with the chairperson managing director, determine the scope of powers to be delegated to the Assistant Managing Director.

The assistant managing director shall, in his relations with third parties, have the same powers as those of the Chairperson Managing Director. He shall commit the company by his acts, including those which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of the board of directors or of general meetings restricting the powers of the Assistant Managing Director shall not be binding on third parties.

ARTICLE 473

The assistant managing director may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

ARTICLE 474

The terms and the amount of the remuneration of the Assistant Managing Director shall be determined by the board of directors which appoints him.

ARTICLE 475

The board of directors may, in agreement with the Chairperson Managing Director, dismiss the Assistant Managing Director at any time.

ARTICLE 476

The appointment of the Assistant Managing Director shall normally end at the expiry of his term of office.

However, in the case of death, resignation or dismissal of the Chairperson Managing Director, the Assistant Managing Director shall stay in office until a new Chairperson Managing Director is appointed, except otherwise decided by the board of directors.

Section 3

Chairperson of the board of directors and general manager

Sub-Section 1

Chairperson of the board of directors

Paragraph 1

Appointment and term of office of the chairperson of the board of directors

ARTICLE 477

The board of directors shall appoint a chairperson from among its members. He shall be a natural person.

ARTICLE 478

The mandate of the chairperson of the board of directors shall not exceed his term of office as director.

The term of office of the chairperson of the board of directors shall be renewable.

ARTICLE 479

No person shall hold simultaneously more than three offices as chairperson of the board of directors of public limited liability companies having their registered office on the territory of the same State Party.

In like manner, a term of office as chairperson of the board of directors shall not be held concurrently with more than two appointments as managing director or General Manager of public limited companies having their registered office on the territory of the same State Party.

The provisions of paragraphs two and three of Article 425 of this Uniform Act relating to the plurality of offices as director shall be applicable to the chairperson of the board of directors.

Paragraph 2

Duties and remuneration of the chairperson of the board of directors

ARTICLE 480

The chairperson of the board of directors shall preside over the meetings of the board of directors and the general meetings of shareholders.

He shall ensure that the board of directors assures control of the management of the company entrusted to the general manager. The chairperson of the board of directors shall, at any period of the year, carry out the verifications that he deems necessary and may request all the documents that he considers relevant for the accomplishment of his mission to be submitted to him.

ARTICLE 481

The chairperson of the board of directors may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

ARTICLE 482

The board of directors shall determine the terms and amount of remuneration of its chairperson, under the conditions laid down in Article 430 of this Uniform Act.

Benefits in kind granted him, where necessary, shall be fixed in like manner as his remuneration.

Paragraph 3

Impediment and dismissal of the chairperson of the board of directors

ARTICLE 483

Where the chairperson is temporarily prevented from attending to his duties, the board of directors may delegate the duties of chairperson to one of its members.

In the case of death, resignation or dismissal of the chairperson, the board of directors shall appoint a new chairperson or delegate the duties of chairperson to a director.

ARTICLE 484

The board of directors may dismiss its chairperson at any time. Any provision to the contrary shall be void.

**Sub-section 2
General Manager**

**Paragraph 1
Appointment and term of office of the general manager**

ARTICLE 485

The board of directors shall appoint, from among its members or outside, a General Manager who shall be a natural person.

The board of directors may, on the proposal of the General Manager, appoint one or more natural persons to assist the General Manager in the capacity of assistant general manager, under the conditions laid down in Articles 471 to 476 of this Uniform Act.

ARTICLE 486

The board of directors shall freely fix the term of office of the general manager.

The General Manager's mandate shall be renewable.

**Paragraph 2
Duties and remuneration of the General Manager**

ARTICLE 487

The General Manager shall ensure the general management of the company. He shall represent the company in its relations with third parties.

He shall, for the performance of his duties, be given the widest possible powers which he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on the general meetings or specially reserved for the board of directors by the laws and regulations in force.

ARTICLE 488

The company shall, in its relations with third parties, be bound by even the acts of the General Manager which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the resolutions of general meetings or of the board of directors restricting the powers of the general manager shall not be binding on third parties acting in good faith.

ARTICLE 489

The general manager may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

ARTICLE 490

The terms and the amount of the remuneration of the general manager shall be determined by the board of directors which appoints him.

Benefits in kind granted him, where necessary, shall be fixed in the like manner as his remuneration.

Paragraph 3 Impediment and dismissal of the General Manager

ARTICLE 491

Where the General Manager is temporarily or permanently prevented from attending to his duties, the board of directors shall immediately replace him by appointing, on the proposal of its chairperson, a new general manager.

ARTICLE 492

The general manager may be dismissed at any time by the board of directors.

ARTICLE 493

Except in the case of death, resignation or dismissal, the appointment of the General Manager shall normally end at the expiry of his term of office.

CHAPTER 3 PUBLIC LIMITED COMPANY WITH MANAGING DIRECTOR

Section 1 General provisions

ARTICLE 494

Public limited liability companies with not more than three shareholders may not have a board of directors and may appoint a managing director who shall be responsible for administering and managing the company. In this case, the provisions of the first paragraph of Article 417 shall not apply.

Section 2 Appointment and duration of mandate of the Managing Director

ARTICLE 495

The first Managing Director shall be designated by the Articles of Association or appointed by the constituent general meeting.

Where the company is in existence, the Managing Director shall be appointed by the ordinary general meeting. He shall be chosen from among the shareholders or outside.

ARTICLE 496

The term of office of the Managing Director shall be freely determined by Articles of Association. It shall not be more than six years in the case of appointment while the company is in existence and two years in the case of designation by the Articles of Association or appointment by the constituent general meeting. His mandate shall be renewable.

ARTICLE 497

No person shall hold simultaneously more than three offices as Managing Director of public limited companies having their registered office on the territory of the same State Party.

In like manner, a term of office as Managing Director shall not be held concurrently with more than two appointments as Chairperson Managing Director or General Manager of public limited companies having their registered office on the territory of the same State Party.

A director who, on appointment to a new office, violates the provisions of the first and second paragraphs of this article shall, within three months of his appointment, resign from one of his offices.

He shall, at the expiry of this deadline, be deemed to have resigned from his new office and shall refund all remuneration received, in any form whatsoever, without the validity of decisions taken by him being opened to question as a result thereof.

Section 3

Duties and remuneration of the Managing Director

ARTICLE 498

The Managing Director shall be responsible for ensuring the administration and general management of the company. He shall represent the company in its relations with third parties.

He shall convene and preside over general meetings of shareholders.

He shall be given the widest possible powers to act in all circumstances on behalf of the company, which powers he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on general meetings of shareholders by this Uniform Act and, where appropriate, by the Articles of Association.

The company shall, in its relations with third parties, be bound even by the acts of the Managing Director which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association or the resolutions of the general meeting of shareholders restricting the powers of the Managing Director shall not be binding on third parties acting in good faith.

ARTICLE 499

The managing director may be bound to the company by a contract of employment, on condition that such contract corresponds to an effective job.

The contract of employment shall be subject to prior authorization by the general meeting of shareholders.

ARTICLE 500

The Managing Director shall not, apart from the sums of money paid him under a contract of employment, receive any remuneration, be it permanent or otherwise, other than that referred to in Article 501 of this Uniform Act.

Any statutory clause to the contrary shall be void. In like manner, any decision to the contrary taken by the general meeting of shareholders shall be null and void.

ARTICLE 501

The ordinary general meeting of shareholders may grant the managing director a fixed annual duty allowance as remuneration for his activities.

The meeting may also grant the Managing Director special remuneration for missions and tasks entrusted to him, or authorize the reimbursement of travel and subsistence costs and expenses incurred in the interest of the company.

Benefits in kind granted him, where necessary, shall be fixed in like manner as his remuneration.

SECTION 4 REGULATED AGREEMENTS

ARTICLE 502

The Managing Director shall submit to the ordinary general meeting of shareholders adjudicating on the summary financial statements of the past fiscal year a report on the agreements he has concluded with the company, directly or indirectly, or through third parties and on the agreements signed with a corporate person of which he is the owner, a member with unlimited liability or, in general, the manager.

The provisions of this article shall not be applicable to agreements relating to ordinary transactions concluded under normal terms as described in Article 439 above.

ARTICLE 503

The Managing Director shall inform the auditor of the said agreements within a period of one month following the conclusion thereof and, in any case, no later than fifteen days before the date of the annual ordinary general meeting of shareholders.

The auditor shall submit a report on these agreements to the ordinary general meeting of shareholders.

The report shall contain the number of agreements submitted for the approval of the meeting, state the type of agreements, mention the products or services that are the subject of the agreements, their essential terms, in particular an indication of the prices and rates imposed, rebates or commissions granted, securities given and, where appropriate, all other information that would enable the shareholders to evaluate the interest in concluding the agreements.

ARTICLE 504

Agreements approved or disapproved by the general meeting shall have all their effects with regard to co-contractors and third parties.

However, any adverse consequences of agreements on the company which have been disapproved by the general meeting may be borne by the managing director.

ARTICLE 505

The provisions of Articles 502 and 503 of this Uniform Act shall not apply where the Managing Director is the sole shareholder of the public limited company.

The provisions of Articles 502 to 504 of his Uniform Act shall be applicable to the Managing Director and the assistant managing director.

Section 5
Securities, sureties and guarantees

ARTICLE 506

Securities, sureties, guarantees or guarantees at earliest demand provided by the Managing Director or by the assistant managing director shall be binding on the company only where they were authorized in advance by the ordinary general meeting of shareholders either as a general or special measure.

However, such restriction shall not apply to securities, sureties and guarantees provided by the managing director or by the assistant managing director acting on behalf of the company, to customs and taxation services.

Section 6
Prohibited agreements

ARTICLE 507

The managing director or the assistant managing director, as well as their spouses, ascendants, descendants and whether acting personally or through third parties shall, under pain of the agreement being declared null and void, be prohibited from contracting, in any form whatsoever, loans from the company, from having the company grant them a current account overdraft or otherwise, as well as to have it provide security or guarantee for their commitments towards third parties.

However, where the company is a banking or financial institution it may grant its managing director or its assistant managing director, in whatever form, a loan, a current account overdraft or any other form of guarantee where the agreements relate to ordinary transactions concluded under normal conditions.

Section 7
Impediment and dismissal of the Managing Director

ARTICLE 508

Where the Managing Director is temporarily prevented from attending to his duties, the said duties shall be performed temporarily by the assistant managing director. Where an assistant managing director has not been appointed, the duties of the managing director shall be performed temporarily by any person that the ordinary general meeting of shareholders deems appropriate to appoint.

In the case of death or resignation of the Managing Director, his duties shall be performed by the assistant managing director until the appointment of a new managing director by the very next ordinary general meeting of shareholders.

ARTICLE 509

The Managing Director may be dismissed at any time by the general meeting of shareholders. Any clause to the contrary shall be disregarded.

Section 8
Assistant managing director

ARTICLE 510

The general meeting of shareholders may, on the proposal of the Managing Director, appoint one or more natural persons to assist the managing director as assistant managing director.

ARTICLE 511

The meeting shall freely fix the term of office of the assistant managing director.

The mandate of the assistant managing director shall be renewable.

ARTICLE 512

The general meeting of shareholders shall, in agreement with the Managing Director, determine the powers to be delegated to the assistant managing director.

Statutory clauses or decisions of the general meeting of shareholders restricting the powers of the assistant managing director shall not be binding on third parties.

ARTICLE 513

The assistant managing director may be bound to the company by a contract of employment, on condition that such employment is effective.

The contract of employment shall be submitted to the ordinary general meeting of shareholders for prior authorization.

ARTICLE 514

The terms and amount of the remuneration of the assistant managing director as well as the benefits in kind to be granted him shall be determined by the ordinary general meeting of shareholders.

ARTICLE 515

The ordinary general meeting of shareholders may, on the proposal of the Managing Director, dismiss the assistant managing director at any time.

SUB-TITLE 3
GENERAL MEETINGS

CHAPTER 1
RULES COMMON TO ALL MEETINGS OF SHAREHOLDERS

Section 1
Convening of the meeting

ARTICLE 516

The meeting of shareholders shall be convened by the board of directors or by the Managing Director, as the case may be.

Failing this, it may be convened:

- 1°) by the auditor, after he has, in vain, requested the board of directors or the Managing Director, as the case may be, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception, to convene the meeting. Where the auditor convenes a meeting, he shall determine the agenda and may, for vital reasons, choose a venue for the meeting other than the one, if any, provided for by the Articles of Association. He shall state the reasons for the invitation in a report read to the meeting;
- 2°) by an agent appointed by the president of the competent court in a summary judgment, at the request of either any party concerned in the case of an emergency, or of one or more shareholders representing at least one-tenth of the company's capital in the case of a general meeting, or one-tenth of the shares of the category concerned in the case of a special meeting;
- 3°) by the liquidator.

ARTICLE 517

Except otherwise provided for in the Articles of Association, meetings of shareholders shall be held at the registered office of the company or at any other place on the territory of the State Party of the registered office.

ARTICLE 518

Subject to the provisions of this article, the Articles of Association of the company shall lay down the rules of convening meetings of shareholders.

Meetings shall be called by a convening notice which shall be inserted in a newspaper empowered to publish legal notices.

Where all the shares are registered, the publication provided for in the preceding paragraph may be replaced by an invitation, at the expense of the company, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception. The invitation shall include the agenda of the meeting.

Shareholders shall receive or be informed of the invitation no later than fifteen days before the date of the meeting in the case of a first invitation and, where necessary, no later than six days before the date of the meeting for subsequent invitations.

Where the meeting is convened by an agent appointed by the court, the judge may fix a different deadline.

ARTICLE 519

The convening notice shall indicate the name of the company followed, where appropriate, by its acronym, form and authorized capital, the address of its registered office, its registration number in the Trade and Personal Property Rights Register, the day, time and venue of the meeting, as well as the nature (ordinary, extraordinary or special) and the agenda of the meeting.

The notice shall, where necessary, indicate where bearer shares or the certificate of deposit of the said shares are to be deposited in order to give entitlement to participate in the meeting, as well as the date on which such deposit shall be effected.

Co-owners of joint shares, legal owners and beneficiaries of shares shall be convened according to the forms mentioned above.

Any meeting irregularly convened may be cancelled. However, action for cancellation instituted under the conditions laid down in Article 246 of this Uniform Act shall not be admissible where all the shareholders were present or represented.

ARTICLE 520

The agenda of the meeting shall be prepared by the party convening the meeting.

However, where the meeting is convened by an agent appointed by the court, the agenda shall be prepared by the president of the competent court that appointed him.

Also, one or more shareholders may request the inclusion of a draft resolution in the agenda of the general meeting of shareholders where they represent:

- 1°) 5% of the company's capital, where such capital is less than one thousand million (1,000,000,000) CFA francs;
- 2°) 3% of the company's capital, where such capital is between one thousand million (1,000,000,000) and two thousand million (2,000,000,000) CFA francs.
- 3°) 0.5% of the capital, where the capital is more than two thousand million (2,000,000,000) CFA francs.

The request shall include:

- 1°) the draft resolution together with a short explanatory statement;
- 2°) proof of ownership or representation of the percentage of capital stipulated in this article;
- 3°) where the draft resolution concerns the presentation of a candidate for the post of director or managing director, the information stipulated in Article 523 of this Uniform Act.

ARTICLE 521

Draft resolutions shall be addressed to the registered office of the company by hand-delivered letter with acknowledgement of receipt, by registered letter with notification of reception, by telex or by telefax at least ten days before the date of the general meeting for them to be put to the vote by the meeting.

The proceedings of the general meeting shall be null and void where the draft resolutions forwarded in accordance with the provisions of this article are not put to the vote by the meeting.

ARTICLE 522

The general meeting of shareholders shall not consider an issue not included in its agenda.

However, it may, during an ordinary session, dismiss one or more members of the board of directors or, where necessary, the managing director or the assistant managing director and replace them.

ARTICLE 523

Where the agenda of the general meeting of shareholders concerns the presentation of candidates for the post of director or Managing Director, as the case may be, mention shall be made of their identity, their professional profile and their professional activities during the past five years.

ARTICLE 524

The agenda of the meeting shall not be amended on the second invitation or, where necessary, for extraordinary general meetings, on the third invitation.

Section 2

Right to consult and to obtain copies of documents

ARTICLE 525

Concerning the annual ordinary general meeting, every shareholder shall have the right by himself or through the agent designated to represent him at the meeting, to examine at the registered office:

- 1°) the inventory, summary financial statement and the list of directors of the company where a board of directors has been put in place;
- 2°) reports of the auditor and of the board of directors or the managing director submitted to the meeting;
- 3°) where necessary, the explanatory statement of resolutions proposed, as well as information concerning candidates for the board of directors or for the post of managing director;
- 4°) the list of shareholders;
- 5°) the sum total, certified by the auditor, of remuneration paid to the ten or five best remunerated managers and workers, depending on whether or not the company employs more than two hundred workers.

Except for the inventory, the shareholder's right to examine the documents referred to above shall entail the right to have copies of the documents at his expense. The right to examine the said documents shall be exercised within fifteen days preceding the date of the meeting.

With regard to meetings other than the annual ordinary general meeting, the right to examine documents shall concern the text of resolutions proposed, the report of the board of directors or of the managing director, as the case may be, and, where necessary, the report of the auditor or the liquidator.

ARTICLE 526

In addition, every shareholder may at any time consult and obtain a copy of:

- 1°) the company's documents referred to in the preceding article concerning the last three fiscal years;
- 2°) minutes and attendance lists of meetings held during the last three years;
- 3°) any other documents, where the Articles of Association so provide.

Likewise, every member of the company may, twice every fiscal year, forward written questions to the Chairperson Managing Director, the General Manager or the Managing Director on all issues likely to undermine the running of the company.

The answer to these questions shall be communicated to the auditor.

ARTICLE 527

The right to consult and to obtain copies of documents provided for in Articles 525 and 526 of this Uniform Act shall also be exercised by each of the co-owners of joint shares and the legal owner and beneficiary of shares.

ARTICLE 528

Where the company refuses to communicate all or part of the documents referred to in Articles 525 and 526 of this Uniform Act, the president of the competent court shall, upon an action instituted by the shareholder, give a summary judgment on such refusal.

The president of the competent court may order the company, under financial compulsion, to communicate the documents to the shareholder, under the conditions laid down in Articles 525 and 526 of this Uniform Act.

Section 3 Holding of the general meeting

ARTICLE 529

The general meeting of shareholders shall be presided over as the case may be, by the Chairperson Managing Director, the chairman of the board of directors or the Managing Director or, in their absence and unless there be a statutory provision to the contrary, by the member having or representing the highest number of shares or, in the case of equality, by the oldest member.

ARTICLE 530

The two shareholders representing the highest number of shares by themselves or as agents shall be appointed scrutineers, subject to their acceptance.

ARTICLE 531

A secretary shall be appointed by the meeting to take down the minutes of the proceedings. He may be chosen from among members who are not shareholders.

ARTICLE 532

An attendance list of each meeting shall be kept. It shall contain the following information:

- 1°) the full names and address of each shareholder present or represented, the number of shares that he holds as well as the number of votes attached to the shares;
- 2°) the full names and address of each authorized agent, the number of shares that he represents as well as the number of votes attached to the shares;

ARTICLE 533

The attendance list shall be signed by the shareholders present and by the agents at the beginning of the session. Powers of attorney shall be annexed to the attendance list at the end of the meeting.

ARTICLE 534

The scrutineers shall be responsible for certifying the attendance list.

ARTICLE 535

The minutes of the proceedings of the meeting shall mention the date and venue of the meeting, the nature of the meeting, the method of convening it, the agenda, the composition of the bureau, the quorum, the text of the resolutions put to the vote by the meeting and the result of voting for each resolution, the documents and reports presented to the meeting and a summary of the proceedings.

The minutes shall be signed by the members of the bureau and kept at the registered office together with the attendance list and its annexures, in accordance with the provisions of Article 135 of this Uniform Act.

ARTICLE 536

The copies of or extracts from minutes of meetings shall be validly certified, according to the circumstances, by the Chairperson Managing Director, by the chairperson of the board of directors, by the Managing Director or by any other person duly authorized to do so.

In the case of liquidation, they shall be certified by one liquidator only.

ARTICLE 537

The following may attend general meetings:

- the shareholders or their representatives, under the conditions laid down in this Uniform Act or in accordance with the provisions of the Articles of Association;
- any person authorized to attend by a legal provision or by a provision of the Articles of Association of the company.

Persons who are not members of the company may also attend general meetings where they are authorized to do so by the president of the competent court, by decision of the bureau of the general meeting or by the general meeting itself.

Section 4

Representation of shareholders and voting rights

ARTICLE 538

Any shareholder may be represented by an attorney of his choice.

Any shareholder may receive powers from other shareholders to represent them at a general meeting, without any restriction other than those resulting from legal or statutory provisions fixing the number of votes that the same person may have in his own name and as agent.

The power of attorney shall bear:

- 1°) the full names and address as well as the number of shares and the agent's voting rights;
- 2°) an indication of the type of meeting for which the power of attorney is given;
- 3°) the signature of the agent preceded by the indication "Good for power of attorney" and the date of the power of attorney.

The power of attorney shall be given for one meeting only. It may however be given for two meetings, one ordinary and the other extraordinary, held on the same day or within a period of seven days.

A power of attorney given for a meeting shall be valid for successive meetings convened with the same agenda.

Clauses contrary to the provisions of the preceding paragraphs shall be disregarded.

ARTICLE 539

Directors who are not shareholders may attend all meetings of shareholders in an advisory capacity.

ARTICLE 540

Voting rights attached to a secured share shall be exercised by the owner of the share. A mortgagee shall, at the request of his debtor and at the latter's expense, deposit the shares he holds as security where they are bearer shares.

The depositing of the shares shall be carried out under the conditions laid down in Article 541 of this Uniform Act.

ARTICLE 541

The right to attend meetings may be subject to the prior entry of shareholders in the company's register of shares, to the depositing of bearer shares at a place specified by the convening notice or to the production of a certificate of deposit of bearer shares issued by the banking or financial institution that is depository of the said shares.

The registration of shareholders, depositing of shares or the production of a certificate of deposit shall be done no later than five days before the holding of the general meeting.

ARTICLE 542

Shares redeemed by the company in accordance with the provisions of Articles 639 et seq. of this Uniform Act shall have no voting rights attached to them. They shall not be taken into account when calculating the quorum.

ARTICLE 543

Voting rights attached to capital shares or dividend shares shall be proportional to the percentage of the capital that they represent and each share shall give a right to one vote.

However, the Articles of Association may restrict the number of votes which each shareholder shall have in the meetings, provided that such restriction is imposed on all the shares without distinction of category.

ARTICLE 544

The Articles of Association or a subsequent meeting may grant all fully paid-up shares, which have been entered in the registered shares register for at least two years in the name of a shareholder, voting rights twice those granted to the other shares, considering the quota of the registered capital that they represent.

Furthermore, in the case of an increase of capital by the incorporation of reserves, profits or issue premiums, double voting rights may be granted to registered shares given free of charge as soon as they are issued to a shareholder in proportion to the old shares for which he enjoyed such voting rights.

ARTICLE 545

Any share converted into a bearer share or transferred as property shall lose the double voting rights that may be attached to it.

However, transfer as a result of succession, dissolution of the joint estate of husband and wife or disposition inter vivos in favour of one spouse or a relative within the degree of succession shall have no effect on the acquired rights.

A merger of the company shall have no effect on double voting rights which may be exercised within the acquiring company where its Articles of Association so provide.

CHAPTER 2 ORDINARY GENERAL MEETING

Section 1 Powers

ARTICLE 546

The ordinary general meeting of shareholders shall take all decisions apart from those that are expressly reserved by Article 551 of this Uniform Act for extraordinary general meeting of shareholders and by Article 555 of this Uniform Act for special meetings of shareholders.

It shall in particular be empowered to:

- 1°) adjudicate on summary financial statements of the fiscal year;
- 2°) decide on the allocation of income; under penalty of any decision to the contrary being declared null and void, an allowance equal to at least one-tenth of the fiscal year's profits after deduction, where necessary, of previous losses, shall be allocated for the formation of a reserve fund referred to as "legal reserve". Such allowance shall no longer be compulsory where the reserve fund amounts to one-fifth of the company's registered capital;
- 3°) appoint the members of the board of directors or the Managing Director and, where necessary, the assistant managing director, as well as the auditor;
- 4°) approve or refuse to approve agreements concluded between the company's managers and the company;
- 5°) issue bonds;
- 6°) approve the auditor's report provided for by Article 547 of this Uniform Act.

ARTICLE 547

Where the company buys, within a period of two years following its registration, property belonging to a shareholder at a cost of not less than 5,000,000 (five million) CFA francs, the auditor shall, at the request of the Chairperson Managing Director, the chairperson of the board

of directors or the Managing Director, according to the circumstances, draw up a report on the value of the property. The report shall be submitted to the very next ordinary general meeting for approval.

The report shall describe the property to be bought, indicate the criteria used in fixing the price and assess the relevance of such criteria.

The auditor shall draw up the report and deposit same at the registered office of the company at least fifteen days before the date of the ordinary general meeting.

The general meeting shall take a decision on the evaluation of the property under penalty of the sale being declared null and void. The seller shall not take part either personally or as an agent in the vote of the resolution on the sale, and his shares shall not be taken into account in calculating the quorum and the majority.

Section 2

Meeting, quorum and majority

ARTICLE 548

The ordinary general meeting of shareholders shall hold at least once a year within a period of six months following the close of the fiscal year, subject to the extension of this deadline by a court decision.

The Articles of Association may require a minimum number of shares, which shall not be more than ten, for a right to attend ordinary general meetings.

Several shareholders may come together to obtain the minimum number of shares provided for by the Articles of Association and be represented by one of them.

ARTICLE 549

The proceedings of the ordinary general meeting shall be valid on the first invitation only where the shareholders present or represented hold at least one quarter of the company's shares with voting rights.

On the second invitation, no quorum shall be required.

ARTICLE 550

Decisions of the ordinary general meeting shall be taken by a majority of the votes cast. In the case of voting, blank votes shall not be taken into account.

CHAPTER 3

EXTRAORDINARY GENERAL MEETING

Section 1

Powers

ARTICLE 551

The extraordinary general meeting of shareholders shall alone be empowered to amend all the provisions of the Articles of Association of the company.

Any clause to the contrary shall be disregarded.

The extraordinary general meeting shall also be empowered to:

- 1° authorize mergers, scissions, transformations and partial contributions of assets;
- 2° transfer the registered office to any other town of the State Party where it is located or to the territory of another State Party;
- 3° winding up the company prematurely or extend the duration of its existence.

However, the extraordinary general meeting may increase the commitments of shareholders above their contributions only with the consent of each shareholder.

IV

Section 2

Meeting, quorum and majority

ARTICLE 552

Any shareholder may attend extraordinary general meetings without limitation of votes.

Any clause to the contrary shall be disregarded.

ARTICLE 553

The proceedings of an extraordinary general meeting shall be valid only where the shareholders present or represented hold at least half of the company's shares, on the first invitation and one quarter of the shares, on the second invitation.

Where the quorum is not met, the meeting may be convened a third time within a period of not more than two months from the date fixed by the second invitation. The quorum shall remain fixed at one quarter of the shares.

ARTICLE 554

Decisions of the extraordinary general meeting shall be taken by a two-thirds majority of the votes cast.

Where there is voting, blank votes shall not be taken into account

The decision to transfer the registered office of the company to the territory of another State Party shall be taken unanimously by the members present or represented.

CHAPTER 4

SPECIAL MEETING

Section 1

Powers

ARTICLE 555

The special meeting shall bring together holders of shares of a given category.

The special meeting shall approve or disapprove the decision of general meetings where such decisions modify the rights of its members.

The decision of a general meeting to modify the rights relating to a category of shares shall be final only after approval by the special meeting of shareholders of that category of shares.

Section 2
Meeting, quorum and majority

ARTICLE 556

The proceedings of a special meeting shall be valid only where the shareholders present or represented hold at least half of the company's shares, on the first invitation, and one quarter of the shares, on the second invitation.

Where the last quorum is not met, the meeting shall hold within a period of two months from the date fixed by the second invitation. The quorum shall remain fixed at one quarter of shareholders present or represented holding at least one quarter of the company's shares.

ARTICLE 557

Decisions of the special meeting shall be taken by a two-thirds majority of the votes cast.

Blank votes shall not be taken into account.

CHAPTER 5
**SPECIAL CASE OF A PUBLIC LIMITED COMPANY WITH A SOLE
SHAREHOLDER**

ARTICLE 558

Where a public limited company has only one shareholder, the resolutions to be taken at a meeting, be they resolutions falling within the jurisdiction of the extraordinary general meeting or those falling within the jurisdiction of the ordinary general meeting, shall be taken by that shareholder.

The provisions of Articles 516 to 577 of this Uniform Act that are not contrary to the provisions of this article shall apply.

ARTICLE 559

The sole shareholder shall, within a period of six months following the close of the fiscal year, take all the resolutions falling within the jurisdiction of the annual ordinary general meeting.

Resolutions shall be taken upon the reports of the managing director and of the auditor who attend general meetings in accordance with the provisions of Article 721 of this Uniform Act.

ARTICLE 560

Resolutions taken by the single shareholder shall be in the form of minutes which shall be filed in the records of the company.

ARTICLE 561

All resolutions taken by the single shareholder which would have been published in a newspaper carrying legal notices if they had been taken by a general meeting shall be published in the same manner.

**SUB-TITLE 4
VARIATION OF CAPITAL**

**CHAPTER 1
GENERAL PROVISIONS**

**Section 1
Conditions for increase of capital**

ARTICLE 562

Registered capital of a company shall be increased either by issuing new shares or by increasing the face value of existing shares.

New shares shall be paid up either in cash, or by set-off with certain, liquid and due claims on the company, or incorporation of reserves, profits or issue premiums, or by non-cash contributions.

The increase of capital by raising the face value of shares shall be ordered only with the unanimous consent of shareholders, save where it is made by incorporation of reserves, profits or issue premiums.

ARTICLE 563

The new shares shall be issued either at their face value or at such value plus an issue premium.

ARTICLE 564

Only the extraordinary general meeting shall be competent to decide or, where necessary, authorize an increase of capital upon a report of the board of directors or of the managing director, as the case may be, and upon a report of the auditor.

ARTICLE 565

Where an increase of capital is made by incorporation of reserves, profits or issue premiums, the general meeting shall reach a decision under the quorum and majority conditions laid down in Articles 549 and 550 of this Uniform Act concerning ordinary general meetings.

ARTICLE 566

The right to bonus shares as well as rights equivalent to fractional shares that shareholders may claim due to an increase of capital by incorporation of reserves, profits or issue premiums shall be negotiable and transferable.

However, the extraordinary general meeting may, under the quorum and majority conditions laid down in Article 565 of this Uniform Act, expressly order that rights equivalent to fractional shares shall not be negotiable and that the corresponding shares shall be sold.

Proceeds of the sale shall be allocated to the holders of the fractional shares no later than thirty days after the date of entry against their name of the whole number of shares allotted.

ARTICLE 567

The general meeting may authorize the board of directors or the Managing Director, as the case may be, to determine the terms of sale of rights equivalent to fractional shares.

ARTICLE 568

The general meeting may to the board of directors or to the Managing Director, as the case may be, the necessary powers to increase the capital one or more times, to lay down all or part of the conditions for such increase and ensure that it is effected and to amend the Articles of Association accordingly.

ARTICLE 569

Any clause to the contrary granting the board of directors or the managing director, as the case may be, the power to order an increase of capital shall be void.

ARTICLE 570

The report of the board of directors or of the managing director, as the case may be, shall contain all relevant information on the reasons for the proposed increase of capital and on the situation of the company since the beginning of the current fiscal year and, where the ordinary general meeting which is to adjudicate on the accounts of the company has not yet held, during the previous fiscal year.

ARTICLE 571

Increase of capital shall be effected within a period of three years following the general meeting that ordered or authorized it.

Increase of capital shall be deemed effected from the day the notarial statement of subscription and payment is drawn up.

ARTICLE 572

The capital shall be fully paid up before any issue of new shares to be paid up in cash, under penalty of the operation being declared null and void.

Section 2 Pre-emptive right of subscription

ARTICLE 573

Shares shall carry a pre-emptive right of subscription for increases of capital.

Shareholders shall, proportionately to the number of their shares, have a pre-emptive right of subscription for shares issued for cash for an increase of capital. This right shall be irreducible.

Any clause to the contrary shall be disregarded.

ARTICLE 574

During subscription, a pre-emptive right of subscription shall be negotiable where it is detached from the shares which are themselves negotiable.

Otherwise, such right shall be transferable under the same conditions as for the share.

ARTICLE 575

Shareholders shall, where the general meeting so expressly decides, also have a pre-emptive right to apply for excess new shares for which they would not have applied as of right.

ARTICLE 576

Excess shares shall be allotted to shareholders who subscribed for a number of shares higher than the number of new shares they would have subscribed for as of right. In any case they shall not be allotted more shares than they applied for.

ARTICLE 577

The period of time allowed shareholders to exercise their pre-emptive right of subscription shall not be less than twenty days. Time shall start running from the date of commencement of subscription.

ARTICLE 578

The abovementioned period shall end as soon as all applications as of right for new shares and, where necessary, applications for excess shares have been filed or as soon as the increase of capital has been fully subscribed after renunciation of their right of subscription by the shareholders who have not subscribed for shares.

ARTICLE 579

Where applications as of right for new shares and, where necessary, applications for excess shares have not covered the total increase of capital:

- 1°) the amount of the capital increase may be limited to the amount of subscriptions made provided that such amount is at least three quarters(3/4) of the increase provided by the general meeting which ordered or authorized the increase of capital and that such option was expressly provided for by the meeting during the issue;
- 2°) the shares not subscribed may be freely allotted, in whole or in part, unless otherwise decided by the meeting;
- 3°) the shares not subscribed for may be offered to the public in whole or in part where the meeting expressly provides for such possibility.

ARTICLE 580

The board of directors or the managing director, as the case may be, may use, in the order which it shall determine, the options provided for in Article 579 of this Uniform Act or some of them only.

Increase of capital shall not be made where, after exercising these options, the amount of subscriptions received does not cover the totality of the increase of capital or, in the case provided for in paragraph 1) of Article 579 of this Uniform Act, three quarters (3/4) of such increase.

However, the board of directors or the Managing Director, as the case may be, may on their own initiative and in all the cases, limit the increase of capital to the amount reached where the shares subscribed represent 97% of the increase of capital.

Any decision of the board of directors to the contrary shall be disregarded.

Paragraph 1 Usufruct

ARTICLE 581

Where the old shares have a usufruct attached to them, the usufructuary and the bare owner of the shares may freely determine the conditions for the exercise of the pre-emptive right of subscription for and allotment of the new shares.

Where the parties fail to reach an agreement, the provisions of Articles 582 to 585 of this Uniform Act shall apply.

These provisions shall also apply, where the parties fail to act, in the case of allotment of bonus share.

ARTICLE 582

The bare owner shall be entitled to the pre-emptive right of subscription attached to the old shares.

Where the bare owner sells his rights of subscription, the proceeds of the sale or the property acquired as a result of the re-investment of such money shall be subject to the usufruct.

ARTICLE 583

Where the bare owner fails to exercise his pre-emptive right of subscription, the usufructuary may take his place and subscribe for the new shares or sell the rights of subscription.

Where the usufructuary sells the rights of subscription, the bare owner may demand that the proceeds of the sale be re-invested. The property so acquired shall be subject to the usufruct.

ARTICLE 584

The bare owner of shares shall, vis-à-vis the usufructuary, be considered as having failed to exercise the pre-emptive right of subscription for the new shares issued by the company where he has neither subscribed for new shares nor sold the rights of subscription at least eight days before the expiry of the deadline for subscription accorded to shareholders.

ARTICLE 585

The new shares shall belong to the bare owner for ownership without usufruct and to the usufructuary for the usufruct. However, in case of payment of funds by the bare owner or the usufructuary to make or complete a subscription, the new shares shall belong to the bare owner and to the usufructuary only up to the amount of the rights of subscription; the excess of the new shares shall belong, as freehold, to the party who paid the funds.

Paragraph 2
Withdrawal of pre-emptive right of subscription

ARTICLE 586

The general meeting which orders or authorizes an increase of capital may withdraw the pre-emptive right of subscription of one or more usufructuaries designated by name for all of the increase of capital or for one or more portions of such increase.

ARTICLE 587

The usufructuaries, where they are shareholders, shall not take part in the vote neither by themselves nor as agents and their shares shall not be taken into consideration when calculating the quorum and the majority.

Section 3 Issue price and report

ARTICLE 588

The price of issue of new shares or the conditions governing the determination of such price shall be laid down by the extraordinary general meeting upon the report of the board of directors or the managing director as the case may be, and that of the auditor.

ARTICLE 589

The report of the board of directors or by the Managing Director provided for in Article 588 of this Uniform Act shall specify:

- 1°) the maximum amount of and the reasons for the proposed increase of capital;
- 2°) the reasons for the proposal to withdraw the pre-emptive right of subscription;
- 3°) the full names of persons allotted new shares, the number of shares allotted to each of them and the issue price together with the reason therefor.

ARTICLE 590

Where all the conditions of increase of capital are determined by the meeting, the report referred to in Article 588 of this Uniform Act shall also mention the impact of the proposed issue on the situation of shareholders, in particular as concerns their share of the shareholders' equity at the close of the last fiscal year.

Where the close of the fiscal year precedes the planned operation by more than six months, such impact shall be appraised upon the production of a mid-term financial report on the last six months prepared using the same methods and in the same form as the annual balance-sheet.

ARTICLE 591

The auditor shall express his opinion on the proposal to withdraw the pre-emptive right of subscription, on the choice of data for calculating the issue price and on its amount, as well as on the impact of the issue on the situation of shareholders in relation to the company's equity.

He shall verify and certify the accuracy of data from the company's accounts on which his opinion is based.

ARTICLE 592

Where the general meeting has delegated its powers under the conditions stipulated in Article 568 of this Uniform Act, the board of directors or the Managing Director, as the case may be, shall draw up, when exercising their powers, an additional report describing the final conditions of the operation defined in accordance with the powers conferred by the meeting. The report shall also comprise the data provided for in Article 589 of this Uniform Act.

The auditor shall verify in particular that the conditions of the operation are in conformity with the powers conferred by the meeting and the information provided to the latter. He shall also express his opinion on the choice of information for the calculation of the issue price and on the final amount of the price, as well as on the impact of the issue on the financial situation of the shareholder in particular as concerns his share of the company's equity capital at the close of the last fiscal year.

These additional reports shall forthwith be placed at the disposal of shareholders at the registered office within fifteen days following the date of the board of directors' meeting or the decision of the Managing Director and notified on them at the very next meeting.

Section 4

Renunciation of the pre-emptive right of subscription

ARTICLE 593

Shareholders may individually renounce their pre-emptive right of subscription in favour of designated persons. They may also renounce such right without mentioning any beneficiaries.

ARTICLE 594

A shareholder who renounces his pre-emptive right of subscription shall inform the company by hand-delivered letter against acknowledgement of receipt or by registered letter with notification of reception before the expiry of the period of subscription.

ARTICLE 595

Renunciation without indication of beneficiaries shall be accompanied, as concerns bearer shares, by corresponding coupons or a certificate issued by the depository of the shares establishing the shareholder's renunciation of his right.

Renunciation in favour of designated beneficiaries shall be accompanied by the acceptance of the said beneficiaries.

ARTICLE 596

New shares renounced by a shareholder without indication of beneficiaries may be subscribed for as excess shares under the conditions laid down in Article 576 of this Uniform Act or, where necessary, allotted to the shareholders or offered to the public under the conditions laid down in Article 579 of this Uniform Act.

However, where such renunciation has been notified to the company no later than on the date of the decision to increase the capital, the corresponding shares shall be placed at the disposal of other shareholders to enable them to apply as of right for new shares and, where necessary, for excess shares.

ARTICLE 597

Where the shareholder renounces to subscribe for the increase of capital in favour of designated persons, his rights of subscription for new shares and, where necessary, for excess shares shall be transferred to the latter.

Section 5

Publicity prior to subscription

ARTICLE 598

Shareholders shall be informed about the issue of new shares and the conditions of subscription therefor by a notice containing inter alia the following information:

- 1°) the company name and, where necessary, its acronym;
- 2°) the form of the company;
- 3°) the amount of the registered capital;
- 4°) the registered office address;
- 5°) the registration number of the company in the Trade and Personal Property Rights Register;
- 6°) the number and the face value of the shares and the amount of increase of capital;
- 7°) the price of issue of the shares to be subscribed for and the global amount of the issue premium, where necessary;
- 8°) the place and dates of commencement and close of subscription;
- 9°) the existence, for shareholders, of a pre-emptive right of subscription;
- 10°) the sum of money immediately payable per subscribed share;
- 11°) mention of the bank or the notary to receive the funds;
- 12°) where necessary, a brief description of the valuation and the method of remuneration of noncash contributions to the increase of capital, with an indication of the provisional nature of such valuation and method of remuneration.

ARTICLE 599

Shareholders shall be informed of the notice provided for in Article 598 by hand-delivered letter against acknowledgement of receipt or by registered letter with notification of reception at least six days before the date of subscription begins at the instance, as the case may be, of agents of the board of directors, the managing director or any other person authorized to do so.

ARTICLE 600

Where the general meeting has decided to abolish shareholders' pre-emptive right of subscription, the provisions of Article 598 of this Uniform Act shall not apply.

Section 6**Preparation of allotment letter****ARTICLE 601**

A subscription contract shall be established by an allotment letter prepared in two copies, one of which shall be for the company and the other for the notary responsible for drawing up the statement of subscription and payment.

ARTICLE 602

The allotment letter shall be dated and signed by the subscriber or his authorized agent who shall write out entirely in letters the number of shares subscribed. A copy of the allotment letter written out on a loose-leaf shall be handed over to him.

ARTICLE 603

The allotment letter shall set out:

- 1°) the name of the company followed, where necessary, by its acronym;
- 2°) the form of the company;

- 3°) the amount of the authorized capital;
- 4°) the address of the registered office;
- 5°) the registration number of the company in the Trade and Personal Property Rights Register;
- 6°) the amount and conditions of increase of capital; the face value of shares and the issue price;
- 7°) where necessary, the amount to be subscribed for shares issued for cash and the amount paid up by noncash contributions;
- 8°) the full names or company name and address of the person receiving the funds;
- 9°) the full names and address of the subscriber and the number of shares subscribed;
- 10°) an indication of the bank or the notary responsible for receiving the funds;
- 11°) mention of the notary responsible for drawing up the statement of subscription and payment;
- 12°) mention of handing over to the subscriber a copy of the allotment letter.

Section 7 **Paying up of shares**

ARTICLE 604

At least a quarter of the face value of shares subscribed to in cash and, where necessary, the full issue premiums shall be compulsorily paid up during subscription.

ARTICLE 605

The rest shall be paid up in one or more instalments on demand by the board of directors or the Managing Director, as the case may be, within a period of three years from the day of increase of capital.

ARTICLE 606

Shares subscribed to in cash which entail both payments in cash and incorporation of reserves, profits or issue premiums shall be fully paid up during subscription.

ARTICLE 607

Funds derived from subscription for shares issued for cash shall be deposited by the company executives, on behalf of the company, with a bank domiciled in the State Party of the registered office or with a notary.

The funds shall be deposited within eight days following the receipt thereof.

ARTICLE 608

The depositor shall hand over to the bank or, where necessary, to the notary, at the time of depositing the funds, a list showing the identity of the subscribers and indicating, for each of them, the amount of money paid.

ARTICLE 609

The depositary shall be bound, until the funds are withdrawn, to communicate the said list to any subscriber who, after showing proof of his subscription so requests.

The applicant may examine the list and obtain, at his expense, a copy thereof.

ARTICLE 610

The depository shall issue the depositor a certificate attesting the deposit of funds.

ARTICLE 611

Where shares are paid up by set-off of claims on the company, such claims shall be the object of a statement of accounts prepared, as the case may be, by the board of directors or by the managing director and certified as true by the auditor.

Section 8

Notarial statement of subscription and payment

ARTICLE 612

Subscriptions and payments shall be established in a statement by the managers of the company made in a document certified by a notary referred to as “notarial statement of subscription and payment”.

ARTICLE 613

On presentation of allotment letters and, where necessary, a certificate issued by the depository attesting the deposit of funds, the notary shall state in the act he draws up that the amount for subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount of payments declared by the company executives corresponds to the amount of money deposited with him or, where necessary, appearing on the certificate referred to above. The certificate issued by the depository shall be annexed to the notarial statement of subscription and payment.

The notary shall draw up the statement available to subscribers who may examine it and obtain a copy thereof in his office.

ARTICLE 614

Where the increase of capital is made by set-off with certain, liquid and due claims, the notary shall ascertain that the shares issued for cash have been paid up on presentation of the statement of accounts certified by the auditor referred to in Article 611 of this Uniform Act. The statement shall be annexed to the notarial statement of subscription and payment.

Section 9

Withdrawal of funds

ARTICLE 615

The withdrawal of funds derived from subscription in cash may take place only after the increase of capital has been effected.

Withdrawal shall be made by an authorized agent of the company on presentation to the depository of the notarial statement of subscription and payment.

ARTICLE 616

The increase of capital by issue of shares to be paid up in cash shall be considered effected on the date the notarial statement of subscription and payment is drawn up.

ARTICLE 617

Any subscriber may, six months after the payment of funds, bring an action before the president of the competent court for a summary judgment for the appointment of an agent responsible for withdrawing the funds to refund to the subscribers, subject to the deduction of his distribution costs where, on that date, the increase of capital has not been effected.

ARTICLE 618

The increase of capital shall be published under the conditions laid down in Article 264 of this Uniform Act.

CHAPTER 2

SPECIAL PROVISIONS RELATING TO INCREASE OF CAPITAL BY NON-CASH CONTRIBUTIONS AND/OR BY SPECIAL BENEFITS

ARTICLE 619

Non-cash contributions and/or special benefits shall be evaluated by a shares valuer appointed by the president of the competent court of the place of the registered office at the request of, as the case may be, the board of directors or the managing director.

ARTICLE 620

The shares auditor shall be subject to the incompatibilities provided for in Articles 697 and 698 of this Uniform Act. He may be the auditor of the company.

ARTICLE 621

The shares valuer shall be responsible for assessing the value of non-cash contributions and special benefits.

He may be assisted in the performance of his task by one or more experts of his choice.

The experts' fees shall be borne by the company.

ARTICLE 622

The report of the shares valuer shall be deposited at least eight days before the date of the extraordinary general meeting at the registered office and shall be made available to shareholders who may study it and obtain, at their expense, a complete or partial copy thereof.

It shall also be deposited, within the same time limit, at the registry of the court in charge of commercial matters of the place of the registered office.

ARTICLE 623

The shares of the contributor or the beneficiary shall not be taken into account in the calculation of the quorum and the majority when the extraordinary general meeting is reaching a decision on the approval of a non-cash contribution or the grant of a special benefit.

The contributor or the beneficiary shall not be entitled to vote either by himself or as an agent.

ARTICLE 624

Where the meeting approves the valuation of contributions and the grant of special benefits, it shall ascertain that the increase of capital has been effected.

ARTICLE 625

Where the meeting reduces the valuation of contributions or the amount paid as special benefits, the express approval of the modifications by the contributors, the beneficiaries or their agents duly authorized to do so shall be necessary.

Failing this, the increase of capital shall not be effected.

ARTICLE 626

Initial shares shall be fully paid up as soon as they are issued.

**CHAPTER 3
REDUCTION OF CAPITAL**

ARTICLE 627

The registered capital of a company shall be reduced by decreasing either the face value or the number of shares.

ARTICLE 628

The reduction of capital shall be authorized or ordered by the extraordinary general meeting which may delegate all the necessary powers to the board of directors or the managing director, as the case may be, to effect the reduction.

The meeting shall, under no circumstances, undermine the equality of shareholders, except with the express consent of the disadvantaged shareholders.

ARTICLE 629

The draft instrument on the reduction of capital shall be communicated to the auditor at least forty-five days before the date of the extraordinary general meeting which shall order or authorize the reduction of capital.

ARTICLE 630

The auditor shall table before the extraordinary general meeting a report in which he shall set out his assessment of the reasons for and condition of the reduction of capital.

ARTICLE 631

Where the board of directors or the managing director, as the case may be, carries out the reduction of capital upon delegation of powers by the general meeting, he shall draw up a report thereon which shall be subject to publicity and shall amend the Articles of Association of the company accordingly.

ARTICLE 632

The creditors of the company may not object to the reduction of capital where it is justified by losses.

ARTICLE 633

Creditors of the company with claim prior to the depositing with the registry of the court in charge of commercial matters the minutes of the proceedings of the general meeting which ordered or authorized the reduction of capital as well as debenture holders, may object to the reduction of the capital of the company where such reduction is not justified by losses.

ARTICLE 634

The time limit for the filing of opposition by creditors to the reduction of capital shall be thirty days from the date of depositing with the registry of the minutes of the proceedings of the general meeting which ordered or authorized the reduction of capital.

ARTICLE 635

The opposition shall be by way of an extrajudicial act and shall be filed before the competent court for a summary judgment.

ARTICLE 636

The capital reduction operations may not commence within the time-limit allowed for opposition, or as the case may be, before a judgement is given on the opposition at first instance.

ARTICLE 637

Where the objection is allowed, the capital reduction procedure shall be suspended until the claims are reimbursed or until guarantees are provided for the creditors if the company offers such guarantees and if they are considered adequate.

ARTICLE 638

The reduction of capital shall be subject to publicity formalities as provided for in Article 264 of this Uniform Act.

CHAPTER 4

SUBSCRIPTION - PURCHASE ACCEPTANCE BY THE COMPANY OF ITS OWN SHARES AS SECURITY

ARTICLE 639

Subscription to or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company, shall be prohibited. In like manner, the company may not grant advances or loans or provide security for subscription to or purchase of its own shares by a third party.

However, the ordinary general meeting which has ordered a reduction of capital not justified by losses may authorize the board of directors or the managing director, as the case may be, to buy a specific number of shares with a view to cancelling them.

The founders or, in the case of an increase of capital, the members of the board of directors or the managing director shall be bound, under the conditions laid down in Articles 738 and 740 of this Uniform Act, to pay up the shares subscribed to or acquired by the company in violation of the provisions of the first paragraph of this article.

Likewise, where shares are subscribed to or acquired by a person acting in his own name but on behalf of the company, such person shall be bound to pay up the shares jointly with the founders or, as the case may be, the members of the board of directors or the managing director. The subscriber shall also be considered as having subscribed to shares on his own account.

ARTICLE 640

The provisions of the first paragraph of Article 639 of this Uniform Act notwithstanding, the extraordinary general meeting may authorize the board of directors or the managing director, as the case may be, to acquire a specific number of shares in order to allot them to workers of the company. In such case, the shares shall be allotted within a period of one month from the date of their acquisition.

The company may not hold, directly or through a person acting in his own name but on behalf of the company, more than 10% of the total number of its own shares.

The shares acquired shall be registered and fully paid up at the time of acquisition.

The founders or, in the case of an increase of capital, the members of the board of directors or the managing director shall be bound, under the conditions laid down in Articles 738 and 740 of this Uniform Act, to pay up the shares subscribed to or acquired by the company in pursuance of the provisions of the first paragraph of this article.

Likewise, where shares are subscribed to or acquired by a person acting in his own name but on behalf of the company, such person shall be bound to pay up the shares jointly with the founders or, as the case may be, the members of the board of directors or the managing director. The subscriber shall also be considered as having subscribed to shares on his own account.

The acquisition of shares may not lead to the reduction of the shareholders' equity to an amount lower than the amount of the capital and non-allocated reserves.

Shares held by the company shall not give a right to dividend.

ARTICLE 641

The provisions of Article 639 of this Uniform Act shall not be applicable to fully paid up shares acquired by a universal transfer of assets or by a decision of a court.

However, the shares shall be transferred within two years following the date of subscription or acquisition thereof; after this time limit they shall be cancelled.

ARTICLE 642

The acceptance of the company's own shares as security, directly or through a person acting in his own name but on behalf of the company, shall be prohibited.

The shares accepted by the company as security shall be refunded to their owner within a period of one year. The shares shall be refunded within a period of two years where the transfer of the security to the company is the result of a universal transfer of assets or a decision of a court; failing this, the security contract shall be automatically void.

The prohibition provided for in this article shall not apply to the ordinary transactions of credit enterprises.

ARTICLE 643

Where the company decides to purchase its own shares with a view to cancelling them and reducing its capital by the same amount, it shall make the purchase offer to all the shareholders.

For this purpose, it shall insert in a newspaper empowered to publish legal notices of the place of the registered office of the company a notice containing the following information:

- 1°) the name of the company;
- 2°) the form of the company;
- 3°) the address of the registered office;
- 4°) the amount of the registered capital;
- 5°) the number of shares to be purchased;
- 6°) the price offered per share;
- 7°) the method of payment;
- 8°) the period of offer. The period of offer may not be less than thirty days from the date of insertion of the notice in the newspaper;
- 9°) place of acceptance of offer.

ARTICLE 644

Where all the shares are registered, the notice provided for in Article 643 of this Uniform Act may be replaced by a notification containing the same information addressed to each shareholder by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception. The cost of notification shall be borne by the company.

ARTICLE 645

Where the shares offered for purchase exceed the number of shares to be purchased, the number of shares offered by each shareholder selling shares shall be reduced proportionately to the number of shares owned or held by him.

ARTICLE 646

Where the shares offered for purchase are fewer than the number of shares to be bought, the registered capital shall be reduced to the amount of shares bought.

However, the board of directors or the managing director, as the case may be, may decide to repeat the operation under the conditions laid down in Articles 643 and 644 of this Uniform Act until the number of shares initially fixed is completely sold, on condition that the operation is repeated within the period stipulated by the general meeting that authorized the reduction of capital.

ARTICLE 647

The provisions of Articles 643 and 646 of this Uniform Act shall not apply where the general meeting has authorized, in a bid to facilitate an increase of capital, a merger or a scission, the board of directors or the managing director, as the case may be, to buy a large number of shares representing not more than 1% of the amount of registered capital with a view to cancelling them.

Likewise, these provisions shall not apply where the company redeems shares whose transferee has not been approved.

The auditor shall express his opinion on the advisability and conditions of the planned purchase of shares in his report on the projected operation.

ARTICLE 648

Where a usufruct is attached to the shares, the purchase offer shall be to the bare owner. However, the purchase of shares shall be final only where the usufructuary has expressly consented to the transaction.

Except otherwise agreed upon between the bare owner and the usufructuary, the purchase price of the shares shall be shared between them proportionately to the value of their respective rights to the shares.

ARTICLE 649

Shares purchased by the company which issued them in order to effect a reduction of capital shall be cancelled within a period of fifteen days following the expiry of the period of the purchase offer mentioned in the notice provided for in Article 643 of this Uniform Act.

Where the purchase is made in order to facilitate an increase of capital, a merger or a scission, the time limit provided for the cancellation of the shares shall run from the day the shares were purchased. Shares acquired or held by the company in violation of the provisions of Articles 639 and 640 of this Uniform Act shall be cancelled within a period of fifteen days from the date of their acquisition or, where necessary, at the expiry of the period of one year referred to in the first paragraph of Article 640 above.

ARTICLE 650

The cancellation of bearer shares shall be established by the indication “cancelled” made on the share.

Where the shares are registered, the same indication shall be made on the company’s registered shares as well as on the registered shares certificate and on the counterfoil of the register from which the certificate was extracted, where necessary.

CHAPTER 5 REDEMPTION OF CAPITAL

Section 1 Conditions of redemption

ARTICLE 651

Redemption of capital is the operation by which the company reimburses the shareholders all or part of the nominal value of their shares, as an advance on the proceeds of the future liquidation of the company.

ARTICLE 652

Where it is so provided in the Articles of Association the resolution to redeem capital shall be taken in the ordinary general meeting.

Where there is no provision in the Articles of Association to this effect, redemption of capital shall be resolved in the extraordinary general meeting.

ARTICLE 653

Shares may be totally or partially redeemed. Shares totally redeemed are referred to as dividend shares.

ARTICLE 654

Redemption shall be effected by equal reimbursement for each share of the same category and shall not lead to the reduction of capital.

ARTICLE 655

Sums of money used for the reimbursement of shares shall be deducted from profits or withdrawn from the non-statutory reserves.

Money may not be withdrawn from the legal reserve or, except otherwise decided by the extraordinary general meeting, from the statutory reserves.

Reimbursement of shares may not lead to the reduction of shareholders' equity to an amount lower than the amount of the authorized capital increased by reserves that the law or the Articles of Association do not permit to be distributed.

Section 2

Rights attached to redeemed shares and conversion of redeemed shares into capital shares

ARTICLE 656

Shares totally or partially redeemed shall retain all their rights with the exception, however, of the right to the first dividend provided for in Article 145 of this Uniform Act and the reimbursement of the nominal value of shares which they shall lose proportionately.

ARTICLE 657

The extraordinary general meeting may decide to convert redeemed shares totally or partially into capital shares.

The decision to so convert shall be taken under the quorum and majority conditions laid down for the amendment of the Articles of Association.

ARTICLE 658

Conversion of shares shall be effected by a compulsory deduction, up to the redeemed amount of shares to be converted, from the portion of profits of one or more fiscal years allocated to these shares after payment, for partially redeemed shares, of the first dividend or the interest accruing from the shares.

Likewise, the extraordinary general meeting may authorize the shareholders, under the same conditions, to pay back to the company the amount of their shares redeemed and, if need be, the first dividend or the statutory interest for the past period of the current fiscal year and, eventually, of the preceding fiscal year.

ARTICLE 659

Decisions provided for in Article 658 of this Uniform Act shall be submitted for ratification by the special meetings of each of the categories of shareholders who have the same rights.

ARTICLE 660

Sums of money deducted from the profits or paid by the shareholders in pursuance of Article 658 of this Uniform Act shall be paid into a reserve account.

Where the shares are totally redeemed, a reserve account shall be opened for each of the categories of totally redeemed shares.

ARTICLE 661

Conversion shall be effected where the amount of a reserve account constituted by deductions from the profits of the company is equivalent to the amount of shares redeemed or to the amount of the corresponding category of shares.

The board of directors or the managing director, as the case may be, shall be empowered to make the necessary amendments to the clauses of the Articles of Association in so far as the said amendments correspond materially to the results of the operation.

ARTICLE 662

Where conversion is carried out by payments made by shareholders, the board of directors or the managing director, as the case may be, shall be empowered to make, no later than at the close of each fiscal year, amendments to the Articles of Association corresponding to the conversions made during the said fiscal year.

ARTICLE 663

Partially redeemed shares whose conversion into capital shares has been resolved shall be entitled, for each fiscal year and until such conversion is carried out, to the first dividend or to the interest in lieu thereof calculated on the basis of the amount of the unredeemed paid up shares.

Furthermore, totally or partially redeemed shares whose conversion has been resolved to be by deductions from the company's profits shall, for each fiscal year and until the conversion is finally carried out, be entitled to the first dividend calculated on the basis of the amount, at the close of the preceding fiscal year, of the corresponding reserve account.

SUB-TITLE 5 VARIATION OF SHAREHOLDERS' EQUITY

ARTICLE 664

Where, owing to losses recorded in the summary financial statements, the shareholders' equity capital of the company falls below half of the company's authorized capital, the board of directors or the managing director, as the case may be, shall be bound, within four months following the approval of the accounts that showed the losses, to convene the extraordinary general meeting to take a decision as to whether or not the company should be wound up prematurely.

ARTICLE 665

Where the winding up of the company is not pronounced, the company shall be bound, no later than at the close of the second fiscal year following the one during which the losses were recorded, to reduce its capital by an amount at least equal to the amount of the losses that have not been charged to the reserves where, within such time limit, the shareholders' equity has not been reconstituted up to a value at least equal to half of the registered capital.

ARTICLE 666

The resolution of the extraordinary general meeting shall be deposited at the registry of the court responsible for commercial matters of the place of the registered office and entered in the Trade and Personal Property Rights Register.

The resolution shall be published in a newspaper empowered to publish legal notices of the place of the registered office.

ARTICLE 667

Where the session of the meeting does not hold like in the case where the meeting fails to deliberate validly upon the last convocation, any party concerned may bring an action before the court for the winding up of the company.

Likewise, any party concerned may petition the court for the winding up of the company where the provisions of Article 665 of this Uniform Act have not been applied.

ARTICLE 668

The competent court before which an action is brought for the winding up of the company may grant the company a maximum period of six months to regularize the situation.

The court shall not order the winding up of a company where such regularization is made on the day it is examining the case on its merits.

ARTICLE 669

The provisions of Articles 664 to 668 of this Uniform Act shall not apply to companies under legal redress or those in liquidation.

SUB-TITLE 6 MERGER, DIVISION AND TRANSFORMATION

CHAPTER 1 MERGER AND DIVISION

Section 1 Merger

ARTICLE 670

Transactions referred to in Articles 189 to 199 of this Uniform Act which are carried out solely between public limited companies shall be subject to the provisions of this chapter.

ARTICLE 671

The merger shall be resolved by the extraordinary general meeting of each of the companies taking part in the transaction.

The merger shall, where necessary, be subject, in each of the companies taking part in the transaction, to ratification by the special meetings of shareholders referred to in Article 555 of this Uniform Act.

The board of directors of each of the companies participating in the transaction shall draw up a report which shall be placed at the disposal of the shareholders.

The report shall explain and justify the project in detail from a legal and economic standpoint, in particular concerning the exchange ratio of shares and the valuation methods used which shall be the same for the companies concerned as well as the specific difficulties of valuation, if any.

ARTICLE 672

One or more merger valuers appointed by the president of the competent court shall be responsible for preparing a written report on the terms of the merger.

They may obtain all the relevant documents from each company and carry out all necessary verifications. They shall be subject, with respect to the participating companies, to the incompatibilities provided for in Article 698 of this Uniform Act.

The merger valuers shall ascertain that the relative values given to the shares of the companies participating in the transaction are fair and reasonable and that the exchange ratio is equitable. The report(s) of the merger valuers shall be placed at the disposal of shareholders. They shall mention:

- 1° the method(s) of determination of the proposed exchange ratio;
- 2° whether this or these method(s) are adequate in the case in point and the values to which each of these methods leads; an opinion shall be expressed on the relative importance given this or these method(s) in the determination of the value adopted;
- 3° specific evaluation difficulties, if any.

ARTICLE 673

Merger or division valuers shall be appointed and they shall perform their task under the conditions laid down in Article 619 et seq. of this Uniform Act.

Where only one report is established for the whole transaction, the valuer(s) shall be appointed at the joint request of all the participating companies.

ARTICLE 674

Any public limited company participating in a merger or division transaction shall place the following documents at the disposal of its shareholders at the registered office at least fifteen days before the date of the general meeting to take a resolution on the proposed merger or division:

- 1° the proposed merger or division;

- 2°) the reports referred to in Articles 671 and 672 of this Uniform Act;
- 3°) the summary financial statements approved by the general meetings as well as the management reports of the last three fiscal years of the companies participating in the transaction;
- 4°) an accounting report drawn up using the same methods and according to the same presentation as the last annual balance-sheet adopted on a date which, where the last summary financial statements are on a fiscal year the close of which precedes by more than six months the date of the proposed merger or division, shall precede by less than three months the date of the proposal.

Any shareholder may obtain at his expense, on a mere request, a complete or partial copy of the documents referred to above.

ARTICLE 675

The extraordinary general meeting of the company acquiring the others shall take a resolution on the approval of non-cash contributions in accordance with the provisions of Articles 619 et seq. of this Uniform Act.

ARTICLE 676

Where, from the time of deposit at the registry of the court in charge of commercial matters of the proposed merger up to the time the transaction is carried out, the company acquiring the other permanently holds all the capital of the acquired company or companies, there shall be no need for the approval of the merger by the extraordinary general meeting of the acquired companies or for the preparation of the reports referred to in Articles 671 and 672 of this Uniform Act.

ARTICLE 677

Where the merger is realized by the setting up of a new company, such company may be formed without other contributions apart from those of the merging companies.

In any case, the draft Articles of Association of the new company shall be approved by the extraordinary general meeting of each of the disappearing companies. The approval of the transaction by the general meeting of the new company shall not be necessary.

ARTICLE 678

The proposed merger shall be submitted to the meetings of debenture holders, unless the said debenture holders are offered the possibility of reimbursement of their debentures on a mere request by them.

Where debentures are reimbursable on a mere request, the acquiring company shall become the debtor of the debenture holders of the acquired company.

Offer of reimbursement of debentures on a mere request by debenture holders provided for above shall be published in a newspaper empowered to publish legal notices of the State Party.

Any debenture holder who has not applied for reimbursement within the time limit fixed shall retain his status in the acquiring company, under the conditions laid down by the merger contract.

ARTICLE 679

The acquiring company shall be the debtor of the creditors, who are not debenture holders, of the acquired company instead of the latter, without such substitution entailing a novation on their part.

Creditors, who are not debenture holders, of the companies participating in the merger transaction, including the lessors of premises hired by the acquired companies, whose claim is made prior to the publicity given the proposed merger, may file an opposition to the proposal within a period of thirty days from the date of such publicity before the competent court.

The president of the competent court shall rule against the opposition or order either the reimbursement of the debts or the provision of guarantees where the company can offer such guarantees and where they are considered adequate.

Failing reimbursement of the debts or provision of the guarantees ordered, the merger shall not have effect vis-à-vis this creditor.

The opposition filed by a creditor may not lead to the suspension of the merger transaction.

ARTICLE 680

The provisions of Article 679 of the Uniform Act shall not prevent the implementation of agreements authorizing a creditor to demand the immediate reimbursement of his claim in the case of a merger of the debtor company with another company.

ARTICLE 681

The proposed merger shall not be submitted to the meetings of debenture holders of the acquiring company.

However, the general meeting of debenture holders may authorize the representatives of the general body of the debenture holders to oppose the merger under the conditions and effects provided for in Articles 679 and 680 of this Uniform Act.

ARTICLE 682

Opposition by of a creditor to the merger or the division under the conditions laid down in Articles 679 and 681 of this Uniform Act shall be filed within a period of thirty days from the date of the insertion prescribed by Article 265 of this Uniform Act.

ARTICLE 683

Opposition by the representatives of the general body of the debenture holders to the merger or division provided for in Article 681 of this Uniform Act shall be filed within the same period.

Section 2
Division

ARTICLE 684

The provisions of Articles 670 to 683 of this Uniform Act shall apply to the division of a company.

ARTICLE 685

Where the division shall be carried out by contribution to new public limited companies, each of the new companies may be formed without any other contribution apart from the contribution of the divided company.

In this case and where the shares of each of the new companies are allotted to the shareholders of the divided company proportionately to their rights in the capital of the company, it shall not be necessary to draw up the report referred to in Article 672 of this Uniform Act.

In any case, the draft Articles of Association of the new companies shall be approved by the extraordinary general meeting of the divided company.

There shall be no need for the approval of the transaction by the general meeting of each of the new companies.

ARTICLE 686

The proposed division shall be submitted to the meetings of the debenture holders of the divided company, unless the possibility of reimbursement of debenture stocks on a mere request on their part is offered them.

Where reimbursement by a mere request is possible, the companies receiving contributions resulting from the division shall be joint debtors of the debenture holders who apply for reimbursement.

ARTICLE 687

The proposed division shall not be submitted to the meetings of shareholders of the companies to which the property has been transferred. However, the meeting of debenture holders may authorize the representatives of the general body of the debenture holders to oppose the division, under the conditions and the effects laid down in Article 681 of this Uniform Act.

ARTICLE 688

The beneficiary companies of the contributions resulting from the division shall be the joint debtors of the debenture holders and the creditors who are not debenture holders of the divided company, instead of the latter, without such substitution entailing a novation on their part.

ARTICLE 689

The provisions of Article 688 of this Uniform Act notwithstanding, it may be stipulated that the companies receiving contributions resulting from the division shall be liable only for part of the liabilities of the divided company to be borne by them severally.

In this case, the creditors who are not debenture holders of the participating companies may oppose the division, under the conditions and the effects stipulated in Article 679 paragraph 2 et seq. of this Uniform Act.

CHAPTER 2 TRANSFORMATION

ARTICLE 690

Any public limited company may be transformed into another form of company where, at the time of transformation, it has been incorporated for at least two years and where it has drawn up the balance sheet of its first two fiscal years of operation and has had them approved by its shareholders.

ARTICLE 691

The resolution to transform the company shall be taken upon a report of the auditor of the company.

The report shall attest that the company's net assets are at least equal to its registered capital.

The transformation shall, where necessary, be submitted for approval by the meeting of debenture holders.

The transformation resolution shall be subject to publicity, under the conditions laid down in Articles 263 and 265 of this Uniform Act for the amendment of the Articles of Association.

ARTICLE 692

Transformation of a public limited company into a partnership shall be resolved unanimously by the shareholders. In this case, Articles 690 and 691 of this Uniform Act shall not apply.

ARTICLE 693

The transformation of a public limited company into a private limited company shall be resolved under the conditions laid down for the amendment of the Articles of Association of companies of that form.

SUB-TITLE 7

AUDIT OF PUBLIC LIMITED COMPANIES

CHAPTER 1

CHOICE OF AUDITOR AND HIS ALTERNATE

ARTICLE 694

Each public limited company shall be audited by one or more auditors.

The duties of auditor shall be performed by natural persons or by companies incorporated by natural persons, under one of the forms provided for by this Uniform Act.

ARTICLE 695

Where there exists an association of chartered accountants in the State Party of the registered office of the company to be audited, only the chartered accountants approved by the association of chartered accountants may perform the duties of auditor.

ARTICLE 696

Where there is no association of chartered accountants, only the chartered accountants entered before hand on a list drawn up by a committee holding at a Court of Appeals in the State Party of the registered office of the company to be audited may perform the duties of auditor.

The committee shall comprise four members as follows:

- 1°) a judge at the Court of Appeal who shall chair the committee and shall have the casting vote;
- 2°) a lecturer of law, economics or management;

3°) a judge of the competent court hearing commercial matters;

4°) a representative of the Public Treasury.

ARTICLE 697

The duties of auditor shall be incompatible with:

1°) any activity or act of a nature to compromise his independence;

2°) any paid job. However, an auditor may give lectures in a course relating to his profession or take up a paid job with an auditor or a chartered accountant;

3°) any commercial activity, whether or not such activity is carried on directly by him or on his behalf by a nominee.

ARTICLE 698

The following may not be auditors:

1°) the founders, contributors, beneficiaries of special benefits, managers of the company or of its subsidiaries, as well as their spouses;

2°) the blood relatives and persons related by marriage, up to the fourth degree inclusive, of the persons referred to in paragraph 1) of this article;

3°) the managers of companies holding one-tenth of the company's capital or in which the latter holds one-tenth of the capital, as well as their spouse;

4°) the persons who, directly or indirectly or through third parties, receive either from the persons figuring in paragraph 1) of this article or from any company referred to in paragraph 3) of this article, a salary or any remuneration for a permanent activity other than that of auditor; the same shall apply to the spouses of the said persons;

5°) the auditors' companies one of whose members, shareholders or managers is in one of the situations referred to in the preceding paragraphs;

6°) the auditors' companies one of whose managers, members or shareholders performing the duties of auditor has a spouse who is in one of the situations referred to in paragraph 5) of this article.

ARTICLE 699

An auditor may not be appointed director, Managing Director, assistant managing director, General Manager or assistant general manager of the companies which he audits less than five years following the cessation of his duties as auditor of the said companies.

The same prohibition shall be applicable to the members of an auditors' company.

He may not, during the same period, perform the duties of auditor in the companies holding one-tenth of the capital of the company audited by him or in the companies in which the company audited by him holds one-tenth of the capital after cessation of his duties as auditor of the said companies.

ARTICLE 700

Persons who have been directors, Managing Directors, assistant managing directors, General Managers or assistant general managers, managers or workers of a company may not be appointed auditors of the company less than five years following the cessation of their duties in the said company.

They may not, during the same period, be appointed auditors in the companies holding 10% of the capital of the company in which they were performing their duties or in the companies in which the said companies hold 10% of the capital following the cessation of their duties.

The prohibition provided for in this article for the persons mentioned in the first paragraph of this article shall apply to the auditors' companies in which the said persons are members, shareholders or managers.

ARTICLE 701

Decisions taken in the absence of duly appointed substantive auditors or on the report of the substantive auditors appointed or on duty contrary to the provisions of Articles 694 to 700 of this Uniform Act shall be null and void.

Action for nullity shall cease where the said decision are expressly confirmed by a general meeting, upon the report of the duly appointed auditors.

CHAPTER 2

APPOINTMENT OF THE AUDITOR AND HIS ALTERNATE

ARTICLE 702

Public limited companies which do not make public call for capital shall be bound to appoint an auditor and an alternate auditor.

Public limited companies which make a public call for capital shall be bound to appoint at least two auditors and two alternate auditors.

ARTICLE 703

The first auditor and his alternate shall be designated in the Articles of Association or appointed by the constituent general meeting.

During the existence of the company, the auditor and his alternate shall be appointed by the ordinary general meeting.

ARTICLE 704

The term of office of the auditor designated in the Articles of Association or appointed by the constituent general meeting shall be two fiscal years.

Where he is appointed by the ordinary general meeting, his term of office shall be six years.

The mandate of the auditor shall expire at the end of the general meeting that adjudicates either on the accounts of the second fiscal year where he is designated in the Articles of Association or appointed by the constituent general meeting, or on the accounts of the sixth fiscal year where he is appointed by the ordinary general meeting.

ARTICLE 706

An auditor appointed by the meeting of shareholders in replacement of another auditor shall hold office until the expiry of the mandate of his predecessor.

ARTICLE 707

Where, at the expiry of the mandate of an auditor, it is proposed to the meeting not to renew his mandate, the auditor may, at his request, be heard by the meeting.

ARTICLE 708

Where the meeting fails to elect a substantive auditor or his alternate any shareholder may bring action before the president of the competent court sitting in chambers for the designation of an auditor - substantive or alternate - with the president of the board of directors, the chairman and managing director or the managing director duly summoned to the proceedings.

The mandate thus conferred on the auditor shall expire when the general meeting appoints an auditor.

ARTICLE 709

Where the meeting fails to renew the mandate of an auditor or to replace him at the expiry of his mandate and, except where the auditor expressly declines the appointment, his mandate shall be extended until the very next annual ordinary general meeting.

CHAPTER 3 DUTIES AND RIGHTS OF THE AUDITOR

Section 1 Duties of the auditor

ARTICLE 710

The auditor shall certify that the summary financial statements are regular and accurate and give a fair image of the result of operations of the past fiscal year as well as the financial situation and the estate of the company at the end of the said fiscal year.

ARTICLE 711

The auditor shall either:

- certify that the summary financial statement is regular and accurate; or
- certify with reservation or refuse to certify giving the reasons for such reservation or refusal.

ARTICLE 712

The permanent task of the auditor shall, excluding any interference in the management of the company, be to audit the assets and the accounting documents of the company and to check compliance of its accounting operations with the rules in force.

ARTICLE 713

The auditor shall ascertain that the information contained in the management report of the board of directors or of the Managing Director, as the case may be, as well as in the documents on the financial situation and the summary financial statements circulated to the shareholders is accurate and in conformity with the summary financial statement of the company.

He shall set out his observations in his report to the annual general meeting.

ARTICLE 714

The auditor shall finally ascertain that the equality of the members of the company is respected, in particular that all the shares of the same category have the same rights.

ARTICLE 715

The auditor shall prepare a report in which he shall inform the board of directors or the Managing Director of:

- 1°) the audits and verifications that he carried out and the various investigations that he conducted as well as their results;
- 2°) the items of the balance-sheet and other accounting documents to which amendments have been made, making all the relevant observations on the evaluation methods used in the preparation of the said documents;
- 3°) the irregularities and inaccuracies which he discovered;
- 4°) the conclusions of the above observations and amendments on the results of the fiscal year compared to those of the past fiscal year.

The report shall be made available to the chairperson of the board of directors or the Managing Director before the meeting of the board of directors or the decision of the managing director who adopts the accounts of the fiscal year.

ARTICLE 716

The auditor shall report to the next general meeting on the irregularities and inaccuracies he discovered in the course of his duties.

Furthermore, he shall disclose to the Legal Department any offence he discovers in the course of his duties, provided that he shall not commit himself by such disclosure.

ARTICLE 717

The auditor as well as his assistants shall, subject to the provisions of Article 716 of this Uniform Act, be bound to professional secrecy regarding the facts, acts and information they have knowledge of in the course of their duties.

Section 2 Rights of the auditor

ARTICLE 718

The auditor shall, at any time of the year, carry out any verifications and audits which he deems appropriate and may demand and have produced before him immediately any document he deems relevant to the exercise, in particular contracts, books, accounting documents and minutes registers.

The auditor may in the course of this exercise enlist under his responsibility the assistance or representation of any experts or collaborators of his choice whom he shall make known by name to the company. The experts or collaborators so chosen shall have the same powers of investigation as those of the auditor.

Parent companies or subsidiaries within the meaning of Articles 178 to 180 of this Uniform Act may be subject of the investigations provided for in this article.

ARTICLE 719

Where many auditors are appointed, they may carry out their investigations and audits separately but they shall draw up a joint report.

In case of disagreement among the auditors, the report shall indicate the different opinions expressed.

ARTICLE 720

The auditor may also collect all the information relevant in the performance of his duties from third parties who carried out transactions on behalf of the company. However, this right of information may not cover the communication of documents, contracts and other documents of any nature kept by third parties, unless the auditor is authorized to obtain such contracts and documents in an order of the president of the competent court giving a summary judgment.

Professional secrecy may not be raised against the auditor save by auxiliary officers of justice.

ARTICLE 721

The auditor shall compulsorily be invited to all meetings of shareholders, no later than at the time the shareholders are themselves summoned, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

ARTICLE 722

The auditor shall compulsorily be invited to the meeting, as the case may be, of the board of directors or of the Managing Director adopting the accounts of the fiscal year, as well as, where necessary, to any other meeting of the board or of the Managing Director.

The invitation shall be forwarded to the auditor no later than at the time of convening the members of the board of directors or, where the company is managed by a managing director, at least three days before the meeting by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

ARTICLE 723

The fees of the auditor shall be borne by the company.

The amount of the fees shall be a global sum to be shared among the auditors irrespective of their number.

ARTICLE 724

Travel and subsistence expenses incurred by the auditors in the discharge of their duties shall be borne by the company.

Likewise, the company may grant the auditor a special remuneration where he:

- 1°) carries out an additional professional activity, on behalf of the company, abroad;
- 2°) carries out special audits of accounts of companies in which the audited company holds a share or intends to hold a share;
- 3°) performs temporary duties entrusted to him by the company at the request of a public authority.

CHAPTER 4 LIABILITY OF THE AUDITOR

ARTICLE 725

The auditor shall be liable, to the company and as well as to third parties, for the actionable wrongs which he commits in the course of his duties.

However, he shall not be liable for information given or disclosures made by him in the course of his duties, in accordance with the provisions of Article 153 of this Uniform Act.

ARTICLE 726

The auditor shall not be liable for any damage resulting offences committed by the members of the board of directors or by the Managing Director, as the case may be, except where he had knowledge of them and failed to mention same in his report to the general meeting.

ARTICLE 727

Any civil action against the auditor shall lapse after three years from the date of commission of the tort or, where such tort was hidden, from the date of its disclosure.

Where such deed is described as a felony, the action shall lapse after ten years.

CHAPTER 5 TEMPORARY OR PERMANENT INCAPACITY OF THE AUDITOR TO PERFORM

ARTICLE 728

Where the auditor is unable to perform his duties or resigns or dies, his duties shall be performed by the alternate until the auditor is available or, where he is permanently absent, until the expiry of the mandate of the substantive auditor.

Where the impediment ceases, the substantive auditor shall resume duty following the next ordinary general meeting which approves the accounts.

ARTICLE 729

Where the alternate auditor is called upon to perform the duties of the substantive auditor, a new alternate shall be appointed during the next ordinary general meeting. The mandate of the alternate so appointed shall automatically expire when the cause of the disability of the substantive auditor ceases and he resumes duty.

ARTICLE 730

One or more shareholders representing at least 10% of the company's capital as well as the Legal Department may bring an action before the court for the recusal of auditors appointed by the ordinary general meeting.

Where the court grants the application for recusal, a new auditor shall be appointed by the court. He shall hold office until the assumption of duty by the auditor to be appointed by the meeting of shareholders.

ARTICLE 731

One or more shareholders representing at least 10% of the company's capital, the board of directors or the managing director, as the case may be, the ordinary general meeting or the Legal Department may bring an action before the court for the dismissal of the auditor in case of misconduct on his part or where he is unable to perform his duties.

ARTICLE 732

The action for recusal or for the dismissal of the auditor shall be brought before the president of the competent court who shall give a summary judgment.

The writ of summons shall be issued against the auditor and the company.

The action for recusal shall be filed within 30 days from the date of the general meeting which appointed the auditor.

ARTICLE 733

Where the action is initiated by the Legal Department, it shall be filed by way of a petition. Parties other than the representative of the Legal Department shall be summoned at the instance of the court registrar by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

ARTICLE 734

The time limit for filing an appeal against the decision of the president of the competent court shall be 15 days from the date of notification of the said decision to the parties.

SUB-TITLE 8

WINDING-UP OF PUBLIC LIMITED LIABILITY COMPANIES

ARTICLE 735

The provisions of Articles 736 and 737 of this Uniform Act shall not apply to companies under legal redress or in liquidation.

ARTICLE 736

A public limited company shall be wound up for reasons common to all companies under the conditions and with the effects stipulated in Articles 200 to 202 of this Uniform Act. A public limited company shall also be wound up in case of partial loss of its assets under the conditions laid down in Articles 664 to 668 of this Uniform Act.

ARTICLE 737

Shareholders may pronounce the premature winding up of the company.

The decision shall be by a resolution of the extraordinary general meeting of shareholders.

**SUB-TITLE 9
CIVIL LIABILITY**

**CHAPTER 1
LIABILITY OF PROMOTERS**

ARTICLE 738

The promoters of the company who are responsible for the nullity of the company and the directors or Managing Director in office at the time when the nullity of the company occurred may be declared jointly and severally liable for damage suffered by shareholders or third parties as a result of the nullity of the company.

Shareholders whose contributions or benefits have not been verified and approved may also be jointly and severally liable.

ARTICLE 739

Action for liability on grounds of nullity of the company shall lapse under the conditions laid down in Article 256 of this Uniform Act.

**CHAPTER 2
LIABILITY OF DIRECTORS**

ARTICLE 740

The directors or the Managing Director, according to the circumstances, shall be jointly or severally liable to the company or to third parties either for the offences committed in violation of the laws and regulations applicable to public limited companies or for violation of the provisions of the Articles of Association or for wrongs committed in their management.

Where many directors took part in the commission of the same acts, the competent court shall determine the contribution of each of them in the award of the damages.

ARTICLE 741

In addition to the action for the award of personal damages, the shareholders may, either individually or collectively, institute proceedings in the company's interest, as the case may be, against the directors or the managing director.

Shareholders may, where they represent at least 5% of the company's capital, authorize, in their common interest and at their expense, one or more shareholders to represent them in prosecuting or defending an action involving the company.

The withdrawal of one or more of the said shareholders from the action either voluntarily or because of loss of their status as shareholders shall have no effect on the continuation of the said action.

The plaintiffs may institute proceedings for the reparation of all the injuries suffered by the company for which, where necessary, damages may be awarded.

ARTICLE 742

Any clause of the Articles of Association subjecting the institution of the action in the company's interest to a prior notice or to the authorization of the general meeting, or imposing in advance renunciation of the institution of such action shall be void.

No decision of the general meeting may extinguish an action against the directors or the managing director, as the case may be, for wrong committed in the course of their duties.

ARTICLE 743

A civil action against the directors or the Managing Director, both in the company's interest and individual interest, shall lapse after three years from the date of commission of the wrong or, where it was concealed, from the date of disclosure. However, where it is a felony, the action shall lapse after ten years.

TITLE 2 TRANSFERABLE SECURITIES

CHAPTER 1 COMMON PROVISIONS

Section 1 Definition

ARTICLE 744

Public limited companies shall issue transferable securities whose form, class and characteristics shall be listed in this Title.

Transferable securities shall confer identical rights per category and shall give access directly or indirectly to a quota of the capital of the issuing company or a right to a general claim on its estate. They shall be indivisible with regard to the issuing company.

The issue of partnership or founder's shares shall be forbidden.

Section 2 Form of securities

ARTICLE 745

Shares and bonds shall be in the form of bearer bond or registered securities irrespective of whether they are issued against non-cash contributions or cash contributions.

However, registered securities may be the exclusive form imposed by the provisions of this Uniform Act or by the Articles of Association.

ARTICLE 746

The owner of securities which are part of an issue comprising bearer bonds shall have the option, notwithstanding any clause to the contrary, to convert his bearer bonds into registered securities and vice-versa.

Section 3

Pledge of securities

ARTICLE 747

Subject to the provisions of Articles 772 and 773 of this Uniform Act, the pledge of transferable securities registered in an account shall be effected, with respect to both the issuing corporate person and third parties, by a statement dated and signed by the holder of the securities. The statement shall contain the amount of money due as well as the amount and nature of the securities pledged.

The secured bonds shall be transferred into a special account opened in the name of the holder of the securities and kept by the issuing corporate person or the financial broker, as the case may be.

A certificate of pledge shall be issued to the pledgee.

In case of a collective action for the wiping off of debts of the intermediary financial broker who keeps the account, the holders of the securities entered in the account shall have all their rights transferred into an account kept by another financial broker or by the issuing corporate person.

The competent court shall be informed of such transfer. Where the entries in the account are insufficient, the holders of the securities shall make a declaration thereof to the representative of the creditors for their rights to be supplemented.

The pledge of registered securities provided for in Article 764 1) below shall be carried out by registration in the transfer registers of the company. The same shall apply in the case of sequestration of goods.

CHAPTER 2

PROVISIONS RELATING TO SHARES

Section 1

Different classes of shares

ARTICLE 748

Shares issued for cash shall be shares whose amount is paid up in cash or by set-off of certain, liquid and due claims on the company, shares which are issued following the incorporation of reserves, profits or issue premiums and shares whose amount is made up in part of an incorporation of reserves, profits or issue premiums and in part of an issue for cash. Shares issued for cash shall be fully paid up during subscription.

All the other shares shall be non-cash shares.

ARTICLE 749

A share issued for cash shall be a registered share until it is fully paid up.

A non-cash share shall be convertible into a bearer bond only after two years.

ARTICLE 750

The nominal amount of shares or share denominations may not be lower than ten thousand (10 000) CFA francs.

Section 2 Rights attached to shares

Paragraph 1 Voting rights

ARTICLE 751

Each share shall have voting rights proportional to the percentage of share capital it represents and shall give right to at least one vote.

ARTICLE 752

A voting right double the right conferred on other shares, may in view of the percentage of share capital represented, be conferred by the Articles of Association or the extraordinary general meeting on fully paid-up registered shares where there is justification that the shares have been registered for at least two years in the name of the same shareholder.

Likewise, where share capital has been increased through capitalization of reserves, profits or issue premiums, double voting rights may, from the time of issue, be conferred on registered shares freely allotted to a shareholder in proportion to the number of his old shares which already enjoy this right.

ARTICLE 753

Any share converted into a bearer share shall lose the double voting right.

Paragraph 2 Right to dividend

ARTICLE 754

Each share shall have a right to dividend proportional to the percentage of share capital it represents. The Articles of Association or the extraordinary general meeting may grant shares a right to the first dividend.

ARTICLE 755

Notwithstanding the provisions of Article 754 of this Uniform Act, during the formation of a company or during its existence, preference shares may be issued having preferential rights in relation to all the other shares. These rights may particularly consist in a bigger share in the profits or bonus after liquidation, a preferential right to profits and cumulative dividends.

ARTICLE 756

Notwithstanding any clause to the contrary in the Articles of Association of the issuing company, the totality of interest, dividends or other periodic revenue accruing to shares for a specific company fiscal year shall be paid in a lump-sum.

The date of payment of the lump-sum shall be fixed by the general meeting of shareholders. The general meeting may, however, request the board of directors to fix the said date.

Paragraph 3
Pre-emptive right of subscription

ARTICLE 757

Shareholders shall have proportionately to the amount of their shares, a pre-emptive right of subscription for shares issued for cash in order to increase capital.

This right shall be negotiable under the same conditions as the share itself during the subscription period.

ARTICLE 758

The application of the provisions of Article 757 of this Uniform Act may only be set aside by the general meeting sitting under the conditions of quorum and majority of an extraordinary meeting, and the deliberations shall not be valid unless the board of directors or the managing director, as the case may be, indicates in their report to the general meeting the reasons for the increase of capital and the persons to whom the new shares shall be allotted, together with the number of shares allotted to each person, the issue price and the basis on which such price was determined.

Section 3
Negotiability of shares

ARTICLE 759

Shares shall be negotiable only after registration of the company in the Trade and Personal Property Rights Register or entry therein of the statement of amendment following an increase of capital.

ARTICLE 760

Negotiation of a promise of shares shall be prohibited except where it concerns shares still to be issued in case of an increase of capital for a company whose existing shares are already registered on the securities list of a stock exchange of one or more States Parties. In such case, negotiation shall not be valid unless it is conditioned on the realization of the increase of capital. Failing an express statement, this condition shall be presumed.

ARTICLE 761

Shares issued for cash shall not be negotiable until they have been fully paid up.

ARTICLE 762

Shares shall remain negotiable after the winding up of the company and until the close of liquidation.

ARTICLE 763

The annulment of a company or of an issue of shares shall not imply the nullity of the negotiations which took place prior to the decision to dissolve, where the shares appear to be valid. However, a purchaser may take action against the vendor on the guarantee.

Section 4

Transfer of shares

ARTICLE 764

In principle, shares shall be freely transferable. The transfer of shares shall be carried out according to the following procedure:

1°) for companies not making a public call for capital:

by transfer on the registers of the company, for registered shares, the holder's rights resulting from the single registration on the company's registers;

by simple delivery for bearer shares. The bearer of the share shall be deemed to be the owner;

2°) for companies making a public call for capital:

besides the above procedure whether for registered or bearer shares, the shares may be represented by registration in an account opened in the name of their proprietor and held either by the issuing company or a financial intermediary approved by the Minister in charge of the Economy and Finance. In such case the transfer shall take place by transfer from one account to another.

Section 5

Limitations to the transfer of shares

ARTICLE 765

Notwithstanding the principle of free transferability stated in Article 764 of this Uniform Act, the Articles of Association may lay down certain limitations to the transfer of shares under the following conditions:

1°) the limitation clauses shall not be valid in a company unless all its shares are registered;

2°) the Articles of Association may provide that the transfer of shares to a third party who is an outsider to the company either free of charge or for payment shall be subject to approval by the board of directors or the ordinary general meeting of shareholders ;

3°) limitations to the transfer of shares may not operate in case of succession, liquidation of the community of property between spouses or of transfer to a spouse or an ascendant or a descendant.

ARTICLE 766

Where approval is given by the meeting, the transferor shall not take part in the vote and his shares shall be deducted when calculating the quorum and the majority. The same shall apply where the transferor is a director, and the approval is given by the board of directors.

ARTICLE 767

Where an approval clause is applicable, the transferor shall attach to his application for approval addressed to the company by hand-delivered letter against a receipt, or by registered letter with a request for acknowledgement of receipt, by telex or fax, the full names, capacity and address of the proposed transferee, the number of shares earmarked for transfer and the price offered.

ARTICLE 768

Approval shall result from notification or from failure to reply within a time limit of three months from the date of the application.

ARTICLE 769

Where the company does not approve the proposed transferee, the board of directors or the managing director, as the case may be, shall, within a period of three months from notification of the refusal, cause the shares to be acquired by a shareholder, a third party, or, with the consent of the transferor, by the company with a view to a reduction of capital.

ARTICLE 770

Failing an agreement between the parties, the transfer price shall be determined by an expert designated by the president of the competent court at the request of the more diligent party.

ARTICLE 771

Where at the expiry of the three-month period, the purchase has not taken place, the approval shall be deemed to be granted. However, where an expert has been designated by the president of the competent court to fix the price, the time limit may be extended for a period not exceeding three months by the court which designated the expert.

Section 6 Pledge of shares

ARTICLE 772

Where the company has given its consent for a plan to pledge shares, such consent shall mean approval of the transferee in case of compulsory sale of the pledged shares, unless the company prefers to redeem the shares without delay with a view to reducing its capital.

A plan to pledge shares shall not be binding on the company unless it was approved by the organ designated for that purpose by the Articles of Association to approve the transfer of shares.

ARTICLE 773

The plan to pledge shall first have been sent to the company by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, by telex or fax, stating the full names and the number of shares to be pledged.

Agreement shall result from acceptance of the pledge notified in the same form as the application for approval of the pledge, or from failure to reply within the time limit of three months from the date of the application.

Section 7 Failure to pay up shares

ARTICLE 774

At least one quarter of the value of shares shall be paid up on subscription; the balance shall be paid up as the board of directors makes calls within a maximum period of three years from the date of subscription.

ARTICLE 775

In case of non-payment of the balance on the shares that have not been fully paid up at the time fixed by the board of directors or the managing director, as the case may be, the company shall

send a formal notice to the defaulting shareholder by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

One month after such formal notice has gone unheeded; the company shall on its own initiative take over the sale of the shares. With effect from the same date, shares for which the amount owed has not been paid shall cease to give right to votes in shareholders' meetings and shall be deducted when calculating the quorum and the majority.

Upon the expiry of the time limit of one month, the right to dividend and the pre-emptive right of subscription to increases of capital attached to such shares shall be suspended until the sums owed are paid up.

ARTICLE 776

In the case referred to in Article 775, paragraph 2 of this Uniform Act, the sale of quoted shares shall take place on the stock exchange, whereas the sale of unquoted shares shall take place at a public auction conducted by a stockbroker or a notary public.

Before carrying out the sale referred to in the preceding paragraph, the company shall publish in a newspaper empowered to publish legal notices, thirty days following the formal notice provided for in Article 775 of this Uniform Act, the number of the shares on sale. The company shall notify the debtor and, where necessary, his co-debtors of the sale by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt containing an indication of the date and number of the newspaper in which publication was made. The actual sale of shares may not take place less than 15 (fifteen) days after the despatch of the hand-delivered letter against a receipt or the registered letter with acknowledgement of receipt.

The defaulting shareholder shall remain debtor or benefit from the balance. The defaulting shareholder shall bear all the costs incurred by the company in carrying out the sale.

ARTICLE 777

The defaulting shareholder, successive transferees and subscribers shall be jointly and severally liable for the unpaid amount of the share.

The company may take action against them before or after the sale, or at the same time, to obtain the sum owed and a refund of the costs incurred.

Any person who pays off the company shall be entitled to take action for the entire sum against successive holders of the share. The final charge on the debt shall fall to the last of such holders.

Section 8 Redemption of shares

ARTICLE 778

Redemption of shares by the casting of lots shall be prohibited notwithstanding any legislative, statutory or contractual provisions to the contrary.

**CHAPTER 3
PROVISIONS RELATING TO BONDS**

**Section 1
General provisions**

**Paragraph 1
Definition**

ARTICLE 779

Bonds shall be negotiable instruments which, for one and the same issue, shall confer the same rights to a claim for the same nominal value.

**Paragraph 2
Conditions of issue**

ARTICLE 780

The issue of bonds shall only be allowed for public limited companies and economic interest groups made up of public limited companies, which have existed for two years and have drawn up two balance-sheets duly approved by the shareholders.

ARTICLE 781

The issue of bonds shall be prohibited for companies whose capital is not fully paid up.

ARTICLE 782

The issue of lottery bonds shall be prohibited.

ARTICLE 783

The general meeting of shareholders shall have the sole prerogative to decide on or authorize the issue of bonds. It may delegate to the board of directors or the managing director, as the case may be, the necessary powers to issue bonds in one or more instalments within a period of two years and to lay down the conditions thereof.

ARTICLE 784

Any bonds redeemed by the issuing company and paid for shall be cancelled and may not be re-floated.

**Paragraph 3
Grouping of bondholders**

ARTICLE 785

Holders of bonds issued at the same time shall as of right be grouped together to defend their interests in an organization having legal personality. However, where bonds are issued successively and a clause in each contract of issue so provides, the company may bring together bondholders having identical rights into a single group.

ARTICLE 786

The group shall be represented, according to the decision taken by the general meeting of bondholders which elected them, by one to three representatives.

ARTICLE 787

The mandate of representative of the group may be conferred only on natural or corporate persons resident in the State Party of the head office of the debtor company.

The following may not be chosen to represent the group:

- 1°) the debtor company;
- 2°) companies having a share in the debtor company;
- 3°) companies which have guaranteed all or part of the commitments of the debtor company;
- 4°) managers or directors of the debtor company or of any company having a share in its capital, as well as their ascendants, descendants or spouses;
- 5°) employees of the companies referred to above;
- 6°) the auditor of the companies referred to above;
- 7°) persons who have forfeited their right to be director, administrator or manager a company in any capacity whatsoever.

ARTICLE 788

In emergency cases, representatives of the group may be designated by the president of the competent court on the application of any interested party.

ARTICLE 789

Representatives of the group may be relieved of their right of representation by the general meeting of bondholders.

ARTICLE 790

Representatives of the group shall, unless otherwise restricted by the general meeting of bondholders, have the power to carry out in the name of the group and of all the bondholders any acts of management to defend the common interests of the bondholders.

ARTICLE 791

Representatives of the group may not interfere in the management of the company. They may take part in the meetings of shareholders but in an advisory capacity. They shall have the right to be served any documents available to shareholders under the same conditions as the shareholders.

ARTICLE 792

In case of liquidation or judicial fiscal adjustment of the company, the representatives of the group of bondholders shall be competent to act in the company's name. Under the liabilities column of the liquidation of assets or judicial fiscal adjustment of the company, they shall declare

for all the bondholders of the group the amount of the capital and interest owed by the company to the bondholders of the group.

They shall not be required to produce the bonds of the bondholders of the group to justify their declaration. In case of difficulty, any bondholder may apply to the president of the competent court to appoint a receiver to make the said declaration and represent the group.

ARTICLE 793

Where the liquidation or adjustment procedure cannot continue because of insufficient assets the group representative or court appointed special manager shall recover the debts due to the bondholders.

The costs incurred in representing the bondholders during the process of liquidation of assets or judicial adjustment of the company shall be borne by the company and shall be considered as receivership expenses.

ARTICLE 794

Remuneration of the group representatives shall be determined by the general meeting or by the contract of loan. It shall be borne by the debtor company.

Where the said remuneration is not fixed, or where the amount is challenged, it shall be determined by the president of the competent court.

Section 2

General meeting of bondholders

Paragraph 1 Convening

ARTICLE 795

The general meeting of bondholders of the same group may hold at any time.

ARTICLE 796

The general meeting shall be convened by the representatives of the group of bondholders or, where necessary, by the board of directors or the managing director, as the case may be, or by the liquidator during liquidation.

The general meeting may also be convened at the request of bondholders representing at least one-thirtieth of bonds of the company by the group representatives or by a receiver designated by the president of the competent court.

ARTICLE 797

The convening of the meeting of bondholders shall be done under the same conditions of form and time limit as for shareholders' meetings. The same shall apply for communicating to bondholders the draft resolutions to be proposed and the reports to be presented at the meeting.

Paragraph 2 Compulsory particulars

ARTICLE 798

The convening notice to the meeting shall contain particulars in respect of the following:

1°) particulars as to the loan subscribed to by the bondholders for which the group is convened;

- 2°) the full names and address of the person who took the initiative to convene the meeting and the capacity in which he is acting;
- 3°) where necessary, the date of the court decision appointing the receiver responsible for convening the meeting.

ARTICLE 799

Any meeting convened irregularly may be annulled. However, the action for annulment shall not be entertained where all the bondholders of the group concerned are present or represented.

Paragraph 3 Agenda

ARTICLE 800

The agenda shall be drawn up by the convenor. However, one or more bondholders representing at least one-thirtieth of the company's bonds shall have the option of requesting that draft resolutions be included on the agenda.

The draft resolutions shall be included on the agenda and submitted to the meeting by the chairperson for approval.

The meeting may not deliberate on any matter which is not included on the agenda.

On the second invitation, the agenda may not be amended.

Paragraph 4 Representation

ARTICLE 801

Every bondholder shall be entitled to participate in the meeting or be represented by any person of his choice.

Persons who may not represent the group by virtue of Article 787 of this Uniform Act may not represent bondholders in the meeting.

Paragraph 5 Conduct of meetings

ARTICLE 802

The meeting shall be presided over by a representative of the group. Where there are several representatives and there is disagreement among them, the meeting shall be presided over by a bondholder in attendance representing the highest number of bonds.

Where the meeting is convened by an official receiver, it shall be presided over by him.

The rules governing the conduct of shareholders' meetings shall apply, where appropriate, to bondholders' meetings.

ARTICLE 803

The ordinary meeting of bondholders shall deliberate on the appointment of the group's representatives, their term of office, determination, where necessary, of their remuneration, their

alternate, summoning them and any other measure intended to ensure the defence of bondholders and the execution of the loan contract, on the management expenditure that such measures could incur and, in general, on all measures of a protective or administrative nature.

ARTICLE 804

The extraordinary meeting of bondholders shall deliberate on every recommendation likely to modify the loan contract, in particular the following:

- 1°) the change of object or form of the company;
- 2°) its merger or division;
- 3°) any proposal of compromise or settlement of rights in dispute or rights which have been the subject of a court decision;
- 4°) the total or partial modification of guarantees or extension of due date;
- 5°) change of registered office;
- 6°) winding up of the company.

Paragraph 6 Voting rights

ARTICLE 805

Voting rights attached to bonds shall be proportionate to the fraction of the amount of the loan which they represent.

Each bond shall give right to at least one vote.

Bondholders may vote by correspondence under the same conditions and form as shareholders in shareholders' meetings.

ARTICLE 806

A company holding at least 10% of the capital of the debtor company may not vote during the meeting using the bonds it holds.

ARTICLE 807

In case of break-up of ownership of the bonds, the voting right shall belong to the bare owner, unless otherwise provided by the parties.

Paragraph 7 Resolutions of the meeting

ARTICLE 808

The meetings may neither increase the responsibility of bondholders nor set up an unequal treatment of bonds of the same issue.

ARTICLE 809

Failing approval by the general meeting of bondholders of the proposals made by the company relating to an amendment of its form or objects, the company may override this by redeeming the bonds before implementing the change of its form and objects.

ARTICLE 810

Where the general meeting of bondholders fails to approve the company's proposals regarding its merger or division, the company may override this and the bondholders shall maintain their rights as bondholders in the acquiring company or in the new company created from the merger or in the companies created from the division, as the case may be.

Where the company decides to override the failure of the said general assembly to give approval, the chairperson managing director, the general manager or the managing director, as the case may be, shall inform the representative of the bondholders' group thereof by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

The group of bondholders may file an opposition to the merger or division with the president of the competent court.

The said president may dismiss the action or order a refund of the bonds or that guarantees be provided if the acquiring company or the company being divided offers guarantees which are deemed sufficient.

ARTICLE 811

In case of winding up of the company not resulting from merger or division, refund of the bonds shall be immediately due.

ARTICLE 812

Judicial adjustment of the company shall not put an end to the functioning or the role of the general assembly of bondholders.

Paragraph 8 Individual bondholders' rights

ARTICLE 813

Bondholders may not exercise individual control over the company's transactions or be sent company documents.

They shall have the right, at their own expense, to obtain from the company a copy of reports and attendance lists of bondholders' meetings of the group to which they belong.

ARTICLE 814

In the absence of special clauses in the contract of loan, the company may not force the bondholders to accept a reimbursement before term of the bonds.

Paragraph 9 Guarantees in respect of bonds

ARTICLE 815

The general meeting of shareholders which decides to issue bonds may decide that the bonds will be secured.

The meeting shall determine what securities to offer or shall delegate to the board of directors or the managing director, as the case may be, the power to determine it.

ARTICLE 816

The securities shall be formed by the company before issue in a special deed for the benefit of the group of bondholders being formed.

The formalities of publishing the securities shall be complied with before any subscription of bonds.

ARTICLE 817

Acceptance of the guarantee shall be evidenced only by subscription. It shall take effect from the date of registration for those securities subject to registration and on the date of their subscription for the other securities.

ARTICLE 818

Within a period of six months from the opening of subscription, the result of the subscription shall be recorded in a notarial deed at the instance of the legal representative of the company.

Within a period of thirty days from the date of preparation of the deed, the results of the subscription shall be entered on the margin of the security.

Where the issue of bonds is not realized because there is little or no subscription, registration shall be cancelled.

ARTICLE 819

Renewal of the security shall be done at the expense of the company, under the responsibility of its statutory representatives.

The representatives of the group shall be responsible for ensuring compliance with the provisions relating to renewal of registration.

ARTICLE 820

Discharge of the mortgage may only be done by the group's representatives and on condition that the loan has been repaid in full and that all the interest has been paid.

Furthermore, it shall be necessary for the representatives to be expressly authorized by the general assembly of bondholders of the group to discharge the mortgage.

ARTICLE 821

Any securities provided after the issue of bonds shall be granted by the legal representatives of the company either upon the authorization of the ordinary general meeting of shareholders or, where the articles so provide, by the board of directors or the managing director.

Acceptance by the group shall be by an express act.

CHAPTER 4 OTHER TRANSFERABLE SECURITIES

ARTICLE 822

When the issue of securities representing claims on the issuing company or giving right to subscribe or acquire a transferable security representing claims, it may be provided that the said transferable securities shall only be redeemed after the other creditors have been paid off, excluding holders of equity-type loans.

TITLE 3

PROVISIONS PECULIAR TO PUBLIC LIMITED COMPANIES MAKING PUBLIC CALL FOR CAPITAL

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 823

Without prejudice to the provisions which may govern the stock exchange and the acceptance of transferable securities on the exchange, incorporated companies or those in the process of making a public call for capital by the issue of shares shall fall under the general rules governing public limited companies and the special provisions of this title.

The provisions of this title shall override the general provisions governing the form of public limited companies in case of incompatibility between the two sets of rules.

ARTICLE 824

The minimum capital of a company whose shares are listed on the stock exchange of one or more State Parties or of a company making a public call for capital for the sale of its shares in one or more State Parties shall be one hundred million (100 000 000) CFA francs.

The registered capital may not be lower than the amount stipulated in the preceding paragraph unless the company changes into another form of company.

In case of failure to comply with the provisions of this article, any interested party may apply to the court for the winding up of the company. Such winding up may not be pronounced where, on the day the court is giving its judgment on the merits of the case, the matter has been regularized.

CHAPTER 2

FORMATION OF A COMPANY

ARTICLE 825

The promoters shall publish, before subscription for shares begins, a prospectus in newspapers empowered to publish legal notices in the State Party of the registered office of the company and, as the case may be, in the State Parties where a public call for capital is made.

ARTICLE 826

The prospectus referred to in the preceding article shall contain the following details:

- 1°) the name of the company being formed followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the registered capital;
- 4°) the company's object;

- 5°) the address of the registered office;
- 6°) the duration of the company;
- 7°) the number of shares subscribed to, for cash and the amount immediately due comprising, as the case may be, the agio on issue;
- 8°) the nominal value of the shares to be issued, with a distinction made, where necessary, between each category of shares;
- 9°) a summary description of non-cash contributions, their total valuation and their mode of remuneration, with an indication of the provisional nature of the said valuation and the mode of remuneration;
- 10°) the special benefits stipulated in the draft Articles of Association in the interest of any person;
- 11°) the conditions of admittance to shareholders' meetings and of exercising the voting rights with an indication, where necessary, of the provisions relating to the granting of the double voting right;
- 12°) where necessary, the clauses relating to the approval of transferees of shares;
- 13°) the provisions relating to the sharing of profits, the building up of reserves and the sharing of the bonus after liquidation;
- 14°) the full names and address of the notary public or the corporate name and registered office of the bank in which the funds from the subscription shall be deposited;
- 15°) the time limit open for subscriptions with an indication of the possibility of early closure in case the full subscriptions are made before the expiry of the said time limit;
- 16°) the procedure for convening the constituent general meeting.

The prospectus shall be signed by the promoters and it shall state:

- 1°) in case of natural persons, their usual full names, address and nationality;
- 2°) in case of corporate persons, their name, form, registered office and, as the case may be, the amount of the registered capital.

ARTICLE 827

To inform the public about the forthcoming issue of shares, circulars shall be written reproducing the contents of the prospectus provided for in Article 826 of this Uniform Act.

The circulars shall contain a statement to the effect that the prospectus has been published in the newspapers empowered to publish legal notices. They shall make reference to the publication number of the said newspapers.

Furthermore, the circulars shall make known the plans of the promoters regarding the use of the funds derived from the payments of the shares subscribed.

Posters and notices in newspapers shall reproduce the same information or at least extracts from such information with reference to the prospectus and an indication of the number of the newspapers empowered to publish legal notices in which the prospectus was published.

CHAPTER 3 FUNCTIONING OF THE COMPANY

Section 1 Administration of the company

ARTICLE 828

Companies making a public call for capital in order to sell their shares in one or more State Parties or whose shares are listed on the stock exchange of one or more State Parties shall be bound to have a board of directors.

ARTICLE 829

The board of directors of the companies referred to in Articles 828 to 853 of this Uniform Act shall, as of necessity, comprise at least three members and at most fifteen members where its shares are listed on the stock exchange.

However, to include the total number of directors in office for more than six months in the merged companies in case of a merger involving one or more companies whose shares are quoted on the stock exchange of one or more State Parties, the number of members may exceed fifteen but may not exceed twenty.

No new directors may be appointed even to replace directors who are deceased, dismissed or have resigned as long as the number of directors has not been reduced to fifteen where the shares of the company are quoted on the stock exchange of one or more State Parties.

Where a company quoted on the stock exchange of one or more State Parties is struck off from those stock exchanges, the number of directors shall as soon as possible be reduced to twelve.

Within the various limits fixed above, the number of directors shall be freely determined in the Articles of Association.

ARTICLE 830

The Chairperson Managing Director, the General Manager of a company whose shares are quoted on the stock exchange of one State Party and the natural or corporate persons performing the duties of director in the company shall be required, within the time limit fixed in the second paragraph of this article, to obtain registered status for the shares belonging to them personally or those belonging to their unemancipated minor children issued by the company itself, by its subsidiaries, by the company of which it is a subsidiary or by the other subsidiaries of such company, where the shares are quoted on the stock exchange of one or more State Parties.

The time limit referred to in the preceding paragraph shall be one month from the date on which the persons concerned acquire the capacity making them subject to the provisions by the preceding paragraph. The time limit shall be twenty days from the date of entry into possession where the persons concerned acquire the shares referred to in the first paragraph of this article.

The preceding provision shall apply to the permanent representatives of corporate persons performing the duties of director in the companies whose shares are quoted on the stock exchange of one or more State Parties. They shall also apply to the spouses (not separated) of all the persons referred to in this article.

Failure to obtain the registered status for the shares, the persons concerned shall deposit them in a bank or with a stock broker.

Section 2 **Shareholders' meetings**

ARTICLE 831

Before the meeting of shareholders, companies making public call for capital in order to sell their shares or companies whose shares are registered in one or more State Parties shall be required to publish in newspapers empowered to publish legal notices of the State Party of the registered office and, where necessary, of the other State Parties where a public call for capital issue is made, a notice containing the following:

- 1°) the company name followed, where necessary, by the acronym of the company;
- 2°) the form of the company;
- 3°) the amount of its capital;
- 4°) the address of its registered office;
- 5°) the agenda of the meeting;
- 6°) the text of the draft resolutions which shall be presented to the assembly by the board of directors;
- 7°) the place where the shares shall be deposited;
- 8°) except where the company sends out to shareholders a form for voting by correspondence, the places and conditions under which the said forms may be obtained.

Section 3 **Modification of registered capital**

ARTICLE 832

Shareholders and investors shall be informed of the issue of new share and the conditions thereof either by a notice inserted in the prospectus published in newspapers empowered to publish legal notices in the State Party of the head office and, as the case may be, of the other State Parties in which a public call for capital is made or by hand-delivered letter against a receipt or by registered letter with a request for notice of delivery where the shares of the company are registered.

ARTICLE 833

The prospectus containing the company's seal and the hand-delivered letter against a receipt or by registered letter with a request for notice of delivery shall contain the following information:

- 1°) the name of the company followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) a summary of the company's objects;
- 4°) the amount of the registered capital;
- 5°) the address of the registered office;

- 6°) the registration number of the company in the Trade and Personal Property Rights Register;
- 7°) the normal expiry date of the company;
- 8°) the amount of increase of capital;
- 9°) the dates of commencement and close of subscription;
- 10°) the full names or company name, the address of registered office of the depositary;
- 11°) the categories of shares issued and their characteristics;
- 12°) the nominal value of the shares to be subscribed for in cash and, where necessary, the amount of the issue premium;
- 13°) the amount immediately due per share subscribed;
- 14°) the existence for the benefit of shareholders of the pre-emptive right of subscription to new shares as well as the conditions for exercising the said right;
- 15°) the special benefits stipulated by the Articles of Association in favour of any person;
- 16°) as the case may be, the statutory clauses restricting the free transfer of shares;
- 17°) the provisions relating to the sharing of profits, the building up of reserves and the sharing of bonus after liquidation;
- 18°) the unredeemed amount of the other bonds issued before and the securities covering them;
- 19°) the amount at the time of issue of the bond issues secured by the company and, where appropriate, the secured fraction of the said issues;
- 20°) where necessary, a summary description, assessment and mode of remuneration of non-cash contributions within the increase of capital, with an indication of the provisional nature of the assessment and mode of remuneration.

ARTICLE 834

A copy of the last balance-sheet, certified true by the legal representative of the company, shall be published in the annex to the prospectus referred to in Article 833 of this Uniform Act. Where the last balance-sheet has been published in a newspaper empowered to publish legal notices, a copy of the said balance-sheet may be replaced with an indication of the reference to the previous publication. Where a balance-sheet has not yet been drawn up, the prospectus shall so state.

ARTICLE 835

The circulars informing the public about the issue of shares shall reproduce the details of the prospectus referred to in Article 833 of this Uniform Act and shall contain a statement that the said prospectus has been published in newspapers empowered to publish legal notices alongside the reference number of the newspaper in which it was published.

The notices and posters in the newspapers shall reproduce the same information or at least an extract from such information with reference to the prospectus and an indication of the newspapers in which it was published.

ARTICLE 836

An increase of capital by public call which takes place less than two years after the formation of a company without such public call shall be preceded, under the conditions laid down in

Article 619 et seq. of this Uniform Act, by an audit of the assets and liabilities and, where necessary, of the special benefits granted.

ARTICLE 837

A public call without pre-emptive right of subscription to new shares which confer on their holders the same rights as old shares shall be subject to the following conditions:

- 1°) the call shall be realized within a period of three years from the date of the meeting which authorized it;
- 2°) for companies whose shares are listed on the stock exchange, the call price shall be at least equal to the average price recorded for those shares for twenty consecutive days chosen from the forty that precede the day call begins, after adjusting the average to take into account the difference in the date of enjoyment;
- 3°) for companies other than those referred to in paragraph (2) of this article, the issue price shall, at the company's choice, with account being taken of the difference in the date of enjoyment, be at least equal to the part of stockholders' equity per share as deduced from the last balance-sheet approved on the date of issue, or at a price fixed by an expert designated by the competent court giving a summary judgment.

ARTICLE 838

A public call without pre-emptive right of subscription to new shares which do not confer on their holders the same rights as old shares shall be subject to the following conditions:

- 1°) the call shall be realized within a period of two years from the date of the general meeting which authorized it;
- 2°) the issue price or conditions for fixing such price shall be determined by the extraordinary general meeting upon the report of the board of directors and the special report of the auditor.

Where the issue is not realized on the date of the annual general meeting following the decision, an extraordinary general meeting shall decide, upon the report of the board of directors and the special report of the auditors, on the maintenance or adjustment of the issue price or on the conditions for determining such price, failing which, the decision of the first meeting shall lapse.

ARTICLE 839

The general meeting which decides on the increase of capital may, in the interest of one or more persons designated by name or not, cancel the pre-emptive right of subscription.

Beneficiaries of this provision may not, under penalty of the decision being declared void, take part in the vote. The required quorum and majority shall be calculated after deducting the shares they own.

The issue price or the conditions for fixing such price shall be determined by the extraordinary general meeting upon the report of the board of directors and the auditor.

ARTICLE 840

An increase of capital shall be deemed to have been carried out where one or more credit establishments, within the meaning of the law regulating banking activities, irrevocably

guarantee its successful end. Payment of the paid-up fraction of the nominal value and of the totality of the issue premiums shall take place no later than the thirty-fifth day following the expiry of the time limit for subscription.

Section 4 **Investment of bonds**

ARTICLE 841

Where an investment of bonds is carried out by public call for capital in one or more State Parties, the issuing company shall fulfil in the State Party before the opening of subscription and prior to any other publicity measures, the formalities specified in Articles 842 to 844 of this Uniform Act.

ARTICLE 842

The company shall publish in newspapers empowered to publish legal notices a prospectus containing the following information:

- 1°) the name of the company followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the address of the registered office;
- 4°) the amount of the registered capital;
- 5°) the company's registration number in the Trade and Personal Property Rights Register;
- 6°) a summary of the company's objects;
- 7°) the normal expiry date of the company;
- 8°) the unredeemed amount of bonds issued earlier and the securities attached to them;
- 9°) the amount during the issue, of the bond issues secured by the company and, where necessary, the guaranteed fraction of such issues;
- 10°) the amount of the issue;
- 11°) the nominal value of the bonds to be issued;
- 12°) the rate and mode of calculation of the interest and other proceeds, as well as the method of payment;
- 13°) the period and conditions of reimbursement as well as the conditions of eventual redemption of the bonds;
- 14°) the securities provided, where necessary, for the bonds.

The prospectus shall contain the company signature.

ARTICLE 843

The following shall be annexed to the prospectus referred to in Article 842 of this Uniform Act:

- 1°) a copy of the last balance-sheet approved by the general meeting of shareholders, certified by the statutory representative of the company ;

- 2°) where the balance-sheet was closed on a date more than ten months before the start of issue, a statement of the company's assets and liabilities dating not more than ten months, drawn up under the responsibility of the board of directors or managers, as the case may be;
- 3°) information on the progress of the company's business since the beginning of the current fiscal year and, where appropriate, on the preceding fiscal year where the ordinary general assembly required to adjudicate on the summary financial statements has not yet held.

Where no balance-sheet has yet been drawn up, the prospectus shall so state.

The annexures provided for in paragraphs (1) and (2) of this article may be replaced, depending on the case, by the reference to the publication in newspapers empowered to publish legal notices of the last balance-sheet or the interim financial statement of the balance-sheet drawn up on a date not more than ten months prior to the date of issue, where the balance-sheet or statement has already been published.

ARTICLE 844

The circulars informing the public about the issue of bonds shall reproduce the information in the prospectus referred to in Article 842 of the Uniform Act, indicating the issue price and containing a statement about the publication of the said prospectus in a newspaper empowered to publish legal notices, with reference to the number of the newspapers in which the prospectus was published.

The posters and notices in newspapers shall reproduce the same information or at least an extract from the said information with reference to the prospectus and an indication of the numbers of the newspapers in which it was published.

Section 5 Bondholders' meetings

ARTICLE 845

Before the session of the meeting of bondholders, the notices convening the bondholders published in newspapers empowered to publish legal notices of the State Party of the registered office and, where necessary, of the other State Parties where a public call is made shall contain:

- 1°) the company's name followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the amount of the company's capital;
- 4°) the address of the registered office;
- 5°) the registration number of the company in the Trade and Personal Property Rights Register;
- 6°) the agenda of the meeting;
- 7°) the day, time and venue of the meeting;
- 8°) where necessary, the place or places where the bonds shall be submitted in order to obtain the right to take part in the meeting;
- 9°) an indication of the loan subscribed to by the bondholders whose group is convened for the meeting;

- 10°) the name and address of the person who took the initiative to convene the meeting and the capacity in which he acted;
- 11°) where appropriate, the date of the court decision designating the representative responsible for convening the meeting.

Section 6

Publicity

ARTICLE 846

The provisions of this section shall apply to companies whose shares are all or partially listed on the stock exchange of one or more State Parties.

Sub-section 1

Annual publicity

ARTICLE 847

The companies whose shares are listed on the stock exchange shall publish in a newspaper empowered to publish legal notices within a period of four months from the close of the fiscal year and no later than fifteen days before the date of the annual general meeting of shareholders, under a heading clearly showing that the publication concerns drafts not verified by the auditors:

- 1°) the summary financial statements (balance-sheet, profit and loss account, table of income and expenditure and annexed statement);
- 2°) the proposed allocation of income;
- 3°) for companies with subsidiaries or holdings, the consolidated summary financial statements, if available.

ARTICLE 848

Companies whose shares are listed on the stock exchange shall publish in a newspaper empowered to publish legal notices within a period of forty-five days following the approval of the summary financial statements by the ordinary general meeting of shareholders the following documents:

- 1°) the approved summary financial statements, containing the certificate of the auditors;
- 2°) the decision on the allocation of income;
- 3°) the consolidated summary financial statements containing the attestation of the auditors.

However, where these are exactly identical to those published in pursuance of Article 765 of this Uniform Act, only one notice making reference to the first publication and bearing the attestation of the auditor shall be published in a newspaper empowered to publish legal notices.

Sub-section 2

Publicity at the end of the first semester

ARTICLE 849

Companies whose shares are listed on the stock exchange of one or more State Parties shall, within a period of four months following the end of the first half of the fiscal year, publish in a

newspaper empowered to publish legal notices of the State Parties a table of trading operations and the profit and loss situation as well as a semester report of its trading operations accompanied by an attestation from the auditor on the authenticity of the information provided.

ARTICLE 850

The statement of operations and income shall show the pretax net amount of the turnover and income from the ordinary operations of the company. Each item on the statement shall show the figure of the corresponding item during the previous fiscal year and the first half of that year.

ARTICLE 851

The half-yearly progress report of its activity shall analyse the data on the turnover and the income of the first half of the year. It shall also describe the company's operations during this period and provide a forecast of the development of the operations up to the close of the fiscal year. Any important events which happened during the just-ended half year shall also be included in the report.

ARTICLE 852

Companies drawing up consolidated summary financial statements shall be required to publish their tables of trading operations and balance sheet and their half-yearly reports in consolidated form accompanied by an attestation from the auditor on the authenticity of the information provided.

Sub-section 3

Publicity - Subsidiaries of listed companies

ARTICLE 853

Companies not listed on the stock exchange, half of whose shares are held by one or more listed companies having:

- 1°) a balance-sheet above two hundred million (200 000 000) CFA francs; or
- 2°) a share portfolio with an inventory value or stock exchange value exceeding eighty million (80 000 000) CFA francs,

shall, within a period of forty-five days following the approval of the summary financial statements by the meeting of shareholders, publish in a newspaper empowered to publish legal notices the documents, approved summary financial statements containing the attestation of the auditors, and the decision to allocate the income.

BOOK 5
THE JOINT VENTURE

TITLE 1
GENERAL PROVISIONS

ARTICLE 854

A joint venture shall be an entity whose partners agree not to register it in the Trade and Personal Property Rights Register and not to give it a corporate personality. It shall not be subject to publicity.

The existence of a joint venture may be proved by any means.

ARTICLE 855

The partners shall freely agree on the object, duration, conditions of functioning, rights of partners and termination of the joint venture, subject to there being no derogation from the mandatory rules of the provisions common to companies, with the exception of those relating to corporate personality.

TITLE 2
RELATIONS AMONG PARTNERS

ARTICLE 856

Unless a different organization has been provided for, the relations between partners shall be governed by the provisions applicable to private companies.

ARTICLE 857

The assets necessary for the operation of the joint venture shall be placed at the disposal of the manager of the joint venture. However, each partner shall remain owner of the assets he places at the disposal of the joint venture.

ARTICLE 858

The partners may agree to put certain assets in joint ownership or that one of the partners, in relation to third parties, shall be owner of all or part of the assets he acquires with a view to the realization of the object of the joint venture.

ARTICLE 859

The assets acquired by application of funds or re-investment of joint earnings shall be deemed to be joint holdings throughout the duration of the joint venture, as well as assets which were joint before being placed at its disposal.

The same shall apply to assets which the partners may have agreed to put into joint ownership.

ARTICLE 860

Unless otherwise provided for by the articles, no partner may request the sharing of joint assets as long as the joint venture is a going concern.

**TITLE 3
RELATIONS WITH THIRD PARTIES**

ARTICLE 861

Each partner shall contract in his personal name and shall be solely liable to third parties.

However, where the partners act expressly in their capacity as partners towards third parties, each of those who acted shall be liable for the commitments of the others.

The liability for any bonds subscribed to under these conditions shall be unlimited, joint and several.

The same shall apply to a partner who, by interference, has made the contracting partner believe that he intended to commit himself on the partner's behalf and it is proved that he reaped profit from the enterprise.

**TITLE 4
WINDING UP OF THE JOINT VENTURE**

ARTICLE 862

A joint venture shall be dissolved by the same events which terminate a private company.

The partners may, however, agree in the Articles of Association or in a subsequent deed that the joint venture shall continue in business in spite of such events.

ARTICLE 863

Where the joint venture is of an unspecified duration, it may be wound up at any time after notification, by hand-delivered letter against a receipt or by registered letter with acknowledgement of receipt, from one partner to all the others, provided that the notification shall be in good faith and not at the wrong moment.

**BOOK 6
DE FACTO PARTNERSHIP**

ARTICLE 864

A de facto partnership shall exist where two or more natural or corporate persons act as partners without having formed between themselves one of the companies recognized by this Uniform Act.

ARTICLE 865

A de facto partnership shall exist where two or more natural or corporate persons form between themselves a company recognized by this Uniform Act but have not fulfilled the constituent legal formalities, or have formed between them a company not recognized by this Uniform Act.

ARTICLE 866

Any interested party may apply to the competent court of the principal place of activity of a de facto partnership between two or more persons for the recognition of the partnership whose identity or company name shall produce give.

ARTICLE 867

The existence of a de facto partnership shall be proved by any means.

ARTICLE 868

Where the existence of a de facto partnership is recognized by the judge, the rules governing private companies shall apply to the partners.

BOOK 7
THE ECONOMIC INTEREST GROUP

TITLE 1
GENERAL PROVISIONS

ARTICLE 869

An economic interest group shall be one which has the exclusive object of putting in place for a specified duration all the means necessary to facilitate or develop the economic activity of its members and to improve or increase income from the said activity.

Its activity shall mainly be connected with the economic activity of its members and shall not be of an auxiliary nature in relation thereto.

ARTICLE 870

The economic interest group shall not by itself give rise to the realization or sharing of profits.

It may be formed without capital.

ARTICLE 871

Two or more natural or corporate persons, including persons exercising a liberal profession governed by a legislative or statutory instrument or whose title is protected, may form between them an economic interest group.

The rights of members of the group may not be represented by negotiable instruments. Any clause to the contrary shall be disregarded.

ARTICLE 872

An economic interest group shall have corporate personality and full capacity with effect from registration in the Trade and Personal Property Rights Register.

ARTICLE 873

The liability of members of the economic interest group for the debts of the group shall be covered by their personal assets. However, a new member may, where the contract permits, be exempted from the debts contracted before he joined the group. The exemption decision shall be published.

The members of the economic interest group shall be jointly and severally liable for payment of the debts of the group, unless otherwise agreed with a contracting third party.

ARTICLE 874

The creditors of the group may not take action for the settlement of debts against any one partner except after unsuccessfully notifying the group by an extra-judicial act of the said debts.

ARTICLE 875

An economic interest group may issue bonds under the general conditions relating to the issue of bonds where the group exclusively comprises companies authorized to issue bonds.

ARTICLE 876

Subject to the provisions of this Uniform Act, a contract shall determine the organization of the economic interest group and shall freely lay down the contribution of each member to the debts of the group. Failing this, each member shall bear an equal portion of the debt.

During its existence, the group may accept new members under the conditions laid down by contract.

Any member may withdraw from the group under the conditions laid down in the contract, subject to having fulfilled his obligations.

The contract shall be in writing and shall be subject to the same conditions of publicity as the companies concerned by this Uniform Act.

It shall in particular contain the following details:

- 1°) the name of the economic interest group;
- 2°) the name, trade name or corporate name, legal form, address or head office and, as the case may be, the registration number in the Trade and Personal Property Rights Register of each member of the economic interest group ;
- 3°) the duration of the economic interest group;
- 4°) the object of the economic interest group;
- 5°) the address of the registered office of the economic interest group.

Any amendments to the contract shall be drawn up and published under the same conditions as the contract itself. They shall be binding on third parties from the date they are published.

The deeds and documents emanating from the economic interest group intended for third parties, more particularly, invoices, various notices and publications shall clearly show the name of the group, followed by the words “ economic interest group “ or the acronym “E.I.G.”

Any violation of the provisions of the above paragraph shall be punished as a simple offence.

ARTICLE 877

The general meeting of members of the economic interest group shall be competent to take any decision, including premature winding up or extension of the existence of the group under the conditions laid down in the contract.

The contract may provide that all or some resolutions shall be taken under the conditions of quorum and majority it shall determine. Where the contract is silent, decisions shall be taken unanimously.

The contract may also allocate to each member of the economic interest group a number of votes different from that allocated to others. Failing this, each member shall have one vote.

ARTICLE 878

Meetings shall hold as of right at the request of at least one quarter of the members of the economic interest group.

TITLE 2 ADMINISTRATION

ARTICLE 879

The economic interest group shall be administered by one or more natural or corporate persons provided that in the case of a corporate person, such corporate person shall designate a permanent representative, who shall incur the same civil and criminal liabilities as if he were a director in his own name.

Subject to the above, the contract or, failing that, the general meeting of members of the economic interest group shall freely organize the administration of the group and appoint the directors whose duties, powers and conditions of dismissal it shall determine.

In relations with third parties, a director shall commit the economic interest group for any act connected with the object of the group. No limitation of powers may be invoked against third parties.

TITLE 3 AUDIT

ARTICLE 880

The audit of the management and of the summary financial statements shall be carried out under the conditions laid down by the contract.

However, where an economic interest group issues bonds under the conditions provided for in Article 874 of this Uniform Act, the management audit shall be carried out by one or more natural persons appointed by the meeting.

Their term of office and powers shall be determined by the contract.

The audit of the summary financial statements shall be conducted by one or more auditors chosen from the official list of auditors and appointed by the meeting for a term of six fiscal years.

Subject to the regulations peculiar to the economic interest group, the auditor shall have the same status, duties and responsibilities as the auditor of a public limited company.

ARTICLE 881

In case of issue of bonds by the economic interest group, the punishment for offences relating to the obligations provided for in this Uniform Act shall be applicable to the executives of the economic interest group as well as to natural persons managing the member companies or permanent representatives of the corporate persons managing these economic interest groups.

TITLE 4 TRANSFORMATION

ARTICLE 882

Any company or association whose object corresponds to the definition of the economic interest group may be transformed into an economic interest group. It shall not be necessary to wind up the company or to set up a new corporate person.

An economic interest group may be transformed into a private company without having to wind up the group or to set up a new corporate person.

TITLE 5 DISSOLUTION

ARTICLE 883

The economic interest group shall be dissolved:

- 1°) at the end of the term;
- 2°) by the realization or extinction of its object;
- 3°) by decision of its members under the conditions laid down in Article 877 of this Uniform Act;
- 4°) by a reasoned court decision;
- 5°) by death of a natural person or dissolution of a corporate person member of the economic interest group, unless otherwise provided for in the contract.

ARTICLE 884

Where one of the members becomes incapacitated, personally bankrupt or is banned from

directing, managing, administering or controlling an enterprise, whatever its form or object, the economic interest group shall be dissolved, unless its continuation is provided for in the contract or the other members so decide unanimously.

ARTICLE 885

The dissolution of the economic interest group shall lead to its liquidation. The personality of the group shall subsist for the purposes of the liquidation.

The liquidation shall be carried out in accordance with the provisions of the contract. Failing this, a liquidator shall be appointed by the general meeting of the members of the economic interest group or, where the meeting is unable to make such appointment, by decision of the president of the competent court.

After settlement of the debts, the surplus of assets shall be shared among the members under the conditions laid down by the contract. Failing this, the sharing shall be done in equal parts.

PART 3 PENAL PROVISIONS

TITLE 1 OFFENCES RELATING TO THE FORMATION OF COMPANIES

ARTICLE 886

A criminal offence shall be committed where the promoters, Chairperson Managing director, General Manager, Managing Director or assistant managing director of a public limited company issue shares before registration of the company or at any time whatsoever where registration is obtained by fraud or the company is irregularly formed.

ARTICLE 887

Whoever

- 1°) knowingly, by the establishment of the notarial statement of subscription and payment or of the depositary's certificate, certifies as true and authentic subscriptions he knows are fictitious or declares that the funds which have not been placed definitely at the disposal of the company have been effectively paid ; or
- 2°) hands over to the notary or to the depositary a list of shareholders or statements of subscription and payment bearing fictitious subscriptions or payment of funds which have not been definitely made available to the company ; or
- 3°) knowingly, by fictitious subscriptions or payments or by publication of non-existent subscriptions or payments or by any other false acts obtains or attempts to obtain subscriptions or payments; or
- 4°) knowingly, in order to obtain subscriptions or payments, publishes the names of persons falsely designated as being or expected to be linked to the company in any capacity

whatsoever; fraudulently, causes a non-cash contribution to be given an assessment above its real value shall be criminally liable.

ARTICLE 888

Whoever knowingly carries out any deal in respect of:

- 1°) registered shares which have not remained in the registered form until they were fully paid up; or
- 2°) non-cash shares before the expiry of the time limit during which they are not negotiable; or
- 3°) shares issued for cash for which a quarter of the nominal value has not been paid up shall be criminally liable.

TITLE 2

OFFENCES RELATING TO THE MANAGEMENT AND ADMINISTRATION OF COMPANIES

ARTICLE 889

Any company executives, who, in the absence of an inventory or by means of a fraudulent inventory, knowingly share fictitious dividends among shareholders or partners of the company, shall be criminally liable.

ARTICLE 890

Any company executives who, knowingly, even without any sharing of dividends, publish or present to the shareholders or partners, with a view to hiding the true situation of the company, summary financial statements not showing, for each fiscal year, an accurate picture of the transactions of the year, of the financial situation and of the situation of the estate of the company at the expiry of the said period, shall be criminally liable.

ARTICLE 891

Any manager of a private limited company, directors, Chairperson Managing Director, General Manager, Managing Director or assistant managing director who, in bad faith, use the assets or credit of the company in a way they know is against the interests of the company, for personal, material or moral ends, or in favour of another corporate body in which they have an interest directly or indirectly, shall be criminally liable.

TITLE 3

OFFENCES RELATING TO GENERAL MEETINGS

ARTICLE 892

Whoever, knowingly, prevents a shareholder or a partner from participating in a general meeting shall be criminally liable.

TITLE 4

OFFENCES RELATING TO VARIATION OF THE CAPITAL OF PUBLIC LIMITED COMPANIES

CHAPTER 1

INCREASE OF CAPITAL

ARTICLE 893

Any directors, chairperson of the board of directors, Chairperson Managing Director, General Manager, Managing Director or assistant managing director of a public limited company who, on the occasion of an increase of capital, issue shares or share coupons:

- 1°) before the establishment of the depository's certificate; or
- 2°) without due compliance with the preliminary formalities for an increase of capital; or
- 3°) without the previously subscribed capital of the company having been fully paid up; or
- 4°) without the new non-cash shares having been fully paid-up before the registration of the amendment in the Trade and Personal Property Rights Register; or
- 5°) without one quarter of the nominal value of the new shares having been paid up at the time of subscription; or
- 6°) where necessary, without the totality of the issue premium having been fully paid up at the time of subscription, shall be criminally liable.

Penalties shall also be applied against persons referred to in this article who fail to maintain the shares issued for cash in registered form until they are fully paid up.

ARTICLE 894

Any company executive who, at the time of an increase of capital

- 1°) fails to enable shareholders to benefit, proportionately to the amount of their shares, from the pre-emptive right of subscription for shares issued for cash where such right has not been cancelled by the general meeting and where the shareholders have not renounced it ; or
- 2°) fails to reserve a deadline of at least twenty days for shareholders from the opening of subscription, unless such deadline has expired prematurely; or
- 3°) fails to allot the shares which become available because of insufficient number of subscriptions as of right, to shareholders who have subscribed for excess shares which outnumber the shares they subscribed for as of right, proportionately to the rights which they enjoy ; or
- 4°) fails to reserve the rights of holders of subscription certificates, shall be criminally liable.

ARTICLE 895

Any company executive who, knowingly, gives or confirms incorrect information in the reports presented to the general meeting convened to decide on the cancellation of the pre-emptive right of subscription, shall be criminally liable.

CHAPTER 2 REDUCTION OF CAPITAL

ARTICLE 896

Any director, Chairperson Managing Director, General Manager, Managing Director or assistant managing director who, knowingly, carries out a reduction of capital:

1°) without respecting the principle of equality of shareholders; or

2°) without communicating the proposed reduction of capital to the auditors forty-five days before the holding of the general meeting convened to decide on the reduction of capital, shall be criminally liable.

IV

TITLE 5 OFFENCES RELATING TO THE AUDIT OF COMPANIES

ARTICLE 897

Any company executive who fails to have auditors appointed for the company or fails to invite them to the general meetings of shareholders, shall be criminally liable.

ARTICLE 898

Whoever, in his own name or as a member of an auditors company, knowingly accepts, performs or maintains the duties of auditor, notwithstanding legal incompatibilities, shall be criminally liable.

ARTICLE 899

Any auditor who, either in his own name or as a member of a firm of auditors, knowingly gives or confirms false information on the situation of the company or fails to disclose to the Legal Department any offences which may have come to his knowledge, shall be criminally liable.

ARTICLE 900

Any company executive or any person in the service of a company who knowingly, obstructs verifications or audit by auditors or refuses to immediately communicate to them on demand, all the documents needed for the performance of their duty, in particular contracts, books, accounting documents and minutes registers, shall be criminally liable.

TITLE 6 OFFENCES RELATING TO THE DISSOLUTION OF COMPANIES

ARTICLE 901

Any company executive who, knowingly, fails, where the shareholders' equity of the company falls below half the registered capital due to losses recorded in the summary financial statements to

1°) have an extraordinary general meeting convened, within a period of four months following the approval of the summary financial statements in which the losses appear to order, where necessary, the premature dissolution of the company; or

2°) file at the registry of the court responsible for commercial matters, register in the Trade and Personal Property Rights Register and publish in a newspaper empowered to publish legal notices the premature dissolution of the company shall be criminally liable.

TITLE 7

OFFENCES RELATING TO THE LIQUIDATION OF COMPANIES

IV

ARTICLE 902

Any liquidator of a company who, knowingly

1°) fails within a time limit of one month from the date of his appointment, to publish in a newspaper empowered to publish legal notices of the place of the registered office of the company, the document appointing him liquidator and to enter the decisions pronouncing the dissolution of the company in the Trade and Personal Property Rights Register ; or

2°) fails to convene the members of the company at the end of liquidation to pass a resolution on the final liquidation account, the final discharge of his management and mandate and to ascertain the end of the liquidation exercise; or

3°) fails, in the case provided for in Article 219 of this Uniform Act, to deposit final accounts at the registry of the court responsible for commercial matters of the place of the registered office, or to apply to the court for the approval of the accounts, shall be criminally liable.

ARTICLE 903

Any liquidator who, where liquidation is ordered by a court, knowingly

1°) fails to present, within six months of his appointment, a report on the situation of the assets and liabilities of the company under liquidation and on the pursuit of liquidation transactions, or to apply for the authorizations needed to end them ; or

2°) fails to establish, within three months following the close of each fiscal year, the summary financial statements upon the inventory and a written report in which he gives account of the liquidation transactions during the just-ended fiscal year; or

3°) fails to enable the members of the company to exercise, during the liquidation period, their right to receive the company's documents under the same conditions as before; or

4°) fails to convene the members of the company, at least once a year, to give them an account of the summary financial statements in the case where the company continues in business; or

5°) fails to deposit in a bank account opened in the name of the company under liquidation, within a time limit of fifteen days following the decision to share the sums allocated to the members and the creditors of the company ; or

- 6°) fails to deposit in a deposit account opened in the Treasury, within a time limit of one year from the end of the liquidation, the sums allocated to the creditors or members of the company but not claimed by them shall be criminally liable.

ARTICLE 904

Any liquidator who, in bad faith

- 1°) uses the assets or credit of a company under liquidation in a way he knows is contrary to the interests of the company, for personal ends or in the interest of another corporate person in which he has an interest directly or indirectly ; or
- 2°) transfers all or part of the assets of a company under liquidation to a person who has had in the company the status of partner in name, active partner, manager, member of the board of directors, managing director or auditor, without having obtained the unanimous consent of the partners or failing this, the authorization of the competent court shall be criminally liable.

TITLE 8

OFFENCES RELATING TO PUBLIC CALL FOR CAPITAL

ARTICLE 905

Any chairperson, director or General Manager of a company who issues transferable securities offered to the public:

- 1°) without publishing a notice in a newspaper empowered to publish legal notices prior to any publication measure; or
- 2°) without a prospectus and circular reproducing the information in the notice referred to in paragraph (1) of this article and containing a statement of the publication of such notice in a newspaper empowered to publish legal notices with reference to the number of the newspapers in which it was published ; or
- 3°) without posters and notices in newspapers reproducing the same information in or at the very least an extract of the information with reference to the said notice and indications of the number of the newspaper empowered to publish legal notices in which it was published ; or
- 4°) without posters, prospectus and circular stating the signatory or the representative of the company making the offer and specifying whether the securities are quoted or not and, where quoted, on which stock exchange, shall be criminally liable.

The same penalty shall be applicable to any person who acts as an accessory in the transfer of transferable securities in violation of the provisions of this article.

PART 4

FINAL AND TRANSITIONAL PROVISIONS

BOOK 1

MISCELLANEOUS PROVISIONS

ARTICLE 906

The CFA franc shall, within the meaning of this Uniform Act, be the basic currency of OHADA. The exchange rate in the national currency of State Parties which do not have the CFA franc as their monetary unit, shall initially be the one determined by application of the parity in force between the CFA franc and the national currency of the said State Parties on the date of adoption of this Uniform Act. The exchange rate shall be rounded up to the next higher unit where the conversion shows a decimal number.

The Council of Ministers of the State Parties to the Treaty on the Harmonization of Business Law in Africa, on the proposal of the Finance Ministers of the State Parties, shall, as and when necessary, examine and, where necessary, revise the amounts in this Uniform Act expressed in CFA francs, depending on the economic and monetary developments in the said State Parties. The exchange rate in the national currency shall, where necessary, be that determined by application of the parity in force between the CFA franc and the national currency of the said State Parties on the day of adoption of the revised amounts in this Uniform Act.

BOOK 2

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 907

This Uniform Act shall be applicable to companies and economic interest groups which shall be formed on the territory of one of the State Parties from the date of its entry into force in the said State Party.

However, any formalities towards the formation of a company accomplished prior to the entry into force of this Uniform Act shall not be repeated.

ARTICLE 908

Companies and economic interest groups formed prior to the entry into force of this Uniform Act shall be subject to its provisions. They shall be required to modify their Articles of Association in order to comply with the provisions of this Uniform Act within a period of two years following its entry into force.

Partnerships limited by shares existing regularly in one of the State Parties shall be transformed, within the same time limit of two years, into public limited companies, under penalty of being dissolved as of right on the expiry of the said time limit.

ARTICLE 909

The purpose of such modification shall be to repeal, amend and replace, where necessary, the provisions of the Articles of Association contrary to the mandatory provisions of this Uniform Act and to include therein any additions warranted by this Uniform Act.

ARTICLE 910

Modification may be carried out through amendment of the old Articles of Association or through adoption of redrafted Articles of Association.

Modification may be decided upon by shareholders or partners during a regular meeting, notwithstanding any legal or statutory provisions to the contrary, provided there shall be amendment in substance of only those clauses which are incompatible with the new law.

ARTICLE 911

Transformation of the company or an increase of its capital by any means other than incorporation of reserves, profits or agio on issue may only be carried out under the conditions normally required for the amendment of the Articles of Association.

ARTICLE 912

Where, for any reason whatsoever, the meeting of shareholders or of partners has been unable to reach a valid decision, the proposed harmonization of the articles shall be submitted for the approval of the president of the competent court on the application of the statutory representatives of the company.

ARTICLE 913

Where harmonization is unnecessary, the fact shall be duly noted by the meeting of shareholders or of partners whose decision shall be subject to the same publication as for the decision to amend the Articles of Association.

ARTICLE 914

Where private limited companies and public limited companies fail to increase their registered capital by at least the minimum amount stipulated respectively in Articles 311 and 387 of this Uniform Act, they shall, where their capital is below the said amounts, pronounce, before the expiry of the time limit specified in Article 908 of this Uniform Act, their dissolution or be transformed into another form of company for which this Uniform Act does not require minimum capital above the existing capital.

Companies which do not comply with the provisions of the preceding paragraph shall be dissolved as of right upon the expiry of the stipulated time limit.

ARTICLE 915

Where the Articles of Association of a company are not harmonized with the provisions of this Uniform Act within a period of two years from the date of entry into force, the clauses of the articles contrary to these provisions shall be disregarded.

ARTICLE 916

This Uniform Act shall not repeal laws applicable to companies subject to a special regulations.

The clauses of the articles of such companies which conform to the provisions repealed by this Uniform Act but which are contrary to the provisions of this Uniform Act and which are not provided for by the special regulations of the said companies, shall be harmonized with the provisions of this Uniform Act under the conditions laid down in Article 908 of this Uniform Act.

ARTICLE 917

This Uniform Act shall not derogate from the laws relating to the minimum amount of company shares issued by the companies formed prior to its entry into force.

ARTICLE 918

Partnership shares or promoters' shares issued before the entry into force of this Uniform Act shall remain governed by the instruments concerning them.

ARTICLE 919

All laws contrary to the provisions of this Uniform Act shall be repealed, subject to their transitional application for two years from the date of entry into force of this Uniform Act to the companies which have not harmonized their Articles of Association with the provisions of this Uniform Act.

However, notwithstanding the provisions of Article 10 of this Uniform Act, each State Party may, during a transitional period of two years from the date of entry into force of this Uniform Act, maintain its national law applicable for the procedure of establishing the Articles of Association.

ARTICLE 920

After deliberation, the Council of Ministers of the State Parties present and voting, in accordance with the provisions of the Treaty of 17 October 1993 on the Organization for the Harmonization of Business Law in Africa, hereby adopts unanimously this Uniform Act.

This Uniform Act shall be published in the Official Gazette of OHADA and of the Contracting States. It shall enter into force on 1 January 1998.