

## **LAW OF MONGOLIA**

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Ulaanbaatar

### **COMPANY LAW**

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#### **CHAPTER 1**

##### **General Provisions**

###### **Article 1. Purpose of the Law**

1.1. The purpose of this Law is to regulate the establishment, registration and reorganization of a company, its management and organizational structure, the rights and obligations of its shareholders and its liquidation.

###### **Article 2. Applicability of the Law**

2.1. All companies operating within the territory of Mongolia, without regard to their ownership, the size of their property, the amount of their production, or their internal organization, shall be subject to this Law unless otherwise provided in this Law or other laws of Mongolia.

2.2. Basic procedures with respect to the establishment and activities of companies in the banking, finance, insurance and securities sectors shall be governed by this Law, but other laws shall govern sector-specific matters with respect to such companies.

2.3. Activities of companies established as a result of the privatization of state-owned enterprises shall be governed by this Law, but matters with respect to the establishment of such companies shall be governed by the State and Local Property Law.

2.4. Matters pertaining to the representation of state and local authorities as a shareholder of a company shall be governed by the State and Local Property Law.

2.5. Activities of companies established as a result of the reorganization of state-owned enterprises into companies shall be governed by this Law. In such cases, the state shall be the owner and shareholders shall be the state administrative bodies authorized by the Government.

2.6. Procedures for the establishment and the activities of profit-seeking legal persons other than companies shall be governed by other laws.

#### **CHAPTER 2**

##### **Legal status of a company**

###### **Article 3. Company Definition and Forms**

3.1. A company is a legal person whose capital is divided into shares, that has its own separate property, and that has as its primary purpose the making of profit.

3.2. Shares in a company represent ownership interests in the company, and not ownership interests in any of the company's separate property.

3.3. The rights of shareholders shall be defined in this Law and in a company's charter. The principal rights of a shareholder are to receive dividends, to participate in meetings of shareholders, to vote on all or some issues considered at such meetings and, following the company's liquidation, to receive its share of the proceeds from the sale of the company's remaining assets.

3.4. A company may take the following forms:

3.4.1. an open or joint stock company whose shareholders' capital is divided into shares which may be freely traded by the public; or

3.4.2. a closed or limited liability company whose shareholders' capital is divided into shares, where the right to dispose of such shares is limited by the company's charter.

#### **Article 4. Open or Joint Stock Company**

4.1. A shareholder of an open or joint stock company (hereinafter "joint stock company") shall have the right to freely dispose of its shares without regard to preemptive rights of other shareholders.

4.2. The number of shareholders of a joint stock company shall not be limited by the company's charter.

4.3. A joint stock company may issue shares and other securities through open or closed subscription, unless otherwise provided in the company's charter. A purchaser of shares issued on the basis of a closed subscription may freely dispose of such shares.

4.4. The shareholders of a joint stock company may enter into an agreement that mutually limits their rights to dispose of their shares. The duration of such an agreement may not be more than 10 years but the agreement may be renewed an unlimited number of times.

#### **Article 5. Closed or Limited Liability Company**

5.1. The number of founders of a closed or limited liability company shall not be more than 50. The number of shareholders of a limited liability company after its foundation shall be unlimited.

5.2. A limited liability company shall issue shares, options to acquire shares, and securities convertible into shares, only by means of closed subscription. A limited liability company may issue securities other than shares, options to acquire shares, and securities convertible into shares, by means of open or closed subscription unless otherwise provided in its charter.

5.3. Unless otherwise provided in a company's charter, shareholders of a limited liability company shall have a preemptive right to purchase shares, options to acquire shares, and securities convertible into shares, that are offered for sale by another shareholder to a third party in proportion to the number of shares held by each such shareholder and at the price offered to such third party by the offering shareholder pursuant to the procedures provided in this Article and the company's charter.

5.4. A shareholder of a limited liability company who proposes to sell any of its shares to a third party shall notify the other shareholders in writing of such offer. The notice shall contain information concerning the number and class of shares being offered for sale, the proposed sale price, and the number of shares that each other shareholder has the right to acquire, and the period and procedures for exercising such other shareholders' preemptive rights.

A shareholder with a preemptive right to purchase shares shall notify the company in writing of its decision to exercise such right within the prescribed period. The notice shall contain the full name and address of the shareholder, the number of shares to be purchased and a document confirming payment for such shares. Unless otherwise provided in the company's charter, a shareholder shall have the right to exercise its preemptive right to purchase shares offered for sale by another shareholder, in whole or in part, or to transfer its right, in whole or in part, to another shareholder.

5.5. Unless otherwise provided in a company's charter, if a shareholder does not exercise its preemptive right defined in Article 5.3 in full within the prescribed period, the unexercised portion of such right shall be deemed to have been transferred to the company. The company may exercise such right within five (5) business days following the period specified in the notice.

5.6. If the shareholders and the company do not exercise their preemptive rights, stipulated in Article 5.3 and 5.5 of this Law, in full, the shareholder that is offering to sell its shares may sell such shares that have not been purchased by other shareholders or the company to a third party at a price no less than the price specified in the notice.

#### **Article 6. Controlled and Subsidiary Companies**

6.1. A company is deemed to be a controlled company of a predominant company if the latter company, alone or in conjunction with its affiliated persons, owns 20% to 50% of the common shares of such company. A controlled company is deemed to be a legal person with separate financial statements.

6.2. A company is deemed to be a subsidiary of a parent company if the latter company is a separate legal person that owns 51% to 100% of the common shares of such company. A subsidiary shall have both its own financial statements and, together with its parent company, consolidated financial statements.

6.3. A controlled or subsidiary company shall not be responsible for debts of its predominant or parent company. A predominant or parent company shall not be responsible for debts of its controlled or subsidiary companies, unless otherwise provided by an agreement between them.

6.4. If a predominant or parent company is a controlled or subsidiary company of a third company, its controlled or subsidiary company shall be deemed to be a controlled or subsidiary company of the third company. This principle shall also be applicable to any longer series of relationships.

6.5. A controlled or subsidiary company may own shares of its predominant or parent company. Shares of a parent company owned by a subsidiary company shall not have voting rights and shall not be considered as issued shares in determining a quorum for holding a shareholders meeting. If such shares are transferred to a third party, all rights with respect to such shares shall be transferred to such third party.

6.6. A company may agree with its controlled or subsidiary companies, with the controlled or subsidiary companies of such controlled or subsidiary companies, and with other companies, to coordinate their activities.

6.7. The parties to any such coordination agreement shall remain separate legal persons. Any such relations between the participants shall be governed by an agreement concluded in conformity with the Civil Code.

6.8. Except for performing its obligations under the agreement specified in Article 6.7, a predominant or parent company shall participate in the activities of its controlled or subsidiary company within the limits the shares held.

## **Article 7. Branches and Representative Offices of a Company**

7.1. A branch of a company is a unit located in a place other than the principal place of business of the company that may perform the principal functions of the company, in whole or in part, and may also function as the company's representative office.

7.2. A representative office of a company is a unit located in a place other than the principal place of business of the company that may undertake to protect the legal interests of the company and conclude transactions on behalf of the company as its legal representative.

7.3. A company may have branches or representative offices in Mongolia or in foreign countries. Unless otherwise provided in the company's charter, a resolution to establish a branch or representative office shall be adopted by the Board of Directors (in its absence, a shareholders meeting).

7.4. A branch or representative office of a foreign legal person in Mongolia shall be registered with the registration agency. Unless otherwise provided in an international agreement to which Mongolia is a party, the establishment of a branch or representative office by a Mongolian company in a foreign country shall be governed by the laws of such foreign country.

7.5. A branch or representative office of a company shall not be deemed to be a legal person and shall conduct its activities in accordance with regulations adopted by the company. The assets of a branch or representative office shall be shown in the balance sheet of the company that established such branch or representative office.

7.6. A branch or representative office of a company shall conduct its activities on behalf of the company that established it. Such company shall be responsible for liabilities incurred by its branches and representative offices.

7.7. A company shall appoint an authorized representative agent of each of its branches and representative offices and such executive shall act on the basis of a power of attorney from the company.

## **Article 8. Permitted Activities and Duration of a Company**

8.1. A company may conduct any activities not prohibited by law and shall exercise rights and incur obligations necessary to conduct such activities.

8.2. A company's charter may limit the activities that the company may conduct. These limitations shall not release the company from its obligations to a third party who has dealt with the company in good faith without knowledge of such limitations.

8.3. A company shall conduct activities which require special licensing only on the basis of written permission from relevant authorities.

8.4. Unless otherwise provided in a company's charter, a company shall be established for an indefinite duration.

## **Article 9. Liabilities of a Company and its Shareholders**

9.1. The assets of a company consist of the property and property rights owned by the company. A company is liable with respect to its obligations to the extent of all of its assets.

9.2. A company is not liable for the obligations of its shareholders.

9.3. Shareholders shall not be liable for the obligations of the company and shall only bear risk of loss to the extent of the shares held.

9.4. A shareholder who, alone or in conjunction with its affiliated persons, holds more than ten percent (10%) of a company's shares, or who otherwise has the power to control the management of the company, shall be liable to the extent of its own assets for any loss incurred by the company resulting from own wrongful acts.

9.5. If it is not possible to distinguish the property and property rights contributed to a company by a shareholder from other property and property rights of such shareholder, such shareholder shall be liable for the company's obligations to the extent of the value of its contributed property and property rights.

#### **Article 10. Name and Location of a Company**

10.1. A company shall have a name. A joint stock company shall have a name that includes the words "joint stock company" or the abbreviation "XK". A limited liability company shall have a name that includes the words "limited liability company" or the abbreviation "XXK".

10.2. A company's name may not be identical to the registered name of another company or enterprise. Upon registration of a company's name by the registration agency, the company shall have the exclusive right to use such name.

10.3. A company may have its own symbol and trademarks which shall be registered with the relevant Registration authority.

10.4. A company's principal place of business and postal address shall be determined by the place where its head office general office is located. The company shall inform the Registration authority of any change in the address of its principal place of business.

*/As modified by the Law of 4 July 2002/*

### **CHAPTER 3**

#### **Establishment of a company**

##### **Article 11. Establishment of a Company**

11.1. A company may be established directly or by the reorganization of another legal person through merger, consolidation, separation, division, or transformation.

11.2. In the case of a company created as a result of privatization, the State shall be deemed to be the founder. Subscriptions for the shares of such a company, sale or transfer of such shares shall be governed by the State and Local Property Law.

##### **Article 12. Founders of a Company**

12.1. A citizen or legal person of Mongolia and, if provided by law, a foreign citizen or legal person, or a stateless person, may be a founder of a company.

12.2. Shares issued by a company may be owned by a citizen or legal person of Mongolia, by a foreign citizen or legal person, or by a stateless person.

12.3. A company may have a single founder.

12.4. A founder of a company is not required to own shares of the company.

12.5. The State and its agencies may be a founder and a shareholder of:

12.5.1. a company that is created through privatization of a state or local government-owned enterprise;

12.5.2. a state-owned company that is established by the reorganization of a state owned enterprise;

12.5.3. a company that is deemed to be bankrupt in accordance with applicable laws, and whose shares the State has acquired in exchange for debts owed to the State by such company. In such case the State must sell such shares within a period of three (3) years;

12.5.4. a company that is created jointly with a foreign legal person; or

12.5.5. other companies as permitted under the law.

12.6. The founders of a company shall be jointly liable for expenses related to establishment and registration of the company. A company may assume responsibility for such expenses if so resolved by the founders at the founding meeting, or by the Board of Directors of the company, or, if there is only one founder, by such founder.

12.7. A founder who pays for expenses related to establishment of a company shall be entitled to receive reimbursement for such expenses from the other founders in proportion to the value of the shares owned or subscribed for by such other founders, or to receive additional shares having a value equal to such expenses.

12.8. A founder or shareholder of a company may be a founder or shareholder of another company.

### **Article 13. Procedures for Establishment of a Company**

13.1. A company may be established by an offering of shares to an unlimited number of persons (open subscription) in accordance with a plan as specified in Article 13.2, or by an offering of shares to a limited number of persons (closed subscription).

13.2. The plan for establishing a company by an offering of shares by open subscription shall contain the following information:

13.2.1. the type of business to be conducted by the company;

13.2.2. the proposed amount of share capital;

13.2.3. the number and par value of the shares being offered;

13.2.4. the proposed duration of the business, if deemed relevant;

13.2.5. the amount of projected profits; and

13.2.6. the date of the offering and the date of closing of the offering.

13.3. Matters concerning an offering of shares to the public by open subscription shall be regulated pursuant to regulations adopted by the Securities Committee.

13.4. Subscriptions for shares shall be evidenced by a subscription form. The form shall contain the full name of the subscriber, the class, designation, number and aggregate price of the shares, and the date of the subscription. The subscription shall be deemed to be a binding obligation when the subscriber or his or its authorized representative signs the form.

13.5. Thirty percent (30%) of the aggregate value of all subscribed shares must be paid to the company within thirty (30) business days following the closing date of the subscription period.

13.6. If the total value of payments received for subscribed shares reaches the minimum amount of owner's equity required by law, the company shall be deemed to be qualified for establishment.

13.7. A company shall be established on the basis of a resolution adopted at a meeting of the founders. If one individual is the founder, such person shall adopt the resolution.

13.8. If a company is established by more than one founder, the founders may enter into a founders' agreement. Such agreement may contain provisions with respect to cooperation among the founders, the obligations of each founder, the designation,

number, price, and date of purchase of each class of shares and other securities to be acquired by such founders, and any other matters deemed necessary. Such agreement shall not be considered to be a founding document.

13.9. A company that proposes to sell its shares to the public by open subscription shall, within ten (10) business days following its registration with the Registration authority, register such shares with the Securities Committee in accordance with the procedures specified in the Securities Law.

#### **Article 14. Founding Meeting of a Company**

14.1. The founders shall convene the founding meeting of a company.

14.2. The founders shall have equal votes at the founding meeting unless otherwise unanimously agreed by the founders.

14.3. At the founding meeting, the founders shall consider and decide the following matters:

14.3.1. adoption of a resolution to establish the company;

14.3.2. the content of the company's charter;

14.3.3. the number of authorized shares, the number of shares to be issued, and the price at which the founders may acquire these shares at the time of the company's establishment;

14.3.4. if the company is to have a Board of Directors, provisions concerning election of its members and the salaries and bonuses to which each member will be entitled;

14.3.5. if the company is to have a Supervisory Board, provisions concerning election of its members and the salaries and bonuses to which each member will be entitled;

14.3.6. procedures for reimbursement of expenses incurred by the founders in connection with the establishment of the company; and

14.3.7. the date by which payment for share subscription must be made.

14.4. Unless otherwise provided by the founders' agreement, there shall be a quorum at the founding meeting if all the founders attend the meeting, and decisions made at the meeting shall be adopted by an overwhelming majority of votes of the founders attending the meeting.

14.5. The chairman of the founding meeting shall be elected from among the founders attending the meeting.

14.6. If any founder proposes to pay for subscribed shares by non-monetary payment, the value of such non-monetary payment if deemed necessary shall be appraised by an evaluation agency or other qualified experts and the founder's proposal shall be submitted for approval at the founding meeting.

14.7. The value of property given as non-monetary payment for shares must be unanimously approved by the participants in the founding meeting.

14.8. If, for any reason, a company is not established as of the date scheduled by the founding meeting, the founders shall return all advance payments made by each subscriber within fourteen (14) business days following such scheduled date.

#### **Article 15. — Registration of a Company /Repealed by the Law of 23 May 2003/**

~~15.1 Within ten (10) business days following the date that the decision to establish a company has been adopted, the founders shall submit the documents required for registration to the Registration authority.~~

~~15.2 The following documents shall be submitted to the Registration authority in connection with the registration of a company:~~

~~15.2.1 an application for registration of the company signed by an authorized person, containing the name of the company, its place of business, and its postal address;~~

~~15.2.2 the resolution to establish the company adopted at the founding meeting;~~

~~15.2.3 the company's charter;~~

~~15.2.4 a document confirming payment of the registration fee;~~

~~15.2.5 a beginning balance sheet of the company showing the required minimum amount of owner's equity;~~

~~15.3 The Registration authority may not require presentation of documents, or establish requirements with respect to the content of documents submitted with an application for registration, other than as set forth in Article 15.2.~~

~~15.4 The Registration authority's review of the application and related documents shall be limited to verifying that:~~

~~15.4.1 the documents specified in Article 15.2 have been submitted;~~

~~15.4.2 the charter includes the items specified in Article 16.2 ;~~

~~15.4.3 the company's name is not identical to the name of another company or partnership; and~~

~~15.4.4 the company has the minimum amount of owner's equity specified in Article 32.~~

~~15.5 Within three (3) business days following the date of submission of the documents specified in Article 15.2, the Registration authority shall register the company and issue a certificate of registration or shall issue a decision stating the basis for its refusal to register the company.~~

~~15.6 The Registration authority shall refuse to register a company if the company fails to satisfy the requirements specified in Article 15.4.~~

~~15.7 Within three (3) business days following a decision to refuse to register a company the Registration authority shall send a written notice stating the basis for such refusal to the applicant's postal address specified in the application. If the founders do not agree with the decision of the Registration authority, they may appeal to the courts.~~

~~15.8 Registration of a company that is established as the result of the reorganization of a legal person shall be effected in accordance with the procedures for registration of a company as specified in this Article upon submission of the following documents:~~

~~15.8.1 an application for registration signed by an authorized person of the company(ies) being reorganized;~~

~~15.8.2 the decision of appropriate authorities having jurisdiction over the reorganization of the legal person(s) being reorganized;~~

~~15.8.3 the charter(s) of the newly established company(ies);~~

~~15.8.4 where a limited liability company is transformed into a joint stock company, a decision from the Securities Committee granting permission for the company to register the shares to be offered to the public in accordance with the procedures specified in the Securities Law;~~

~~15.8.5 copies of the charter and certificate of registration of the reorganized legal person(s);~~

~~15.8.6 in the case of reorganization by merger or transformation, a copy of the resolution to merge or transform and, in the case of reorganization by division or separation, a copy of the~~

~~respective balance sheets of the divided or separated companies; and~~

~~15.8.7 a document confirming payment of the registration fee.~~



~~15.9 A foreign legal person that is conducting business within the territory of Mongolia, or the branch or representative office of any such legal person, must register with the Registration authority. The Registration authority shall establish procedures for such registration consistent with the procedures established in this Law for registration of a legal person or a branch or representative office of such legal person.~~

~~15.10 A company shall be considered to be established, and shall have the right to conduct the business described in its charter, upon registration with the Registration authority.~~

## **Article 16. Charter of a Company**

16.1. A company's charter is the basic document evidencing its establishment.

16.2. A company's charter shall include:

16.2.1. the company's full name and [words or] an abbreviation indicating the company's form of organization;

16.2.2. the company's place of business;

16.2.3. the number of the company's authorized common shares;

16.2.4. if the company's charter establishes preferred shares, the number of authorized preferred shares and rights of holders of such shares;

16.2.5. if the company has a Board of Directors, the number of its members;

16.2.6. powers of the shareholders at a meeting of shareholders, or of the Board of Directors or Supervisory Board, to the extent such powers are in addition to those specified in this Law;

16.2.7. the type of business to be conducted by the company;

16.2.8. other provisions included in the company's charter in accordance with this Law.

16.3. A company's charter may also contain other provisions that do not conflict with the Civil Code or other applicable laws.

16.4. Upon demand of a shareholder, a company must provide such shareholder with a copy of the charter, including all amendments.

## **Article 17. Approval and Registration of Amendments to or New Version of a Company's Charter**

17.1. Amendments to a company's charter, or adoption of a new version of the charter, must be approved at a meeting of shareholders by an overwhelming majority of the shares held by shareholders eligible to vote who attend the meeting.

17.2. Shareholders whose rights are reduced or otherwise limited as a result of amendments to a company's charter, or the adoption of a new version of the charter, and who voted against such amendment or adoption, or who did not participate in the voting with respect thereto, have a right to demand redemption of their shares by the company in accordance with the provisions of Articles 54 and 55.

17.3. Amendments to a company's charter, or a new version of the charter, shall be registered by the Registration authority upon submission of the following documents:

17.3.1. an application for registration of amendments to the company's charter, or a new version of the charter, signed by a person authorized by the company;

17.3.2 the resolution adopted at the shareholders' meeting to amend the charter, or to adopt a new version of the charter, together with the text of the amendments or new version of the charter;

17.3.3.a copy of the company's charter and original certificate of registration; and

17.3.4.a document confirming payment of the required fee.

17.4. Within ten (10) business days following the date of adoption of a resolution to amend or adopt a new version a company's charter, the company shall register such amendments or new version in accordance with the procedures specified by law.

17.5. Within three (3) business days following the date of submission of the documents specified in Article 17.3, the Registration authority shall register the amendments to the company's charter, or the new version of the charter, or shall issue a decision stating the basis for its refusal to register such amendments or new version of the charter.

17.6. The Registration authority shall refuse to register amendments to a company's charter, or a new version of the charter, if such amendments or such version of the charter fail to satisfy the requirements of Article 17.3.

17.7. Within three (3) business days following the date of adoption of the relevant decision, the Registration authority shall send a written notice stating the basis for such refusal to the company's postal address specified in the application. If the company does not agree with the decision of the Registration authority, it may appeal to the court.

17.8. Amendments to a company's charter, or a new version of the charter, shall become effective upon registration with the Registration authority.

## **CHAPTER 4**

### **Reorganization and liquidation of a company and debt-for-share exchanges**

#### **Article 18. Reorganization of a Company**

18.1. A company may be reorganized by consolidation, merger, division, separation, or transformation pursuant to resolutions adopted at shareholder meetings in accordance with procedures established by this Law.

18.2. In appropriate cases, if provided by law, a company may also be reorganized by division or separation pursuant to a court order.

18.3. Except for reorganization by merger, a company shall be deemed to be reorganized as of the date of registration of the reorganized company with the registration authority.

18.4. If a company is reorganized by merger, such company shall be deemed reorganized as of the date that the Registration authority registers the termination of the merged company and, if there are changes in the charter of the merging (surviving) company, registration of such changes.

18.5. Within 15 business days following the date of adoption of a reorganization resolution, the reorganized company shall notify its creditors and other persons with whom it has business dealings in writing of the reorganization. Such notice shall contain the following information:

18.5.1. the form of reorganization;

18.5.2. the name and business address of each reorganized company and, if applicable, that of any new company created by the reorganization;

18.5.3. the date of adoption of the reorganization resolution; and

18.5.4. in the case of reorganization by division or separation, the pro-forma balance sheets of each company that is a party to the reorganization.

18.6. A joint stock company shall notify the Securities Committee and the Stock Exchange of any proposed reorganization or liquidation within three (3) business days following adoption of the resolution to reorganize or liquidate.

#### **Article 19. Consolidation of Companies**

19.1. Consolidation of companies means termination of operations of two or more companies and the transfer of the rights, obligations and liabilities of such companies to a newly established company.

19.2. The Board of Directors (in its absence, the executive body) of each company participating in a consolidation shall submit to shareholder meetings of each company for consideration, a resolution of consolidation, an agreement containing the terms and conditions and procedures to be followed with respect to the consolidation, the charter of the new company to be formed by the consolidation, and procedures for converting securities of each company into securities or other property of the new consolidated company.

19.3. To be effective, the resolution of consolidation and the consolidation agreement must be adopted by an overwhelming majority of the votes of shareholders eligible to vote who attend the meetings of each company participating in the consolidation.

19.4. The consolidation agreement shall specify the date, place and agenda of a shareholders meeting of the new company to be held following the consolidation. At such meeting the shareholders shall adopt the charter of the consolidated company and, if the consolidated company is to have a Board of Directors, shall elect members of such Board. At this meeting each shareholder shall have such number of votes as is provided pursuant to procedures set forth in the consolidation agreement.

#### **Article 20. Merger of Companies**

20.1. A merger of companies means termination of the legal status of one company and transfer of the rights, obligations and liabilities of such company to another company.

20.2. The Board of Directors (in its absence, the executive body) of each company participating in a merger shall submit to shareholder meetings of each company for consideration, a resolution of merger, an agreement of merger containing the terms and conditions and procedures to be followed with respect to the proposed merger, and procedures for converting securities of the merged company into securities or other property of the merging (surviving) company.

20.3. To be effective the merger resolution and the merger agreement must be adopted by an overwhelming majority of votes of shareholders eligible to vote who attend the meetings of each company participating in the merger.

20.4. If, prior to a proposed merger, the merging (surviving) company owns more than seventy-five percent (75%) of the issued and outstanding common shares of the company to be merged, and if it will not be necessary to amend the charter of the merging (surviving) company to give effect to the merger, the Board of Directors (in its absence, a shareholders meeting) of the merging company may adopt a resolution of merger and determine the procedures to be followed in giving effect to the merger.

## **Article 21. Division of a Company**

21.1. Division of a company means termination of the legal status of a company and transfer of the ~~rights and obligations~~ obligations and liabilities of such company to one or more newly established companies. Unless otherwise provided in the resolution of division, holders of common shares of a divided company shall be deemed to be holders of common shares of each newly established company in the same proportions as their holdings of common shares of the divided company. [/As modified by the Law of 4 July 2002/](#)

21.2. The Board of Directors (in its absence, the executive body) of a company being divided shall submit to a meeting of its shareholders for consideration, a resolution of division, a proposal for establishment of one or more new companies, pro-forma balance sheets for each new company and the company to be divided, and proposed procedures for converting the divided company's securities into securities or other property of the new companies. To be effective the division resolution and proposed procedures must be adopted by an overwhelming majority of votes of the shareholders eligible to vote who attend the meeting.

21.3. A shareholder meeting of each new company established by the division shall adopt a new charter for each respective company, and if the company has a Board of Directors, shall elect members of such Board. The division resolution shall include provisions for the holding of such shareholders meetings.

21.4. When dividing a company, its rights and obligations shall be transferred to the newly established companies as specified in the pro-forma balance sheets. Unless otherwise provided in the division resolution, each newly established company shall be secondarily liable for obligations of the other companies established by the division.

## **Article 22. Separation of a Company**

22.1. Separation of a company means transfer of part of the ~~assets and rights~~ rights, obligations and liabilities of the company to one or more newly established companies, without termination of the legal status or activities of the transferring company. In the case of a re-organization by separation, the reorganized company shall become the holder of all of the shares of the newly established company or companies. [/As modified by the Law of 4 July 2002/](#)

22.2. The Board of Directors (in its absence, the executive body) of a company that proposes to reorganize by separation shall adopt a separation resolution that includes the terms, conditions and procedures to be followed with respect to the separation and prepare pro-forma balance sheets for the separating company and each of the newly established companies.

22.3. Shareholder meetings of each newly created company must approve the charter of each of the respective companies and, if any such company has a Board of Directors, must elect members of the Board.

22.4. A company that reorganizes by separation remains liable for all of its debts. The pro-forma separation balance sheets may specify debts that have been assumed by each of the newly established companies. In this case, the reorganizing company remains jointly liable with such companies for such debts.

22.5. After a company has reorganized by separation, all or part of the securities of the newly established company or companies issued by such company or companies to the reorganized company may be transferred to the shareholders of the reorganized company as a dividend in accordance with the provisions of Chapter 7.

### **Article 23. Transformation of a Company**

23.1. A joint stock company may be transformed into a limited liability company, and a limited liability company may be transformed into a joint stock company. The Board of Directors (in its absence, the executive body) of a company that proposes to reorganize by transformation shall submit to a meeting of its shareholders for consideration a resolution of transformation. To be effective, such resolution must be adopted by an overwhelming majority of votes of shareholders eligible to vote who attend the meeting.

23.2. The transformation resolution shall specify the purpose, terms and conditions, and procedures to be followed with respect to the transformation, the procedures to be followed with respect to conversion of old securities for new securities by the shareholders of the transformed company, the date of the transformation, and the date for the holding of a shareholders meeting of the transformed company.

23.3. The transformation resolution may provide for the convening of a shareholders meeting of the transformed company and election of members of the Board of Directors if the company is to have such. At such a new version of the company's charter may be approved and the company's governing body may be established.

23.4. If a company is transformed, all of its rights and obligations shall be deemed to have been transferred to the transformed company.

23.5. If a company is transformed, the name of the company and its charter shall be amended to reflect the change of the legal status of the transformed company.

### **Article 24. Rights of Shareholders During a Reorganization**

24.1. In the case of a reorganization of a company by consolidation, merger or transformation, any holder of voting shares of such company who voted against the reorganization, or who did not participate in such voting, shall have a right to demand redemption of its shares by the company in accordance with the procedures set forth in Articles 54 and 55.

24.2. Shares held by shareholders who have exercised their right to demand redemption may not be converted into shares to be issued pursuant to the reorganization resolution. In such case, such shareholders shall lose all ownership rights with respect to their shares that are subject to redemption, other than their right to demand redemption.

24.3. Shares held by holders who have not demanded redemption shall be converted as provided in the terms of the reorganization resolution.

### **Article 25. Exchange of a Company's Debts for Shares**

25.1. A company's debts and securities other than shares may be exchanged for shares. Such exchange shall be called an exchange of debts for shares.

25.2. Unless a company is a party to a contract establishing a debtor-creditor relationship that provides for an exchange of debts for shares under specified circumstances, any such exchange shall require the consent of each creditor and other relevant party who agrees to accept shares in exchange for debts.

25.3. The Board of Directors (in its absence, the executive body) of a company shall prepare a resolution with respect to any proposed exchange of debts for shares and submit such resolution to a meeting of its shareholders for consideration. To be effective, the resolution must be adopted by an overwhelming majority of votes of the shareholders eligible to vote who attend the meeting.

25.4. The resolution to exchange debts for shares shall indicate the debt to be exchanged, the number and per share price of the shares to be issued, the purpose of the exchange, procedures and conditions with respect to the exchange, and any proposed amendments to the company's charter that may be required.

25.5. The exercise of options to acquire shares, or the conversion of securities that are convertible into shares pursuant to the terms of such securities, shall not be considered to be an exchange of debts for shares.

25.6. A shareholder that voted against, or did not participate in the voting on the resolution with respect to, an exchange of a company's debts for shares shall have a right to purchase such shares.

#### **Article 26. Liquidation of a Company**

26.1. A company may be liquidated by a resolution adopted at a meeting of shareholders or by a court order based on provisions of the Civil Code, this Law, and other laws.

26.2. A court may liquidate a company if:

26.2.1. the company is bankrupt;

26.2.2. no shareholders have left; or

26.2.3. such other grounds provided by law.

26.3. The Board of Directors (in its absence, the executive body) of a company that proposes to liquidate by resolution of shareholders shall submit a resolution of liquidation to a meeting of the company's shareholders for consideration. The resolution shall provide for appointment of a liquidation commission, the liquidation procedures and timing, and the procedure for distribution among the shareholders of the company's property remaining after creditors' claims have been satisfied. To be effective, the resolution must be approved by an overwhelming majority of votes of shareholders eligible to vote who attend the meeting.

26.4. Upon appointment of the liquidation commission, the authority of the company's executive body shall terminate and such authority shall be transferred to the liquidation commission. The liquidation commission shall represent the company in all court proceedings.

26.5. The liquidation commission shall be liable for any losses incurred by the company or its creditors caused by the commission's negligence in the performance of its duties.

#### **Article 27. Procedure for Satisfaction of Claims of Creditors During Liquidation**

27.1. Claims of creditors presented in the course of a company's liquidation shall be satisfied in accordance with relevant provisions of the Civil Code, this Law and other laws.

27.2. The liquidation commission shall publish a public notice of the liquidation and the procedures and time periods for the presentation of claims of creditors. The time period in which creditors may present claims shall expire no less than two (2) months and no more than six (6) months following the date of publication of the notice of liquidation.

27.3. The liquidation commission shall also give each of the company's creditors written notice of the liquidation and the procedures and time periods for the presentation of claims.

- 27.4. If, at the time of the adoption of the liquidation resolution, a company has no obligations to creditors or other relevant parties, liquidation may be effected without publishing a public notice. In such case the company's assets shall be distributed among its shareholders in accordance with the provisions of Article 28.
- 27.5. Upon expiration of the time period during which creditors may present claims, the liquidation commission shall compile an interim liquidation balance sheet containing information with respect to the liquidating company's assets and liabilities and the commission's proposals for the satisfaction of claims of creditors. The interim liquidation balance sheet shall be approved by the company's Board of Directors (or in its absence, the shareholders at a shareholders meeting).
- 27.6. The liquidation commission shall give creditors written notice of its proposals for the satisfaction of claims. If any creditor does not agree with such proposals, it shall have the right to appeal to a court prior to the approval of the liquidation balance sheet.
- 27.7. If the liquidating company's monetary assets are not sufficient to satisfy the claims of creditors, the liquidation commission shall sell other property of the company. If such sale of property is deemed to constitute a conflict-of-interest transaction under Chapter 13 of this Law, the sale shall be affected by public auction in accordance with procedures applicable to the enforcement of court decisions.
- 27.8. Claims of creditors shall be satisfied by the liquidation commission in the order of priority specified in the Civil Code and in this Law and in accordance with the provisions of the interim liquidation balance sheet as of the date of the approval of such balance sheet.
- 27.9. Upon satisfaction of the claims of all creditors, the liquidation commission shall compile a final liquidation balance sheet. The date of the final liquidation balance sheet shall be no earlier than thirty (30) business days following the date of the notice to creditors of the liquidation commission's report on satisfaction of their claims.
- 27.10. No claims of creditors presented after the date of the final liquidation balance sheet shall be accepted unless they are presented pursuant to a court order.

#### **Article 28. Distribution of a Liquidating Company's Assets to its Shareholders**

- 28.1. Following satisfaction of the claims of creditors, the liquidation commission shall distribute the company's remaining assets among the shareholders in the following order of priority:
  - 28.1.1. payments of accrued but unpaid dividends on preferred shares, the liquidation value of preferred shares, and payments with respect to preferred shares to be redeemed pursuant to Articles 54 and 55;
  - 28.1.2. payments with respect to common shares to be redeemed pursuant to Articles 54 and 55; and
  - 28.1.3. proceeds from the sale of the remaining assets to holders of the company's common shares in proportion to the number of shares held by such holders.

#### **Article 29. Completion of Liquidation**

- 29.1. After distribution of all of the liquidating company's assets, the liquidation commission shall notify the Registration authority of the termination of the

company and submit to such Authority a copy of the final liquidation balance sheet.

29.2. A company shall be deemed to be liquidated when the Registration authority registers removes the company's name from the State registry. The Registration authority shall publish a notice of such liquidation.

**Article 30. Termination of a Company** */Repealed by the Law of 23 May 2003/*

~~30.1. The Registration authority shall register the termination of a company upon presentation of the following documents:~~

~~—— 30.1.1. in the case of termination of a company as a result of liquidation, the liquidation resolution adopted at the shareholders meeting or the court liquidation order, and a copy of the final liquidation balance sheet;~~

~~—— 30.1.2. in the case of termination of a company as a result of reorganization by consolidation, merger, division or transformation, the resolutions with respect to such reorganization adopted at relevant shareholder meetings;~~

~~—— 30.1.3. in the case of termination of a company as result of reorganization by division, the resolution with respect to such reorganization adopted at the shareholders meeting and a copy of the pro forma balance sheet; and~~

~~—— 30.1.4. the company's charter and certificate of registration.~~

~~30.3. The notice of termination of a company as a result of consolidation, merger, or transformation, shall include the name of the entity to which the rights and obligations of the terminated company have been transferred. The notice of termination of a company as a result of division shall include the name of each company to which rights and obligations of the terminated company have been transferred as stated in the respective pro forma balance sheets.~~

~~30.3. The Registration authority, or any shareholder or creditor of a company, may apply to a court for an order to liquidate a company in the following cases:~~

~~30.3.1. expiration of the period time that a company is authorized to exist as specified in its charter;~~

~~30.3.2. expiration of a company's authorization to engage in activities requiring a license, if such activities are the only activities permitted by the company's charter; or~~

~~30.3.3. if a company commits serious violations of law during the period that it is registered which cannot be remedied or which, after written notice, the company has failed to remedy.~~

## CHAPTER 5

### Owner's equity, shares and other securities of a company

#### Article 31. Owner's Equity

31.1. The owner's equity of a company is the excess of the total amount of the company's tangible and intangible assets shown on its financial balance sheet over the company's liabilities shown on such balance sheet.

#### Article 32. Minimum Owner's Equity

32.1. The owner's equity of a joint stock company shall be at least ten million (10,000,000) togrogs at the date of its registration. The owner's equity of a limited



liability company shall be at least one million (1,000,000) togrogs at the date of its registration.

- 32.2. If the amount of owner's equity shown on the annual balance sheet of a company for any two (2) consecutive years is less than the minimum amount required by Article 32.1, the Board of Directors (in its absence, the executive body) of the company shall submit to a meeting of the company's shareholders a resolution to liquidate the company. If the shareholders meeting fails to approve such liquidation, any creditors holding claims having an aggregate value amounting to more than ten percent (10%) of all of the company's outstanding debts may apply to a court to liquidate the company.

### **Article 33. Shares**

- 33.1. A share is a security that evidences the investment of a shareholder in a company, gives its holder the right to vote at shareholders meetings, to receive dividends and to receive a proportionate share of proceeds from the sale of the company's assets remaining following its liquidation.
- 33.2. Shares may be of two (2) classes: common and preferred.
- 33.3. A company must issue common shares and may issue preferred shares.
- 33.4. Shares may have a nominal (or par) value as specified in the company's charter. Shares with a par value may not be issued at a price lower than such value.
- 33.5. Each common share shall be entitled to one vote with respect to each matter decided at meetings of a company's shareholders.
- 33.6. Shares shall be indivisible and shall be registered in the name of the shareholder.

### **Article 34. Authorized and Issued Shares**

- 34.1. A company's charter shall specify the number of common shares that the company may issue and, if the charter provides for preferred shares, the number of preferred shares that the company may issue. Such common and preferred shares constitute the company's authorized shares.
- 34.2. Issued shares are those authorized shares that are issued to and held by a company's shareholders. Unless otherwise provided in a company's charter, the number of issued shares of each class, and the terms and conditions for their issuance, shall be determined by the Company's Board of Directors (in its absence, a shareholders meeting). The number of issued shares of each class shall be set forth in the company's balance sheet.
- 34.3. The number of authorized shares of any class shall be no less than the sum of the number of issued shares of such class and the number of shares required for conversion of securities convertible into shares of such class.
- 34.4. Shares issued by a company shall remain issued until they are acquired or redeemed by the company, or converted into other securities or property.
- 34.5. Shares acquired or redeemed by a company shall be deemed to be authorized but not issued shares. Unless otherwise provided in a company's charter, such authorized but not issued shares may be reissued by the company.

### **Article 35. Rights of Holders of Common Shares**

- 35.1. A holder of common shares of a company shall have the right:

- 35.1.1. to participate in all shareholder meetings and to have votes in the proportion of shares held by such holder on all issues considered at such meetings;
  - 35.1.2. to receive dividends as determined by the Board of Directors (in its absence, a shareholders meeting) after the payment of dividends on the company's preferred shares;
  - 35.1.3. to receive the holder's proportionate share of proceeds from the sale of the company's remaining assets following liquidation of the company pursuant to Article 28;
  - 35.1.4. in the case of a joint stock company, the preemptive right to purchase additional shares, and securities related to shares, proposed to be issued by the company, as provided in Article 39 and in the company's charter; and
  - 35.1.5. in the case of a limited liability company, unless otherwise provided in the company's charter, the preemptive right to purchase securities related to shares issued by a company.
- 35.2. A company's charter may not limit the number of common shares that may be held by any one shareholder.
- 35.3. A company's common shares may not be converted into preferred shares or other securities issued by the company.
- 35.4. The voting rights of a holder of common shares may be limited by this Law, ~~or by the charter of a limited liability company,~~ with respect to certain matters to be decided at a shareholders meeting. [/The phrase was repealed by the Constitutional Court Decision # 03 of 2002/](#)

#### **Article 36. Rights of Holders of Preferred Shares**

- 36.1. Holders of all series of preferred shares shall have the following rights:
- 36.1.1. the right to receive dividends with respect to such shares before dividends are distributed to the holders of common shares;
  - 36.1.2. to vote at shareholders meetings with respect to certain matters specified in this Law, the company's charter, and the terms and conditions pursuant to which the particular series of preferred shares were issued; and
  - 36.1.3. upon the liquidation of a company, to receive accumulated unpaid dividends with respect to such preferred shares, and the liquidation value of such shares, from proceeds from the sale of assets of the company during the liquidation process.
- 36.2. A company's charter, or the terms and conditions pursuant to which each series of preferred shares are issued, shall specify:
- 36.2.1. the procedure for determining the liquidation value of shares of each series and the order of priority for payment of such value upon liquidation of the company;
  - 36.2.2. the matters with respect to which a holder of each series of preferred shares has a right to vote at a shareholders meeting, and the number of votes attributable to each share;
  - 36.2.3. if applicable, the terms for conversion of any series of preferred shares into common shares; and
  - 36.2.4. the circumstances that will give a holder of any series of preferred shares the right to demand redemption of such shares by the company.

- 36.3. A company may acquire, redeem, or pay dividends with respect to its common shares only after payment in full of all accumulated unpaid dividends with respect to its preferred shares and the redemption of any such preferred shares that the company is obligated to redeem.
- 36.4. Unless the conditions specified in Article 48.3 occur, a company shall pay dividends on preferred shares in such amount and within such time period as provided in the company's charter.
- 36.5. In the case of liquidation of a company, the company shall pay to holders of its preferred shares the liquidation value and accumulated but unpaid dividends with respect to their preferred shares before making any payments with respect to the company's common shares.
- 36.6. Holders of preferred shares shall have the right to vote at a shareholders meeting with respect to the following matters:
  - 36.6.1. adoption of amendments to, or a new version of the company's charter, that limit the rights of such shareholders; or
  - 36.6.2. any reorganization of the company requiring conversion of preferred shares into common shares or other securities or property.
- 36.7. Any resolution adopted at a shareholders meeting with respect to any matter specified in Article 36.6 must be approved by a majority of the votes of holders of preferred shares.
- 36.8. The charter of a joint stock company may provide that holders of preferred shares shall have the right to vote for election of members of the Board of Directors in the following cases:
  - 36.8.1. if the terms pursuant to which preferred shares that are convertible into common shares are issued provide that the holders of such preferred shares may elect a representative to serve as a member of the Board of Directors; or
  - 36.8.2. if the company fails to pay dividends with respect to preferred shares within a specified period of time.

### **Article 37. Golden Shares**

- 37.1. In the case of the privatization of a state-owned enterprise, or a company in which the state holds a majority of the issued shares, where the state proposes to sell all of its interest, the Government may provide in its decision to sell the shares for issuance of a golden share (Golden Share) to the Government to be held for a specified period of time. The Government, as holder of the Golden Share, shall have the right to veto any decision adopted at a meeting of the company's shareholders, Board of Directors, or executive body, with respect to any matter described in Article 37.2, but shall not have any other rights, including the right to receive dividends.
- 37.2. In the case of a company that has issued a Golden Share, if any decision with respect to any the following matters that is adopted at a meeting of the company's shareholders, Board of Directors, or executive body, adversely affects the state's national security or social policy interests, such decision may be vetoed by the Government:
  - 37.2.1. any change in the nature of the company's business conducted prior to privatization;
  - 37.2.2. any reorganization or liquidation of the company;

- 37.2.3. any decision to conclude a major transaction to which the company is a party; or 37.2.4. any decision to establish or modify the company's prices for its products or services.
- 37.3. In order to exercise its veto right with respect to any matter specified in Article 37.2, the Government must adopt a resolution stating the reasons for such veto.
- 37.4. A resolution by a company with respect to any matter specified in Article 37.2 shall become effective upon confirmation by the Government that it does not intend to veto such decision.
- 37.5. A Golden Share may not be transferred to any other person.
- 37.6. A Golden Share shall be canceled upon the expiration of its stated term, and such term may not be renewed.

#### **Article 38. Securities Related to Shares**

- 38.1. Any rights to acquire common shares, or securities convertible into shares, or options, are deemed to be securities related to shares. Procedures for the issuance and sale of such securities shall be set forth in the company's charter.

#### **Article 39. Preemptive Right to Purchase Shares**

- 39.1. Subject to certain terms and conditions, any holder of a company's common shares shall have a preemptive right to purchase additional common shares issued by the company in proportion to the number of the common shares held by such holder.
- 39.2. Whenever a company proposes to issue additional common shares, it shall notify each common shareholder in the same manner as giving notice of a shareholders meeting of the number and price of the shares proposed to be issued, the number of shares that each shareholder has the right to purchase, and the terms and procedures for purchasing such shares. Any holder of common shares must notify the company of its decision to purchase additional shares that it is entitled to purchase pursuant to the exercise of its preemptive right within thirty (30) business days following the date of adoption of the resolution to issue the additional shares.
- 39.3. The price of the common shares that a shareholder is entitled to purchase pursuant to the exercise of its preemptive right may not be ninety percent (90%) or less than the market price of the shares. */As amended by the Law of May 12, 2000/*
- 39.4. The shareholder shall be deemed to have exercised its preemptive right to acquire shares upon the delivery to the company within the prescribed time of a document specifying its name and address, the number of shares to be purchased, and a document indicating payment for such shares.
- 39.5. A shareholder may exercise its preemptive right in whole or in part. A shareholder of a joint stock company may transfer its preemptive right to any other person in whole or in part.
- 39.6. Whenever a joint stock company proposes to issue additional common shares, its shareholders may waive the preemptive rights of all shareholders of the company to purchase such shares by adopting a resolution to this effect at a shareholders meeting by an overwhelming majority of votes of shareholders eligible to vote who attend the meeting.

#### **Article 40. Securities Convertible into Shares**

- 40.1. A company may issue preferred shares and bonds that are convertible into a specified number of common shares, subject to certain terms and conditions.
- 40.2. If a company issues preferred shares or bonds that are convertible into common shares it shall issue as well securities convertible into shares.
- 40.3. The terms for issuance of securities convertible into shares shall specify the type of such securities, the number of common shares into which such securities may be converted, the conversion price, and the period of time in which such conversion may be effected.
- 40.4. The conversion price of securities convertible into common shares of a joint stock company may not be less than the market value of such common shares.
- 40.5. Holders of a company's common shares shall have a preemptive right to acquire any convertible securities that a company proposes to issue in proportion to the number of common shares held by such holders. The procedures with respect to the exercise of such rights shall be governed by the provisions of Article 39.

#### **Article 41. Options**

- 41.1. A company's charter may provide that the company may issue options to acquire its common or preferred shares at a specified price and for a specified period of time.
- 41.2. The terms for issuance of options shall specify the number, class, and price of the optioned shares and the period of time in which the options may be exercised.
- 41.3. The option price to acquire common shares issued by a joint stock company may not be less than the market value of such common shares.
- 41.4. A holder of a company's common shares shall have a preemptive right to acquire any options to acquire common shares that a company proposes to issue in proportion to the number of common shares held by such holder. The procedures with respect to the exercise of such rights shall be governed by the provisions of Article 39.

#### **Article 42. Bonds**

- 42.1. A company may issue bonds secured by its owners' equity subject to a promise to pay interest while the bonds are outstanding and to redeem the bonds after the expiration of a stated period.
- 42.2. Unless otherwise provided in a company's charter, the Board of Directors (in its absence, a shareholders meeting) may adopt a resolution to issue bonds. The resolution shall specify the number, maturity date, issue price, interest rate, time for interest payments, and redemption price of the bonds and other relevant terms.
- 42.3. A company may issue bonds that mature on a specified date or on a series of specified dates.
- 42.4. Bonds issued by a company may be guaranteed by another company.
- 42.5. A company may redeem its bonds prior to their maturity by a decision adopted by the Board of Directors (in its absence, a shareholders meeting).

#### **Article 43. Resolution to Issue Securities**

- 43.1. Unless otherwise provided in the company's charter, a resolution to issue authorized shares or other securities referred to in this chapter shall be adopted by the Board of Directors (in its absence, a shareholders meeting). The resolution

shall specify the type and number of such securities and the terms and conditions of their issuance.

43.2. A company must issue all, or part, of its authorized common shares. A company may issue all, or part, of its authorized preferred shares at any time.

43.3. Securities [initially] offered to the public by a [joint stock] company, and additional shares that are [thereafter] issued by such joint stock company, must be registered with the Securities Committee pursuant to the Securities Law.

#### **Article 44. Issue Price of Shares, Options and Securities Convertible into Shares**

44.1. The price at which a company may issue its securities shall be determined by the Board of Directors (in its absence, a shareholders meeting) pursuant to Article 56, except in the following cases:

44.1.1. if the conversion price of securities convertible into shares and the exercise price of options was fixed;

44.1.2. if shares are being acquired by the exercise of rights;

44.1.3. if the issue price of shares acquired by a company's founders is specified in the company's founding documents; and

44.1.4. in the case of a limited liability company, as may be otherwise provided in its charter.

#### **Article 45. Payment for Securities**

45.1. Unless otherwise provided in a company's charter, a company's securities may be paid for with money, securities, property, or property rights.

45.2. Payment for shares issued at the time of establishment of a company shall be made prior to the registration of the company. Thereafter, payment shall be made at the time of issuance of any additional securities.

45.3. Unless otherwise provided in a company's charter, payment for shares may be made in non-monetary form in the following cases:

45.3.1. if non-monetary payment for shares is permitted by the founding documents in the course of establishment of a company pursuant to Article 14.6; or

45.3.2. if non-monetary payment for additional securities is permitted by the relevant issuing authorities.

45.4. If payment for shares is made in non-monetary form during the establishment of a company, the value of such payment shall be unanimously agreed to by the participants in the founding meeting.

45.5. In the case of the issuance of additional shares by a company, the Board of Directors (in its absence, a shareholders meeting) shall determine the value of non-monetary payment for shares. In the case of the issuance of additional shares by a joint stock company, the Board of Directors shall determine the value on non-monetary payment on the basis of an evaluation by an independent appraiser.

#### **Article 46. Register of Security Holders**

46.1. A company must maintain a register of the holders of the company's securities and, if the company issues securities in kind, arrange for the safekeeping thereof. A company may delegate these duties on a contractual basis to another organization that is authorized to perform such functions.

46.2. The register of holders of the company's securities shall include the full name and address of the holder, the number and class of securities held by such holder, a

- record of the number of securities transferred by such holder, the name of the transferee of any such securities, and other pertinent information.
- 46.3. A holder of a company's securities must timely inform the company, or other organization authorized to maintain the register of the company's securities, of any changes in the holder's name, address and the number of securities held by such holder.
- 46.4. Upon the demand of any holder of a company's securities, the company, or other organization authorized to maintain the register of the company's securities, must certify the information with respect to such security holder that is in the register. Any such certificate shall not be deemed to be a security.
- 46.5. If a company does not issue securities certificates, upon the demand of any security holder it must give such holder a document evidencing the rights of such holder with respect to the securities it holds.

## **CHAPTER 6**

### **DIVIDENDS AND TRANSFERS OF A COMPANY'S PROPERTY**

#### **Article 47. Payment of Dividends**

- 47.1. Unless otherwise provided in a company's charter, a resolution to pay dividends shall be adopted by the Board of Directors (in its absence, a shareholders meeting). The body adopting the resolution shall notify the shareholders of the amount of the dividend to be paid with respect to each share, the record date for determining shareholders who are entitled to receive the dividend, and the dividend payment date.
- 47.2. In the case of a limited liability company, the dividend record date shall be the date of adoption of the resolution to pay the dividend. In the case of a joint stock company, the dividend record date shall be a date later than the date of adoption of the resolution to pay the dividend and the shareholders shall be promptly notified of such date.
- 47.3. The per share value of dividends with respect to shares of the same class shall be equal in amount.
- 47.4. Unless otherwise provided in a company's charter, dividends may be paid in cash, in property, in securities of the company, or in securities of other persons.
- 47.5. If a shareholder sells or transfers its shares after the dividend record date, but prior to the dividend payment date, then such shareholder shall be entitled to receive the relevant dividend with respect to such shares.
- 47.6. If a resolution to pay a dividend is adopted, the company must pay the dividend on the date specified in the resolution. If the dividend is not paid on such date, upon the demand of any shareholder, the company shall pay a fine to such shareholder [as provided in the Civil Code], and the executive body shall reimburse the company for such fine and any losses attributable to the payment of such fine.

#### **Article 48. Conditions With Respect to Payment of Dividends**

- 48.1. A company may pay dividends with respect to its common shares if:
- 48.1.1. the company will be solvent after payment of the dividend;

- 48.1.2. after payment of the dividend, the company's owner's equity will exceed the sum of: the minimum amount of owner's equity required pursuant to Article 32, accrued but unpaid dividends with respect to preferred shares, and the liquidation value of such preferred shares; and
- 48.1.3. the company has redeemed all preferred shares that it is obligated to redeem.
- 48.2. A company may not pay dividends with respect to redeemed shares.
- 48.3. A company may pay dividends with respect to preferred shares if:
- 48.3.1. the company will be solvent after payment of the dividend; and
- 48.3.2. the company has redeemed all shares that it is obligated to redeem.
- 48.4. If, as a result of a dividend payment, a company's owner's equity is reduced by more than twenty-five percent (25%), the company shall notify its creditors in writing of the amount of its owner's equity within fifteen (15) business days following the date of the dividend payment.
- 48.5. If a company does not pay dividends, the Board of Directors must explain to its shareholders at any regular shareholders meeting why such dividends have not been paid.

#### **Article 49. Limitations on Disposition of a Company's Property**

- 49.1. For the purpose of protecting the rights of creditors, a company may not dispose of any of its property or property rights at less than market value if, as a result of such disposition, the company's owner's equity would be reduced to less than the minimum amount required by Article 32, or the company would be insolvent.
- 49.2. Any disposition in violation of Article 49.1 may be declared invalid by a court.

### **CHAPTER 7**

#### **REDEMPTION AND RE-PURCHASE OF A COMPANY'S SECURITIES**

#### **Article 50. Re-purchase by a Company of its Securities**

50.1. Unless otherwise provided in a company's charter, a company's Board of Directors (in its absence, a shareholders meeting) may agree with one or more of its shareholders to re-purchase securities of the company held by such shareholders.

50.2. A company may re-purchase any such securities, other than common shares, in full or in part. With respect to common shares, a company may re-purchase no more than twenty-five percent (25%) of the average amount of its outstanding common shares in any year.

50.3. Common shares re-purchased by a company shall be deemed to be authorized but not issued shares.

50.4. The Board of Directors in its resolution with respect to the re-purchase of a company's securities shall specify the number of shares to be re-purchased, the price to be paid per share, the date of payment, and the proposed disposition of the shares after they have been re-purchased.

50.5. Unless otherwise provided in a company's charter, the company may pay for re-purchased securities with cash, securities or other property.



50.6. A company may not purchase its securities that are in the process of a primary distribution pursuant to a public offering.

50.7. Unless otherwise provided in the charter of a limited liability company, or in an agreement among shareholders of a limited liability company, a company shall re-purchase its common shares at the market value for such shares determined by the Board of Directors (in its absence, a shareholders meeting) in accordance with the provisions of Article 56.

50.8. A proposed resolution by a company to re-purchase more than five percent (5%) of its then outstanding common shares must be approved at a shareholders meeting by a majority of the votes of shareholders eligible to vote who attend the meeting at which such resolution is considered, except in the following cases:

50.8.1. where a company proposes to re-purchase its common shares in proportion to the number of such shares then held by its shareholders;

50.8.2. where a company redeems securities presented to it by its shareholders pursuant to the exercise of redemption rights; or

50.8.3. in other instances as provided in the charter of a limited liability company.

50.9. If a company proposes to re-purchase its outstanding common shares in proportion to the number of shares held by each shareholder, it shall notify all shareholders of the number of shares that the company proposes to repurchase, the purchase price per share, the procedures for payment for such shares, the date of payment for the shares, and the date on or prior to which shareholders must present their shares to the company for sale. In the case of a joint stock company, the notice must be given to the shareholders at least thirty (30) business days prior to the date on or prior to which shareholders must present their shares to the company for sale. If the total number of common shares presented for sale exceeds the number of shares that the company initially offered to acquire, the Board of Directors (in its absence, a shareholders meeting), may elect to acquire a larger number of shares, up to the total number offered for sale, but not exceeding the amount specified in Article 50.2, and the company shall re-purchase such shares from each presenting shareholder in proportion to the number of shares offered for sale.

#### **Article 51. Redemption by a Company of its Preferred Shares**

51.1. If a company has sufficient funds, it may offer to redeem preferred shares, which it is obligated to redeem, in full or in part, prior to the date specified for redemption. In such case, the company shall notify the holders of these securities of its offer to redeem in accordance with the provisions of Article 66.

51.2. If a redemption price was not specified in the terms of the preferred shares when they were issued, such shares shall be redeemed at the market price as determined by the Board of Directors (in its absence, a shareholders meeting) in accordance with Article 56.

51.3. In the case of a mandatory redemption as of a date specified in the terms of the preferred shares when they were issued, if the company lacks sufficient funds to redeem such shares as of such date, the company may agree with the holders of such shares to postpone the redemption until sufficient funds are available. If the company and the holders of preferred shares fail to agree with respect to postponing the redemption, the company shall offer to transfer its obligation to purchase the shares to the persons specified in Article 53.

51.4. A company may not redeem its common shares if, following such redemption, its owner's equity would be reduced to an amount less than its paid-in capital.

#### **Article 52. Consolidation and Splitting of a Company's Shares**

- 52.1. A company may consolidate its shares of any class by converting two (2) or more shares of such class into one (1) new share of the same class.
- 52.2. A company may split its shares of any class by converting one (1) share of such class into two (2) or more new shares of the same class.
- 52.3. Fractional shares resulting from the consolidation or splitting of shares may be redeemed by the company at their market value as determined by the Board of Directors (in its absence, a shareholders meeting), in accordance with the provisions of Article 56.
- 52.4. A proposed resolution to consolidate or split a company's shares must be approved at a shareholders meeting by an overwhelming majority of the votes of shareholders eligible to vote who attend the meeting.
- 52.5. Changes in the number of authorized shares resulting from the consolidation or splitting of a company's shares shall be reflected in an amendment to the company's charter and in a notice to the Registration authority.
- 52.6. Following the consolidation or splitting of a company's shares, appropriate modifications shall be made with respect to the company's obligations to issue shares of the relevant class pursuant to the exercise of rights to acquire the shares of such class or the conversion of securities convertible into shares of such class.

#### **Article 53. Conditions for Re-Purchase and Redemption of Securities by a Company**

- 53.1. A company may re-purchase or redeem its outstanding securities subject to the following conditions:
- 53.1.1. the company must be solvent following such re-purchase or redemption; and
  - 53.1.2. the company's owner's equity must exceed the sum of the minimum amount of owner's equity required pursuant to Article 32, accrued but unpaid dividends on preferred shares, and the liquidation value of outstanding preferred shares.
- 53.2. After redemption of all common shares that it is obligated to redeem in accordance with Article 54, a company may re-purchase other common shares or securities relating to such shares.
- 53.3. If, as a result of an re-purchase or redemption of shares, a company's owner's equity is reduced by more than twenty-five percent (25%), the company shall notify its creditors in writing of the amount of its owner's equity within fifteen (15) business days following the date of payment for such shares.

#### **Article 54. Redemption of Shares by a Company at the Demand of Shareholders**

- 54.1. Each shareholder who voted against, or did not participate in voting for, a resolution adopted at a shareholders meeting with respect to the following matters, has the right to demand that the company redeem its shares:
- 54.1.1. reorganization of the company by consolidation, merger, division or transformation of a joint stock company into a limited liability company;

- 54.1.2. conclusion by the company of a major transaction requiring approval by shareholders at a shareholders meeting in accordance with Chapter 11;
  - 54.1.3. amendments to a company's charter, or adoption of a new version of the company's charter which limits the rights of existing shareholders; and
  - 54.1.4. other cases as provided in the company's charter.
- 54.2. If a shareholder, together with its affiliated persons, holds more than seventy-five percent (75%) of a company's common shares or, pursuant to the privatization of a company, purchases a control block of a company's shares owned by the State, any other holder of common shares may demand that the company redeem its shares. The company may allow the holder(s) of the control block to acquire the shares presented for redemption at a price determined in accordance with Article 54.4.
- 54.3. A company shall compile from its registry of shareholders a list of shareholders having rights of redemption as of the date of occurrence of events or circumstances giving rise to such rights.
- 54.4. A company shall redeem shares presented pursuant to a demand of its shareholders at the market price of such shares determined by the Board of Directors (in its absence, a shareholders meeting) in accordance with Article 56, without taking into account any factors occurring after the event or circumstance giving rise to the redemption right.

#### **Article 55. Procedures With Respect to the Exercise of a Shareholder's Right of Redemption**

- 55.1. Whenever a proposed resolution gives rise to a shareholder's right of redemption in accordance with Article 54 of this Law, a company must give notice to its shareholders of the existence of such right and the procedures for exercise of such right.
- 55.2. A shareholder who proposes to exercise its right of redemption shall deliver to the company a written statement of such demand that contains the shareholder's full name, address and the number and class of the shares being presented for redemption.
- 55.3. A shareholder must present its demand for redemption to the company within thirty (30) business days following adoption of the resolution giving rise to such right or receipt of such notice.
- 55.4. If a shareholder, together with its affiliated persons, acquires more than seventy-five percent (75%) of a company's common shares or, pursuant to the privatization of a company, acquires a control block of such shares previously owned by the State, within thirty (30) days following such acquisition the Board of Directors (in its absence, the executive body) of such company must notify other shareholders of their right to demand redemption of their shares. Such shareholders must present their demands for redemption to the company in writing within thirty (30) business days following receipt of such notice.
- 55.5. Within thirty (30) days following receipt of a shareholder's demand for redemption of its shares, the company shall redeem the shares at the price stated in the notice of the right of redemption or shall notify the shareholder of the reason that the company refuses to redeem such shares.
- 55.6. If a company refuses to redeem shares presented for redemption, or if the presenting shareholder does not accept the redemption price proposed by the

company, such shareholder may appeal to a court within three (3) months following the date of the company's decision.

55.7. The Board of Directors of a company shall provide such shareholders with additional information with respect to its determination of the market price of the shares to be redeemed.

#### **Article 56. Determination of the Market Value of Property and Property Rights**

56.1 . The market value of property and property rights, including the value of a company's securities, is the price that a seller who is not obligated to sell and a buyer who is not obligated to buy would agree to, assuming that each of them had complete access to information with respect to factors determining such value.

56.2. Unless otherwise provided in this Law or in a company's charter, the market value of property and property rights shall be determined by the company's Board of Directors (in its absence, a shareholders meeting).

56.3. If a member of a company's Board of Directors has an interest in any transaction which requires a determination of the market value of a company's property or property rights, such market value shall be determined by the votes of a majority of independent members of such Board of Directors who have no interest in the transaction. A member of the Board of Directors shall be deemed to be independent if he or she has no affiliation with any of the parties to the transaction, or any of their respective intermediaries, and will not, directly or indirectly, realize any financial benefit from the transaction. If a determination of market value is made by shareholders at a shareholders meeting, any shareholder who has an interest in the relevant transaction may not vote on such determination.

56.4. In determining the market value of property or property rights pursuant to Article 56.2 of this Law, the Board of directors (in its absence, a shareholders meeting) may seek the advice of an independent appraiser or auditor.

In the case of redemption of shares by a joint stock company pursuant to Article 54, the market value of the shares shall be determined on the basis of an evaluation by an independent appraiser or auditor.

The market value of securities listed for trading on the Stock Exchange shall be the average price of the relevant securities for the preceding six (6) months as recorded in the official records of the Exchange.

In determining the market value of a company's securities, the reasonable price that a buyer with full information concerning the paid-in capital, owner's equity, and profitability of the company would be willing to pay, as well as other relevant factors, shall be taken into account.

### **CHAPTER 8**

#### **ACQUISITION OF A CONTROL BLOCK OF SHARES OF A COMPANY**

##### **Article 57. Acquisition of a Control Block of Shares of a Company**

57.1. A control block of a company's shares is deemed to be one third (1/3) or more of the company's common shares.

57.2. Any person who, alone or in conjunction with its affiliated persons, proposes to acquire a control block of common shares of a joint stock company must make its offer to purchase such shares in accordance with procedures provided for by this Law and the Securities Law.

57.3. If any person, alone or in conjunction with its affiliated persons, announces its proposal to acquire a control block of shares of a joint stock company, such company may not take any action that interferes with the sale of such shares to such person unless a shareholder's meeting specifically adopts a decision to that effect by majority of vote of shareholders eligible to vote on such matter.

#### **Article 58. Requirements With Respect to Related Offer to Shareholders**

58.1. A person who, alone or in conjunction with its affiliated persons, acquires a control block of shares of a company must, within sixty (60) business days after the date of acquisition of such shares, make an offer to the company's other shareholders to acquire the company's shares held by them at a price not less than the weighted average market price of the company's shares during the preceding six (6) months.

58.2. If a person who has acquired a control block of shares of a company fails to make the offer required by Article 58.1, the shares held by it and its affiliated persons shall have no voting rights.

A notice of the offer to acquire shares of other shareholders shall be provided to all shareholders in the same manner as a notice with respect to the holding of a shareholders meeting. In the case of a joint stock company, such notice shall also be provided to the Securities Committee and the Mongolian Stock Exchange.

Such notice must contain the full name and address of the person, and its affiliated persons, who have acquired the control block of shares, the number of shares held by each of them, the price offered for the shares, and the period during which shareholders can accept the offer.

58.3. The period during which shareholders can accept the offer referred to in Article 58.1 may not be less than thirty (30) days following the date of sending the notice of the offer to the shareholders.

58.4 . Article 58.1 of this Law shall not apply to the acquisition of a control block of shares owned by the State in connection with the privatization of a State-owned enterprise. In such case, the provisions of Articles 54 and 55 with respect to redemption of shares shall apply.

#### **Article 59. Required Disclosure of Information upon Acquisition of a Control Block of Shares**

59.1. Any person who alone, or in conjunction with its affiliated persons, acquires or owns more than one third (1/3) of the common shares of a joint stock company shall, within ten (10) business days following the date of such acquisition, deliver a written notice to such company and to the Securities Committee stating its full name and address, as well as the names and addresses of such affiliated persons, and the number of the company's shares held by each of them.

### **CHAPTER 9**

#### **A COMPANY'S MANAGEMENT**

##### **Article 60. Shareholders Meetings**

60.1. A shareholders meeting is the highest governing authority of a company. If a company has only one shareholder, that shareholder shall exercise such authority.

60.2. A shareholders meeting may be either regular or special.

- 60.3. A regular shareholders meeting shall be called and held within four (4) months following the end of each fiscal year of a company. If a regular shareholder meeting is not called and held within such period, the authority of the Board of Directors (in its absence, the executive body) shall terminate and the power to call the shareholders meeting shall be transferred to the Supervisory Board. The Supervisory Board shall convene a shareholders meeting within fifteen (15) business days following the transfer of such power. If the Supervisory Board fails to convene such meeting within this period, any shareholder may appeal to a court of competent jurisdiction for an order calling the meeting, or such shareholder may convene and hold the shareholders meeting him/ herself. In such case, any expenses incurred by such shareholder in connection with the convening and holding of the meeting shall be reimbursed by the company.
- 60.4. In the case of a limited liability company, a chairman elected by the shareholders meeting shall preside over the meeting. In the case of a joint stock company, the chairman of the Board of Directors shall preside over the shareholders meeting unless another person is elected by the shareholders.
- 60.5. A special shareholders meeting may be convened by the Board of Directors (in its absence, the executive body) or by shareholders eligible to vote holding ten (10%) or more percent of the company's common shares in accordance with the provisions of Article 62.

#### **Article 61. A Decision to Convene a Shareholders Meeting**

- 61.1. The Board of Directors (in its absence, the executive body), or persons specified in Articles 60.3 and 62.7, shall call a shareholders meeting by adopting a resolution to this effect.
- 61.2. Such resolution shall specify:
- 61.2.1.the place, date and time of the meeting;
  - 61.2.2.the agenda of the meeting;
  - 61.2.3.in the case of a joint stock company, the record date for determining shareholders who have a right to attend the meeting;
  - 61.2.4.the date and procedures for notifying the company's shareholders of the meeting;
  - 61.2.5.a list of documents that will be made available to the shareholders prior to the meeting;
  - 61.2.6.if there is to be voting by ballots, the form and content of ballots; and
  - 61.2.7.the date by which all ballots must be submitted to be effective.

#### **Article 62. Special Shareholders Meetings**

- 62.1. A special shareholders meeting may be called by the Board of Directors (in its absence, the executive body).
- 62.2 In addition, a shareholder or shareholders eligible to vote holding at least ten percent (10%) of a company's common shares may demand that the Supervisory Board or Board of Directors (in its absence, the executive body) convene a special shareholders meeting. Any such demand must be in writing.
- 62.3. A demand to convene a special shareholders meeting shall contain the full names of the shareholders making such demand, the reason for calling the meeting, the agenda for the meeting, and the number and class of shares held by such shareholders.

- 62.4. The Board of Directors (in its absence, the executive body) shall decide whether or not to convene such special shareholder meeting within ten (10) business days following the date that they receive the demand.
- 62.5. If the Board of Directors (in its absence, the executive body) refuses to call such special shareholder meeting, it shall immediately notify the demanding shareholders of such decision and the reasons thereof. The only allowable reasons for such a decision are:
- 62.5.1. that the shareholders demanding the calling of the special meeting do not hold at least ten percent (10%) of the company's common shares that are eligible to be voted; or
- 62.5.2. that none of the issues proposed for the agenda of the special shareholder meeting are within the authority of such meeting.
- 62.6. A decision to refuse to convene a special shareholders meeting may be appealed to a court.
- 62.7. If, within the period provided in Article 62.4, the Board of Directors (in its absence, the executive body) fails to adopt a resolution with respect to the calling of a special shareholders meeting at the demand of shareholders, the demanding shareholders may call such meeting. In such case if authorized by the shareholder's meeting, the company may reimburse the demanding shareholders for expenses incurred in connection with the holding of the meeting.
- 62.8. If the Board of Directors (in its absence, the executive body) decides to call the special meeting demanded by the shareholders, such meeting shall be called within forty-five (45) business days following receipt of the demand. In such case, the company shall be responsible for all expenses incurred in connection with the holding of the meeting.

### **Article 63. Authority of a Shareholders Meeting**

- 63.1. A shareholders meeting shall have exclusive authority to consider and decide the following matters:
- 63.1.1 amendments to the company's charter or the adoption of a new version of the charter;
- 63.1.2 reorganization of the company by consolidation, merger, division, or transformation;
- 63.1.3 an exchange of the company's debts for shares;
- 63.1.4 reorganization of the company by transformation;
- 63.1.5 liquidation of the company and the appointment of a liquidation committee;
- 63.1.6 a split or consolidation of the company's shares;
- 63.1.7 election of members of the Board of Directors and termination of their powers prior to the expiration of their terms;
- 63.1.8 election of members of the Supervisory Board and termination of their powers prior to the expiration of their terms;
- 63.1.9 whether the shareholders shall have the preemptive rights to acquire the company's shares or other securities as provided in Article 39;
- 63.1.10 consideration and approval of reports prepared by the Board of Directors with respect to the company's annual operations and financial statements;
- 63.1.11 approval of any major transactions specified in Chapter 11;

- 63.1.12 approval of any conflict-of-interest transactions specified in Chapter 12;
  - 63.1.13 approval of any acquisition of its shares by the company pursuant to this Law;
  - 63.1.14. approving the amount of salaries and bonuses to be given to members of the Board of Directors, unless otherwise provided in the company's charter;
  - 63.1.15. other matters submitted to the meeting by the Board of Directors; and
  - 63.1.16. other matters required to be submitted to a shareholder meeting for approval as provided in this Law or in the company's charter.
- 63.2 A shareholders meeting of a limited liability company that does not have a Board of Directors shall have exclusive authority to consider and decide the following matters in addition to those specified in Article 63.1:
- 63.2.1 the issuance of securities by the company;
  - 63.2.2 determining the authority of the company's executive body;
  - 63.2.3 appointment of the executive director or members of the company's executive body, determining their authority, and termination of their powers prior to the expiration of their terms;
  - 63.2.4 approving the amount of salaries and bonuses to be given to members of the executive body;
  - 63.2.5 consideration and approval of reports prepared by the executive body with respect to the company's annual operations and financial statements;
  - 63.2.6 selecting and concluding a contract with the company's auditor;
  - 63.2.7 determining the amount of dividends and the procedures for their payment;
  - 63.2.8 approving the internal organization of the executive body;
  - 63.2.9 establishment of branches and representative offices of the company;
  - 63.2.10 determining the market value of property and property rights pursuant to Article 56;
  - 63.2.11 other matters set forth by this Law and the company's charter; and
  - 63.2.12 other matters proposed for consideration by the executive body or shareholders.

#### **Article 64. Shareholders Meeting Resolutions**

- 64.1. The rights of holders of a company's common shares to vote on matters submitted for consideration and approval at a shareholders meeting are governed by Article 35 and the rights of holders of preferred shares are governed by Article 36.
- 64.2. Unless otherwise provided by law, one share shall have one vote.
- 64.3. A shareholder shall be entitled to vote on any matter submitted to a vote of shareholders with respect to which it is entitled to vote. The voting eligibility of holders of each class of shares with respect to each such matter shall be determined at the meeting.
- 64.4. To be effective, any matter submitted to a shareholders meeting for consideration, other than election of members of the Board of Directors (or in its absence, the executive body), must be adopted by a majority of the votes of shareholders that are eligible to vote on the matter who attend the meeting, unless a larger number of votes is specified in this Law or in the company's charter. In the case of elections of members of the Board of Directors (or in its absence, the executive body), the candidates who receive the largest number of votes shall be elected as members, unless otherwise provided in the charter of a limited liability company.



- 64.5. To be effective, any matter specified in Articles 63.1.1 through 63.1.6 and Article 63.12 shall be adopted by an overwhelming majority of votes of shareholders eligible to vote on the matter who attend the meeting. A company's charter may specify that a larger number of votes are required to approve any such matter.
- 64.6. A company's charter may provide for special procedures to be followed when considering certain matters on the agenda of a shareholders meeting.
- 64.7. A shareholders meeting may neither consider nor adopt a resolution with respect to any matter that is not included in the agenda of the meeting. If deemed necessary, a company's charter may specify procedures for submitting matters to be included in the agenda except as provided in Article 67.

#### **Article 65. Right to Participate in a Shareholders Meeting**

- 65.1. A list of shareholders having the right to attend a shareholders meeting shall be compiled as of a record date determined by the Board of Directors (in its absence, the executive body) by the authorized person or entity that maintains the company's shareholder register and delivered to the person who called the meeting.

In the case of a joint stock company, the record date for compiling the list of such shareholders shall be determined by the Board of Directors at the time of the adoption of the resolution to hold the meeting. Such record date may not be earlier than forty-five (45) days prior to the date of the meeting. In the case of a limited liability company, the record date shall be the date of the shareholders meeting.

- 65.2. The list of shareholders having the right to attend a shareholders meeting shall contain the full name and address of each shareholder and the number and class of shares held by each such shareholder.
- 65.3. Upon the demand of shareholders holding at least ten percent (10%) of company's shares eligible to vote, the company must make the list of shareholders having the right to attend a shareholders meeting available to such shareholders.
- 65.4. Changes to the list of shareholders having the right to attend a shareholders meeting may be made by the Board of Directors with the approval of the authorized person that maintains the register of shareholders.

#### **Article 66. Delivery of the Notice of a Shareholders' Meetings**

- 66.1. A person convening a shareholders meeting must notify each shareholder who has a right to attend the meeting.
- 66.2. In the case of a limited liability company, the procedures and time for giving notice of the holding of a shareholders meeting may be specified in the company's charter.

The Securities Committee may issue rules for giving notice of the holding of shareholders meetings of a joint stock company.

- 66.3. A notice of the holding of a shareholders meeting shall contain the company's name and address, the date, time and place of the meeting, the record date for determining shareholders having the right to attend the meeting, the matters to be included in the agenda, drafts of resolutions to be considered at the meeting, the procedure for providing shareholders with information concerning such draft

resolutions, and other information provided for by this Law or the company's charter.

If votes may be cast at the meeting by ballot, the notice shall specify the place for delivery of ballots and the date by which such ballots must be received to be effective.

- 66.4. Information materials submitted to shareholders [with respect to the annual meeting of shareholders] shall include:
- 66.4.1. the company's annual financial statements;
  - 66.4.2. the report of the company's auditors with respect to the financial statements;
  - 66.4.3. a list of any conflict-of-interest transactions concluded by the company during the previous fiscal year and certification by the auditor as to whether each such transaction was concluded in accordance with the requirements of Chapter 12;
  - 66.4.4. information with respect to the candidates for election to the Board of Directors (or appointment to the executive body) of the company;
  - 66.4.5. a list of the company's affiliated persons, and the number and class of shares held by them;
  - 66.4.6. information with respect to company related expenses incurred by, and salaries and bonuses paid or granted to members of the Board of Directors and executive body;
  - 66.4.7. in the case of a joint stock company, an annual report of business operations; and
  - 66.4.8. any other material information concerning the matters included in the agenda of the meeting.
- 66.5. The above-noted information must be provided to shareholders at the time of giving notice of the shareholders meeting.

#### **Article 67. Proposals to be Included in the Agenda of a Shareholders Meeting**

- 67.1. No less than forty-five (45) business days prior to any regular meeting of a company's shareholders, holders of more than five percent (5%) of the company's common shares may introduce additional proposals to the agenda for the meeting and may nominate candidates for election to the Board of Directors or appointment to the executive body.
- 67.2. A proposal for the agenda must be in writing and contain a statement of the proposal, the reasons for submitting the proposal, the full names of the shareholders introducing the proposal, and the number and class of shares held by each such shareholder. Nominations of candidates for election to the Board of Directors or appointment to the executive body must be in writing and contain a statement of the name of each candidate and, if the candidate is a shareholder of the company, the number and class of shares held by such shareholder, the name of the shareholders nominating the candidate, and the number and class of shares held by each such shareholder. The statement may also include the reasons for the nominations.
- 67.3. The Board of Directors (in its absence, the executive body) must include the submitted proposals in the agenda for a regular shareholders meeting within fifteen

(15) business days following the receipt of such proposals, except in the following cases:

67.3.1. non-compliance with the requirements of Article 67.1; or

67.3.2. if all information specified in Article 67.2 has not been provided.

67.4. If the Board of Directors (in its absence, the executive body) refuses to include a proposal in the agenda of a regular shareholders meeting, or to include a proposed candidate in the list of candidates, it shall deliver a notice on the reasons for such refusal to the shareholders who submitted the proposals or nominations within three (3) business days following the date of such decision. Such decision may be appealed to a court.

67.5. It shall be prohibited to make changes to the agenda of a shareholders meeting after the resolution to hold such meeting has been adopted.

#### **Article 68. Tabulation Commission**

68.1. The Board of Directors of a joint stock company shall appoint a tabulation commission to determine matters relating to voting at shareholders meetings. With the approval of shareholders at a shareholders' meeting a third party may be authorized to act as the tabulation commission.

68.2. It shall be prohibited to include in the tabulation commission persons holding official positions in the company, or their affiliated persons, if any such persons have a direct interest in any matter to be considered at the meeting.

68.3. The tabulation commission shall:

68.3.1. determine the existence of a quorum at a shareholders meeting and advise the chairman of the meeting in this regard;

68.3.2. determine each shareholder's voting rights with respect to each matter on the agenda of the meeting;

68.3.3. explain any issues arising in connection with the exercise by shareholders of their right to vote;

68.3.4. explain the voting procedures;

68.3.5. ensure compliance with the established voting procedures and voting

rights; 68.3.6. account for and preserve voting ballots if voting is conducted by ballot;

68.3.7. tabulate votes and record the results of voting at the shareholders meeting;

68.3.8. compile a record of voting results and provide the meeting with a report

signed by the head of the tabulation commission (who shall be personally responsible for the accuracy of the record); and

68.3.9. deliver voting ballots to the company's archives for safe keeping.

68.4. The Board of Directors may assign additional duties to the tabulation commission related to the holding of shareholders meeting.

#### **Article 69. Procedures for Participation in a Shareholders Meeting**

69.1. The right to participate in a shareholders meeting may be exercised by a shareholder either in person or through its representative, who shall act on the basis of a written power of attorney issued pursuant to the requirements of the Civil Code.

69.2. The representative shall notify the Board of Directors that it is acting in this capacity prior to the meeting. The power of attorney shall only be valid for a

specified meeting. If such meeting is postponed, but the agenda remains the same, the power of attorney shall remain valid for use at the postponed meeting.

- 69.3. Shareholders who have submitted their votes by ballot shall be deemed to be participants in the shareholders meeting.
- 69.4. In the case of a joint stock company, any shareholder that has transferred its shares after the record date for determining shareholders having the right to participate in a shareholders meeting may grant a power of attorney to the transferee of such shares authorizing such holder to participate in the meeting, or the transferor may agree to participate in person at the meeting and to vote in accordance with the transferee's instructions.
- 69.5. If a company's shares are jointly owned by several persons, the power to vote at a shareholders meeting may be exercised by any one of the owners as mutually agreed among them or by their jointly appointed representative. Documentation establishing the right to represent such persons must meet the requirements of the Civil Code.

#### **Article 70. Quorum Required for a Shareholders Meeting**

- 70.1. There shall be a quorum at a shareholders meeting if shareholders holding more than fifty percent (50%) of the company's voting shares participate in the meeting. A company's charter may establish larger quorum requirements.
- 70.2. In the absence of a quorum as provided in Article 70.1 the shareholders meeting shall not be convened and a date for a new shareholders meeting shall be announced. No changes may be made in the agenda of the postponed meeting.
- 70.3. There shall be a quorum at the postponed shareholders meeting if shareholders eligible to vote holding at least twenty percent (20%) of the company's voting shares participate in the meeting, unless a larger number of shares is required by the company's charter.
- 70.4. If the agenda for the postponed shareholders meeting includes matters specified in Articles 63.1.1 through 63.1.6, a quorum will be deemed to be established if shareholders eligible to vote holding at least one third (1/3) of the company's voting shares participate in the meeting, unless a larger number of shares is required by the company's charter.
- 70.5. A company shall hold the postponed shareholders meeting within twenty (20) business days following the date of the meeting at which a quorum was not established. Shareholders shall be given notice of the place, date and time of the postponed meeting at least seven (7) business days prior to the holding of postponed meeting.
- 70.6. In the case of a postponed shareholders meeting held by a joint stock company, the record date for determining shareholders having the right to participate in the meeting shall not be changed.
- 70.7. Ballots submitted for use at the shareholders meeting at which a quorum was not established shall be counted in establishing the quorum and for the purpose of voting at the postponed meeting.
- 70.8. If the postponed shareholders meeting is not held within twenty (20) business days following the date of the meeting at which a quorum was not established, a new shareholders meeting shall be convened, at which the quorum requirements of Article 70.1 must be met.

### **Article 71. Voting Ballots**

- 71.1. A joint stock company shall, and a limited liability company may, conduct voting at a shareholders meeting by the use of ballots.
- 71.2. Shareholders enter their votes in the ballots and submit them to the tabulation commission pursuant to procedures established by the Board of Directors (in its absence, the executive body).
- 71.3. The Board of Directors (in its absence, the executive body) shall approve the text and form of voting ballots. Voting ballots shall contain:
- 71.3.1. the company's name;
  - 71.3.2. the place, date and time for holding the relevant shareholders meeting;
  - 71.3.3. the name of the shareholder and the class and number of shares held by such shareholder;
  - 71.3.4. a statement of the issues on the agenda for the meeting and the names of candidates for election to the Board of Directors (or appointment to the executive body);
  - 71.3.5. the voting method (ordinary or cumulative) to be used for electing members of the Board of Directors or the executive body; and
  - 71.3.6. if ordinary voting is to be used, provisions for the voting options "for", "against" and "abstain" with respect to each matter. If cumulative voting is to be used, the ballots shall include an explanation of the concept of cumulative voting and a blank next to the name of each candidate indicating the number of votes being cast for such candidate.

### **Article 72. Validity of Voting Ballots at a Shareholders Meeting**

- 72.1. A voting ballot shall be deemed to be valid if:
- 72.1.1. in the case of ordinary voting, only one blank is marked with respect to each matter to be voted on;
  - 72.1.2. in the case of election of members of the Board of Directors (or members of the executive body) by ordinary voting, the number of candidates chosen does not exceed the number of members to be elected; and
  - 72.1.3. in the case of election by cumulative voting, the total number of votes cast by the shareholder does not exceed the total number of votes such shareholder is entitled to cast, which is the number of common shares held by the shareholder multiplied by the number of the members to be elected.
- 72.2. With respect to voting on all matters other than elections, a shareholder may mark only one of the possible voting options.

### **Article 73. Decisions of Shareholders Adopted by External Voting**

- 73.1. In the case of a special shareholders meeting, a joint stock company may elect to use external voting procedures in lieu of holding a meeting. Such external voting shall be implemented by the use of voting ballots. External voting may not be used in connection with a regular shareholders meeting.
- 73.2. A company's Board of Directors may decide to use external voting. The resolution with respect to such decision shall contain:
- 73.2.1. a list of the matters to be submitted to shareholders for external voting;
  - 73.2.2. the record date for determining the shareholders who have the right to participate in such external voting;
  - 73.2.3. the date for delivering voting ballots to such shareholders;

- 73.2.4. the date by which ballots must be submitted to the company;
  - 73.2.5. the form and text of the ballot; and
  - 73.2.6. a list of documents to be made available to shareholders with respect to the matters to be voted, the location of such information, and the procedures to be followed to access such information.
- 73.3. Shareholders having the right to participate in external voting shall be determined in accordance with Articles 65 and 69.
- 73.4. The voting ballot shall contain the information specified in Articles 71.3.1, 71.3.3, 71.3.4, 71.3.5 and 71.3.6 and the date by which ballots must be submitted to the company.
- 73.5. In the case of a joint stock company, voting ballots must be distributed to shareholders at least thirty (30) business days prior to the date by which ballots must be submitted to the company to be effective.
- 73.6. An external voting shall be considered valid if shareholders holding more than fifty percent (50%) of the total shares eligible to vote submit their ballots. Resolutions shall be adopted if approved by a majority of votes of shareholders eligible to vote who submitted their ballots.
- 73.7. The tabulation commission with rights and duties specified in Article 68 shall count the votes cast by ballot and prepare a summary report.
- 73.8. The tabulation commission shall submit its report to the Board of Directors, signed by the head and members of the commission, within three (3) business days following the date by which ballots must be submitted to the company.
- 73.9. The report on the results of external voting shall include:
- 73.9.1. the date that the voting ballots were distributed to shareholders;
  - 73.9.2. a list of the matters voted on by external voting;
  - 73.9.3. a list of the names of shareholders who submitted ballots and the number of voting shares held by each such shareholder;
  - 73.9.4. the total number of votes cast with respect to each issue by shareholders with voting rights;
  - 73.9.5. the results of the external voting; and
  - 73.9.6. the resolutions adopted by the external voting.
- 73.10. The Board of Directors shall inform the shareholders of the results of the external voting as set forth in the report by the tabulation commission within seven (7) business days following the date of receiving such report.

#### **Article 74. Minutes of a Shareholders Meeting**

- 74.1. Minutes of a shareholders meeting shall be compiled within fifteen (15) business days following the meeting and shall be signed by the chairman of the meeting who shall be responsible for the accuracy of the minutes.
- 74.2. The minutes of a shareholders meeting shall include the following information:
- 74.2.1. the date, place and time of holding the meeting;
  - 74.2.2. the full name of the chairman of the meeting;
  - 74.2.3. the agenda for the meeting;
  - 74.2.4. the total number of voting shares held by all shareholders and the number shareholders attending the meeting;
  - 74.2.5. in the case of voting by ballots, the form and content of the ballot; and

- 74.2.6. the number of votes cast for and against each resolution, the number of abstentions, the full text of resolutions adopted at the meeting on each matter on the agenda for the meeting.
- 74.3. Mistakes made in compiling the minutes of a shareholders meeting shall not serve as a reason to invalidate or otherwise affect resolutions adopted by the meeting.
- 74.4. In the case of a limited liability company, voting results and resolutions adopted at a shareholders meeting shall be announced at the meeting. In the case of a joint stock company and external voting, voting results and resolutions adopted at a shareholders meeting shall either be announced at the same meeting or in a report to shareholders delivered to them after the meeting.

#### **Article 75. The Board of Directors**

- 75.1. The Board of Directors shall be the governing body of a company between shareholders meetings.
- 75.2. A joint stock company shall have a Board of Directors. A limited liability company may not have a Board of Directors unless otherwise provided in its charter.
- 75.3. The number of members of the Board of Directors shall be set forth in the company's charter. The Board of Directors of a joint stock company shall have at least nine (9) members.
- 75.4. A member of the Board of Directors is not required to be a shareholder of the company.

#### **Article 76. Authority of the Board of Directors**

- 76.1. With the exception of matters specified in this Law or in a company's charter as being exclusively within the authority of the shareholders at a shareholders meeting the Board of Directors shall exercise authority with respect to the following matters:
- 76.1.1 determination of the management and policies of the company;
  - 76.1.2 the holding of regular and special shareholders meetings;
  - 76.1.3 determination of the agenda for shareholders meetings, the record date for determining shareholders having the right to participate in such meetings, and other matters with respect to the holding of such meetings;
  - 76.1.4 the issuance of shares within the limits of the company's authorized but not issued shares;
  - 76.1.5 the issuance of securities related to common shares and other securities as specified in the company's charter;
  - 76.1.6 determination of the market value of property and property rights in accordance with Article 56;
  - 76.1.7 acquisition and redemption of its shares and other securities;
  - 76.1.8 election and modification of the company's executive body and determining its authority;
  - 76.1.9 establishment of the terms of contracts to be concluded with members of the executive body, the amount of bonuses to be granted to such members, and their respective liabilities and obligations;
  - 76.1.10 selection of the company's auditor and establishment of the terms of the contract to be concluded with such auditor;

- 76.1.11 preparation of the company's annual report of business operations and financial statements;
  - 76.1.12 unless otherwise provided in the company's charter, determination of the amount of dividends to be paid with respect to the company's shares and the procedures for payment of such dividends;
  - 76.1.13 approval of the rules of procedure to be followed by the company's Board of Directors and executive body;
  - 76.1.14 creation of branches and representative offices of the company;
  - 76.1.15 preparation of draft resolutions with respect to reorganization of the company for submission to a shareholders meeting for approval and implementation of such resolutions;
  - 76.1.16 approval of the conclusion of a major transactions in accordance with Chapter 11;
  - 76.1.17 approval of the conclusion of a conflict-of-interest transaction in accordance with Chapter 12; and
  - 76.1.18. the matters specified in this Law and in the company's charter.
- 76.2. In the case of a joint stock company, only independent members of the Board of Directors may consider and vote on the matters specified in Articles 76.1.6, 76.1.10 and 76.1.17. A member is deemed to be independent if neither he (her) nor his (her) spouse, parents, children, brothers, sisters, or affiliated persons, has been a governing person of the company, or any of its controlled or subsidiary companies, within the past three (3) years.

#### **Article 77. Election, Powers and Termination of Authority of Members of the Board of Directors**

- 77.1. Members of the Board of Directors shall be elected at a regular shareholders meeting pursuant to the procedures established by this Law and the company's charter. In the event of termination of authority of any member of the Board of Directors before the expiration of his/her term, new members may be elected at a special shareholders meeting. Unless otherwise provided in the company's charter, the authority of members of the Board of Directors shall expire on the date of the next annual shareholders meeting. Members of the Board of Directors may be reelected.
- 77.2. The shareholders may terminate the authority of a member of the Board of Directors before the expiration of his or her term by a decision of a special shareholders meeting. If the members of the Board of Directors have been elected by cumulative voting, a shareholders meeting may only terminate the authority of all members of such Board.
- 77.3. Members of the Board of Directors must be individual persons.
- 77.4. Members of the Board of Directors of a joint stock company must be elected through cumulative voting. In using such voting, each shareholder shall be entitled to as many votes as shall equal the number of voting shares held by such shareholder multiplied by the number of directors to be elected and such shareholder may cast all such votes for a single candidate or distribute its votes among the number of candidates to be voted for.
- 77.5. Unless otherwise provided in a company's charter, in the event of long-term incapacity or death of a member of the Board of Directors, the Board may appoint a person to hold this position until the election of a replacement member.



**Article 78. Chairman of the Board of Directors**

- 78.1. Unless otherwise provided in a company's charter, the chairman of a company's Board of Directors shall be elected from among the members of the Board by a majority vote of such members.
- 78.2. Unless otherwise provided in a company's charter, the chairman of the Board of Directors shall organize the activities of the Board, convene and preside at its meetings, and supervise the preparation and retention of minutes of such meetings.
- 78.3. In the absence of the chairman of a company's Board of Directors, his or her powers shall be exercised by another member of the Board appointed by the chairman or by the Board.
- 78.4. Subject to the authority specified in the procedures governing the activities of a company's Board of Directors, the chairman of the Board may act on behalf of the company without a power of attorney, including the conclusion of transactions in the company's name and otherwise representing the company's interests.

**Article 79. Meetings of the Board of Directors**

- 79.1. Unless otherwise provided in a company's charter, a Board of Directors meeting shall be held monthly and, if deemed necessary, additional meetings may be held. Decisions adopted at a meeting of the Board of Directors shall take the form of resolutions. Such resolutions shall be signed by the chairman of the Board.
- 79.2. A meeting of a company's Board of Directors may be convened by the chairman, any member of the Board, any member of the company's executive body, at the initiative or demand or any other persons specified in the company's charter. The Board of Directors shall establish and approve rules of procedure governing its activities.

The Board of Directors may adopt resolutions by means of external voting.

- 79.3. An overwhelming majority of members of the Board of Directors shall constitute a quorum at meetings of the Board. Resolutions of the Board shall be adopted by an overwhelming majority of votes of members participating in the meeting, unless a larger number of votes is specified in the company's charter. If, pursuant to this Law or the company's charter, any members of the Board are not eligible to vote on a particular matter, a decision with respect to such matter shall be adopted by an overwhelming majority of the Board members who are eligible to vote on such matter.

If the number of elected members of the Board is reduced to less than half of the total number of members specified in the company's charter, then the company shall convene a special shareholders meeting to elect new members within three (3) months.

Each member of the Board shall have one vote with respect to each matter considered at any meeting of the Board.

In the case of a tie vote with respect to any matter, either a company's charter or

the Board's rules of procedures may provide that the chairman of the Board may cast the deciding vote.

- 79.4. The minutes of a meeting of a company's Board of Directors shall include the following information:
- 79.4.1. the place and time of the meeting;
  - 79.4.2. the names of the members present at the meeting;
  - 79.4.3. the agenda for the meeting;
  - 79.4.4. all matters submitted for consideration and the results of voting on any such matters; and
  - 79.4.5. resolutions adopted at the meeting.

The minutes of a meeting of the Board of Directors shall be signed by the person presiding at the meeting and such person shall be responsible for the accuracy of the minutes.

- 79.5. Errors made in compiling the minutes of a meeting of the Board of Directors shall not serve as a reason to invalidate resolutions adopted by the meeting.

#### **Article 80. The Executive Body**

- 80.1. A company's executive body shall manage the company's day-to-day activities within the scope of the authority established by the company's charter and the contract concluded between the executive body and the Board of Directors (in its absence, a shareholders meeting).
- 80.2. Unless a company's charter provides for a collegial executive body, such body shall be an individual who shall be called the executive director.
- 80.3. In the case of a joint stock company, the executive body may be a member of the company's Board of Directors, but not the chairman of the Board.
- 80.4. Unless otherwise provided by law or in a company's charter, and with the consent of the company's Board of Directors (in its absence, a shareholders meeting), the executive director of a company, or a member of the company's collegial executive body, may concurrently hold an official position in the governing body of another company or business entity.
- 80.5. The executive body shall act on the basis of a contract concluded with the Board of Directors (in its absence, a shareholders meeting). The contract shall be signed by the chairman of the Board (in its absence, by the chairman of the shareholders meeting) and shall establish the rights and duties of the executive body, the extent of its responsibilities, circumstances warranting release from liability, and the salaries and bonuses of members of the executive body.
- 80.6. Subject to limitations with respect to the authority of the executive body afforded by the Board of Directors (in its absence, a shareholders meeting), the executive body may act on behalf of the company without a power of attorney, including concluding transactions, entering into agreements and otherwise representing the company.
- 80.7. A collegial executive body of a company shall establish rules of procedure for implementing the duties and responsibilities imposed on its members by the company's charter and its contract with the Board of Directors (in its absence, a shareholders meeting). Such procedures shall be approved by the Board of Directors (in its absence, a shareholders meeting) and shall include the following:

- 80.7.1. the respective duties and responsibilities of the chairman and each member of the executive body and procedures for coordinating such duties and responsibilities;
- 80.7.2. the procedure for appointment of the chairman of the body; and
- 80.7.3. the rights, duties and responsibilities of the chairman of the executive body.
- 80.8. Members of the collegial executive body of a company shall be jointly liable and accountable to the Board of Directors (in its absence, a shareholder meeting).
- In concluding any transactions or agreements specified in Article 80.5, the chairman of the collegial executive body shall act as the company's executive director and sign all relevant documents on behalf of the company in this capacity. Such chairman shall be elected by the members of the executive body upon consultation with the Board of Directors.
- 80.9. The collegial executive body shall keep minutes of its meetings, including all resolutions adopted at any such meetings. The chairman of the body shall be responsible for the accuracy of such minutes.
- 80.10. The powers of the executive body may be terminated at any time by the Board of Directors (in its absence, a shareholder meeting).

## **CHAPTER 10**

### **LIABILITIES OF GOVERNING PERSONS OF A COMPANY**

#### **Article 81. Governing Persons of a Company**

- 81.1. Members of a company's Board of Directors and collegial executive body, the executive director, chief financial officer, general accountant, and other senior executive officers of a company shall be deemed to be governing persons of the company.
- 81.2. A governing person of a company must fulfill his or her duties as determined by the company's charter and the internal rules of procedure adopted by the Board of Directors (in its absence, a shareholder meeting) and act in good faith and in the company's interest. A governing person may not use a company's confidential information to advance his or her personal interests and may not disclose any such information to third persons unless permitted by the Board of Directors (in its absence, a shareholders meeting).
- 81.3. A governing person of a company shall be liable to the company for any loss caused to the company by his or her unlawful actions unless otherwise provided by law.
- 81.4. Liabilities of a governing person shall be determined based on the duties of such person as stated in the contract between such person and the Board of Directors and the company's internal rules of procedure, and if it is not possible to determine liability based on these documents, such liabilities shall be determined by a court.
- 81.5. If more than one governing person is determined to be liable to the company pursuant to this Article, such governing persons shall be deemed to be jointly liable.

81.6. In the case of a limited liability company, a shareholder that alone or in conjunction with its affiliated persons holds twenty percent (20%) or more of the company's common shares shall be liable as a governing person of the company, stated in Article 81 of this Law.

### **Article 82. Personal Liabilities of a Governing Person**

82.1. A governing person of a company shall be personally liable for any loss caused to the company, its shareholders and creditors, if such person intentionally commits any of the following unlawful acts:

82.1.1. conducts business in the name of the company for personal benefit;

82.1.2. gives false information to shareholders, creditors or other persons having business dealings with the company;

82.1.2. fails to disclose that such governing person is an affiliated person of the company in accordance with Article 97;

82.1.3. fails to keep company documents secure as required by Article 95;

82.1.4. violates the principles stated in Article 81.2; or

82.1.5. does not comply with requirements with respect to payment of dividends, or for the acquisition or redemption of shares, or does not comply with limitations with respect to the disposition of a company's property as provided in his or her contract with the company, or in the company's charter, or in Articles 47, 48, 49 and 53.

82.2. The liabilities provided for in this Article may be imposed in addition to any liabilities imposed pursuant to other provisions of this Law or other laws.

### **Article 83. Rights of Shareholders to Assert Claims Against Governing Persons in Court**

83.1. A holder or holders of one percent (1%) or more of a company's common shares may file a claim in court against a governing officer of the company for compensation of any loss caused to the company.

83.2. A company, or the holder or holders of one percent (1%) or more of a company's common shares may also file a claim in court against a person specified in Article 81.6 for compensation of any loss caused to the company ~~or such shareholders.~~

*[/The phrase was annulled by the Constitutional Decision # 03 of 2002/](#)*

## **CHAPTER 11**

### **MAJOR TRANSACTIONS**

#### **Article 84. Major Transactions**

84.1. The following transactions shall be deemed to be major transactions:

84.1.1. a transaction, or series of related transactions, other than in the ordinary course of business, involving the sale, purchase, disposition (including a pledge) by a company of property or property rights, the market value of which exceeds twenty five percent (25%) of the total assets of the company as shown on the company's most recent balance sheet prior to the conclusion of such transaction;

or

84.1.2. the issuance in one transaction, or in a series of related transactions, of common shares, or rights to acquire common shares, or securities convertible into common shares, where the number of such common shares exceeds twenty five percent (25%) of the common shares outstanding prior to such transaction.

84.2. The market value of property and property rights that are the subject of a major transaction shall be determined by the Board of Directors (in its absence, a shareholders meeting) pursuant to Article 56.

84.3. In determining whether a transaction is a major transaction, the Board of Directors (in its absence, the executive body) may adjust the book value of the company's assets to reflect inflation based on recommendations of the company's auditor.

84.4. The provisions of this chapter shall not apply to a company whose common shares are owned by one shareholder.

#### **Article 85. Conclusion of a Major Transaction**

85.1. A resolution to conclude a major transaction must be adopted unanimously by the Board of Directors (in its absence, by a shareholders meeting).

If the Board of Directors does not unanimously adopt the resolution to conclude a major transaction, the resolution shall be submitted to the shareholders meeting and must be approved by a majority of votes of shareholders eligible to vote who attend the meeting.

85.2. Shareholders who voted against a resolution to conclude a major transaction have the right to demand that the company redeem their shares in accordance with the provisions of Article 54.

## **CHAPTER 12**

### **CONFLICT-OF-INTEREST TRANSACTIONS**

#### **Article 86. Transactions with Conflict-of-Interest Persons**

86.1. The following persons are deemed to be conflict-of-interest persons of a company with respect to transactions specified in Article 86.2 between such conflict-of-interest person and the company or any of the company's controlled or subsidiary companies: any governing person of the company; and any shareholder (or shareholders) of the company who, alone or in conjunction with their affiliated persons, hold twenty percent (20%) or more of the company's common shares.

- 86.2. Any conflict-of-interest person specified in Article 86.1, and his or her spouse, parents, children, brothers, sisters and affiliated persons shall be deemed to be a party to a conflict-of-interest transaction if such person:
- 86.2.1. is a party to such transaction, or participates in such transaction as a representative or intermediary;
  - 86.2.2. is a governing person of another company, or owns, alone or in conjunction with its affiliated persons, twenty percent (20%) or more of the common shares of such other company that is a party to such transaction, or is a participant in such transaction as a representative or intermediary;
  - 86.2.3. is a governing person of a company, or owns, alone or in conjunction with its affiliated persons, twenty percent (20%) or more of the common shares of a company that is the predominant or parent company of a controlled or subsidiary company that is a party to such transaction or that participates in such transaction as a representative or intermediary; or
  - 86.2.4. directly or indirectly, sells or acquires property or property rights or other rights as the result of such transaction.
- 86.3. The provisions of this Chapter shall not apply to:
- 86.3.1. a company all of whose common shares are owned by a single person;
  - 86.3.2. any shareholder in connection with the exercise by such shareholder of a preemptive right to acquire shares pursuant to Article 39;
  - 86.3.3. a company that acquires shares from its shareholders in proportion to the number of shares of each class held by such shareholders; and
  - 86.3.4. a company holding seventy-five percent (75%) or more of the common shares of another company that is merging with such other company pursuant to Article 20.4.
- 86.4. If a limited liability company has no more than ten (10) shareholders, the company's charter may provide that the provisions of this Chapter shall not apply to other circumstances in addition to those specified in Article 86.3.

#### **Article 87. Compensation for Losses Resulting from Conflict-of-Interest Transactions**

- 87.1. If a transaction concluded by a conflict-of-interest person in violation of the provisions of Articles 88 and 89 is declared to be void by a court, the person responsible for such violation shall be liable for any loss caused to the company or its controlled company.
- 87.2. The holder or holders of more than one percent (1%) of the common shares of a company, or any officer authorized to represent a company, may file a claim in court for compensation for any loss specified in Article 87.1.

#### **Article 88. Requirements Applicable to Conflict-of-Interest Persons**

- 88.1. Any conflict-of-interest person who is a party to a proposed conflict-of-interest transaction must report to the Board of Directors (in its absence, the executive body), and the company's auditor, the following information:
- 88.1.1. the relevant companies, or any controlled or subsidiary companies of such companies, in which it holds, alone or in conjunction with his or her spouse, parents, children, brothers, sisters, or affiliated persons, twenty percent (20%) or more of the common shares;

- 88.1.2. the relevant companies, or any controlled or subsidiary companies of such companies, in which he or she, or his or her spouse, parents, children, brothers or sisters holds a governing position; and
- 88.1.3. that it is a conflict-of-interest person with respect to a proposed transaction by the company.
- 88.2. A member of the authorized body of a company who is a conflict-of-interest person may not participate in decisions made by the company with respect to conflict-of-interest transactions.

#### **Article 89. Procedure for Concluding a Conflict-of-Interest Transaction**

- 89.1. A resolution of a joint stock company to conclude a conflict-of-interest transaction, or a resolution to permit or cause its controlled or subsidiary companies to conclude a conflict-of-interest transaction, must be adopted by the company's Board of Directors (in its absence, a shareholders meeting) by a majority of the votes cast by its members who are independent and not conflict-of-interest persons with respect to the transaction.
- 89.2. A member of the Board of Directors shall be deemed to be independent if, for past three (3) years, such member:
- 89.2.1. and none of the following persons: his or her spouse, parents, children, brothers, sisters or affiliated persons, has been an officer or member of the governing body of the company;
- 89.2.2. has not been an affiliated person of the company; and
- 89.2.3. has not been a governing officer of any affiliated company.
- 89.3. The Board of Directors (in its absence, a shareholder meeting) shall determine the market value of the property, property rights, other rights, or services that are the subject of the conflict-of-interest transaction in accordance with Article 56.
- 89.4. In the following cases, a resolution by a joint stock company to conclude a conflict-of-interest transaction (or a series of related transactions), or to permit or cause its controlled or subsidiary companies to conclude such a transaction or transactions, must be approved at a shareholders meeting by a majority of the votes of shareholders eligible to vote who attend the meeting and who are not conflict-of-interest persons:
- 89.4.1. if the amount to be paid with respect to the transaction, or the market value of property, property rights or other rights to be disposed of pursuant to the transaction, or the value of the services to be rendered pursuant to the transaction, as determined by the Board of Directors pursuant to Article 56, exceeds two percent (2%) of the value of the company's assets as shown on the company's balance sheet as at the date of adoption of the resolution to complete such transaction;
- 89.4.2. if the number of common shares to be issued in connection with the transaction, including shares set aside for issuance upon the exercise of rights to acquire common shares and the conversion of securities convertible into common shares, exceeds two percent (2%) of the value of the issued and outstanding common shares of the company or any joint stock company controlled by the company, as the case may be; or
- 89.4.3. if all members of the Board of Directors (including independent members) are conflict-of-interest persons with respect to the transaction.

- 89.5. A decision by the Board of Directors of a company to submit to a shareholders meeting a resolution to conclude a conflict-of-interest transaction must be approved by a majority of the votes of members of the Board who are not interested in the transaction or, in the case of a joint stock company, by a majority of the votes of independent members of the Board.
- 89.6. A conflict-of-interest transaction need not be approved pursuant to Article 89.4 if such transaction is a loan to the company from a conflict-of-interest person, or his or her spouse, parents, children, brothers, sisters or affiliated persons.

If a conflict-of interest transaction was concluded in the ordinary course of the business of a company, or its controlled company, before the person who is interested in the transaction was deemed to be a conflict-of-interest person pursuant to Article 86, such transaction need not be approved by shareholders until the next regular shareholders meeting.

- 89.7. If, at a regular shareholders meeting, it is not possible to determine whether a transaction concluded by the company, or its controlled or subsidiary companies, in the ordinary course of business is a conflict-of-interest transaction, the shareholders at such meeting may adopt a resolution approving the transaction. The resolution shall describe the nature of the transaction, the identity of the persons concluding the transaction, and the monetary value involved in the transaction. Adoption of such a resolution shall be deemed to meet the requirements of Article 89.4.
- 89.8. When concluding a conflict-of-interest transaction, the procedures in this Chapter shall be followed as well as other procedures provided for in this Law or in a company's charter applicable to the specific transaction.

#### **Article 90. Consequences of Non-compliance with the Procedures for Concluding a Conflict-of-Interest Transaction**

- 90.1. If any person specified in Article 86.1 does not comply with the requirements and procedures specified in Articles 88 and 89, such person shall be liable for any loss caused to the company or its controlled or subsidiary companies as the result of such non-compliance or for the monetary proceeds realized by such person as a result of the transaction. In addition, a court may declare such conflict-of-interest transaction to be void.
- 90.2. If any governing person of a company concludes a conflict-of-interest transaction, such person shall be subject to liability as provided in Articles 82 and 87.
- 90.3. If any person specified in Article 86.1 does not comply with the requirements and procedures specified in Articles 88 and 89, and if such person holds all of the shares of the company that concluded a transaction with the company with respect to which such person is a conflict-of-interest person, such company may file a claim with court against the other company for compensation for losses incurred by the company or to declare the transaction to be void.
- 90.4. A company, or shareholders holding at least one percent (1%) of a company's common shares, may file a claim with court against persons specified in Article 86.1 or, in the case of a company specified in the same article, all of the shares which are held by one person, against the company.
- 90.5. In cases other than those referred to in Article 90.3, non-compliance with the requirements of Article 89 shall not result in declaration of the transaction to be



void if the person who concluded such transaction did not know, or did not have possibilities to know, of such non-compliance.

## **CHAPTER 13**

### **FINANCIAL CONTROLS**

#### **Article 91. Audits of a Company's Financial and Economic Activities**

- 91.1 Unless otherwise provided in a company's charter, a company may contract with an auditor to review and certify its financial statements and to audit, in full or in part, the company's financial and economic activities. The charter of a joint stock company must provide for retaining an auditor.
- 91.2. The Board of Directors (in its absence, a shareholder meeting) shall select the auditor and approve a contract which specifies the rights, duties and obligations of the auditor and the amount of the auditor's compensation. An audit of a company's financial and economic activities may be regular or special. A regular audit shall be performed to review and certify the company's annual financial statements. A special audit of a company's financial and economic activities may be authorized at any time by a resolution of the Board of Directors or demanded by shareholders possessing more than ten percent (10%) of the company's common shares. The costs of a regular audit shall be borne by the company. The costs of a special audit demanded by shareholders shall be borne by such shareholders. If a special audit reveals any loss caused to a company as a result of any unlawful action of a governing person of the company, such governing person shall be liable for the audit costs.
- 91.3. At the demand of the company's auditor, any governing officer of the company must deliver to the auditor any documents pertaining to the company's financial and economic activities.
- 91.4. A company's auditor may participate in a shareholders meeting for the sole purpose of explaining the results of its audit to the shareholders.
- 91.5. An auditor of a company may not:
- 91.5.1. be an affiliated person, governing officer or employee of the company, or an affiliated person of any such governing person, or a governing person or employee of any company that is affiliated with the company;
  - 91.5.2. hold securities issued by the company or other property or property rights of the company or any of its affiliated persons; or
  - 91.5.3. enter into any transaction with the company other than the contract to complete the audit.
- 91.6. A company may not contract to pay an auditor on the basis of the results of the audit.
- 91.7. Based on its review of the company's financial and economic activities, the auditor shall prepare a report which shall include:
- 91.7.1. a certificate with respect to the reliability of the data contained in the company's financial statements;

91.7.2. confirmation that the company's accounting books and records have been prepared in accordance with appropriate procedures and any exceptions in this regard;

91.7.3. a list of conflict-of-interest transactions concluded by the company during the period covered by the audit and, with respect to each such transaction, confirmation of compliance with the requirements of this Law;

91.7.4. in the case of a joint stock company, such other information as may be required by the Securities Committee or the Stock Exchange; and

91.7.5. such other information as may be required by the company's charter or the contract between the company and the auditor.

### **Article 92. Supervisory Board**

92.1. A joint stock company must have a supervisory board and a limited liability company may have a supervisory board. A company's charter shall specify the number of members, procedures for election, term of office, and rights and obligations of members of the supervisory board.

92.2. A company's supervisory board shall: monitor compliance of the company's management with the provisions of the Company's charter and the implementation of resolutions adopted at meetings of the company's shareholders; submit to each regular shareholders meeting a report with respect to its review of the activities of the company's management and financial statements for the preceding fiscal year; review specified financial activities of the company at the demand of shareholders; and perform such other duties as provided in this Law and in the company's charter.

92.3. If a company's charter provides for a single supervisor, he or she shall have all of the rights and obligations of the supervisory board.

92.4. Members of a company's supervisory board shall be elected by the shareholders at a shareholders meeting.

92.5. A governing person of a company may not simultaneously be a member of the supervisory board.

92.6. A company's supervisory board may demand that the company convene a special shareholders meeting pursuant to Article 62.2.

### **Article 93. Accounting Books and Reports of a Company**

93.1. A company shall maintain financial accounting books and records and prepare financial statements for submission to shareholders and other authorized persons as required by law. A joint stock company must also timely deliver such statements to the Securities Committee and the Stock Exchange together with such additional information as may be required by such organizations to be published as public information.

93.2. A company's charter shall specify the commencement date and termination date of the company's fiscal year.

93.3. The executive body of a company shall be responsible for the accuracy of the accounting books and financial statements prepared by the company.

## **Article 94. Financial Statements and Annual Reports**

94.1. The financial statements of a company shall include:

- 94.1.1. a balance sheet;
- 94.1.2. a profit and loss statement;
- 94.1.3. a cash flow statement;
- 94.1.4. a statement of retained earnings;
- 94.1.5. a list of all conflict-of-interest transactions concluded during the relevant period reflected in the report, with a description of the type of each such transaction and the amount of money involved;
- 94.1.6. appropriate explanatory notes; and
- 94.1.7. other information.

The financial statements of a limited liability company may also contain additional items required by the company's charter.

94.2. The Ministry of Finance may adopt regulations requiring additional disclosures in a company's financial statements with respect to tax matters. In the case of a joint stock company, the Securities Committee may establish requirements and standards with respect to the form and content of a company's financial statements and explanatory notes.

94.3. The Board of Directors of a company shall prepare and deliver to its shareholders an annual report with respect to the structure, organization, assets, and business activities of the company. Such annual report shall include:

- 94.3.1. a description of the principal activities conducted during the fiscal year covered by the report, the results of such activities, changes in such activities from those of the preceding year, the company's structure and organization, and any changes from the preceding year with respect to such structure and organization;
- 94.3.2. the amount of bonuses granted to governing officers of the company and expenses incurred by the company's management during such fiscal year;
- 94.3.3. other information required by the company's charter; and
- 94.3.4. in the case of a joint stock company, any additional information as may be required by regulations of the Securities Committee.

94.4. The Board of Directors shall submit to a company's annual shareholders meeting its report with respect to the financial statements. If audited financial statements are required by law, the company's auditor shall review and certify such financial statements before the Board of Directors prepares its report.

## **Article 95. Safekeeping of a Company's Documents**

95.1. A company shall keep the following documents:

- 95.1.1. the company's charter, amendments to the charter, resolutions with respect to the founding of the company, and the company's certificate of registration;
- 95.1.2. resolutions adopted by the Board of Directors, the executive body, the supervisory board, and shareholders at shareholders meetings;
- 95.1.3. rules of procedure of the company's branches and representative offices;
- 95.1.4. documents evidencing ownership of the company's property and property rights as shown in its balance sheet;

- 95.1.5. minutes of shareholders meetings, meetings of the Board of Directors or collegial executive body and, where an individual acts a company's executive body, the orders and resolutions of such individual;
  - 95.1.6. minutes of meetings of the supervisory board and reports prepared by the supervisory board and the company's auditor;
  - 95.1.7. annual financial statements and reports of business operations;
  - 95.1.8. resolutions with respect to the issuance of common shares and other securities;
  - 95.1.9. bookkeeping and accounting records;
  - 95.1.10. a list of the company's affiliated persons with a statement of the number and class of the company's shares held by each of them; and
  - 95.1.11 the documents required by this Law and the company's charter.
- 95.2. A company shall keep the documents specified in Article 95.1 at its principal place of business or at such other place that is disclosed to, and reasonably accessible by, the company's shareholders.
- 95.3. A company shall keep its charter and amendments to the charter indefinitely. A company shall keep all other documents specified in Article 95.1 for at least five (5) years and may thereafter transfer such documents to archives.
- 95.4. The secretary of the Board of Directors (in its absence, the relevant officer of the executive body) shall be responsible for safekeeping of documents specified in Article 95.1, providing access to such documents by authorized persons, and transferring such documents to archives.

The secretary of the Board of Directors shall be personally responsible for preparing and coordinating the handling of a company's documents.

#### **Article 96. Requirements With Respect To Disclosure of Information Concerning a Company**

- 96.1. A joint stock company shall make available to its shareholders, at any such shareholders request, the company's annual financial statements and reports of business operations, the names of the company's affiliated persons, the number and class of shares and other securities held by each of such persons, and such other information as may be required to be made available to shareholders by the rules and regulations of the Securities Committee and the Stock Exchange.
- 96.2. A company must make any documents other than the company's book-keeping and accounting records, minutes of the executive body meetings, resolutions and decisions adopted at such meetings accessible to its shareholders at any such shareholder's request and permit copying of such information upon payment of a fee provided, however, that the company shall not be required to give its shareholders access to any documents of the company that are prohibited to be disclosed by legislation.
- 96.3. Shareholders of a joint stock company holding ten percent (10%) or more of the company's common shares, or any shareholder of a limited liability company, may demand that the company provide such shareholders with a list of the names and addresses of holders of the company's common shares and the number of shares held by each such holder. The company's executive body, or any entity authorized to maintain the registry of such shareholders, shall prepare such list as of the date of the demand and shall provide such list to the demanding shareholders within

five (5) business days following such date. The demanding shareholders shall be responsible for all costs incurred in connection with preparation of the list.

#### **Article 97. Affiliated Persons and Information With Respect to Them**

- 97.1. For the purposes of this Law, the following persons shall be deemed to be affiliated persons with respect to each other:
- 97.1.1. a group of individuals who together have the possibility to determine the company's decisions on the basis of a certain agreement;
  - 97.1.2. a company and its controlled companies;
  - 97.1.3. controlled companies of the same company;
  - 97.1.4. a company or individual (or a group of individuals) that has the possibility to determine decisions company's decisions on the basis of a certain agreement;
  - 97.1.5. companies that have the possibility to determine decisions adopted by a person (or a group of persons);
  - 97.1.6. a company and its officials;
  - 97.1.7. family members and spouses;
  - 97.1.8. parents and their children under the age of eighteen living together with them.
- 97.2. An affiliated person of a company shall give written notice to the company of the number and class of the company's securities held by such person and his affiliated person within thirty (30) business days following the date such person becomes an affiliated person of the company.
- 97.3. An affiliated person shall be liable for any losses incurred by the company as a result of its failure to give timely notice as required by Article 97.2.

### **CHAPTER 14**

#### **MIISCELLANEOUS**

#### **Article 98. Entry Into Force**

- 98.1. Any companies established prior to the effective date of this Law shall amend their charters to conform to this Law by 30 December 1999 1 September 2000. Until the charters of such companies are so amended, the provisions of such charters shall continue to apply to the extent that they are not inconsistent with the provisions of this Law. A shareholder of a company that has not timely amended its charter to conform to this Law may demand that the company amend its charter or may apply to a court for an order requiring the company to complete such amendment. [/As amended by the Law of May 12, 2000/](#)
- 98.2. A company shall not be required to pay any registration fee when registering amendments to its charter pursuant to Article 98.1.
- 98.3. ~~As of the effective date of this Law, the provisions of other laws pertaining to companies shall continue to be effective to the extent that they are not inconsistent with the provisions of this Law.~~ [/This Article was repealed by the Constitutional Decision # 03 of 2002/](#)

CHAIRMAN OF THE STATE IKH KHURAL  
OF MONGOLIA

R.GONCHIGDORJ