

Art. 50. — (1) L'espace approprié et les conditions matérielles nécessaires pour le déroulement de l'activité de l'Office national du registre du commerce et de chaque office du registre du commerce seront assurés pour les années 1990–1991 par la préfecture et, respectivement, la Mairie de la municipalité de Bucarest.

(2) Les biens avec lesquels ont été dotés les offices passent, sans paiement, dans la propriété des chambres de commerce et d'industrie territoriales jusqu'à la date du 1^{er} janvier 1992.

Art. 51. — La Chambre de commerce et d'industrie de Roumanie et les chambres de commerce et d'industrie territoriales assureront les conditions nécessaires au fonctionnement du système informatique unitaire du registre du commerce.

Art. 52. — L'Office du registre du commerce de la municipalité de Bucarest devient l'Office du registre du commerce de la municipalité de Bucarest et du département d'Ilfov.

Art. 53. — La présente loi entre en vigueur dans le délai de trente jours de sa publication au *Moniteur Officiel* de la Roumanie*.

* Y font exception les dispositions de l'art. 4 al. (2) et (3), art. 6, art. 8 al. (2), (3) et (4), art. 11 al. (2), (3) et (4), art. 12 al. (1), (3) et (4), art. 13 al. (1), art. 14, art. 15, art. 16, art. 17 à 20, art. 21 lett. f), art. 23, art. 24 al. (3), art. 25 al. (3), art. 26 à 29, art. 30 al. (2) et (4), art. 36, art. 37, art. 39, art. 41, art. 44, art. 45, art. 48 al. (1) et des art. 51 et 52, qui entrent en vigueur trente jours suivant la date de publication au *Moniteur Officiel* de la Roumanie, Partie I^{re}, de la Loi n° 12/1998.

**LAW
on trading companies**

**LAW
regarding the trade register**

LAW

on trading companies*

TITLE I

General provisions

Art. 1. — (1) With a view to carrying out trading operations, natural and legal persons may associate and set up trading companies, in compliance with the provisions of the present law.

(2) The trading companies, having their registered office in Romania are Romanian legal persons.

Art. 2. — The trading companies will be set up under one of the following forms: a) general partnership; b) limited partnership; c) joint-stock company; d) limited partnership by shares; e) limited liability company.

Art. 3. — (1) A company's social obligations are guaranteed with its registered assets.

(2) The associates in a general partnership as well as the active partners in a limited partnership or in a limited partnership by shares shall have an unlimited and joint liability for the company's obligations. The creditors shall first go against the company to fulfill its obligations and will go against the associates only if it does

* Republished on the grounds of Art. X of the Government Expeditious Ordinance No. 32/1997, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 133/27 June 1997, approved and modified by the Law No. 195/17 November 1997, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 335/28 November 1997 by giving the texts new numbers.

The Law No. 31/1990 was published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 126-127/17 November 1990 and it was modified by: Law No. 41/1 June 1991, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 120/4 June 1991; Law No. 44/4 July 1991, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 142/11 July 1991; Law No. 80/23 December 1991, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 263/23 December 1991, and by the Law No. 78/20 July 1992, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 178/28 July 1992.

not meet payments within 15 days from the date of receiving notice.

(3) The shareholders, the sleeping partners as well as the associates in a limited liability company may be kept liable only up to the value of their subscribed registered capital.

Art. 4. — A trading company shall have at least two associates except for the case where the law provides otherwise.

TITLE II

Setting up trading companies

CHAPTER I

The constitutive act of the trading company

Art. 5. — (1) The general partnership company or the limited partnership shall be set up by a company contract while the joint-stock company, the limited partnership by shares or the limited liability company shall be set up by a company contract and its articles of association.

(2) The limited liability company may be set up by the act of will of a single person. In this case only the articles of association shall be drawn up.

(3) The company contract and the articles of association may be drawn up as a single document entitled the *constitutive act*.

(4) When only the company contract or only the articles of association are concluded, they could also be designated as constitutive act. Within this present law the *constitutive act* designates both the single document and the company contract and/or the company's articles of association.

(5) The constitutive act shall be signed by all associates or, in case of a public subscription, by the founders, and shall be concluded in an authenticated form.

Art. 6. — (1) The signers of the constitutive act as well as the persons with a decisive role in the setting up of the company are considered as founders.

(2) The persons who, according to the law, are incapacitated or have been sentenced for fraudulent management, breach of trust, forgery, use of forgeries, cheating, embezzlement, perjury, bribery or other criminal offences prescribed by this present law, can not assume the position of founders.

Art. 7. — The constitutive act of the general partnership, of the limited partnership, and of the limited liability company shall contain:

a) the name and first name, place and date of birth, domicile and citizenship of the associates when they are natural persons; the denomination, the registered office and the nationality of the associates, when they are legal persons. In case of a limited partnership the active partners as well as the sleeping partners shall be clearly identified;

b) the form, denomination, the headquarters and the emblem of the company, as the case may be;

c) the company's object of activity, specifying the field of action and the main activity;

d) the subscribed and the deposited registered capital, with special mention of each associate's contribution, whether in cash or in kind, the value of the assets brought as contribution in kind and the way the evaluation has been made, as well as the date when all subscribed registered capital shall be deposited. In a limited liability company the number and the nominal value of all participating shares as well as the number of participating shares attributed to each associate for his contribution shall be specified;

e) the associates who represent and manage the company or the independent administrators, be they natural or legal persons, the powers vested in them and whether they are going to exert the powers together or separately;

f) each associate's part in profits and losses;

g) location of its subsidiaries — branches, agencies, or other offices of the same kind without legal personality — when they and the company are set up at the same time, or conditions to set them up at a later date if such a setting up is considered;

h) duration of the company;

i) the method of dissolution or liquidation of the company.

Art. 8. – The constitutive act of the joint-stock company or of the limited partnership by shares shall contain:

a) the name and first name, place and date of birth, the domicile and citizenship of the associates, when they are natural persons; denomination, their registered office and the nationality of the associates, when they are legal persons; in case of a limited partnership by shares the active partners as well as the sleeping partners shall be clearly identified;

b) the form, denomination, the registered office and the emblem of the company, as the case may be;

c) the company's object of activity, specifying the field of action and its main activity;

d) the subscribed and deposited registered capital. At the time of setting up the subscribed registered capital, deposited by each shareholder, shall be no less than 30% of the subscribed capital, except where the law provided otherwise. The remaining of the registered capital shall be deposited within 12 months from the date of the company's incorporation;

e) the value of the assets brought as contribution in kind, the method of evaluation and the number of shares attributed against them;

f) the number and nominal value of the shares, specifying whether they are registered or on bearer; where there are different categories of shares the number, nominal value and the rights conferred to each category shall be specified;

g) the name and first name, place and date of birth, the domicile and citizenship of the managers, when they are natural persons; denomination, the headquarters and nationality of the managers, when they are legal persons; the guaranty which the managers are bond to deposit, the powers vested in them and whether they shall exert the said together or separately; the special rights of administration and representation granted to some of them. In a limited partnership by shares the active partners who represent and manage the company shall be identified;

h) the name and first name, place and date of birth, domicile and citizenship of the auditors, when they are natural persons; denomination, headquarters and nationality of auditors, when they are legal persons;

i) provisions regarding the management, administration and functioning of the company as well as the administrative control over company's property;

j) duration of the company;

k) method of profit distribution and loss bearing;

l) location of its subsidiaries – branches, agencies or other offices of the same kind without legal personality – when they and the company are set up at the same time, or the conditions to set them up at a later date if such a setting up is considered;

m) special benefits reserved for the founders;

n) the shares for the sleeping partners in a limited partnership by shares;

o) operations concluded by associates on behalf of the company to be set up and which the company is going to take over as well as the sums of money to be paid for those operations;

p) method of dissolution or liquidation of the company.

Art. 9. – The joint-stock company may be set up only by full and simultaneous subscription of the registered capital by all signers of the constitutive act or by public subscription.

Art. 10. – (1) The registered capital of the joint-stock company or of the limited partnership by shares can not be lower than 25,000,000 lei.*

* According to Article VI of the Expeditious Government Ordinance no. 32/1997, as amended by Law no. 195/1997 the existing joint-stock companies, limited partnerships by shares and the limited liability companies which do not have the minimum registered capital stipulated by this Article, are obliged to complete it within a year as from the date of coming into force of the Expeditious Ordinance.

Until the expiry of this time limits the registered capital contributed as an increase of capital to joint-stock companies or limited partnerships by shares can not be lower than 30% of the capital subscribed for the same purpose.

The increase of the registered capital can also be done by using the reserves, except legal reserves, as well as the benefits and bonuses related to the capital, including the positive differences resulted out of the reassessment of the registered assets or in other ways allowed by the law.

Instead of the completion of the registered capital those companies may, at their option, proceed to change the form of the company into one where, the existing registered capital will suffice, which change should be done within one year as from the date of coming into force of this Expeditious Ordinance (i.e. July 27, 1997).

In case the above mentioned one year time period is not observed the court, at the request of the state through the Ministry of Finance or of the relevant county Chamber of Commerce and Industry or of any interested person, will decide upon the dissolution of the company.

However the court, for justified reasons, may grant a new 6 months time period at the most for the completion of the registered capital.

(2) The number of shareholders in a joint-stock company can not be under 5.

Art. 11. — (1) The registered capital of the limited liability company can not be lower than 2,000,000 lei and it shall be divided into equal participating shares that can not be less than 100,000 lei each.*

(2) The participating shares can not be represented by negotiable instruments.

Art. 12. — In a limited liability company the number of the associates can not be higher than 50.

Art. 13. — (1) In case that, in a limited liability company, the participating shares belong to a single person as a sole associate, that person has the rights and duties prescribed, according to this present law, for the general assembly of the associates.

(2) If the sole associate is also the manager he shall assume the duties prescribed by the law for persons filling that position.

(3) In a company set up by a sole associate the value of his contribution in kind shall be assessed by specialized experts.

Art. 14. — (1) A natural person or a legal person can not fill the position of sole associate in more than one limited liability company.

(2) A limited liability company can not have, as a sole associate, another limited liability company set up by a single person.

(3) In case the provisions of para. (1) and (2) of this article are infringed, the State through the Ministry of Finance shall request the dissolution of such a company by way of court decision. Likewise, the relevant county Chamber of Commerce and Industry or any interested person may request dissolution by way of a court decision of any company set up by infringement of the above-mentioned provisions.

(4) Based on the dissolution decision, the liquidation shall be carried out according to the rules prescribed by this present law for limited liability companies.

Art. 15. — (1) Contributions in cash are compulsory when setting up companies of any kind.

(2) Contributions in kind are admissible in all forms of companies. These contributions are fulfilled by transferring

* See the note on page 201.

the relevant rights and by effective delivery, to the company, of the assets in a good to use condition.

(3) Contributions in debts shall be paid according to the rules prescribed under Article 84 hereinbelow. Such contributions are not admitted in joint-stock companies set up by public subscription, in limited partnerships by shares or in limited liability companies.

(4) Labour prestations cannot be considered as contributions to form or to increase the registered capital.

(5) The associates in a general partnership as well as the active partners may assume the obligation to come with labour prestations as contributions but these contributions can not be considered as such with the purpose to form or to increase the registered capital. In exchange for such contributions the associates are entitled, according to the constitutive act, to share in the distribution of profits and company's assets remaining, at the same time, bound to pay their share of possible losses.

Art. 16. — At the time of authentication of the constitutive act the company shall produce the proof issued by the trade register office regarding the disponibility of firm's name and of the emblem.

CHAPTER II

Specific formalities to set up joint-stock companies by way of public subscription

Art. 17. — (1) In case the joint-stock company is set up by public subscription, its founders shall draw up an issue prospectus containing the data provided under Article 8, except those regarding the managers, directors and auditors and that shall establish the closing date of the subscription.

(2) The issue prospectus, signed by founders in the authentic form, shall be deposited, prior to its publishing, with the trade register office of the county where the company's registered office will be established.

(3) The mandatory judge of the trade register office, ascertaining the meeting of the conditions of paragraphs (1) and (2), shall authorize the issue prospectus publication.

(4) The issue prospectus which does not contain all the mentions shall be void. The subscriber can not be in a posi-

tion to invoke such nullity if he attended the constitutive meeting or if he exercised the shareholder's rights and duties.

Art. 18. – (1) The subscriptions of shares shall be made on one or more copies of the founders' issue prospectus visaed by mandatory judge.

(2) The subscription will contain: the name and first name or denomination, domicile, or registered office of the subscriber; number of subscribed shares, given in letters, subscription date and an express statement that the subscriber knows and accepts the issue prospectus.

(3) The sharing in the company's profits, reserved by founders to their own use, although accepted by subscribers, shall have no effect unless it is approved by the constitutive meeting.

Art. 19. – Within a period of maximum 15 days from subscription closing date, the founders will call together the constitutive meeting by a notice published in the "Monitorul Oficial" (Official Gazette of Romania), Part IV, and in two wide circulation newspapers 15 days prior to the day established for the meeting. The notice shall indicate the place and date of the meeting which can not take place later than two months from the subscription closing date and also a detailed list of the problems subject to discussion.

Art. 20. – (1) The company can be set up only if the full registered capital was subscribed and each acceptor has paid in cash half of the subscribed shares value to the Savings and Consignment Office, to a commercial bank or to one of their subsidiaries. The other half shall be paid within 12 months as from the incorporation date.

(2) The shares which represent contribution in kind shall be covered in full.

Art. 21. – If the public subscriptions exceed the registered capital stipulated by the issue prospectus, or they are smaller than this one, the founders shall be obliged to submit to the constitutive meeting's approval the increase, or the reduction of the registered capital to the subscription level, as the case may be.

Art. 22. – (1) The founders shall be obliged to draw up a list of those who, accepting the subscription, are entitled to take part in the constitutive meeting, mentioning the number of shares of each one.

(2) This list will be posted up at the meeting place, at least five days prior to the meeting date.

Art. 23. – (1) The meeting elects a president and two or more secretaries. The participation of the acceptors will be ascertained by a list of attendance, signed by each of them and visaed by the president and by one of the secretaries.

(2) Before starting the proceedings of the meeting's agenda any acceptor has the right to make remarks regarding the list posted by the founders; the meeting will have to decide upon the issue.

Art. 24. – (1) In the constitutive meeting each acceptor has the right to one vote, irrespective of the shares subscribed to. He may also be represented by a special proxy.

(2) No one can represent more than 5 acceptors.

(3) The acceptors who provided contributions in kind do not have the right to vote in proceedings regarding their contribution even if they are subscribers of shares paid in cash or they are proxies of other acceptors.

(4) The constitutive meeting is considered legal when half plus one of the acceptors' number are present and makes decisions with simple majority vote of those attending the meeting.

Art. 25. – (1) In case of contribution in kind, advantages reserved for the founders, operations concluded by founders on behalf of the company to be set up and which it is going to take over, the constitutive meeting appoints, according to Article 38, one or several experts who will advise the assessments.

(2) If the required majority can not be met, the experts shall be appointed by the mandatory judge upon the request of any acceptor.

Art. 26. – (1) After the experts submitted their evaluation report as provided by Article 37, the founders shall again call together the constitutive meeting according to the provisions of Article 19 hereinabove.

(2) If the value of the contribution in kind established by experts is by one fifth lower than the one mentioned by founders in the issue prospectus, any acceptor may withdraw, informing the founders accordingly, until the day established for the constitutive meeting.

(3) The shares of the withdrawn accepters may be acquired by the founders within a period of 30 days or, subsequently, by other persons by way of public subscription.

Art. 27. — The constitutive meeting has the following obligations:

- to verify the existence of the payments;
- to examine and validate the evaluation report of the experts on contributions in kind; to approve the sharing of founders into profits as well as the operations concluded on behalf of the company;
- to discuss and approve the constitutive act of the company, the present members representing also in this respect the absent members, and to appoint those who will be present at the authentication of the act and fulfilling the formal procedures required to set up the company;
- to appoint the managers and the auditors.

Art. 28. — (1) The payments made, according to Article 20, to set up the company by public subscription shall be handed over to the persons empowered to cash or to collect them according to the constitutive act or, when such a provision does not exist, to the persons appointed by the managing board decision, after presentation to the trade register office of the certificate attesting company's incorporation.

(2) If the company was not set up, the payments shall be returned to the accepters.

Art. 29. — (1) The founders are kept responsible for the consequences of their deeds and for the expenses incurred by the company's setting up and if, for any reason, it will not be set up, they can not rise against the accepters.

(2) The founders are obliged to hand over to the managers the documents and correspondence regarding the company's setting up.

Art. 30. — (1) The founders and the first appointed managers have a joint liability, as from the moment the company has been set up, to the company and to third parties for:

- full subscription of the registered capital and the effectuation of payments as provided by law or by the constitutive act;
- existence of contributions in kind;
- veracity of the publications made in view of setting up the company.

(2) The founders are also liable for the validity of the operations concluded on behalf of the company before setting up and undertaken by the company.

(3) The general meeting may not discharge the founders and the first appointed managers of the responsibility they have according to this Article and to Article 49 and Article 53 for a period of 5 years.

Art. 31. — (1) The constitutive meeting will decide upon the quota out of the net profits due to the founders of a company set by public subscription.

(2) The quota stipulated under paragraph (1) cannot exceed 6 per cent of the net profit and cannot be granted for a period longer than five years from the date of the company setting up.

(3) In case of increase of the registered capital, the founders' rights could only be exercised upon the profit corresponding to the initial registered capital.

(4) Only natural persons recognized as founders through the constitutive act may benefit by the provisions of this Article.

Art. 32. — In case of anticipated dissolution of the company, the founders are entitled to lay claim to the company for damages, if the dissolution was carried out to the prejudice of their rights.

Art. 33. — The right to suit is lost by limitation after six months passing from the date of the meeting of the general assembly of the shareholders which decided the anticipated dissolution.

Art. 34. — The trading companies by shares set up by way of public subscription shall be considered as open companies according to para. k) of Article 2 of Law no. 52/1994 regarding securities and the stock exchanges completed accordingly by the provisions of this present law as regards incorporation with the trade register.

CHAPTER III Incorporation of the company

Art. 35. — (1) Within 15 days as from the authentication date of the constitutive act, the founders or the managers of the company or one of their properly empowered representative, will request incorporation of the compa-

ny with the trade register of the area where it will have its headquarters.

(2) The following documents shall be attached to the application:

- a) the constitutive act of the company;
- b) the proof attesting payments made according to the constitutive act;
- c) documents attesting ownership over the contributions in kind and, in case buildings are involved, the certificate regarding mortgages or other obligations which may be attached to them;
- d) documents attesting operations concluded on behalf of the company and approved by the associates;
- e) a written statement on their responsibility signed by the founders, the managers and the auditors by which they declare they fulfill the conditions required by this present law.

(3) All authorization documents and all relevant opinions issued by the competent public authorities depending on the object of activity of a company, shall be requested by the trade register's office within 5 days as from the application registration date while the competent authorities shall have to issue their relevant opinions or authorization documents within 15 days. It is not necessary to submit the technical opinions or the technical authorizations nor those whose issuance is legally conditioned by the incorporation of the company.

Art. 36. — (1) The control over the legality of the documents and of the deeds which, according to the law, are going to be registered with the trade register, is exercised by the judiciary through a mandatory judge.

(2) At the beginning of each judicial year, the president of the court will appoint one or more judges to attend at the trade register office.

(3) The mandatory judge may request, on parties' account, an expert appraisal as well as presentation of other evidence.

Art. 37. — (1) In cases where joint-stock companies are involved, if there are contributions in kind, advantages reserved for the founders, operations concluded by the founders on behalf of the company to be set up and which

it is going to take over, the mandatory judge shall appoint, within 5 days as from the application registration date one or more experts from the list of licensed experts. The experts shall draw up a report comprising the description and the method of evaluation of all contributed goods, and will clearly show if the value of the said goods come up to the number and value of the shares granted against them, as well as other elements requested by the mandatory judge. For new movables the invoices shall serve as an evaluation element.

(2) The report shall be submitted with the trade register office within 15 days where it could be examined by the personal creditors of the associates and by any other person. At their request and at their expense they may get full copies of the report or only parts of it.

Art. 38. — The following persons can not be appointed as experts:

- relatives or kinsmen up to the fourth rank inclusively and spouses of those who came up with contributions in kind or of the founders;
- the persons who receive, in any way, for the positions they fulfill, other than that of an expert, an wage or a remuneration from the founders or from those who came up with contributions in kind.

Art. 39. — (1) In cases where the legal requirements are fulfilled the mandatory judge shall authorize, by way of conclusions handed in within 5 days as from the date the said requirements have been fulfilled, the setting up of the company and will order its incorporation with the trade register, according to the conditions stipulated by the law regarding that register.

(2) The incorporation conclusions shall contain the mentions of the constitutive act as provided by Article 7 and Article 8, as the case may be.

Art. 40. — (1) The trading company becomes a legal person as from the date of its incorporation with the trade register.

(2) Incorporation shall be done within 24 hours as from the date the conclusions of the mandatory judge has become final.

Art. 41. — (1) At the time of incorporation the conclusions of the mandatory judge shall be forwarded, *ex officio*, to the

“Monitorul Oficial” (Official Gazette of Romania) for publication, at the parties’ expense, as well as to the office of the financial administration of the area where the company has its headquarters with the purpose to be entered into the fiscal books, mentioning the registration number with the trade register.

(2) At the parties’ request and at their expense, the constitutive act visaed by the mandatory judge shall be published in the same Official Gazette of Romania, Part IV, in full or only parts of it.

(3) In cases of general partnership or limited partnership companies only an excerpt of the conclusions, visaed by the mandatory judge, may be published in the “Monitorul Oficial al României” (Official Gazette of Romania), which shall contain: the data of the conclusions, identification data of the associates, denomination and the emblem of the company, if any, its headquarters, form and object of activity, briefly, the registered capital, duration of the company, incorporation number with the trade register.

Art. 42. — The branches represent trading companies with legal personality and are set up in one of the forms described by Article 2 and under the conditions prescribed for that form. They shall follow the legal status of the form in which they were set up.

Art. 43. — (1) The subsidiaries represent parts without legal personality of the trading companies which are incorporated with the trade register of the county where they will carry out their activity before their activity starts.

(2) If the subsidiary is set up in a place situated within the same county, or the same locality as the mother company then it shall be incorporated with the same trade register, but distinctly, as a separate incorporation.

(3) The legal status of subsidiary shall be applied to any other secondary centre, irrespective of its denomination, to which the mother company will confer the legal status of a subsidiary.

(4) The other secondary centres — agencies, representations and the like — shall be referred to only within the incorporation of the company with the trade register of its main headquarters.

(5) Secondary centres can not be set up under the denomination of branches.*

Art. 44. — The foreign trading companies may set up branches in Romania, according to the provisions of Romanian laws, as well as subsidiaries, agencies, representations or other secondary centres, providing this represents a right recognized as such by their organic articles of association.

Art. 45. — (1) The representatives of the company are obliged to submit their own signatures with the trade register office within 15 days as from the company’s incorporation date, if they have been appointed by the constitutive act, and within 15 days since their election by the ones elected after the company started its operation.

(2) The provision of the previous paragraph shall also be accordingly applicable to the heads of the subsidiaries.

CHAPTER IV

Consequences of the infringements of the legal requirements when setting up a company

Art. 46. — When the constitutive act does not contain the mentions required by law or contains clauses by which an imperative legal provision is infringed or when a legal requirement was not fulfilled when setting up the company, then the mandatory judge, *ex officio* or at the request of any associate or of other interested parties will reject by a motivated conclusion, the incorporation application except for the case where the associates remove the irregularities. The mandatory judge shall reflect, in his conclusion, the achieved regularizations.

Art. 47. — (1) In case the founders or the company’s representatives did not request its incorporation within the time limit set by the law, anyone of the associates may request incorporation with the trade register office after previously, by notification.

* According to Article V of the Expeditious Government Ordinance no. 32/1997, as approved by Law no. 195/1997, the provisions of this paragraph are not applicable to the branches without legal personality set up until coming into force of this Expeditious Ordinance.

It is however recommended to companies which set up branches without legal personality to modify the denomination of “branch” attributed to them.

tion or by registered letter gave them formal notice and they did not conform themselves within 8 days after receiving notice.

(2) Still, if incorporation is not effected within the time limits as stipulated by the previous paragraph then the associates are discharged of their obligations proceeding from their subscriptions after passing a 3 months period since the constitutive act has been authenticated, except when the said act provides otherwise.

(3) If one of the associates has requested the fulfillment of the incorporation requirements then the others shall not be in a position to request discharge of their obligations as they result from the subscriptions.

Art. 48. — (1) In case some irregularities are discovered after incorporation, the company is obliged to proceed for their removal within 8 days, at the most, since they have been ascertained.

(2) If the company does not take action then any interested person may request the court to oblige the management of the company to regularize them under penalty of payment of comminatory damages.

(3) The right to initiate a regulatory suit shall be lost by limitation after one year as from the date the company has been incorporated.*

Art. 49. — The founders, the representatives of the company and the first members of the directing, administration and control bodies of the company have an unlimited and joint liability for the damages caused by the irregularities mentioned by Articles 46 to 48.

Art. 50. — (1) The acts or deeds, for which the publicity as prescribed by the law has not been effected, can not be opposed to third parties, except for the case where the company proves they had good knowledge of the said.

(2) Operations concluded by the company before the 16th day since the publication in the “Monitorul Oficial” (Official

Gazette of Romania) of the conclusions of the mandatory judge are not opposable to third parties which prove they could not take knowledge of the said.

Art. 51. — However, the third parties may invoke the acts or deeds about which the publicity was not effected, except for the case where lack of publicity renders them useless.

Art. 52. — The company is obliged to check up the identity between the text submitted to the trade register office and the one published in the “Monitorul Oficial” (Official Gazette of Romania) or in the newspapers. In case they present differences the third parties may oppose to the company any one of the texts, except for the case where the company presents proof that they had good knowledge of the text submitted to the trade register office.

Art. 53. — The founders, the representatives and other persons which worked in the name of a company to be set up have a joint and unlimited liability to the third parties for the juridical acts concluded with them on behalf of the company, except for the case where the company, after acquiring legal personality, takes the said over as being its own. The acts taken over as such shall be considered as belonging to the company ever since their being concluded.

Art. 54. — (1) Neither the company nor the third parties are in a position to oppose an irregularity in the appointment of the representatives, of the managers or other persons belonging to the bodies of the company, in order to avoid their obligations, providing the appointment has been published according to the law.

(2) The company can not invoke to the third parties the appointments in the offices mentioned in the previous paragraph or the cessation of these offices if they were not published according to the law.

Art. 55. — (1) The joint-stock company, the limited partnership by shares and the limited liability company in their relations with third parties become responsible for the acts concluded by their management bodies even if these acts exceed the object of activity, except for the case where it proves that the third parties knew it or, in the given circumstances, had to know about it. The publishing of the constitutive act by it alone can not be taken as proof for being in the know.

* According to Article VIII of the Expeditious Government Ordinance no. 32/1997, legal provisions regarding the stamp tax and the judiciary tax for the suits brought before the administrative courts by which the annulment of an administrative act is requested, may be accordingly applied to the appeal, to an opposing suit or a regulatory suit.

The suits initiated by the district chambers of commerce and industry, based on this present expeditious ordinance, are excepted from the stamp tax and from the judiciary tax.

(2) The clauses of the constitutive act or the decisions taken by the management bodies of the companies as prescribed in the previous paragraph, which limit the powers vested into them by the law, can not be opposed to third parties, even if they were published.

Art. 56. — The nullity of a company incorporated with the trade register can be declared by the court only when:

- a) the constitutive act lacks or when the said was not concluded in an duly certified form;
- b) all founders were legally incapable at the time when the company was set up;
- c) the company's object of activity is illicit or against public order;
- d) the conclusion of the mandatory judge for company's incorporation is lacking;
- e) the administrative legal authorization of the company's setting up is lacking;
- f) the constitutive act does not mention the denomination of the company, its object of activity, the contributions of the associates and the subscribed registered capital;
- g) legal provisions regarding the minimum registered capital, subscribed and paid were not observed;
- h) the minimum number of associates prescribed by the law was not observed.

Art. 57. — The nullity can not be declared in case its cause, invoked in the annulment suit has been removed before the closing argument in front of the court.

Art. 58. — (1) On the day the court decision by which the nullity was declared has become irrevocable, the company ceases to exist with no retroactive effect and enters liquidation. The legal provisions regarding liquidation of companies following their dissolution shall be applied accordingly.

(2) By the same court decision which declared the nullity the company's liquidators shall also be appointed.

(3) The court shall send the enacting terms of this decision to the trade register office which after taking relevant notice, shall send it, in turn, to the "Monitorul Oficial" (Official Gazette of Romania) in order to be published.

(4) The associates remain liable for social obligations until they are covered according to the provisions of Article 3.

Art. 59. — (1) The declaration of the company's nullity has no effect on the acts concluded on its behalf.

(2) Neither the company nor the associates can oppose the nullity of the company to good faith third parties.

CHAPTER V

Some procedural provisions

Art. 60. — (1) The conclusion of the mandatory judge regarding the incorporation or any other entries with the trade register are subject only to appeal.

(2) The appeal may be filed with the court within 15 days as from the date the conclusion was delivered.

(3) The appeal is submittted to and a relevant mention is made by the trade register where registration of the company was effected. Within 3 days as from the date it was submitted, the trade register office shall, in turn, submit the appeal to the court of the area where the company has its registered office and, in case of branches set up in a different county, to the competent court within that county.

(4) Written notes which explain the reasons for the appeal may be submitted to the court of least two days prior to the day set for the court proceedings to start.*

Art. 61. — (1) The decisions of the associates regarding modifications of the constitutive act may be opposed by the social creditors or other persons for whom the said decisions may be prejudicial to their rights.

(2) According to this present law the phrase *the decision of the associates* means also decision of the management statutory bodies of the company, while the term *associates* includes also the shareholders except for the case where from the context results a different meaning.

Art. 62. — (1) The opposing suit may be filed within 30 days as from the date the decision or the additional modification act have been published in the Official Gazette of Romania, if this present law does not provide otherwise. It shall be filed with the trade register office which, within 3 days, will make the relevant mention in the register and then file it with the district court of the company's registered office.

* See the footnote for Article 48, paragraph (3).

(2) The opposing suit suspends the enforcing of the associates' decision against the initiators until the court decision will remain final, except for the case where the present law provides otherwise. The opposing suit is tried in the Court chamber with the summoning of the parties.

(3) The decision taken by the court following an opposing suit is subject only to appeal.*

Art. 63. — The requests and the lawsuits, as prescribed by this present law and which come within the powers of the courts, shall be tried by the district court of the company's main registered office, except for the case where the law provides otherwise.

Art. 64. — The summoning of the parties before the mandatory judge as well as the delivery of his acts shall be done by the trade register office using the services of the post-office by registered letter the official receipt of which shall be attached to the file, or by the agents of the trade register office, or according to the rules prescribed by the Civil procedure code.

TITLE III

Operation of trading companies

CHAPTER I

Common provisions

Art. 65. — (1) Unless stipulated otherwise, the assets constituted as contribution into the company become its property as from the moment of its incorporation with the trade register.

(2) The associate who delays to deliver his registered contribution is liable for the damages caused, and if the contribution was stipulated to be made in cash, he is also liable to pay the legal interest as from the day he was bound to make the payment.

Art. 66. — (1) During the company's life the associates' creditors may exercise their rights only upon the sharing in the

* See the footnote for Article 48, paragraph (3).

profit due to the respective associate after the registered balance sheet has been drawn and, after the dissolution of the company, upon the shares he is entitled to through liquidation.

(2) The creditors stipulated under paragraph (1) may however deduct during the company's life the part due to the associates through liquidation, or can sequester and sell the shares of their debtor.

Art. 67. — (1) The share of the profits to be paid to each associate represents a dividend.

(2) The dividends shall be paid to the associates in proportion with their participation quota in the registered and paid capital, providing the constitutive act does not provide otherwise.

(3) Dividends can be distributed only out of real profits.

(4) Dividends paid with the infringement of the above mentioned provisions shall be reimbursed.

(5) The right to suit for the reimbursement of the dividends is limited to three years since the day of their distribution.

(6) The dividends due after the shares changed the owner belong to the assignee providing the parties did not agree otherwise.

Art. 68. — The contribution made by the associates to the registered capital is not interest bearing.

Art. 69. — If a registered capital decrease is ascertained this will have to be completed or written down prior to any profit allotment or distribution being carried out.

Art. 70. — (1) The managers can carry out all the operations required for the fulfillment of company's goal, except for the restrictions mentioned by the constitutive act.

(2) They are bound to take part in all the company's meetings, in the meetings of the managing board and of managing bodies similar to this.

Art. 71. — (1) The managers who are entitled to represent the company, can only transfer this right if this was expressly granted to them.

(2) In case of infringement of the provisions of paragraph (1) the company can lay claim for the profits resulting from the operation from the substituted person.

(3) The manager who, no right being granted to him in this respect, substitutes another person to himself, is jointly liable with this person for possible damages caused to the company.

Art. 72. — The managers' duties and liability are settled by the provisions regarding the mandate and by those specifically stipulated under the present law.

Art. 73. — (1) The managers are jointly liable towards the company for:

- a) reality of payments effected by associates;
- b) actual existence of the paid dividends;
- c) existence of the registers required by law and their correct updating;
- d) exact fulfillment of the decisions of the general assembly;
- e) strict fulfillment of the duties imposed by the law and by the constitutive act.

(2) The suit on responsibility against the managers belongs to the company's creditors too but they could only lay claim to it in case of company's bankruptcy.

Art. 74. — (1) In any document, letter or publication issued by a company, the denomination, the legal form, the registered office, the registration number with the trade register and the fiscal code should be mentioned.

(2) In the case of limited liability companies the registered capital should also be mentioned and for joint-stock companies and limited partnerships by shares the registered capital should also be indicated with special reference to that actually deposited according to the latest approved balance sheet.

CHAPTER II General partnerships

Art. 75. — The right to represent the company belongs to each manager, unless otherwise stipulated by the constitutive act.

Art. 76. — (1) In case the constitutive act prescribes that the managers should operate together, the decision must be made unanimously; in case of disagreement among the managers, the decision will be made by the associates representing the absolute majority of the registered capital.

(2) For urgent acts, whose unfulfillment would cause great damage to the company, a single manager may decide in the absence of the others who are in the impossibility, even momentarily to take part in the management of the company.

Art. 77. — (1) The associates representing the absolute majority of the registered capital may elect one or more managers among themselves, establish their powers, duration of their mandate and their possible remuneration, unless otherwise stipulated by the constitutive act.

(2) The same majority may decide the managers' discharge or the limitation of their powers, except for the case when the managers were appointed through the constitutive act.

Art. 78. — (1) In case a manager takes the initiative of an operation exceeding the limits of an ordinary operation in the line of trade carried out by the company, he must advise the other managers prior to concluding the respective operation under the sanction of bearing the consequences resulting thereof.

(2) In case of opposition of one of them, the decision will be made by the associates representing the absolute majority of the registered capital.

(3) The operation concluded against the opposition made is valid towards third parties who were not informed about this opposition.

Art. 79. — (1) The associate who, in a certain operation, has on his own or on other's behalf, interests, contrary to those of the company, cannot take part in any proceeding or decision making regarding this operation.

(2) The associate breaking the provisions of paragraph (1) is liable for the damages caused to the company if, without his vote, the required majority would not have been met.

Art. 80. — The associate who, without the written consent of the other associates, uses the capital, the assets or the credit of the company for his own or another person's benefit is bound to reimburse the resulting profits to the company and to pay the damages caused.

Art. 81. — (1) No associate may take out of the company's funds more than what was allotted to him, for the expenses which were incurred or for those he will make in the company's interest.

(2) The associate breaking this provision is liable for the amounts taken and for damages.

(3) The constitutive act may stipulate that the associates may take out of the company's cashier safe certain amounts, for their private expenses.

Art. 82. — (1) The associates may take part, as partners with unlimited liability, neither in other competing companies or having the same goal, nor may they operate on their own or on others' behalf, in the same trading branch, or in a similar one, without the consent of the other associates.

(2) Consent is to be validly taken into account only if the participation or operations, prior to the constitutive act were known by all the other associates and their continuation was not forbidden.

(3) In case of breaking the provisions of paragraph (1) and (2), the company, beside the right to exclude the associate, can decide whether he worked on its behalf or can claim for damages.

(4) This right is cancelled after a three months period passing from the day the company took knowledge of the situation without making any decision.

Art. 83. — In case the contribution to the registered capital belongs to several persons, these are jointly liable towards the company and have to appoint a common representative to exercise the rights resulting from this contribution.

Art. 84. — (1) The associate who deposited as contribution one or more debts of third parties, cannot be considered as having fulfilled his obligations until the company has obtained the payment of the amount for which the debts of third parties were deposited.

(2) If the payment could not be obtained by suing the assigned debtor, the associate, besides damages, is liable for the sum which is due including the legal interest on the day debts are falling due.

Art. 85. — (1) The associates are unlimitedly and jointly liable for the operations carried out in the company's name, by the persons representing it.

(2) The judgement in court obtained against the company is opposable to each associate.

Art. 86. — For the approval of the balance sheet and in order to make the decisions regarding the managers' liabi-

lities, the vote is needed, of the associates representing the registered capital majority.

Art. 87. — (1) The transfer of the contribution to the registered capital is possible in case it was permitted by the constitutive act.

(2) The transfer does not liberate the assigning associate from the part he owes to the company out of his contribution to the capital.

(3) The assigning associate stays liable against third parties as per Article 220.

(4) When the constitutive act stipulates the cases of an associate's withdrawal, the provisions of Articles 220 and 224 are to be applied.

CHAPTER III Limited partnerships

Art. 88. — The management of a limited partnership will be entrusted to one or several active partners.

Art. 89. — (1) The sleeping partner can conclude operations on behalf of the company, only on the basis of a special power of attorney for certain operations, granted by the company's representatives and registered in the trade register. Otherwise, the sleeping partner becomes unlimitedly and jointly liable against third parties for all the company's obligations, undertaken since the date of the operations concluded by him.

(2) The sleeping partner can carry out operations in the company's domestic administration and control, takes part in the procedures for appointing and dismissing the managers in cases provided by law, or can grant the managers' authorization in performing operations exceeding their powers, within the limits of the constitutive act.

(3) The sleeping partner also has the right to ask for a copy of the balance sheet and of the profit and loss account and to verify their exactness by means of checking the trade registers and the other supporting documents.

Art. 90. — The provisions of Articles 75, 76 paragraph (1), Articles 77, 79, 83, 84, 86 and 87 are also to be applied to the limited partnerships and the provisions of Articles 80, 81, 82 and 85 to the active partners.

CHAPTER IV Joint-stock companies

Section 1 Regarding the shares

Art. 91. — (1) In the joint-stock companies the registered capital is represented by shares issued by the company, which can be registered or bearer shares according to the transfer way.

(2) The shares kind shall be determined by the constitutive act; otherwise they shall be bearer shares. The registered shares may be issued in a material form, on paper support or in a dematerialized form by registration in account.

(3) The shares of a joint-stock company, issued as a public offer of negotiable instruments, defined as such by Law no. 52/1994, fall under the rules applicable to the stock market on which the said shares are transacted.

Art. 92. — (1) The shares can not be issued for an amount lower than their nominal value.

(2) The shares not fully paid for are always registered shares.

(3) The registered capital can not be increased and new shares shall not be issued until shares of previous issue are completely paid for.

(4) The registered shares can be converted into bearer shares and conversely by the decision of the extraordinary general assembly of shareholders, taken as per Article 115.

(5) Cumulative titles can be issued for several shares, when they are registered and issued in material form.

Art. 93. — (1) The nominal value of a share shall not be lower than 1,000 lei.

(2) The shares will contain:

- a) denomination and life of the company;
- b) date of the constitutive act, number in the trade register under which the company is incorporated and number of the Official Gazette of Romania, Part IV issue in which the publication was made;
- c) the registered capital, number of shares and their running number, nominal value of the shares and the deposits made;
- d) advantages granted to founders.

(3) For registered shares the name, first name and shareholder's place of residence when it is a natural person, denomination, the registered office and incorporation number of the shareholder when it is a legal person shall be indicated too.

(4) The shares must bear the signatures of 2 managers in case there are several ones or, of the sole manager.

Art. 94. — (1) The shares have to be equal in value; they grant equal rights to the possessors.

(2) Still, certain categories of shares which confer special rights to their holders may be issued according to the constitutive act, as per Articles 95 and 96.

Art. 95. — (1) Preference shares which benefit of priority dividends without the right to vote may be issued and confer to the holder:

a) the right to a priority dividend out of the distributable profits obtained at the end of the given financial year, before any other payments;

b) the rights recognized to shareholders of ordinary shares, except for the right to attend and to vote, based on these shares, in the general meetings of the shareholders.

(2) The shares with priority dividends, without the right to vote, can not exceed a quarter of the registered capital and shall have the same nominal value as ordinary shares have.

(3) The representatives, the managers and the auditors of the company can not detain shares with priority dividends without the right to vote.

(4) Preference shares and ordinary shares can be converted from one category into the other by the decision of the extraordinary general assembly of the shareholders, as per Article 115.

Art. 96. — Shareholders of each category of shares shall meet in special meetings, according to the conditions prescribed by the company's constitutive act. Any holder of such shares may attend these special meetings.

Art. 97. — In case the company did not issue and did not distribute shares in a material form, then, *ex officio* or at shareholders' request, it shall issue a shareholder's certificate containing the data prescribed by paragraphs (2) and (3) of Article 93 and, also, the number, the category and the

nominal value of the shares belonging to the shareholder, the position at which he is registered in the shareholders' register and the running number of the shares in question, as the case may be.

Art. 98. — (1) The property right over registered shares is transferred by the statement made in the shareholders' register of the issuer, subscribed to by the assignor and the assignee or by their proxies and by the mention made on the share. Other modalities to transfer the property right over registered shares could be prescribed by the constitutive act.

(2) The property right over the shares issued in a dematerialized form and transacted on the stock market is transferred according to Law no. 52/1994.

(3) The subsequent subscribers and assignees are jointly liable for the complete payment of the shares during 3 years, starting on the date the assignment mention was made in the register of shareholders.

Art. 99. — The property right over the bearer shares is transferred by simple assignment.

Art. 100. — (1) In case the shareholders did not make the payments of the deposits they owe within the time periods prescribed by letter d) of Article 8 and paragraph (1) of Article 20, the company shall invite them to fulfill this obligation by means of a common notice published twice at a 15 days interval in the Official Gazette of Romania, Part IV, and in a wide circulation newspaper.

(2) In case the shareholders would not make the payments event after the summons, the managing board may decide either to sue the shareholders for the remaining payments, or to cancel these registered shares.

(3) The cancelling decision will be published in the Official Gazette of Romania, Part IV, specifying the order number of the cancelled shares.

(4) Instead of the cancelled shares, new shares bearing the same number will be issued, and will be sold.

(5) The sums cashed in from the sales will be used to cover the publication and sale expenses, delay interests and uneffected payments; the rest will be returned to the shareholders.

(6) If the obtained price is not enough to cover all amounts due to the company or if the sale does not take place, for

lack of buyers, the company could take action against subscribers and assignees, as per Article 98.

(7) If after the fulfillment of these formalities, the amounts due to the company are not recovered, the capital shall be immediately written down in proportion to the difference between the existing capital and the registered capital.

Art. 101. — (1) Each paid for share gives the right to a vote in the general meeting, providing the constitutive act does not prescribe otherwise.

(2) The constitutive act can limit the number of votes belonging to the shareholders who possess more than one share.

(3) The exercising of the right to vote is suspended for the shareholders not updated on the payments which are falling due.

Art. 102. — (1) The shares are indivisible.

(2) In case a registered share becomes property of several persons, the company does not have the obligation to register the assignment as long as those persons will not appoint a sole representative in order to exercise the rights resulting from share.

(3) In case a bearer share becomes property of several persons, they have to appoint a common representative, too.

(4) As long as a share is an indivisible property of several persons, these are jointly liable for making the due payments.

Art. 103. — (1) The company can not purchase its own shares, either directly or by proxies acting in their name but on its behalf, except for the case the extraordinary general meeting of the shareholders decides otherwise, with observance of the provisions that will follow below.

(2) By authorizing the purchase, the extraordinary general meeting of the shareholders shall establish, mainly, the modalities to acquire the shares, the upper limit of the number of shares which is going to be purchased, the lower and upper limits of their equivalent value and the time limit to carry out the operation which can not exceed 18 months as from the day the decision of the general meeting has been published in the Official Gazette of Romania, Part IV.

(3) The value of the own shares, purchased by the company, including those existing in its portfolio, can not exceed 10% of the subscribed registered capital.

(4) Only fully paid shares could be purchased, always providing the subscribed registered capital has been paid in full.

(5) Payment of the shares such purchased shall be done only out of the distributable profits and of the available reserves of the company, except the legal reserves, as registered in the last duly approved balance sheet. If the newly acquired shares will be registered in the "assets" column of the balance sheet then, in the "liabilities" column, an unavailable reserve of the same value shall be registered, which reserve will be maintained until the shares in question are ceded or cancelled.

(6) The performance report appended to the balance sheet shall mention: the reasons which led to the purchase of own shares, the number, nominal value, equivalent value of the purchased shares as well as the fraction of the registered capital which they represent.

(7) The own shares purchased with the infringement of the provisions of this present Article shall be resold within one year as from the day of their subscription, according to the requirements imposed by the extraordinary general meeting. Shares not resold within this time period shall be cancelled, the company being obliged to write down its registered capital accordingly.

Art. 104. — The restrictions stipulated by Article 103 above are not applicable when the purchase by the company of a certain number of its own shares, fully paid, is done in one of the following circumstances:

a) with the purpose to write down the registered capital, according to Article 202, by cancelling of a certain number of its own shares having a value corresponding to the said reduction;

b) for the assigning to the company's employees of a number of its own shares, within the limits and observing the conditions approved by the general meeting of the shareholders. The assigning operation will not exceed one year as from the date the decision of the general meeting has been published in the Official Gazette of Romania;

c) as a result of an universal legacy or of merging or of a court decision delivered in an emergency law suit against one of the company's debtors;

d) as a free grant;

e) with a purpose to regularize the market value of its own shares at the stock exchange or on the organized out-of-stock exchange market, but only with the previous agreement of the National Commission for Negotiable Instruments.

Art. 105. — (1) A company can not grant any advance of money, lend its own money or mortgage its own property in order to create conditions for a third party to subscribe or purchase its own shares.

(2) Taking its own shares as a mortgage be it directly or through persons which act in their own name but on behalf of the company is understood as a purchase of its own shares. Still, the shares shall be entered separately in the balance sheet.

(3) The provisions of this present Article are not applicable to the day-to-day operations of banking and loan companies nor to operations effected by the company's own employees with a purpose to purchase the company's shares or of one of its branches.

Art. 106. — (1) Mortgaging of the shares is done by a statement, given by their holder, in an authentic form or as an document signed by hand, certified by the company's clerk or of the independent private register of the shareholders, as the case may be, statement or document which shall indicate the level of the debt, the value and the category of the mortgaged shares.

(2) The setting up of the mortgage shall be entered into the shareholders' register.

(3) Proof of the setting up of the mortgage shall be handed to the creditor.

Art. 107. — Shares acquired according to the provisions of paragraphs (1)–(5) of Article 103 are not entitled to dividends. As long as the said shares are in the company's possession the right to vote which they imply is also suspended.

Art. 108. — The shareholders who offer their shares for sale by means of a public offer will have to draw up a offer prospectus, according to the provisions of Law no. 52/1994.

Art. 109. — The status of the shares shall have to be included into the schedule to yearly balance sheet and, especially, it shall be indicated if they have fully been paid for, as well as the number of shares for which payment was requested but with no result, as the case may be.

Section 2

On general meetings

Art. 110. — (1) The general meetings are ordinary and extraordinary.

(2) Unless the constitutive act provides otherwise, they will take place at the company's registered office, at the place indicated by the document convening the meeting.

Art. 111. — (1) The ordinary meeting is convened at least once a year, within 3 months as from the end of the financial year.

(2) Besides the debate of other issues on the agenda the general meeting is obliged:

a) to discuss upon, approve or amend the balance sheet, after listening to the managers and auditors' report and to determine the dividend;

b) to appoint the managers and the auditors;

c) to establish the proper remuneration for the managers and auditors for the current financial year, unless it was settled by the constitutive act;

d) to give their opinion on the managers' administration of budget;

e) to determine the income and expenditure budget and the activity program for the next financial year as the case may be;

f) to decide upon the mortgaging, renting or dissolving of one or several of the companies' units.

Art. 112. — (1) With a view to ensuring the validity of the proceedings of the ordinary meeting it is necessary to have the shareholders' attending it representing at least half of the registered capital and that the decisions be made by the shareholders representing the absolute majority of the

registered capital represented in the meeting in case the constitutive act or the law do not stipulate a larger majority.

(2) If the meeting cannot operate due to unfulfillment of the conditions of paragraph (1) the meeting gathered after a second convening may proceed upon the issues on the first meeting's agenda, whatever the registered capital part represented by the attending shareholders is, with a majority.

Art. 113. — The extraordinary general meeting gathers whenever a decision is necessary to be made for:

a) changing the legal form of the company;

b) changing the location of the registered office of the company;

c) changing the object of activity of the company;

d) extending the company's life;

e) increase of the registered capital;

f) writing down of the registered capital or its completion by means of the issue of new shares;

g) merging with other companies or its partition;

h) early dissolution of the company;

i) conversion of shares from one category into another;

j) conversion of one category of bonds into another or into shares;

k) issue of bonds;

l) any other modification of the constitutive act or any other decision for which the approval of an extraordinary general meeting is requested.

Art. 114. — The extraordinary general meeting will be able to delegate the exercise of its rights and duties as regulated by letters b), c), e), f) and i) of Article 113, to the managing board or to the sole manager, as the case may be, according to the conditions prescribed by the constitutive act and with the majorities requested by Article 115.

Art. 115. — With a view to ensuring the validity of the proceedings of the general extraordinary meeting, in case the constitutive act do not stipulate otherwise, the following are necessary:

— upon the first convening, the attending shareholders to represent three quarters of the registered capital and the decisions to be made with the vote of shareholders representing at least half of the registered capital;

— upon subsequent convening, the attending shareholders to represent half of the registered capital and the decisions to be made with the vote of shareholders representing at least one third of the registered capital.

Art. 116. — (1) The decision of a general meeting to amend the rights or obligations regarding a certain category of shares does not go into effect unless it is approved by the special meeting of the shareholders of shares belonging to that category.

(2) The provisions of this present Section regarding the convening, the quorum and the unfolding of a general meeting of the shareholders are applicable to special meetings too.

(3) The decisions initiated by the special meetings are subject to approval of the relevant general meetings.

Art. 117. — (1) The general meeting shall be convened by the managers any time it appears to be necessary according to the provisions of the constitutive act.

(2) The gathering term can not by any means be shorter than 15 days as from the publication of the meeting convening.

(3) The document calling together the meeting shall be published in the Official Gazette of Romania, Part IV, and in one widely circulated newspaper in the locality of the company's registered office or in the nearest locality.

(4) If all the shares of the company are registered shares, then the convening may be done by registered letter or, if it is allowed by the constitutive act, by simple letter, sent with at least 15 days before the day fixed for the meeting to the shareholder's address as it is registered in the register of shareholders. The change of the address can not be opposed as an excuse to the company as long as the shareholder did not inform the company in writing about it.

(5) Likewise, the call for the meeting can be done by displaying it on the notice board at the company's headquarters together with a calling list which shall have to be signed by the shareholders, at least 15 days before the day fixed for the meeting. The shareholder's signature and the date when he signed it shall be certified by a specially appointed clerk.

(6) The procedures to call a meeting as stipulated by paragraphs (4) and (5) above shall not be used if they are forbidden by the constitutive act or by legal provisions.

(7) The convening announcement will list the place and the date when the meeting is to take place, as well as the agenda, explicitly indicating all the problems that will constitute the subject of the meeting's proceedings.

(8) When on the agenda there are proposals concerning modifications of the constitutive act, the convening announcement will have to contain the full text of such proposals.

Art. 118. — (1) While making the announcement of the convening of the first general meeting, the day and the hour of the second meeting could be fixed, in case the first meeting could not take place.

(2) The second meeting cannot take place on the very day established for the first meeting.

(3) If the day for the second meeting is not indicated in the convening announcement published for the first meeting, the term stipulated under Article 117 could be reduced to 8 days.

Art. 119. — (1) The managers are obliged to convene immediately the general meeting upon the request of the shareholders representing the tenth part of the registered capital, or a lower quota, in case the constitutive act stipulates it, and in case the request contains dispositions that are part of the meeting prerogatives.

(2) The general meeting will take place within one month since the request has been forwarded.

(3) If the managers do not convene the meeting, the court at company's registered office following examination of the parties can order the calling together of the meeting appointing the president of the meeting, among the shareholders.

Art. 120. — The shareholders exercise their right to vote in the general meeting proportional to the number of shares they hold, with the exception stipulated under Article 101 paragraph (2).

Art. 121. — The shareholders representing the whole registered capital could, in case none of them opposes, hold a general meeting and make any decision falling into the competence of the assembly without observing the formalities required for its convening.

Art. 122. — (1) In the general meetings, the shareholders possessing bearer shares have the right to vote only if they deposited them in the places indicated by the constitutive act or by the convening notice, at least five days prior to the meeting. The auditors will ascertain, through a minute, the deposit of shares in due time. The shares will remain deposited until after the general meeting, but it will not be possible to keep them more than 10 days from the date of the meeting.

(2) The sole manager or the board of directors, as the case may be, will fix a certain date for the shareholders entitled to be informed and to vote at the general meeting, a date which shall remain unchanged even in case the general meeting is called again due to lack of quorum. The certain date such established will not exceed 60 days before the day established for the first call of the general meeting.

(3) The shareholders entitled to cash dividends or to exercise other rights are those whose names are entered into the company's documents or into the documents sent to the company by the independent private register of the shareholders, as compared to the above mentioned certain date.

Art. 123. — (1) If the shares are encumbered by a right of usufruct, the right to vote granted by these shares belongs to the usufructuary in ordinary general meetings and to the real owner in the extraordinary general meetings.

(2) If the shares are mortgaged, the right to vote belongs to the shareholder.

Art. 124. — (1) The shareholders can only be represented in general meetings by other shareholders, by special proxy.

(2) The shareholders not having legal capacity, as well as legal persons can be represented by their legal representatives who, in their turn, can give special proxy to other shareholders.

(3) The proxies will be deposited in the original copy within the same interval of time as the shareholders have to deposit the stock, or within the interval of time stipulated by the constitutive act. They will be kept by the company; mention thereto will be made in the minutes.

(4) The constitutive act can depart from the provisions concerning representation by shareholders only.

(5) Company's managers and clerks can not represent the shareholders, subject to the decision becoming null and void if, for lack of their votes, the required majority would not have been met.

Art. 125. — (1) The managers cannot vote on the basis of shares they possess, neither personally nor by proxy, the discharge from their administration duties or any other issue in which their person or administration would be involved.

(2) However they can vote the balance sheet and the profit and loss account in cases, when, having in view their being possessors of at least half of the registered capital, legal majority cannot be met without their vote.

Art. 126. — (1) The shareholder who, with regard to a certain operation, has personal, or as proxy of another person, opposite interest to that of the company, will have to refrain from taking part in the proceedings concerning that operation.

(2) The shareholder who breaks this disposition is liable for damages caused to the company, if, without his vote, the required majority would not have been met.

Art. 127. — The right to vote cannot be assigned. Any agreement concerning the exercising in a certain way of the right to vote is void.

Art. 128. — (1) On the day and hour indicated in the convening, the meeting will be opened by the president of the managing board or by his substitute.

(2) The general meeting will elect, from among the shareholders present, one up to three secretaries who will verify the shareholders attendance list, indicating the capital represented by each one, the minutes drawn up by the auditors to ascertain the numbers of shares deposited and the fulfillment of all formalities imposed by the law and the constitutive act in order for a general meeting to proceed.

(3) The general meeting may decide that the operations mentioned in the previous paragraph be supervised or even fulfilled by a notary public, at the company's expense.

(4) One of the secretaries shall draw up the minutes of the general meeting.

(5) The president may appoint, from among the company's clerks, one or several technical secretaries who could

attend on the carrying out of the operations mentioned in the previous paragraphs.

(6) After ascertaining the fulfillment of all conditions requested by the law and the constitutive act for a general meeting to proceed, the examination of the issues on the agenda may start.

Art. 129. — (1) The decisions of the general meetings are made following a vote by show of hands.

(2) Irrespective of the provisions of the constitutive act the secret vote is compulsory for the election of the managing board members and auditors, for their dismissal and for decisions making concerning the responsibility of the managers.

Art. 130. — (1) The minutes signed by the president and the secretary will ascertain the fulfillment of formalities for the convening of the general meeting, date and place, attending shareholders, number of shares, the summary of the proceedings, the decisions made and, upon shareholders' request, their statements made during the meeting.

(2) The document referring to the meeting convening as well as shareholders' attendance lists will be attached to the minutes.

(3) The minutes will be registered into the register of the general meetings.

(4) In order to be opposable to third parties, the decisions of the general meeting shall be filed within 15 days to the trade register office wherein they shall be mentioned into register and published in the Official Gazette of Romania, Part IV. In case these decisions imply modifications of the constitutive act then only the additional document containing the full text of the amended clauses could be published.

(5) They cannot be carried out before these formalities are fulfilled.

Art. 131. — (1) The decisions made by the general meeting in keeping with the law, the constitutive act, are compulsory even for those shareholders who did not take part in the meeting or who voted against them.

(2) The decisions of the general assembly which are contrary to the constitutive act or which represent an infringement of the law can be sued within a 15 days' period from the publication date in the Official Gazette of Romania, by

any of the shareholders who did not take part in the general meeting or voted against and requested that this should be noted in the meetings' minutes.

(3) In case the decision is sued by all the managers, the company will be represented in court by the person appointed by the president of the court from among the company's shareholders, who will fulfill his proxy, until the general meeting convened with this aim, will appoint another person.

(4) The cancelling action will be submitted in the court of the company's registered office, the shareholder being compelled to deposit at least one share to the court clerk's office.

(5) If several cancelling actions have been submitted, they can be connected.

(6) The request will be judged in the court chamber.

(7) The final cancelling award shall be mentioned in the trade register and published in the Official Gazette of Romania, Part IV. It is opposable to all shareholders as from the date of its publication.

Art. 132. — (1) Along with entering the cancelling action the plaintiff may request to the president of the court to adjourn the carrying into effect of the decision which is being sued.

(2) President's consent to adjourn can force the plaintiff to give a bail.

(3) Against the ordinance to adjourn an appeal can be made, within a 5 days' term from the trial.

Art. 133. — (1) The shareholders who do not agree with the decisions of the general meeting regarding the changing of the main object of activity, of the registered office, the company's form, have the right to withdraw from the company and to obtain payment for the shares they possess, at their choice, be it in proportion to the net registered assets that may result from the latest accepted balance sheet, be it at the average market value of the shares in the last quarter as registered at the stock exchange operating in the registered office area or in the nearest area or, as the case may be, on an organized, out-of-stock exchange market.

(2) Along with the withdrawal statement, they will also deposit the shares they possess.

Section 3

On company's administration

Art. 134. — (1) The joint-stock company is administered by one or several temporary and revocable managers.

(2) In case there are several managers, they form a managing board.

(3) The sole manager or the president of the managing board and at least half of the number of managers will be Romanian citizens unless the constitutive act stipulates otherwise.

(4) The managers' appointment and superseding are exclusively made by the general meeting.

(5) The first managers can be appointed through the constitutive act, but their mandate cannot last longer than 4 years.

(6) Unless the mandate' duration is settled through the constitutive act, it will last for two years.

(7) The managers are re-eligible, unless by constitutive act otherwise stipulated.

Art. 135. — The persons who, according to the present law, cannot be founders, can neither be managers, directors or company's representatives and, in case they were elected they lose automatically their rights.

Art. 136. — (1) A legal person can be appointed or elected as a manager of a trading company according to the conditions stipulated by Article 135.

(2) The rights and duties of the parties shall be established by a management contract. Within the contract it shall be stipulated, among other things, that the legal person is obliged to designate a natural person as its permanent representative. This representative is subject to the same conditions and obligations and has the same civil and criminal responsibility as a manager natural person has, who acts in his own name, but this will not exonerate the legal person of its responsibility neither will it scale down its joint liability.

(3) When the legal person revokes its representative it is obliged, at the same time, to replace him, by way of appointment, with another.

Art. 137. — (1) Each manager will have to deposit a guarantee for his administration, stipulated by the constitutive

act or, lacking a provision under it, approved by the shareholders' general meeting. The guarantee cannot be lower than the nominal value of ten shares or double the monthly remuneration.

(2) If the manager is a shareholder, the guarantee can be constituted, upon his request, by means of depositing 10 shares which during the duration of the mandate are inalienable and are kept in the company.

(3) The guarantee will be deposited prior to the managers' taking up their duties; it can be also deposited by a third party.

(4) If the guarantee will not be deposited prior to the date of his taking up his duties, the manager is considered resigned.

(5) The guarantee remains in the company cashier's safe and can only be returned to the manager after the general meeting approved the balance sheet of the latest financial year within which the manager fulfilled his duties and discharged him.

Art. 138. — The managers' signatures will be deposited with the trade register office along with the certificate issued by auditors, confirming that the guarantee has been deposited.

Art. 139. — (1) For the validity of the decisions of the managing board the attendance in person of at least half of the number of managers is necessary, unless the constitutive act stipulates a larger number.

(2) The decisions in managing board are made with an absolute majority of the attending members.

Art. 140. — (1) The managing board may delegate part of its powers to a managing committee, composed of members elected from among the managers, at the same time determining their remuneration.

(2) The president of the managing board may also be a general director or a director; in this capacity he also leads the managing committee.

(3) The decision of the managing board concerning the necessary cash for the remuneration of the managing committee will have to be ratified by the general meeting if it exceeds the constitutive act's provisions or if the constitutive act do not stipulate anything in this respect.

(4) The decisions of the managing committee are made with absolute majority of its members' votes.

(5) The managing committee has to present, in every meeting of the managing board, its register of proceedings.

(6) In the managing committee, the vote cannot be delegated.

Art. 141. — (1) The appointment of the company's clerks is in the charge of the managing board, unless otherwise stipulated by the constitutive act.

(2) The managing board may any time dismiss the persons appointed on the managing committee.

Art. 142. — (1) Nobody may act on more than three managing boards at the same time.

(2) The interdiction stipulated by paragraph (1) does not refer to cases when the person elected on the managing board is the owner of at least a quarter of the stock or administers a company which possesses the mentioned quarter.

(3) The one who will not observe the above-mentioned provision, will lose by right his capacity as manager, obtained by exceeding the legal number of appointments in a chronological order and will be sentenced, for the benefit of the state, to pay back the remuneration and other due benefits, as well as to hand back the sums of money he cashed in.

(4) The suit against managers can be taken by any shareholder or by the Ministry of Finance.

(5) The members of the managing committee and the directors of a joint-stock company can neither be managers, members of the managing committee, auditors or associates with unlimited liability, without the authorization of the managing board, in other competing companies or having the same object, nor exercise the same trade or another competing one, on his own account or on others', under the penalty of being dismissed and held liable for damages.

Art. 143. — The managers could conclude legal documents by which to acquire, alienate, lease, change or deposit as collateral, goods belonging to the company's assets whose value exceeds half of the company's assets' book value as at the time the legal document is concluded, but only with the approval of the extraordinary general meeting of the shareholders, given as stipulated by Article 115.

Art. 144. — (1) The managers are responsible for the fulfillment of all duties as per Articles 72 and 73.

(2) The managing committee, all the managers are liable towards the company for the directors' or personnel's activity, when the damage would not have happened if they had exercised the supervision which was incumbent upon them by virtue of their positions.

(3) The managing committee should notify the managing board of all deviations found in the fulfillment of its supervising duties.

(4) The company's managers are jointly liable with their immediate predecessors, if, being aware of the irregularities perpetrated by them, they don't denounce them to the auditors.

(5) In the companies with several managers, the responsibility for the actions performed or for the omissions does not extend over the managers who had their opposition recorded in the register of decisions of the managing board and who made a written report about that to the auditors.

(6) For decisions made during the meetings in which the manager didn't take part, he stays responsible if within a month since he had learned about it he did not oppose the decision in the ways indicated by the previous paragraphs.

Art. 145. — (1) The manager who, in a certain operation, has, directly or indirectly, interests opposed to those of the company, must inform the other managers and the auditors about this matter and must not take part in any proceeding concerning the respective operation.

(2) The manager has the same obligation, in case he knows that, in a certain operation, his wife, relatives and kindred up to the fourth degree included take an interest.

(3) The manager who didn't observe the provisions of paragraph (1) and (2) would be liable for the damages resulting for the company.

Art. 146. — (1) The managing board gathers any time it is necessary.

(2) It has to gather at least once a month in the company's registered office, while the managing committee has to gather at least once a week.

(3) The convening note for the meetings of the managing board will contain the place where the meeting will take

place and the agenda, being impossible to make any decision concerning the problems not indicated in the agenda, except for emergency cases and under the condition that they should be retified by the unattending members during the next meeting.

(4) During the meetings of the managing board, the directors will present written reports concerning operations carried out, and the managing committee will present the register of its proceedings.

(5) The auditors will also be convened to the meetings of the managing board.

(6) During every meeting, a report will be drawn containing the proceedings order, decisions made, number of votes met and the separate opinions.

Art. 147. — (1) The carrying into effect of the company's operations can be entrusted to one or several executive directors who are employed by the company.

(2) The executive directors cannot be members of the company's managing board.

(3) They are responsible towards the company and third parties, the same as the managers are, for the unfulfillment of their duties in accordance with the provisions of Article 144, even if a contrary agreement existed.

Art. 148. — Fixed wages and any other sums of money or advantages could be granted to managers and auditors only on the basis of a decision made by the general meeting.

Art. 149. — (1) Any shareholder is entitled to denounce to the auditors the operations he thinks should be censured; the auditors are obliged to verify and, if they find the claims to be real, to register them in the report they are bound to make to the general meeting.

(2) If the denouncement is made by shareholders representing at least one fourth of the registered capital or a lower quota in case the constitutive act thus stipulates, the auditors are compelled to present their remarks and proposals about the denounced facts.

(3) If the auditors consider the denouncement, set by the shareholders representing at least one fourth of the registered capital, well accounted for and urgent, they are compelled to convene the general meeting immediately. If not, they have to refer to the respective matter during the

next meeting. The meeting has to decide upon settling the denouncement.

(4) The fourth part of the registered capital is evidenced by depositing the shares with banking companies in Romania or with their branches or by freezing the bank accounts, respectively, in cases where the shares have been issued in a dematerialized form.

(5) The shares will stay deposited, or frozen respectively, until after the extraordinary general meeting convenes and evidence of deposit, or of freezing of the accounts respectively, will legitimates the attendance of the shareholders at this meeting.

Art. 150. — (1) The suit in responsibility against founders, managers, auditors and directors belongs to the general meeting, which will decide with the majority stipulated by Article 112.

(2) The decision could be made, even if the issue regarding their responsibility is not on the agenda.

(3) The meeting appoints with the same majority the person charged with taking action at law.

(4) If the meeting decides to bring a suit in responsibility against managers, their mandate ceases by right and the meeting will proceed to their substitution.

(5) If the action at law is directed against the directors, they are suspended by right until the ruling of court remains final.

Art. 151. — (1) In case of vacancy of one or several managers, the other managers along with the auditors, and deliberating in the presence of two thirds and with absolute majority, proceed to the appointment of a temporary manager till the convening of the general meeting, unless otherwise stipulated by the constitutive act.

(2) In case there is only one manager and he wants to withdraw, the general meeting will have to be convened. In case of death or physical obstruction, the temporary appointment will be made by the auditors, but the general meeting will be urgently convened, for the final appointment of the manager.

Art. 152. — In case the manager or the directors conclude legal documents to the company's prejudice and the company, because of the positions detained by the said, does not take any action in order to recover the damages, then any of the minority stockholders has the right to file a law suit

in the name of the company in order to recover the respective damage.

Art. 153. — (1) In case the managers find out the loss of half of the registered capital they are compelled to convene the extraordinary meeting in order to decide upon the reconstitution of the capital, its limitation to the balance amount of money or the dissolution of the company.

(2) If provided by the constitutive act, the extraordinary meeting can be convened even in case of a smaller loss.

(3) In case not even upon the second convening the quorum wasn't gathered as per Article 115, the managers will ask the district court of the company's registered office to appoint an expert to verify the loss of a part of the registered capital. The court, on the basis of an expert survey, ascertaining the loss stipulated by paragraphs (1) or (2), will issue a decision, authorizing the managers to convene the general meeting which will be able to decide upon the limitation of the capital to the balance amount or the company's dissolution with any number of attending shareholders.

Section 4

About auditors

Art. 154. — (1) The joint-stock company will have three auditors and the same number of deputy members unless the constitutive act stipulates a larger number. In all cases, the number of the auditors must be an odd one.

(2) In the beginning, the auditors are elected by the constitutive assembly. They have a three years mandate and can be re-elected.

(3) The auditors have to carry out their mandate personally.

(4) At least one of them must be a legally authorized or expert bookkeeper.

(5) In the companies with at least 20 per cent state owned capital, one of the auditors must be recommended by the Ministry of Finance.

(6) The majority of auditors and deputies will be Romanian citizens.

(7) The auditors are bound to deposit within the period indicated by the Article 137, the third part of the guarantee required for managers.

Art. 155. — (1) An outsider independent auditor, be it a natural or a legal person, may be appointed or elected as an auditor of the company. In this case the provisions of this present Law shall be duly completed with the provisions of the special law.

(2) The appointment or the election of an outsider independent auditor is compulsory in certain cases as regulated by law.

Art. 156. — (1) The auditors have to be shareholders, except for the bookkeeper auditors.

(2) The following persons may not be auditors, and if they were elected, they are denied their mandate:

a) relatives or kindred up to the fourth degree included or managers' spouses;

b) persons receiving any form of salary or remuneration from the managers or from the company, for another position than that of an auditor;

c) persons who are denied the position of a manager as per Article 135.

(3) The auditors are remunerated by a fixed salary determined in the constitutive act or by the general meeting which appointed them.

Art. 157. — (1) In case of death, physical or legal obstruction, termination or renouncement to the mandate by one auditor, the oldest deputy member will substitute him.

(2) If in this way, the auditors' number cannot be completed, the remaining auditors will appoint other persons to fill in the vacancies, until the next meeting of the general assembly is held.

(3) In case no auditor stays in office, the managers will urgently convene the general meeting, which will appoint other auditors.

Art. 158. — (1) The auditors are bound to supervise the company's administration, to check if the balance sheet and the profit and loss account are legally drawn up and according to the registers, if these are regularly kept, and whether the assets assessment was made according to the regulations settled for the drawing up of the balance sheet.

(2) Regarding all this, as well as regarding the proposals they think fit for the balance sheet and for the distribution

of profits, the auditors will submit to the general meeting a detailed report.

(3) The general meeting will not be in a position to approve the balance sheet and the profit and loss account, if these are not accompanied by the auditors' report.

(4) The auditors are also bound:

a) to perform monthly and unexpected inspections of the cashier's safe and to verify the existence of bonds and assets, which are the company's property or which were received as security, bail or deposit;

b) to convene the ordinary or extraordinary meeting when it was not convened by the managers;

c) to take part in the ordinary and extraordinary meetings being authorized to include into the agenda the proposals they think fit;

d) to ascertain that guarantees are regularly deposited by the managers;

e) to watch over the legal provisions and those of the constitutive act so that they should be fulfilled by managers and official receivers.

(5) The auditors will inform the managers about irregularities in administration and about the infringement of the provisions of law and of the constitutive act which they find out; they will bring to the attention of the general meeting the more important cases.

Art. 159. – (1) The auditors are entitled to obtain every month from the managers a report on the operations' situation.

(2) The auditors take part in the managers' meetings without having the right to vote.

(3) It is forbidden to auditors to inform the shareholders, in private, or third parties, about the company's operations which they took knowledge of while exercising their mandate.

Art. 160. – (1) With a view to fulfilling the provision of Article 158 paragraph (2), the auditors will confer together; however they will be able to draw up separate reports in case of disagreement, which they must submit to the general meeting.

(2) For the other obligations, stipulated by law, the auditors can work separately.

(3) The auditors will record their proceedings in a special register, as well as the results of their mandate exercising.

Art. 161. – (1) The extent to which the auditors are responsible and the effects of their responsibility are determined by the regulation of the mandate.

(2) Their dismissal could only be made by the general assembly, on the basis of the vote required for the extraordinary meetings.

(3) The provisions of Articles 73, 142 and 150 are also to be applied to auditors.

Section 5

About bonds issue

Art. 162. – (1) The joint-stock company can issue bearer or registered bonds, for an amount not exceeding three quarters of the deposited and existent capital, according to the latest approved balance sheet.

(2) The nominal value of a bond cannot be lower than 25,000 lei.

(3) The bonds of the same issue must have equal value and give equal rights to their possessors.

(4) The bonds may be issued in a material form, on paper, or in a dematerialized form by registration in a bank account.

Art. 163. – In order to proceed on bonds issuing by public offering, as defined by Law no. 52/1994, the managers shall publish an issue prospectus containing:

a) denomination, object of activity, the registered office and life of the company;

b) registered capital and reserves;

c) the date of publication in the Official Gazette of Romania of the incorporation conclusion and the amendments made to the constitutive act;

d) situation of the registered assets according to the latest approved balance sheet;

e) categories of shares issued by the company;

f) total amount of the previous issued bonds and of those which are going to be issued, the method of reimbursement, the nominal value of the bonds, the interest they yield, men-

tion if they are registered or on bearer as well as if they are convertible from one category into another or into shares;

g) debts that entail the company's real estate;

h) date of publication of the extraordinary general meeting decision which approved the issuing of bonds.

Art. 164. — In case the bonds make the object of a public offering, as defined by Law no. 52/1994, their issuing and market transaction are subject to the said Law.

Art. 165. — (1) The subscription of bonds will be made on copies of the issue prospectus.

(2) The value of the subscribed bonds must be fully deposited.

(3) The bonds titles must contain the date stipulated by Article 163, item number and payments schedule in capital and interests.

(4) The titles will be signed according to the provisions of Article 93 paragraph (4).

(5) The nominal value of the bonds convertible into shares shall be equal to the value of the shares.

Art. 166. — (1) The possessors of bonds can gather in a general assembly to deliberate upon their interests.

(2) The meeting will be convened at the expenses of the company that issued the bonds upon the request of a bonds holders number who would represent the fourth part of the titles issued and not yet reimbursed or, after the appointment of the representative of bonds holders upon their request.

(3) The dispositions stipulated for the ordinary meeting of the shareholders are also to be applied to the meeting of bonds holders, concerning the forms, conditions, convening terms, titles depositing and voting.

(4) The issuing company cannot take part in proceedings of the bonds holders' meeting on the basis of the bonds it holds.

(5) The bonds holders could be represented by proxies, other than managers, auditors or company employees.

Art. 167. — (1) The bonds holders' meeting legally set up has the powers:

a) to appoint a representative of the bonds holders and one or several deputy members having the right to represent them in front of the company and court, establishing

their remuneration; they may not take part in the company's administration, but they will be able to attend its general meetings;

b) to carry out all the acts of supervision and protection of their mutual interests or to authorize a representative to carry them out;

c) to set up a fund, taken out from the interests due to bonds holders in order to cover the expenses necessary to the protection of their rights, setting up, at the same time, rules for the administration of this fund;

d) to object to any modification of the constitutive act or loan conditions, by which the bonds holders' rights would be affected;

e) to pronounce their opinion concerning the issue of new bonds.

(2) The assembly's decision will be made known to the company in no more than three days since they were passed.

Art. 168. — For the validity of the proceedings stipulated under Article 167 letters a), b), c), the decision has to be made with a majority of at least one third of the titles issued and not reimbursed; in the other cases, the holders attendance is required to the meeting, representing at least two thirds of the titles not yet reimbursed and the favourable vote of at least four fifths of the titles represented in the meeting.

Art. 169. — (1) The decisions made by the assembly of the bonds holders are also compulsory for the holders who did not take part in the meeting or who voted against.

(2) The bonds holders' decisions can be sued in court by the holders who did not take part in the meeting or who voted against and who demanded this to be recorded in the meeting's minutes, within the period and with the effects indicated by Article 131 and 132.

Art. 170. — The suit taken by the bonds holder against the company is not admissible if its object is the same as that of the action brought against by the representative of the bonds holders or is contrary to a decision of the assembly of the bonds holders.

Art. 171. — (1) The bonds are reimbursed by the issuing company when they fall due.

(2) Before becoming mature the bonds of the same issue and of the same value can be reimbursed, by drawing of lots, at an amount higher than their nominal value established by the company and publicly announced, at least 15 days prior to the drawing of lots.

(3) The convertible bonds may be converted into shares belonging to the issuing company under the conditions established in the issue prospectus.

Section 6

About the registers and balance sheet of the company

Art. 172. — (1) Besides the registers stipulated by law, the joint-stock companies must keep:

a) a shareholders' register which contains, as the case may be, name, first name, denomination, place of residence or registered office of shareholders of registered shares as well as deposits made for the shares. Registration of shares issued in a dematerialized form and transacted on an organized marked shall be kept in an independent private register of the shareholders according to Law no. 52/1994;

b) a register of the meetings and proceedings of the general assembly;

c) a register of the meetings and proceedings of the managing board;

d) a register of the meetings and proceedings of the managing committee;

e) a register of proceedings and findings made by auditors while exercising their mandate;

f) a register of bonds mentioning the total number of the issued and reimbursed bonds, as well as name, first name, denomination and registered office or place of residence of titulars, in case they are registered. Registration of shares issued in a dematerialized form and transacted on an organized market shall be kept according to Law no. 52/1994.

(2) The registers stipulated by letters a), b), c) and f) of paragraph (1) will be in the charge of the managing board, the one stipulated by letter d) will be in the charge of the managing committee and the one stipulated by letter e) will be in the auditors' charge.

Art. 173. — (1) The managers are bound to put at the disposal of the shareholders the registers stipulated by Article 172, paragraph (1) letters a) and b) and to deliver upon their request, at their expense, excerpts from the register.

(2) They are also bound to put at the disposal of the bonds holders, under the same conditions, the register stipulated by Article 172, paragraph (1) letter f).

Art. 174. — The shareholders' register and the bonds register may be kept by filling them by hand or in a computerized system.

Art. 175. — (1) With a purpose to keep the shareholders register in a computerized system and to carry on registration and other operations pertaining thereto the trading company may conclude relevant contracts with an independent private register keeping company.

(2) The provisions of the previous paragraph are accordingly applicable as regards the bonds register too.

(3) Keeping of the shareholders register and/or of the bonds register by an authorized independent register company is compulsory in cases specially regulated by law.

Art. 176. — The managers must present to the auditors, at least one month prior to the established date of the general assembly meeting the balance sheet of the previous financial year, with the profit and loss account, along with their report and supporting documents.

Art. 177. — The balance sheet and the profit and loss account will be drawn up under the conditions stipulated by law.

Art. 178. — (1) The company will take over at least 5 per cent of the profits every year, in order to form the reserve fund until it amounts to a minimum of a fifth part of the registered capital.

(2) If the reserve fund, after its settling, will be reduced for any reason whatsoever it shall be completed observing the provisions of paragraph (1).

(3) Even if the reserve fund reached its limit provided by paragraph (1), it also includes the excess money obtained by stock sale, at a rate higher than their nominal value, if the excess is not money used to pay the issue expenses or is not intended for paying off.

(4) The founders, the managers and the company's personnel will participate in the profits allotment, if so

provided by the constitutive act or, in the absence of such provisions, if it was so approved by the general extraordinary meeting.

(5) In all cases the general meeting will establish the participation conditions for each financial year.

Art. 179. — (1) The balance sheet and the profit and loss account together with the managers' and auditors' reports will remain deposited at the registered office and that of its branches during the 15 days preceding the meeting of the general assembly so that they may be studied by the shareholders.

(2) The shareholders will be entitled to ask, at their expense, for copies of the balance sheet, of the report of the managing board and of the auditors for the general assembly.

Art. 180. — (1) The managers are bound, within 15 days as from the date of the general assembly meeting, to deposit a copy of the balance sheet allong with profit and loss account, with the revenue office attaching their report, the auditors' report and the minutes of the general assembly meeting.

(2) A copy of the balance sheet, confirmed by the revenue office, along with the documents mentioned in the preceding paragraph, shall be deposited with the trade register office.

(3) A notice confirming the depositing of these documents shall be published in the Official Gazette of Romania, Part IV at the company's expense and by care of the trade register office, for trading companies whose yearly rate of turnover exceeds 100 billion lei.

Art. 181. — The balance sheet approved by the general assembly does not hinder the exercise of the action in responsibility against the managers, directors or auditors.

CHAPTER V

Limited partnerships by shares

Art. 182. — The limited partnership by shares is regulated by the provision regarding joint-stock companies except for the provisions of the present chapter.

Art. 183. — (1) The administration of the partnership is entrusted to one or several active partners.

(2) The provisions of Articles 89 and 90 are to be applied to the sleeping partners and those of Articles 80–83 to the active partners.

Art. 184. — (1) In the limited partnership by shares, the managers could be dismissed by the shareholders' general assembly according to a decision made with the majority required for the extraordinary meetings.

(2) The general assembly elects with the same majority and observing the provisions of Article 135 another person instead of the manager who was dismissed, died or who ceased to exercise his mandate.

(3) The appointment must also be approved by the other managers if there are several ones.

(4) The new manager becomes an active partner.

(5) The dismissed manager remains unlimitedly liable towards third parties for the obligations he committed to during his administration, keeping his right to subsequently sue the partnership.

Art. 185. — The active partners who are managers cannot participate in the proceedings of the general assembly for the election of auditors even if they possess shares in the partnership.

CHAPTER VI

Limited liability companies

Art. 186. — (1) The associates' decisions are to be made in the meeting of the general assembly.

(2) The constitutive act may also state the possibility of the voting by correspondence.

Art. 187. — (1) The general assembly makes decisions by the vote of the absolute majority of the associates and of the participating shares.

(2) Except for contrary legal provisions, or those of the constitutive act, the vote of all associates is needed for decisions having as their subject amendments to the constitutive act.

Art. 188. — (1) Each social participating share gives the right to one vote.

(2) One associate could not exercise his right to vote in the proceedings of the associates' assembly, regarding his contribution in kind or the legal documents concluded between him and the company.

(3) If legally constituted meeting of the assembly cannot make a valid decision due to the lack of the required majority, the assembly convened again is entitled to decide upon its agenda whatever the number of associates and the capital share represented by the associates taking part in the meeting are.

Art. 189. — (1) The assembly of the associates has the following main duties:

- a) to approve the balance sheet and to establish the allotment of the net profit;
- b) to appoint the managers and the auditors, to dismiss them and to relieve them of their activity;
- c) to decide upon the suing of the managers and auditors for damages caused to the company, also designating the person in charge of taking action against them;
- d) to modify the constitutive act.

(2) In this last case, the provisions of Articles 219 and 220 are to be applied, if the constitutive act stipulates the right of the associate to withdraw, due to the fact that he does not agree to the amendments which were made.

Art. 190. — (1) The managers are obliged to convene the meeting of the associates at the registered office at least once a year, or as often as necessary.

(2) One associate or a number of them representing at least a quarter of the registered capital, will be entitled to demand the calling together of the general assembly, indicating the purpose of this convening.

(3) The calling together of the assembly will be made under the form stipulated by the constitutive act and, in the absence of any special provision, by registered letter, at least ten days prior to the established date, mentioning its agenda.

Art. 191. — The provisions stipulated for the joint-stock companies regarding the right to contest the decisions of the general assembly are also to be applied to the limited liability companies.

Art. 192. — (1) The company is administered by one or several managers, associates or non-associates, appointed through the constitutive act or by the general assembly.

(2) The managers may neither receive an administrator mandate in other companies which are competitive or have

the same object, without the authorization of the associates' assembly, nor may they carry out the same trading activity or another competitive one on their own account or on the account of another natural or legal person, under penalty of being dismissed and responsible for damages.

(3) The provision of Articles 75, 76, 77 and 79 are also to be applied to the limited liability companies.

Art. 193. — (1) The company must keep, through the good office of the managers, a register of the associates, where there will be written, by case, the name and first name, denomination, place of residence or registered office of each associate, his part of the registered capital, the transfer of the participating shares or any other amendments thereto.

(2) The managers are personally and jointly responsible for any damage caused by breaking the provisions of paragraph (1).

(3) The register may be examined by the associates and by the creditors.

Art. 194. — (1) The constitutive act may stipulate the election of one or several auditors by the associates' assembly.

(2) If the number of the associates is larger than fifteen, the auditors' appointment is compulsory.

(3) The provisions stipulated for the auditors of the joint-stock companies will also be applied to the auditors of the limited liability companies.

(4) For lack of auditors, each associate who is not a manager of the company will exercise the auditing right which the associates have in general partnerships.

Art. 195. — The limited liability company cannot issue bonds.

Art. 196. — (1) The balance sheet of the company and its profit and loss account shall be drawn up according to the rules stipulated for the joint-stock company. After their approval by the general assembly of the associates they shall be deposited by the managers, within 15 days, with the revenue office. A copy of the balance sheet and of the profit and loss account, confirmed by the revenue office, shall be deposited with the trade register office. This office shall make the announcement as regulated by the last paragraph of Article 180.

(2) The provisions stipulated for the reserve funds in the joint-stock company as well as those regarding the writing down of the registered capital, are also to be applied to the limited liability companies.

Art. 197. — (1) The participating shares may be transferred among associates.

(2) The transfer to persons outside the company is only allowed if it was approved by the associates representing at least three quarters of the registered capital.

(3) The provisions of paragraph (2) are not applicable in case of acquiring a participating share by inheritance, unless otherwise stipulated by the constitutive act; in this case the company is obliged to pay the value of the participating share to heirs according to the latest balance sheet approved.

(4) In case the maximum legal number of associates should be exceeded due to the successors' number, these will be obliged to designate a number of title holders, which will not exceed the maximum legal number.

Art. 198. — (1) The transfer of participating shares must be registered with the trade register and into the register of company associates.

(2) The transfer comes into effect with reference to third parties only from the moment of its registration with the trade register.

TITLE IV

On the amending of the constitutive act

CHAPTER I

General provisions

Art. 199. — (1) The constitutive act can be amended by the associates, observing the substance and form conditions stipulated for its concluding.

(2) Amendments regarding changing of the registered office in a different locality, of the main object of activity, of the registered capital, merging and division, reducing or extending the life of the company, its dissolution and liqu-

idation shall be mentioned in the trade register only based on the conclusions of the mandatory judge. The other amendments shall be mentioned, observing the provisions of the law, based on the resolution of the director of the trade register office. This resolution has, correspondingly, the legal status of the mandatory judge's conclusions.

(3) The additional act containing the full text of the provisions of the constitutive act, as amended, shall be deposited with the trade register office and shall be mentioned therein, after which it shall be forwarded, *ex officio*, to the Official Gazette of Romania to be published at the company's expense.

(4) The amending act of the constitutive act of a general partnership or of a limited partnership, in an authenticated form, shall be deposited with the trade register office and shall be mentioned therein, but its publication in the Official Gazette of Romania is not compulsory.

(5) If there are several amendments of the constitutive act, simultaneously or successively, the said act shall be brought up-to-date with all amendments and in such a form it shall be deposited with the trade register office.

(6) In the act updated as per the preceding paragraph the names, denominations and the other identification data of the founders and of the first members of the company's bodies may be omitted.

(7) The omission is allowed only if at least 5 years since incorporation of the company have passed and only if the constitutive act does not provide otherwise.

Art. 200. — Changing of the company's form, extension of its life or other amendments of its constitutive act do not imply the setting up of a new legal person.

Art. 201. — (1) The private creditors of the associates in a general partnership, in a limited partnership or a limited liability company may enter a caveat, according to the conditions set up by Article 62, against the decision of the meeting of the associates to extend the life of the company over the established period for its duration, if they have rights stated by a executory title, previous to the decision.

(2) When the caveat was admitted, the associates must decide within one month from the date when the decision became indisputable if they would give up the extension or

if they are to expel from the company the associate who is in debt to the opponent.

(3) In this last case the rights due to the debtor associate will be calculated on the basis of the latest approved balance sheet.

CHAPTER II

Writing down or the increasing of the registered capital

Art. 202. — (1) Writing down of the registered capital may be obtained by:

- a) reducing the number of shares or of the participating shares;
- b) reducing the nominal value of the shares or of the participating shares;
- c) purchasing its own shares, followed by their cancellation.

(2) When the writing down of the registered capital is not motivated by losses incurred, it may yet be done by:

- a) total or partial exemption of the associates of their obligation to make the deposits they owe;
- b) restitution to the shareholders of a share of their contributions, in proportion to the writing down of the registered capital equally calculated for each share or participating shares;
- c) other methods, as prescribed by the law.

Art. 203. — (1) The writing down of the registered capital can only be made after a two month's period passing from the day of the publication of the decision in the Official Gazette of Romania.

(2) The decision must observe the minimum registered capital, when stated by the law, to point out to the reasons of the writing down and the procedure used for its accomplishment.

(3) Any creditor of the company, prior to the decision being published, is entitled to enter a caveat within the period mentioned in paragraph (1) and under the conditions prescribed by Article 62.

Art. 204. — When the company issued bonds, the writing down of the registered capital by paying back the shareholders out of the sum paid on account of the stock can only be made proportionally to the value of the reimbursed bonds.

Art. 205. — (1) The registered capital may be increased by issuing new shares or by increasing the nominal value of

the existing shares in exchange for new contributions in money and/or in kind.

(2) Likewise, the new shares are paid by including the reserves, except legal reserves, as well as the benefits and the issue premiums or by compensation of some certain and liquid debts of third parties with its own shares.

(3) Favourable differences, as resulted from the re-evaluation of the registered assets, may be included in the reserves and used for the increase of the registered capital.

(4) The increase of the registered capital obtained by increasing the nominal value of the shares can only be decided with the vote of all shareholders, except for the case when it is done by including the reverses, the benefits and the issue premiums.

Art. 206. — The resolution of the extraordinary meeting of the general assembly to increase the registered capital will be published in the Official Gazette of Romania, Part IV, granting a period of at least one month for the priority right to be exercised starting from the publication date.

Art. 207. — (1) The joint-stock company will be able to increase the registered capital, observing the provisions stipulated for the company setting up.

(2) In case of public subscription, the issue prospectus bearing the authentic signatures of two managers must be deposited with the trade register in order to fulfill the formalities stipulated by Article 17 and will contain:

- a) date and incorporation number of the company with the trade register;
- b) denomination and registered office of the company;
- c) subscribed and deposited registered capital;
- d) name and first name of the managers and auditors and their place of residence;
- e) latest approved balance sheet, the profit and loss account and auditors' report;
- f) dividends paid in the last five years or since setting up, if less than five years have passed since this date;
- g) bonds issued by the company;
- h) the resolution of the general assembly regarding new stock issue, their total value, number and nominal value, kind, information referring to contributions other than cash

and advantages granted to these and the date from which dividends will be paid.

(3) The acceptor will be able to claim the nullity of the issue prospectus which does not contain all the indicated mentions, if he did not exercise in any way duties and rights as a shareholder.

Art. 208. — The increase of the registered capital of a company by way of a public offering of negotiable instruments, as defined by Law no. 52/1994, is subject to the said law.

Art. 209. — In case of increase of the registered capital by way of a public offering the managers are jointly liable for the accuracy of the date contained in the issue prospectus, in the publications issued by the company or in the applications forwarded to the trade register office with a view to increase the registered capital.

Art. 210. — (1) If the increase of the registered capital is made by contributions in kind, the extraordinary general meeting, which decided this, shall appoint one or several experts to assess these contributions.

(2) Contributions in debts of third parties are not allowed.

(3) After the survey report has been deposited the extraordinary general meeting, convened again, may decide to increase the registered capital taking into consideration the experts' conclusions.

(4) The resolution of the general assembly must contain the description of the contribution in kind, the name of the persons who make it and number of shares to be issued for it.

Art. 211. — The shares issued with the purpose of increasing the registered capital will be offered for subscription, first of all to the other shareholders, in proportion to the number of shares they possess and with their commitment to exercise their priority right within the period established by the general assembly, unless otherwise stipulated by the constitutive act. After expiration of this period it will be possible to subscribe the shares publicly.

Art. 212. — (1) The general assembly, for justified reasons, can withdraw the shareholders' right to subscribe the new shares totally or partially.

(2) The convening shall have to contain, in this case, the reasons for the increase of the registered capital, the per-

sons to whom the new shares are going to be assigned to, the number of shares assigned to each person, shares value at the time of their issuance and the basis on which this value was calculated.

(3) In order to take this decision the presence of three quarters of the total number of the owners of the registered capital and the vote of a number of shareholders which represent at least half of the registered capital is necessary.

Art. 213. — The priority right can not be used if the new shares represent contributions in kind.

Art. 214. — The resolution of the general assembly regarding the increase of registered capital is effective only to the extent to which it is fulfilled within one year from its date.

Art. 215. — (1) The shares issued in exchange for contributions in cash shall have to be paid, at the time of their subscription, in proportion of at least 30% out of their nominal value and, in full, within no more than 3 years as from the date the decision of the general assembly has been published in the Official Gazette of Romania.

(2) Within the same period of time the shares issued in exchange for contributions in kind shall also have to be paid.

(3) When an issue premium is to be applied it will have to be fully paid at the time of subscription.

(4) The provisions of paragraph (3) of Article 98 and those of Article 100 are to be applicable.

Art. 216. — The limited liability company will increase its registered capital, observing the rules regarding the setting up of such companies.

TITLE V

Exclusion and withdrawal of the associates

Art. 217. — (1) That associate can be excluded from a general partnership, a limited partnership, or a limited liability company who:

a) being noticed that he is put into delay, does not make the contribution he has committed himself to make;

b) having unlimited liability, has declared bankruptcy, or became under a disability;

c) having unlimited liability without any right interferes in administration or breaks the provisions of Article 80 and 82;

d) being a managing associate, defrauds the company or uses the registered signature or the registered capital for his own benefit or for others'.

(2) The provisions of this article are also to be applied to the active partners of the limited partnership by shares.

Art. 218. — (1) The exclusion is delivered by a court award upon request of the company or of any associate.

(2) If the exclusion is sued by an associate, both the company and the defendant will be subpoenaed.

(3) The exclusion final award of court will be deposited within fifteen days with the trade register office in order to be registered, and the enacting terms of the court award will be published upon the company's request in the Official Gazette of Romania, Part IV.

Art. 219. — (1) The excluded associate is liable for losses and he has a right to benefits to the day he has been excluded, but he will not be in a position to ask for their liquidation, until they are allotted according to the provisions of the constitutive act.

(2) The excluded associate has no right to a proportional part of the social assets, but he is only entitled to a sum of money representing the value thereof.

Art. 220. — (1) The excluded associate stays liable against third parties for the operations carried out by the company until the date the final award concerning the exclusion is delivered.

(2) If, in the moment the exclusion take place operations are being carried out, the associate is bound to bear the consequences and he may not withdraw the share he is entitled to, until these operations are completed.

Art. 221. — (1) The associate in a general partnership, in a limited partnership or in a limited liability company may withdraw from the company:

- a) in the instances stipulated by the constitutive act;
- b) with the agreement of all the other associates;
- c) in the absence of such provisions in the constitutive act or when the agreement of all the associates can not be reached still the associate may withdraw for justified rea-

sons, based on a court decision, subject only to an appeal, within 15 days as from the day the decision has been notified.

(2) The rights of the withdrawn associate, for which he is entitled against his participating shares, shall be determined with the agreement of the associates or by an expert designated by them or, in case of misunderstanding, by the court.

TITLE VI

Dissolution, merging and division of the trading companies

CHAPTER I

Dissolution of companies

Art. 222. — (1) The company enters dissolution by:

- a) expiration of the period established for the life of the company;
- b) impossibility to carry out the object of activity of the company or its fulfillment;
- c) the declared nullity of the company;
- d) the decision of the general assembly;
- e) the court decision, initiated by any one of the associates, for justified reasons, such as serious misunderstandings between the associates which hinder the company's operation;
- f) bankruptcy;
- g) other reasons as prescribed by the law or by the constitutive act of the company.

(2) In the case prescribed by letter a) of paragraph (1) a hearing of the associates must be held, at least one year prior to the company's expiration date, regarding the possible extension of its life. When such a hearing lacks, at the initiative of any one of the associates the court may order, by a decision, the carrying out of the hearing.

Art. 223. — (1) The joint-stock company enters dissolution:

- a) in the case and under the conditions prescribed by Article 153;

b) when the registered capital is written down under its minimum legal level;

c) when the number of shareholders diminish under its legal minimum.

(2) The limited partnership by shares and the limited liability company enter dissolution in case of losing half of their registered capital or of it being reduced under its minimum legal level, as the case may be.

(3) The provisions of paragraph (1) and (2) are not to be applicable in cases when, within 9 months as from the date the loss or the reducing of the registered capital has been acknowledged, it has been re-completed or written down to the remaining amount or to the minimum legal level or when the company is converted into another form for which the existing registered capital is up to requirements.

(4) The provisions of letter c) of paragraph (1) are not to be applicable in cases when, within 9 months as from the date the reducing of the number of shareholders under its minimum legal level has been acknowledged, this number has been completed.

Art. 224. — (1) The general partnership and limited liability companies are dissolved through bankruptcy, legal inability, exclusion, withdrawal or death of one of the associates when, owing to these causes, the number of the associates was reduced to only one.

(2) An exception makes the case where the constitutive act contains a clause according to which the company may continue its existence with the heirs or when the only remaining associate decides the company to continue in the form of a limited liability company with an only associate.

(3) The provisions of the preceding paragraphs are to be applicable also to the limited partnership or limited partnerships by shares providing those clauses are applicable to the only active or the only sleeping partner.

Art. 225. — (1) If the general partnership, an associate dies and there is no contrary agreements, the company must pay the share due to the heirs according to the latest approved balance sheet within three months from the notification of the associate's death, if the remaining associate do not prefer to continue the company with those heirs who consent thereto.

(2) The provisions of paragraph (1) are also applied to the limited partnership, in case of death of one of the active partners, unless his heirs do not prefer to stay with the company as active partners.

(3) The heirs stay liable according to Article 219 until the publication was made of the change which took place.

Art. 226. — (1) In case the company was dissolved following the decision of the associates, the said may go back on their decision, with the majority required for the modification of the constitutive act, as long no distribution of the company's assets was initiated.

(2) The new decision shall be mentioned in the trade register after which the trade register office will forward it to the Official Gazette of Romania, in order to be published in Part IV at the company's expense.

(3) The creditors and any interested party may oppose the decision in court according to the conditions laid down by Article 62.

Art. 227. — (1) The dissolution of trading companies must be registered with the trade register and published in the Official Gazette of Romania except for the case stipulated by letter a), paragraph (1) of Article 222.

(2) The registration and publication will be made according to Article 199, when the dissolution will take place on the basis of a decision of the general assembly, within fifteen days from the date of the final court award, if the dissolution was ruled by court.

(3) In the case regulated by letter f) paragraph (1) of Article 222 the dissolution shall be decided by the court specially entrusted with bankruptcy procedure.

Art. 228. — (1) Dissolution of the company has, as an effect, the beginning of the liquidation procedure. Dissolution may take place without liquidation in case of merging or of total division of the company and in other cases stipulated by law.

(2) As from the moment of dissolution, the managers can not start new operations; otherwise they are personally and jointly liable for the operations they started.

(3) The ban imposed by paragraph (2) is to be applied as from the day the time established for the company's life

expires or as from the date of its dissolution as decided by the general assembly or as declared by a court decision.

(4) The company maintains its legal personality during the liquidation operations until the liquidation is finished.

Art. 229. — The dissolution of the company, before expiration of the period established for its duration, becomes effective against third parties only after a thirty day's interval has passed from the publication in the Official Gazette of Romania.

Art. 230. — In the general partnerships, the limited partnerships and the limited liability companies the associates may also decide, along with the dissolution, with the quorum and the majority required for the modification of the constitutive act, the way liquidation is to be carried out, when they are in full agreement as to the distribution and liquidation of the company's assets and when such steps make sure the company gets rid of its liabilities or comes to an agreement with the creditors to the same end.

Art. 231. — (1) Dissolution of a limited liability company with an only associate brings about the universal transfer of the company's assets towards the only associate, without liquidation.

(2) The transfer of the assets takes place and the company ceases to exist at the following dates:

a) if there is no opposition, on the date the time to file an opposition has expired;

b) if an opposition was filed, on the date the court decision which rejects the opposition has become irrevocable or, as the case may be, the decision by which a note is taken that the company or the only associate has paid its debts or offered securities accepted by the creditors or come up with an arrangement with them for the payment of its debts.

Art. 232. — (1) At the request of the local chamber of trade and industry or of any interested person, the court could decide the dissolution of the company, in the cases when:

a) the company lacks the bodies required by the constitutive act or these bodies can not meet any more;

b) the company did not submit for 3 consecutive years its balance sheet or other documents which, according to the law, should be submitted with the trade register office;

c) the company ceased its activity or it has no known registered office or the associates have disappeared or they have no domicile or known residence.

(2) The provisions of paragraph (1) letter c) are not to be applied in case the company was temporarily inactive, a fact notified to the public fiscal agencies and registered with the trade register. The duration of inactivity can not exceed 3 years.

(3) The court decision following which the dissolution comes into effect shall be published in the Official Gazette of Romania, Part IV, and in a wide circulation newspaper at the expense of the party who initiated the application for the dissolution, which party may recover the expenses from the company by way of a separate law suit.

(4) Against the decision any interested person may file an appeal within 30 days as from the date it was published in the Official Gazette of Romania.

(5) On the date of the court decision remaining final the company shall be erased from the trade register, *ex officio*, except for the case when the court decided otherwise.

CHAPTER II

Merging and division of companies

Art. 233. — (1) The merger is accomplished by the absorption of a company by another or by the fusion of two or several companies with the purpose to set up a new company.

(2) The division is accomplished by dividing all assets of a company which ceases to exist among two or several existing companies or which thus are set up.

(3) The company does not cease to exist in case a part of its assets breaks off and is transferred to one or several existing companies or which thus are set up.

(4) Merging or division may also be accomplished between companies of different forms.

(5) Companies on the way of liquidation can undergo merging or they can be divided only if the distribution among the associates of the parts to which they are entitled from the liquidation has not started.

Art. 234. — (1) The merger or the division is decided by each company, under the conditions stipulated for the amending of the company's constitutive act.

(2) If, by merging or division, a new company is set up, it shall come into existence under the conditions prescribed by this present law for the agreed upon form of company.

Art. 235. — The merger or the division has, as an effect, the dissolution without liquidation of the company which ceases to exist and the universal transfer of its assets towards the beneficiary company or companies, in the state they find themselves at the time of the merger or of the division, in exchange for assigning shares or participating shares there-of to the associates of the company which ceases to exist or, possibly, of a sum of money which can not exceed 10% of the nominal value of the assigned shares or participating shares.

Art. 236. — Based on the decision of the general assembly of the shareholders of each of the companies which take part in the merger or in the division, their managers shall draw up a merger or division plan, which shall contain:

a) the form, denomination and the registered office of each of the companies involved in the operation;

b) the basic reasons and the conditions of the merger or of the division;

c) the limits and the evaluation of the assets and the liabilities which are to be transferred to the beneficiary companies;

d) modalities to hand over the shares or the participating shares and the date as from which they entitle the owner to collect dividends;

e) the exchange rate of the shares or of the participating shares and, as the case may be, the amount to be paid as compensation;

f) the quantum of the merger or of the division premium;

g) the rights granted to the obligees and any other special advantages;

h) the date of the merger balance sheet or of the division balance sheet, date which shall be the same for all companies involved;

i) any other data that may present interest for the operation.

Art. 237. — (1) The merger or division plan, signed by the representatives of the companies involved, shall be deposited with the trade register office where each company is registered, along with a statement of the company which ceases to exist following the merger or the division, regarding the way it decided to pay off its liabilities.

(2) The merger or the division plan, confirmed by the mandatory judge, shall be published in the Official Gazette of Romania, Part IV, at the parties' expense, in full or in excerpt, according to the orders of the mandatory judge or to the parties' request.

Art. 238. — (1) Any creditor of the company which enters merging or division, toward whom the company's debt is prior to the publication of the merger or division plan, can file an opposition according to Article 62.

(2) The opposition suspends the carrying into effect of the merger or of the division until the day when the court decision becomes irrevocable, except in case the debtor company presents evidence it paid its debts or presents guarantees accepted by the creditors or comes to an agreement with them for the payment of its debts.

(3) The provisions of Article 62 are to be applicable.

Art. 239. — (1) The managers of the companies which are going to enter a merger or to be divided shall submit to the associates the following:

a) the merger or division plan;

b) the general report of the managers which shall indicate, among others, the exchange rate of the shares or of the participating shares;

c) the auditors' report;

d) the merging balance sheet or the division balance sheet;

e) the situation of contracts covering operations of more than 5,000,000 lei each, currently in progress and their distribution among the beneficiary companies.

(2) For the joint-stock companies, limited partnerships by shares or limited liability companies the report of one or several experts appointed by the mandatory judge shall be added, which shall express their specialized opinion as to the merger or the division.

Art. 240. — (1) In not more than two months as from the expiration of the time limit stipulated by Article 238 or, as

the case may be, as from the date the court decision has become irrevocable, the general assembly of each company involved shall decide as to the merger or the division.

(2) The constitutive acts of the newly set up companies by merger or division shall be approved by the general assembly of the company or companies which cease to exist.

Art. 241. — By derogation from the provisions of Article 115, when the merger or the division has, as an effect, the increase of the obligations of the associates of one of the involved companies, the decision shall be taken with an unanimity vote.

Art. 242. — The act amending the constitutive act of the absorbing company, in an authenticated form, shall be registered with the trade register where the company has its registered office, and, confirmed by the mandatory judge, it is forwarded, *ex officio*, to the Official Gazette of Romania, to be published at the company's expense.

Art. 243. — The merger or the division is considered as being accomplished on the following dates:

a) in case one or several new companies are set up, on the date of the new company's incorporation with the trade register or of the latest;

b) in the other cases, on the date the mention regarding the increase of the absorbing company's registered capital has been registered in the trade register.

Art. 244. — In case of the merger by absorption, the absorbing company acquires the rights and obligations of the absorbed company and in case of the merger by fusion the rights and the obligations of the companies which cease to exist are transferred to the newly set up company.

Art. 245. — (1) The companies which come into possession of goods following a division process are liable to the creditors for the obligations of the company which, by division, ceased to exist, in proportion to the acquired goods, except for the case when the division act has established different proportions.

(2) In case it is not possible to identify the company liable for a certain obligation, then the companies which acquired goods as a result of division shall remain jointly liable.

(3) The contribution of a part out of the assets of a company to one or several existing companies or which, as a

result, are thus set up, in exchange for the shares or the participating shares assigned to the associates of that company to the beneficiary companies, is accordingly subject to the legal provisions regarding the division, if it takes place in the form of a breaking off as per paragraph (3) of Article 233.

TITLE VII Liquidation of trading companies

CHAPTER I General provisions

Art. 246. — (1) Even if the constitutive act stipulates provisions in this respect, the following rules shall be observed in liquidating and distributing the social assets:

a) until the official receivers take over their duties, the managers continue their mandate, except for the provisions of Article 228;

b) the official receivers' appointment act or the decision that replaces it and any subsequent act bringing changes regarding their replacement must be deposited by official receivers' care, with the trade register office to be immediately registered and published in the Official Gazette of Romania, Part IV.

(2) Only after fulfilling the formalities of paragraph (1) the official receivers will deposit their signature with the trade register and will take over their duties.

(3) After the publication stipulated by paragraph (2), no action may be taken for or against the company, but only on behalf of the official receivers or against them.

(4) Beside the provisions of the present title, the rules established under the constitutive act or law are also applied to the companies undergoing liquidation to the extent to which they are not incompatible with the liquidation.

(5) All the documents issued by the company must show that it is undergoing liquidation.

Art. 247. — (1) The receivers can be natural or legal persons. The receivers that are natural persons or the perma-

nent representatives – natural persons belonging to the liquidating company – should be authorized receivers, as provided by law.

(2) The official receivers have the same responsibility as the managers.

(3) Immediately after having taken over their duties, the official receivers are obliged, along with the company's managers, to make an inventory and to draw up a balance sheet to ascertain the exact situation of the company's assets and liabilities and to sign them.

(4) The official receivers are obliged to receive and keep the company's assets, the registers committed to them by the managers and the documents of the company. They will also keep a register with all the liquidation operations, by their date order.

(5) The official receivers carry out their mandate under the auditors' supervision.

Art. 248. – As regards the trading companies whose activity was carried out on the basis of the environment permit stipulated by Law on environment protection no. 137/1995, the official receivers are obliged to take steps for drawing up an environment balance sheet, stipulated by the said law, and to forward the results of this balance sheet to the local environment protection agency.

Art. 249. – (1) Beside the competences granted them by the associates with the same majority required for their appointment, the official receivers will be able:

a) to go to law and be sued to the benefit of the liquidation;

b) to carry out and to conclude the trading operations related to liquidation;

c) to sell, by public auction, the real estate and any movable estate of the company; the goods cannot be sold in the lump;

d) to make transactions;

e) to liquidate and to cash in the company's debts even in case of the debtor's bankruptcy, issuing a receipt;

f) to contract bills of exchange, to make unmortgaged loans and generally to carry out all other necessary acts.

(2) In the absence of special provisions in the constitutive act or in their appointment document, they may not create

mortgages on the company's properties, unless they are authorized by court, with the auditors' advice.

(3) The official receivers who undertake new trading operations which are not necessary to the liquidation purpose, are personally and jointly liable for their accomplishment.

Art. 250. – (1) The official receivers cannot pay the associates any sum of money for the parts they are entitled to by liquidation before all the company's creditors get paid.

(2) Still, the associates could ask for the held back sums to be deposited with the Savings and Consignment Office or with a banking company or one of their branches and to carry out the distribution of the shares or of the participating shares even during liquidation if, besides what is necessary to cover all the company's obligations which are to be paid at maturity or which are falling due, a liquidness of at least 10% of their amount still remains available.

(3) The company's creditors are entitled to enter a caveat against the decisions of the official receivers as per Article 62.

Art. 251. – The official receivers who prove by balance sheet presentation, that the funds owned by the company are not sufficient to cover the claimable liabilities, must ask for the necessary amounts of money to be paid in by the associates who are unlimitedly liable or by those who did not make the full deposits, if they are obliged to obtain them, as per the company's form, or if they are in debt to the company for the unmade deposits they were bound to make as associates.

Art. 252. – The official receivers who paid the company's debts with their own money will not be in a position to exercise against the company more comprehensive rights than those granted to the creditors who got paid.

Art. 253. – The company's creditors are entitled to exercise against the official receivers the actions resulting from debts which fall due until the limit of the property existing in the company's ownership is reached and only then they are allowed to sue the associates, for the payment of the sums due out of the subscribed shares value or of the contributions made to the company's registered capital.

Art. 254. – (1) The company's liquidation must be completed within 3 years at the most as from the date of its

dissolution. For justified reasons the court may extend the said time limit with not more than 2 years.

(2) After the liquidation is completed the official receivers must request the erasing of the company form the trade register.

(3) The company can also be erased *ex officio*.

(4) Liquidation does not discharge the associates and does not hinder the bankruptcy procedure of the company to be started.

Art. 255. – (1) After the accounts are approved and the distribution is completed, the registers and deeds of the general partnership, limited partnership and limited liability company, which are not needed by any of the associates, will be kept by the associate appointed by the majority.

(2) In joint-stock companies and in limited partnerships by shares, these will be deposited with the trade register, where any interested part could take notice of them, with the court authorization.

(3) The registers of all companies will be kept for five years.

CHAPTER II

Liquidation of general partnerships, limited partnerships or limited liability companies

Art. 256. – (1) The official receivers' appointment in the general partnerships, limited partnerships or limited liability companies, will be made by all the associates, unless otherwise stipulated by the company contract.

(2) If the unanimity of votes cannot be met, the appointment of the official receivers will be made by the court, upon the request of any associate or manager, by listening to all the associates and managers.

(3) The associates or managers may appeal against the court ruling within fifteen days from the judgement.

Art. 257. – (1) After having completed the liquidation of the general partnership, limited partnership or limited liability company, the official receivers must draw up the liquidation balance sheet and propose the distribution of assets between the associates.

(2) The unsatisfied associate may enter a caveat, as per Article 62, within 15 days from the notification of the liquidation balance sheet and the distribution draft.

(3) In order to settle the caveat judgement, the liquidation problems will be separated from those regarding the distribution, which may not concern the official receivers.

(4) After expiration of the period stipulated by paragraph (2) or after the court decision on the caveat remained final, the liquidation balance sheet and the distribution are considered approved and the official receivers are discharged of their responsibilities.

CHAPTER III

Liquidation of joint-stock companies and of limited partnerships by shares

Art. 258. – (1) The appointment of the official receivers in the joint-stock companies and limited partnerships by shares is made by the general assembly which decides the liquidation, unless otherwise stipulated by the constitutive act.

(2) The general assembly makes decisions with the same majority stipulated for the modification of the constitutive act.

(3) If the majority was not met, the appointment will be made by court, upon the request of any of the managers or associates, the company and those who requested the appointment being summoned. This ruling may be appealed within fifteen days from the delivery of the court decision.

Art. 259. – (1) The managers will submit to the official receivers a report about administration for the time elapsed since the latest approved balance sheet and until the moment the liquidation started.

(2) The official receivers are entitled to approve the report, to appeal or to support the disputes that may occur.

Art. 260. – (1) When one or several managers are designated as official receivers, the report concerning the managers' administration will be deposited with the trade register office and it will be published in the Official Gazette of Romania, Part IV, along with the final liquidation balance sheet.

(2) When the duration of administration exceeds a financial year, the report must be attached to the first balance

sheet, which the official receivers submit to the general assembly.

(3) Any shareholder may enter a caveat within fifteen days from the publication as per the conditions stipulated by Article 62.

(4) All the caveats entered will be connected to be settled by a single court award.

(5) Any shareholder is entitled to intervene in court and the ruling of court will also be opposable to the non-intervening shareholders.

Art. 261. — If the liquidation lasts longer than a financial year, the official receivers are obliged to draw up the yearly balance sheet observing the provisions of the law, and of the constitutive act.

Art. 262. — (1) After the liquidation has been completed the official receivers draw up the final balance sheet indicating the quota allotted to each share, out of the company's assets distribution.

(2) The balance sheet signed by the official receivers, along with the auditors' report will be deposited with the trade register office in order to be registered and it will be published in the Official Gazette of Romania, Part IV.

(3) Any shareholder may enter a caveat as per Article 62.

Art. 263. — (1) If the period stipulated by Article 260 paragraph (3) has elapsed without any caveat being entered the balance sheet is considered approved by all the shareholders and the official receivers are delivered of their duties on condition that all the company's assets should be distributed.

(2) Independently of the expiration of the term, the receiving bill for the last distribution will stand for the approval of the account and of the distribution made to each shareholder.

Art. 264. — (1) The sums of money due to the shareholders, which were not cashed in within two months as from the publication of the balance sheet, shall be deposited with the Savings and Consignments Office or with a banking company or one of the branches thereof, indicating the shareholder's name and first name when the shares are registered ones or the order numbers of the shares when they are on bearer.

(2) The payment will be made to the indicated person or to the shareholder while the deed is to be held back.

TITLE VIII Offences

Art. 265. — It is to be sentenced to jail in the range of 1 up to 5 years the founder, the manager, the director, the executive director or the legal representative of the company who:

1. in bad faith presents, in the prospectuses, reports and statements submitted to the public, unreal facts regarding the setting up of the company or its economic conditions or hides, in bad faith, totally or in part, data as mentioned;

2. in bad faith presents to the shareholders an inaccurate balance sheet or inaccurate data regarding the economic conditions of the company with the purpose to hide its real situation;

3. refuses to submit to the experts, in the cases and under the conditions stipulated by Articles 25 and 37, the necessary documents or hinders them, in bad faith, to carry out their duties.

Art. 266. — It is to be sentenced to jail in the range of 1 up to 3 years the founder, the manager, the director, the executive director or the legal representative of the company, who:

1. acquires, on the company's account, shares belonging to other companies for a price of which he is aware that it is well superior to their real value or sells, on behalf of the company, shares belonging to the company for prices about which he is aware they are well under their real value, with the purpose to obtain a profit, for him or for others, to the prejudice of the company;

2. uses, in bad faith, the company's assets or prestige for a purpose contrary to its interests or for his own benefit or in order to favour another company he is directly or indirectly interested in;

3. borrows, in any form, directly or by an interposed person, from the company he is managing or from a company

under its control or from a company which controls the one he is managing or paves the way so that one of these above mentioned companies grant him any kind of guarantee for his own debts;

4. spreads false news or use other fraudulent means leading to the increase or decrease of the value of the company's shares or bonds or of other deeds the company owns with the purpose to obtain, for him or for others, a profit to the prejudice of the company;

5. cashes or pays dividends, in any form, out of false profits or which could not be distributed, due to the lack of a balance sheet or contrary to those resulting therefrom;

6. breaks the provisions of Article 178.

Art. 267. — It is to be sentenced to jail ranging from 6 months up to 5 years the manager, the director, the executive director or the legal representative of the company, who:

1. issues shares of a lower value than their legal one or at a lower price than their nominal value, or issues new shares in exchange for contributions in money prior to the full payment of the preceding shares;

2. in the meetings of the general assembly makes use of the shares which are not subscribed to or distributed to the shareholders;

3. grants loans or advances on the company's shares;

4. hands over the shares to the title shareholder ahead of schedule or does the same with shares paid totally or in part except for the cases stipulated by law or issues bearer shares without them being fully paid off;

5. does not observe the legal provisions regarding the cancelling of the unpaid off shares;

6. issues bonds without observing the legal provisions or issues shares which do not contain all mentions required by law.

Art. 268. — It is to be sentenced to jail in the range of one month up to one year or to a fine in the range of 250,000 lei up to 15,000,000 lei the manager, the director, the executive director or the legal representative of the company, who:

1. carries out the decisions of the general assembly, regarding the changing of the company's form, its merging or its division or the writing down of its registered capital prior to expiration of the time limits stipulated by law;

2. carries out the decisions of the general assembly regarding the writing down of the registered capital without first forcing the associates to effect payments due or without a decision of the general assembly which exempts them from the subsequent payments.

Art. 269. — (1) It is to be sentenced to jail in the range of one month up to one year or to a fine in the range of 250,000 lei up to 15,000,000 lei the manager who:

1. breaks, even by interposed persons or be simulated acts, the provisions of Article 145;

2. does not convene the general assembly in the cases stipulated by law or breaks the provisions of Article 188 paragraph (2);

3. starts operations on behalf of a limited liability company before the registered capital was paid in full;

4. issues negotiable instruments representing participating shares of a limited liability company;

5. acquires shares possessed by the company on its account in cases forbidden by law.

(2) It is to be sentenced to the same punishments as provided by paragraph (1) the associate who breaks the provisions of Article 126 or of Article 188, paragraph (2).

Art. 270. — (1) It is to be sentenced to jail in the range of one month up to one year or to a fine in the range of 250,000 lei up to 15,000,000 lei the auditor who does not convene the general assembly in cases where the law compels him to.

(2) The provisions of Article 266, point 3, are also to be applied to the auditors, accordingly.

Art. 271. — (1) It is to be sentenced to jail in the range of 3 months up to 3 years the person who accepted or kept the duties of an auditor, against the provisions of Article 156, paragraph (2) or the person who accepted to be appointed as an expert and so breaking the provisions of Article 38.

(2) Decisions arrived at by general assemblies based on a report of an auditor or of an expert appointed with the infringement of the provisions of Article 156, paragraph (2) and of Article 38 can not be cancelled because of the infringement of the provisions of the said articles.

(3) It is to be sentenced to the punishment provided by paragraph (1) the founder, manager, director, executive director and the auditor exercising their powers and duties by breaking the provisions of this present law regarding the incompatibility.

Art. 272. — (1) The provisions of Articles 265-271 are also to be applied to the official receiver to the extent to which they refer to obligations pertaining to his specific duties.

(2) The sentence stipulated by Article 269 is also to be applied to the official receiver who makes payments to the associates and breaks the provisions of Article 250 in doing so.

Art. 273. — (1) It is to be sentenced to jail in the range of 6 months up to 3 years or to a fine in the range of 350,000 lei up to 30,000,000 lei the shareholder or the bonds holder who:

1. passes his shares or his bonds to the names of other persons to be used with the purpose of meeting a majority in the general assembly, to the prejudice of other shareholders or bonds holders;

2. votes, in the general assemblies, in the situation stipulated at point 1 above, acting as the owner of shares or bonds which he does not really possess;

3. in cases forbidden by law, in exchange for material advantages, assumes the obligation to vote in a certain manner in the general assembly meetings or not to attend the voting procedure.

(2) The person who induces a shareholder or a bonds holder so that, in exchange for a sum of money or of another material advantage, to vote in a certain manner in the general assembly meetings or not to attend the voting procedure, is to be sentenced to jail in the range of 6 months up to 3 years or to a fine in the range of 350,000 lei up to 30,000,000 lei.

Art. 274. — It is to be sentenced to jail in the range of one up to 5 years, beside the responsibility encumbered for the

damages caused through his operations to the Romanian state and to third parties, the person who carries out trading activities in favour and on behalf of companies set up abroad, in cases when the conditions stated by law for their operation in Romania are not fulfilled.

Art. 275. — If, according to the Criminal Code or to other special laws, the offences stipulated by this present Title do represent even more serious law infringements, then they shall be sentenced under the conditions and with the punishments provided therein.

Art. 276. — Sentences in the range of 3 up to 12 years in jail are to be applied to persons guilty of fraudulent bankruptcy consisting in one of the following acts:

a) forging, stealing or destruction of the company's records or hiding of a part of its assets; presenting of nonexistent debts or recording in the company's registers, in any other act or in the balance sheet of some undue amounts, each of these facts being perpetrated with the intended purpose to show a non real decrease of the assets' value;

b) alienation, in case of a company going bankrupt, and to the prejudice of the creditors, of an important part of the assets.

TITLE IX

Concluding and transitory provisions

Art. 277. — (1) The trading companies set up according to Law no. 15/1990 on reorganization of state owned companies as self-managed public companies and as trading companies with all its subsequent modifications, which went private or are going to, can operate on the basis of an articles of association only.

(2) By amending the articles of association, according to the law, the associates may call it the constitutive act, without setting up a new trading company in doing so.

(3) The trading companies with fully or mainly state-owned capital may operate with any number of associates.

Art. 278. — The appointment of staff in the trading companies is to be made on the basis of an individual labour

contract, observing the labour and social security legal provisions.

Art. 279. — If the sole associate in a limited liability company is also a manager, he may also benefit by a pension the same as with the state social security to the extent to which he made his contribution to the social security and that one intended for the additional pension.

Art. 280. — The setting up of trading companies with foreign participation, in association with Romanian legal or natural persons or with full foreign capital will be made observing the provisions of this present law and those of the law on the status of foreign investments.*

Art. 281. — The activities which can not be organized as trading companies shall be identified by way of a Government Decision.

Art. 282. — For the authentication of the constitutive act the stamp tax and notarial fees shall be paid, as regulated by the law.

Art. 283. — According to this present law, the municipality of Bucharest is assimilated to a county.

Art. 284. — (1) Small businesses and the associations having a lucrative purpose which are legal persons set up according to the Decree — law no. 54/1990 on the organization and the accomplishment of economic activities on the basis of free initiative, and reorganized until September 17, 1991 in one of the forms stipulated by Article 2 of this present law, may continue their activity.

(2) They are successors, by right, of the small businesses or of the associations having a lucrative purpose out of which they originate.

Art. 285. — The provisions of this present law are to be completed with the provisions of the Commercial Code.

Art. 286. — The companies with foreign participation set up until December 17, 1990 may continue their activity in accordance with their setting up document, approved according to the law.

* According to Article III of the Expeditious Government Ordinance no. 32/1997, as approved by Law no. 195/1997, trading companies regulated by special laws shall remain subject to the provisions of those laws, too.

Art. 287. — On the date of coming into force of this present law the provisions of Articles 77 — 220 and Article 236 of the Commercial Code*, the provisions regarding the small businesses and the associations having a lucrative purpose, with legal personality, of the Decree — law no. 54/1990 on the organization and accomplishment of economic activities on the basis of free initiative, the Decree no. 424/1972 on the setting up and operation of joint-ventures in Romania, except for Articles 15, 28 paragraph (1), Articles 33 and 35 paragraph (2) and (3), the Decree — law no. 96/1990 concerning some steps to attract foreign capital investment in Romania, are abrogated.

* According to Article IX of the Expeditious Government Ordinance no. 32/1997, as approved by Law no. 195/1997, on the date of coming into force of this mentioned Ordinance (July 28, 1997) Articles 237 — 250 and Articles 264–269 of the Commercial Code are abrogated.

LAW regarding the trade register*

CHAPTER I General provisions

Art. 1. — (1) Traders are obliged, before starting trade, to ask for being incorporated at the trade register and, during the carrying on of trading operations and after their cessation, to ask for having the mentions recorded at the same register concerning deeds and facts whose registration is provided by law.

(2) For the purpose of this law, the term *traders* shall designate natural persons who usually carry on trading operations, trading companies, self-managed public companies and co-operative organizations.

(3) The provisions of paragraph (1) are not applied to craftsmen and peasant who sell products from their own farms.

Art. 2. — (1) The trade register is kept by the trade register office organized in each county and in the Bucharest municipality according to the present law's chapter II provisions.

(2) The central trade register is kept by the National Trade Register Office organized by the Chamber of Commerce and Industry of Romania.

Art. 3. — Traders ask for incorporation with the Bucharest municipality's trade register office or with their county's trade register office where they have their headquarters.

Art. 4. — (1) The trade register is public.

(2) The trade register office is obliged to issue, on the applicant's expense, certified copies of registrations carried on in the register, of the presented documents, as well as certificates ascertaining that certain deeds or facts are or are not registered.

(3) The deeds mentioned at paragraph (2) can be required and delivered by correspondence as well.

* Republished on the grounds of Article IV of the Law no. 12/January 8, 1998, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, no. 15/January 19, 1998, by giving the articles new numbers.

The Law no. 26/1990 was published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, no. 121/November 7, 1990.

Art. 5. — (1) The incorporation documents and mentions are opposable to third parties from the date of their accomplishing with the trade register or from their publishing in the Official Gazette of Romania, Part IV, or in any other publication, when the law provides it.

(2) The person who is obliged to ask for a registration cannot oppose unregistered deeds or facts to third parties unless he can prove that these were known to them.

Art. 6. — The registrations with the trade register are made only based on a mandatory judge's conclusions or, by case, on the court final sentence, unless the cases when the law provides in a different way.

Art. 7. — (1) The law courts are obliged to send to the trade register office legalized copies of the final sentence's dispositions and conclusions concerning deeds and mentions which must be registered, as law provides, within 15 days since they remained final.

(2) By means of these conclusions and final sentences, the courts will order that the registrations be effected with the trade register.

Art. 8. — (1) The control of legality of operations accomplished by the trade register office shall be made by one of the county court's judges or of the Bucharest municipality annually appointed by the president of that court.

(2) The mandatory judge shall check out the operation of the trade register at least once a month.

(3) The checking made by the mandatory judge does not exonerate from responsibility the office's personnel who manage and perform operations of the trade register for having the registred data in accordance with the law.

(4) The mandatory judge's works of secretary, archives, court clerk are effected by the personnel of the trade register office.

CHAPTER II Trade register office

Art. 9. — (1) The trade register office is set up and operates by each county chamber of commerce and industry.

(2) The National Trade Register Office is set up and operates by the Chamber of Commerce and Industry of Romania.

(3) The trade register offices provided by par. (1) will send to the National Trade Register Office any incorporation or mention operated within 15 days since being effected.

Art. 10. — (1) The organizational frame, number and wage level of personnel from the county and Bucharest offices of the trade register are unitedly established by the Chamber of Commerce and Industry of Romania.

(2) In the same way the norms of internal organizing and operation of the offices are established.

(3) The necessary personnel of the trade register offices is staffed on competition base by the county chambers of commerce and industry. The expenses required by functioning and the pay funds are ensured by the budget of the county chambers of commerce and industry.

Art. 11. — (1) For the operations accomplished, the trade register office will levy duties according to a tariff established by the Chamber of Commerce and Industry of Romania together with the Ministry of Finance.

(2) A share of 8% of the duties is due to the National Trade Register Office and it is cashed by the trade register office that operates the registration and it is monthly transferred to the National Trade Register Office. A share of 2% of the duties levied for the registrations done based on the conclusions of the mandatory judges will monthly be transferred by each county chamber of commerce and industry to the Ministry of Justice.

(3) Duties, except those due to the National Trade Register Office and to the Ministry of Justice are income of the budget of the chambers of commerce and industry by which the office is set up.

(4) In case the shares stipulated in paragraph (2) are not paid until the last day in the month following the cashing that entails the payment of 0.15% penalty per day of delay.

Art. 12. — (1) The trade register consists of a register for registering the traders as natural persons and another one to register the traders as legal persons. The register is opened for every year. These registers are computerized.

(2) Each registered trader will have an order number beginning from 1 every year.

(3) The trade register office will also keep files of each trader according to the documents handed in by them. The registrations effected in the register will be also made evident in the trader's file.

(4) The register keeping and the registering are unitarily established for all offices based on the norms issued by the Chamber of Commerce and Industry of Romania together with the Ministry of Justice within 90 days after this law* has been published in the Official Gazette of Romania.

CHAPTER III Registration accomplishment

Art. 13. — (1) The incorporation application with the trade register of a natural person as a trader will contain:

a) name and surname, domicile, citizenship, date and place of birth, marital status, wealth and its means of assessment and previous trading activities;

b) trading company and its headquarters;

c) object of trade, mentioning the field and the main activity sector as stipulated in the trading licence;

d) number, date and issuing body of the trading licence.

(2) To the incorporation application it will be enclosed evidence of the data included in it.

(3) The office will write down with the trade register all the data of the application.

Art. 14. — The incorporation of a trading company with the trade register will cover the data stipulated by the mandatory judge's incorporation conclusion.

Art. 15. — The incorporation with the trade register of a self-managed public company or national company will contain:

a) setting-up deed, denomination, headquarters and, if it is the case, its emblem;

b) object of activity, mentioning the field and main activity;

c) the component units that can enter into contract relationship with third parties, the authorized persons to represent them as well as the limits of their power;

d) name and surname, date and place of birth, domicile and citizenship of the persons authorized to represent them and the limits of their power.

Art. 16. — The co-operative organizations are incorporated with the trade register observing the regulations on handicraft co-operation, credit and consumption co-operation.

Art. 17. — The incorporation application with the trade register is done, if not otherwise stipulated by law, within 15 days:

* Law no. 12/1998 was published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, no. 15 of 19 January 1998.

a) for traders, natural persons, from the date of licence;
b) for trading companies since the date when the constitutive act was certified;

c) for the self-managed public companies, national companies and co-operative organizations since the date of the setting-up deed.

Art. 18. — (1) The incorporation application of a trader, natural person, will be done personally or by authorized agent having special and certified power of attorney.

(2) To prove the signature specimen, the trader is to give its signature at the trade register office in the presence of the mandatory judge or the office manager or its deputy who will certify the signature.

(3) When the trader is absent, its signature can be replaced by a specimen certified by notary public.

Art. 19. — (1) The incorporation application with the trade register of a trading company will be signed at least by an administrator, or by case, by its representative or, according to law, by any partner and for self-managed public companies, national companies, or co-operative organizations that will be signed by authorized persons to represent them according to the law.

(2) The signature specimen of administrators and, by case, of the trading companies' representative as well as the persons authorized by law to represent the self-managed public companies or co-operative organizations shall be done with observance of Art. 18 par. (2) and (3) provisions.

Art. 20. — (1) The incorporation application will be accompanied by proving acts.

(2) Number and date of the mandatory judge's conclusion will be mentioned at any incorporation.

Art. 21. — With the trade register are to be registered mentions concerning:

a) donation, sale, tenancy or trading fund mortgage, as well as any other deeds certifying changes concerning incorporations or mentions or providing company or goodwill cessation;

b) name, citizenship, birth date and place of the authorized person; if the representation right is limited to a certain subsidiary or branch, the mention will be made only with the register where the subsidiary or branch is registered. The authorized person's signature shall be submitted as provided by Art. 18 par. (2) and (3);

c) patents, trade and service marks, brand names, origin names, information regarding the origin, name of the firm,

emblem or other distinctive signs upon which a trading company, self-managed public company, co-operative organization or trader as a natural person has any right;

d) divorce final sentence of the trader, as well as the sentence on sharing the common assets delivered during the trade operating;

e) sentence of laying the trader under interdiction or of instituting his trusteeship, as well as the suspending sentence for these measures;

f) opening the proceedings of judicial reorganization or bankruptcy as well as the registering of the respective mentions;

g) conviction sentence of the trader for penal deeds which make him unworthy to perform this profession;

h) any alteration regarding the registered documents, deeds and mentions.

Art. 22. — (1) The trader is obliged to apply for registration in the trade register of the mentions provided by Art. 21 within at most 15 days since the date of acts and deeds subject to registration obligation.

(2) Mentions' registration can also be made at the interested persons' request within at most 30 days from the date they learnt about the document or deed subject to registration.

(3) Mentions will be registered *ex officio* within at most 15 days from the date when the legalized copy of the enacting terms of the final sentence was received for documents and deeds provided by Art. 21 letters d), e), g).

(4) The fact that mentions can be registered at other persons' request, too, or *ex officio* does not exonerate the trader from the obligation to ask for their operation.

Art. 23. — (1) The trader who has subsidiaries must ask for their incorporation with the trade register office at the headquarters of each subsidiary.

(2) In the application, besides the data stipulated by the present law on the trader's incorporation he will also write down the office where the main headquarters' firm was registered.

(3) The trade register office of the subsidiary's headquarters will deliver to the trade register office of the trader's main headquarters an abstract of the registration in order to be mentioned in the respective trade register.

Art. 24. — (1) The trader who has his trading head office abroad and sets up a subsidiary or branch in Romania will be subject to all provisions concerning incorporation, men-

tioning and publication of documents and deeds required for home traders.

(2) All these formalities will be made with the trade register office of the headquarters of the subsidiary or branch.

(3) If a company that has its headquarters abroad sets up several subsidiaries in the country, the incorporation deeds and other documents of the same company, required by subsidiary incorporation, are handed in only at one of the subsidiaries.

Art. 25. — (1) Anybody considering himself to have suffered a prejudice due to the incorporation or mention in the trade register has the right to ask for its striking off.

(2) The mandatory judge will give his verdict on the application of striking off through a conclusion, summoning the parties.

(3) This conclusion can be attacked only by appeal in the court within 15 days from the passing date.

(4) The court will urgently judge the appeal in the court chamber.

Art. 26. — (1) The registration date with the trade register is the date when this registration was actually operated in the register.

(2) The registration with the trade register is operated within 24 hours since the date of the mandatory judge's conclusion, and for a trading company's incorporation within 24 hours since the mandatory judge's conclusion became irrevocable.

Art. 27. — (1) The chambers of commerce and industry have active trial legitimacy and they can intervene in any trial regarding registrations with the trade register; it has a public interest mainly consisting in observing the general requirements of any trade activity.

(2) The applications submitted by the chambers of commerce and industry, on the grounds of the present law, are not subject to the stamp duty and not to the judicial stamp either.

Art. 28. — In the registration applications with the trade register and in any other inquiries sent to this register, the trader will indicate the person and the address at which he will receive the mandatory judge's conclusion or any other documents or letters of advice.

Art. 29. — The trader must mention — on letters, invoices, offers, orders, tariffs, prospectuses and any other documents used in trade activities — the number of his com-

pany's registration in the trade register and the year of registration as well.

CHAPTER IV

Trade names and emblems regime

Art. 30. — (1) The trade name is the name or, by case, the denomination under which a trader carries on the trade and signs.

(2) The emblem is the sign or denomination which differentiates a trader from another one of the same branch.

(3) Trade names and emblems will be written first of all in Romanian.

(4) The exclusive right of using the trade name and emblem is got by registering them with the trade register.

Art. 31. — (1) The trade name of a natural person trader consists of the trader's fully written name or the surname and the initial letter of his first name.

(2) No mentions misleading on trader's nature or intent, or on trader's position can be added to the trade name. Mentions could be made for indicating more precisely the trader's person or his kind of trade.

Art. 32. — The trade name of a general partnership must comprise the name of at least one of the partners, with the fully written mention of "general partnership".

Art. 33. — The trade name of a limited partnership must comprise the name of at least one of the active partners, with the fully written mention "limited partnership".

Art. 34. — If the name of a person from outside the company appears, with his consent, in the trade name of a general partnership or a limited partnership, that person becomes unlimitedly and jointly responsible for all company's liabilities. The same rule applies to the sleeping partner whose name enters the trade name of a limited partnership.

Art. 35. — The trade name of a joint-stock company or a limited partnership by shares consists of its own denomination able to differentiate it from other companies' names and it will be accompanied by the fully written mention of "jointer, tock company" or "S.A.", or "limited partnership by shares", as the case may be.

Art. 36. — The trade name of a limited liability company consists of its own denomination, at which there may be added one or more of its partners' name, and it will be accompanied by the fully written mention "limited liability company" or "SRL".

Art. 37. — The trade name of a subsidiary in Romania belonging to a foreign company must also contain the mentions concerning its headquarters abroad.

Art. 38. — (1) Any new trade name must differentiate from the existing ones.

(2) In case a new trade name is similar to another one, it must be added a mention that differentiates it from this one, either by more precisely naming the person or by indicating the sort of trade carried on, or by any other way.

Art. 39. — (1) The trade register office will refuse the registration of a trade name which, without introducing some differentiating elements, may cause confusion with other registered marks.

(2) The check of the trade name/emblem availability is done by the trade register office before making ready the setting deeds or, before changing the trade name/emblem, as the case may be.

Art. 40. — No trade name must contain a denomination used by the traders from the public sector.

Art. 41. — (1) The acquirer, with any title of goodwill, may continue his activity under the previous trade name comprising the name of a natural person trader or of one partner, with the express consent of the previous owner or of his successors, being obliged to mention the quality of successor within this trade name.

(2) The previous trade name keeping is allowed to the joint-stock company, limited partnership by shares or limited liability company without being necessary to mention the succession relation.

(3) In case the trade name of a limited liability company comprises the name of one or more partners, the provisions of item (1) are to be applied.

Art. 42. — The trade name cannot be alienated separately from the goodwill for which it is used.

Art. 43. — (1) Any emblem should differentiate from the emblems written in the same trade register for the same sort of trade, as well as from the emblems of other traders on the market where the trader carries on his activity.

(2) The emblems may be used on advertising panels wherever they can be placed, on invoices, letters, orders, tariffs, prospectuses, posters, publications and in any other way, provided they are visibly accompanied by the trader's trade name.

(3) If the emblem contains a denomination, the trade name will be written in letters of at least half of the size of the emblem letters.

CHAPTER V Sanctions

Art. 44. — (1) Traders who must apply for the incorporation or registering of a mention, or who have to hand in a signature or certain deeds and who do not observe the legal dispositions or the stipulated term will be bound, by ruling of court, to pay a civil fine from 50,000 lei to 500,000 lei.

(2) The civil fine is from 100,000 lei to 1,000,000 lei in case the incorporation, mention, submittance of signature or deed are in charge of a trading company. If there are many persons bound to fulfilment, the fine is to be imposed on each of them.

(3) The fine stipulated by item (1) is also imposed on the persons culpable of not transferring, according to Art. 11, the amount of the fees due to the National Trade Register Office and Ministry of Justice, or of not conveying the date provided by Art. 9 item (3).

(4) The fine provided at item (2) is also applied to the representatives of the trading companies fined in compliance with this item.

Art. 45. — Traders who do not comply with the obligations stipulated by Art. 29 shall be sanctioned, by ruling of court, with the civil fine provided by Art. 44 item (1), and, in case of a recurrent deficiency, with the fine provided by Art. 44 item (2).

Art. 46. — The court notification for the fine imposing stipulated by Art. 44 may be done by any interested person as well as by the county chamber of commerce and industry in which the trade register office operates, where it was asked for or it should have been asked for the incorporation or mention registering or the signature submittance and the deed; in the case provided by Art. 45 the notification may be done by the county chamber of commerce and industry by which the trade register office operates, where the registration had been made.

Art. 47. — The civil fines stipulated by Art. 44 and 45 are subject to common law status of the civil fines provided by Code of civil procedure and are to be imposed by the territorial court on whose area the fact was produced.

Art. 48. — (1) The person who, ill-intentioned, made inaccurate statements, on whose basis an incorporation was

made or mention was registered with the trade register, will be sentenced to jail from 3 months to 2 years or a fine will be imposed from 1,000,000 lei to 5,000,000 lei if, according to law, the fact does not represent a more severe infringement of the law.

(2) By ruling passed, the court will also order that the inaccurate incorporation or mention be corrected or struck off.

CHAPTER VI Final and transitory provisions

Art. 49. — In the counties, where there are not set up chambers of commerce and industry, the trade register offices are organized and function by the county chambers of commerce and industry established by the Chamber of Commerce and Industry of Romania.

Art. 50. — (1) The ensurance of the proper premises and material conditions necessary for carrying on the activity of the National Trade Register Office and of every trade register office is made, for 1990–1991, by the prefect's office and respectively, by the Bucharest City hall.

(2) The assets equipping the offices are to be transferred, without any charge, to the county chambers of commerce and industry and becomes their property until 1 January 1992.

Art. 51. — The Chamber of Commerce and Industry of Romania and the county chambers of commerce and industry will provide the implementation of the unitary information system of the trade register.

Art. 52. — The Bucharest Municipality Trade Register Office becomes the Trade Register Office of the Bucharest Municipality and the county of Ilfov.

Art. 53. — The present law is to be enforced within 30 days from the publication in the Official Gazette of Romania.*

* Excepting the provisions of art. 4, item (2) and (3), art. 6, art. 8, item (2), (3), (4), art. 11 item (2), (3), (4), art. 12 item (1), (3), (4), art. 13 item (1), art. 14, art. 15, art. 16, art. 17-20, art. 21 letter f), art. 23, art. 24 item (3), art. 25 item (3), art. 26–29, art. 30 item (2) and (4), art. 36, art. 37, art. 39, art. 41, art. 44, art. 45, art. 48 item (1), art. 51 and 52 that come into force after 30 days from the publication date in the Official Gazette of Romania, Part I, of Law no. 12/1998.

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