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Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors Associations

29 September 2008

LIST OF EU LEGISLATION ON CORPORATE LAW, SECURITIES AND CORPORATE GOVERNANCE

DIRECTIVES

OFFICIAL TITLE	IMPLEMENTATION DATE	CURRENT DEVELOPMENTS (AMENDMENTS NOT YET ADOPTED)
Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies	31 December 2008	
Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (14.7.2007) (Shareholders' rights directive)	3 August 2009 Exceptionally by 3 August 2012	
Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital	15 April 2008.	

<p>Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Corporate Governance Statement)</p>	<p>5 September 2008</p>	
<p>Directive 2006/43/EC on statutory audit of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC (Statutory Audit Directive)</p>	<p>29 June 2008</p>	
<p>Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (Cross Border Merger Directive)</p>	<p>15 December 2007.</p>	
<p>Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive)</p>	<p>20 January 2007</p>	<p>The Commission is conducting the study on application of Transparency obligations. A survey on stakeholders' perceptions will be an important component of this study</p>
<p>Directive 2004/25/EC of 21.04.2004 on takeover bids (Takeover Bids Directive)</p>	<p>20 May 2006</p>	
<p>Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Prospectus Directive)</p>	<p>1 July 2005</p>	<p>Study on the Impact of the Prospectus Regime on EU Financial Markets. Issues for change: abolition of Article 10, reduction of burdens associated with Article 11 and clarifications to the definition of a "public offer", change of exemption thresholds. ESME advises the Commission to abolish the requirement of Article 10.</p>

Directive 2003/58/EC of 15.7.2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies	31 December 2006	
Directive 2003/51/EC of the European Parliament and of the Council of 18.6.2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings	1 January 2005	
Directive 2003/38/EC of 13 May 2003 amending Directive 78/660/EEC		
Directive 2001/86/EC of 8.10.2001 supplementing the Statute for a European company with regard to the involvement of employees (SE)	8 October 2004	
Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (Listing Particulars Directive)	Not relevant	
Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies (Single-member private limited liability company Directive)	Not relevant	
Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State	Not relevant	Proposal for a Directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies
Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents	Not relevant	Working document on implementation of 8th directive of Company Law Directive regarding statutory audits of annual accounts and consolidated accounts (Doorn Report) http://www.europarl.europa.eu/meetdocs/200

		4_2009/documents/dt/736/736155/736155en.pdf
Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts	Not relevant	Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts
Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies	Not relevant	
Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies	Not relevant	Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts
Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies	Not relevant	
Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent	Not relevant	
First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning	Not relevant	Proposal for a Directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and

of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community		89/666/EEC as regards publication and translation obligations of certain types of companies
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REGULATIONS

Draft Regulation on European Private Company (SPE)
Regulation (EC) 2001/2157 of 8 October 2001 on the Statute for a European company (SE)
Regulation (EEC) 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)

RECOMMENDATIONS

Recommendation 2008/362/EC of 6 May 2008 on external quality assurance for statutory auditors and audit firms auditing public interest entities
Recommendation 2008/473/EC of 5 June 2008 concerning the limitation of the civil liability of statutory auditors and audit firms
Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies
Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board

DECISIONS

Decision 2008/627/EC of 29 July 2008 concerning a transitional period for audit activities of certain third country auditors and audit entities

SUMMARIES OF LEGISLATION

Company Law Directives and Their Amendments

1ST COMPANY LAW DIRECTIVE

The key points of the Directive are:

- Compulsory disclosure of certain companies' data such as instrument of constitution, amendments, the appointment, termination of office and particulars of the representatives of the company etc.
- Publication of the company's data in the national gazette appointed for that purpose by the Member State, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The documents and particulars may be relied on by the company as against third parties only after they have been published, unless the company proves that the third parties had knowledge thereof
- Opening of a file in a central register, commercial register or companies register. It shall be possible to obtain a copy of the documents by application in writing at a price not exceeding the administrative cost thereof.
- Obligation to state on letters and order forms the particulars of the company: - the register in which the company's file, the number of the company in that register; the legal form of the company, the location of its seat and, where appropriate, the fact that the company is being wound up.
- Certain rules on liability of the founders of the company, validity of acts done by company's organs, nullity of the company.

DIRECTIVE 2003/58/EC (AMENDMENT OF THE 1ST COMPANY LAW DIRECTIVE)

The Directives provides that the companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means. Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means.

Member States are allowed to decide to keep the national gazette, appointed for publication of compulsory documents and particulars, in paper form or electronic form, or to provide for disclosure by equally effective means.

It is allowed in addition to the mandatory disclosure made in one of the languages permitted in the company's Member State, to voluntary register in additional languages of the required documents and particulars. Third parties acting in good faith should be able to rely on these translations.

Compulsory particulars should be included in all company letters and order forms, whether they are in paper form or use any other medium. In the light of technological developments, it is also appropriate to provide that these statements be placed on any company website.

PROPOSAL FOR AMENDMENT OF THE 1ST COMPANY LAW DIRECTIVE

Proposal aims to abolish the obligation to publish business data in the national gazettes because the publication in a national gazette does not create real added value anymore given that company registries, since the beginning of 2007, have to make this information available online.

2ND COMPANY LAW DIRECTIVE

Directive concerns public limited liability companies. It prescribes the use of the type of the company in the company's name, regulates the minimum content of the statutes or the instrument of incorporation and prohibits automatic winding up of the company in case of number of shareholders falling below the required.

The Directive further sets the minimal capital requirements for public companies and other rules of the formation of the capital, distribution of profits, buy-back of shares, increase and reduction of share capital, pre-emption rights.

Minimum capital shall be subscribed the amount of which shall be not less than 25 000 European units of account, which is reviewed every five years.

DIRECTIVE 2006/68/EC (AMENDMENT OF THE 2ND COMPANY LAW DIRECTIVE)

The Directive aims to simplify some of the provisions in the Second Directive and contains 4 main provisions:

- An option to relax the requirements concerning the valuation of non-cash consideration for an allotment of shares;
 - An option to relax the requirements concerning the buyback of shares by a company;
 - An option to relax the prohibition on financial assistance;
 - A requirement for creditors to demonstrate that their claim is at stake when objecting to a reduction in company's capital
- The Directive had to be implemented by the 15 April 2008.

3RD COMPANY LAW DIRECTIVE

Directive regulates mergers of public companies which result in the full absorption of one or more companies by another, or in the formation of a new company. The merger consists of:

- the drawing-up of draft terms of merger negotiated by the administrative or management bodies of the merging companies. The draft terms must contain a required minimum of particulars, including the share exchange ratio and the new rights of shareholders. The draft must be published; the administration or management bodies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them; shareholders shall be provided with independent expert's written report concerning draft documents and be entitled to inspect certain merger documents.

- a discussion, within each of the companies, by a general meeting of shareholders, ending in a vote on the merger decision. Once it has been taken, the merger decision must also be published;

- the actual merger. This involves the transfer, both as between the companies and as regards third parties, of all the assets and liabilities of the company being acquired to the acquiring company or of the merging companies to the new company.

Civil liability attaches to the members of the administrative or management bodies of the target company for misconduct in preparing and implementing the merger. Experts responsible for drawing up on behalf of the report are subject to liability for misconduct in the performance of their duties.

DIRECTIVE 2007/63/EC (AMENDMENT OF THE 3RD COMPANY LAW DIRECTIVE)

Directive permits not to have an independent expert's report on the occasion of merger of public limited liability companies if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

4TH COMPANY LAW DIRECTIVE 78/660/EEC (ANNUAL ACCOUNTS)

Directive deals with annual accounts of public and private companies. The main rule is that annual accounts shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

Directive gives detailed rules on the layout and content of different parts of annual accounts, valuation rules.

Company is required to publish its annual accounts and the annual report, together with the opinion submitted by the person responsible for auditing the accounts.

Directive requires that companies must have their annual accounts audited by one or more persons authorized by national law to audit accounts. The person or persons responsible for auditing the accounts must also verify that the annual report is consistent with the annual accounts for the same financial year.

DIRECTIVE 2003/38/EC (AMENDMENT OF THE 4TH DIRECTIVE)

The Directive increases certain thresholds expressed in euro for the balance sheet total and the net turnover, at or below which Member States may grant derogations from certain provisions of the 4th Directive.

DIRECTIVE 2003/51/EC (AMENDMENT OF THE 4TH DIRECTIVE)

The Directive harmonises accounting rules applied to companies not covered by Regulation (EC) No 1606/2002 on the application of international accounting standards to firms listed on the stock exchange. It enables IAS accounting options to be applied to firms which maintain the accounting directives as basic legislation. In addition, the directive clarifies how off-balance-sheet financing (debts and loans) should be treated and extends beyond financial aspects the risk analysis in firms' management reports. It also sets out what auditors' reports are required to contain.

DIRECTIVE 2006/43/EC (STATUTORY AUDIT – AMENDMENT OF 4TH COMPANY LAW DIRECTIVE)

The Directive complements and details the requirement of the 4th Company Law Directive that the annual accounts of the public company shall be audited by one or more persons entitled to carry out such audits. The key points of the Directive are the following:

- Requirement to set up an audit committee to be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity. At least one member of the audit committee shall be independent and shall have competence in accounting

and/or auditing.

- The functions of the audit committee are: (a) monitor the financial reporting process; (b) monitor the effectiveness of the company's internal control, internal audit where applicable, and risk management systems; (c) monitor the statutory audit of the annual and consolidated accounts (d) review and monitor the independence of the statutory auditor or audit firm, and in particular the provision of additional services to the audited entity.
- The proposal of the administrative or supervisory body for the appointment of a statutory auditor or audit firm shall be based on a recommendation made by the audit committee. The statutory auditor or audit firm shall be appointed by the general meeting of shareholders or members of the audited entity. Alternative systems or modalities for the appointment are allowed provided that they ensure the independence of the statutory auditor or audit firm from the executive members of the administrative body or from the managerial body of the audited entity.
- The statutory auditor or audit firm shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.
- Statutory auditors or audit firms that carry out the statutory audit of a public-interest entity: (a) confirm annually in writing to the audit committee their independence from the audited public-interest entity; (b) disclose annually to the audit committee any additional services provided to the audited entity; and (c) discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats.

- Rotation period for the key audit partner(s) responsible for carrying out a statutory audit of maximum period of seven years permission to participate in the audit of the audited entity again after a period of at least two years.
- Prohibition for the statutory auditor or the key audit partner who carries out a statutory audit on behalf of an audit firm to take up a key management position in the audited entity before a period of at least two years has elapsed since he or she resigned as a statutory auditor or key audit partner from the audit engagement.
- Dismissal of statutory auditors or audit firms allowed only where there are proper grounds. Divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for dismissal.
- Duty to inform the authority responsible for public oversight concerning the dismissal or resignation of the statutory auditor or audit firm during the term of appointment and give an adequate explanation of the reasons.

- Responsibilities in situations where groups of companies are audited by several different firms in a large number of locations worldwide. Directive requires that the group auditor of the consolidated accounts of a group of companies take full responsibility for the audit of those consolidated accounts. In doing this, the group auditor is obliged to review and document the work of other auditors.

RECOMMENDATION 2008/473/EC (LIMITATION OF AUDITORS' LIABILITY)

The Recommendation suggests that the civil liability of statutory auditors and of audit firms arising from a breach of their professional duties should be limited except in cases of intentional breach of duties by the statutory auditor or the audit

firm. Three examples as possible methods but any other equivalent method might be used: (a) establishment of a maximum financial amount or of a formula allowing for the calculation of such an amount; (b) establishment of a set of principles by virtue of which a statutory auditor or an audit firm is not liable beyond its actual contribution to the loss suffered by a claimant and is accordingly not jointly and severally liable with other wrongdoers; (c) provision allowing any company to be audited and the statutory auditor or audit firm to determine a limitation of liability in an agreement. The selected method should best suit the Member State's legal environment.

The Recommendation also introduces key principles to be followed by Member States when they select a limitation method:

- The limitation of liability should not apply in the case of intentional misconduct on the part of the auditor;
- A limitation would be inefficient if it does not also cover third parties;
- Damaged parties have the right to be fairly compensated.

RECOMMENDATION 2008/362/EC (EXTERNAL QUALITY ASSURANCE)

The Recommendation deals with inspections of statutory auditors or audit firms auditing public interest entities. The main features of the Recommendation:

- It recommends an active role of the public oversight authorities in inspections. Professional associations can still assist the public oversight authorities, but should be subject to important safeguards, including accountability to the public oversight authority.
- The Recommendation invites Member States to clarify that

practitioners from audit firms (peers) should no longer have a leading role in inspections system and inspections teams.

- It also recommends to Member States to enhance transparency on the outcome of the inspections in order to improve accountability of the inspection system towards investors, companies and other stakeholders. The transparency reports published by audit firms should contain no misleading information in comparison to the findings of inspections. Major deficiencies in internal controls of audit firms should be disclosed if an audit firm does not address appropriately the recommendations for improving the audit quality.

DECISION 2008/627/EC (AUDIT FIRMS FROM NON-EU COUNTRIES)

The Decision grants a transitional period for the registration requirements for audit firms from 30 non-EU countries. These audit firms are allowed to continue their audit activities regarding third country companies listed on European markets until 1 July 2010. However, transition will only be granted if third country audit firms comply with the minimum information requirements necessary for investors in Europe. Audit firms from third countries that do not fall under the transitional regime will be subject to full registration and oversight by the competent EU Member State. Common application forms for the registration of third country auditors and audit firms are available.

DIRECTIVE 2006/46/EC (CORPORATE GOVERNANCE STATEMENT - AMENDMENT OF 4TH COMPANY LAW DIRECTIVE, DIRECTIVE 86/635/EC (BANKS) AND DIRECTIVE 91/674/EC (INSURANCE UNDERTAKINGS))

Directive 2006/46/EC requires insertion of the corporate government statement into annual report.

The requirement applies to the companies admitted to trading on a regulated market and which have their registered office in the European Community.

The CG statement shall be posted either in specific and clearly identifiable section of the annual report or be set out in a separate report published together with the annual report or by means of a reference in the annual report where such document is publicly available on the company's website.

The CG statement shall contain at least the reference to the CG code to which the company is subject and/or the CG code which the company may have voluntarily decided to apply, and/or all relevant information about the CG practices applied beyond the requirements under national law. The company shall indicate where the texts of CG codes are publicly available and make its other CG practices publicly available.

Additionally, the company shall provide information on company's internal control and risk management systems in relation to the financial reporting process, takeover bids, the operation of the shareholder meeting and its key powers, description of shareholders' rights and how they can be exercised, the composition and operation of the administrative, management and supervisory bodies and their committees.

Directive also imposes "comply or explain" duties on EU listed companies. If the company departs from CG code or decides not to apply any provisions of such code it shall provide an explanation to which parts of the CG code it departs from and the reasons for doing so.

Directive imposes the joint responsibility of the members of the administrative, management and supervisory bodies of the company to ensure that the annual accounts, the annual report and, when provided separately, the CG statement are drawn up and published in accordance with specific requirements.

PROPOSAL FOR AMENDMENT OF THE 4ST COMPANY LAW DIRECTIVE

The proposal includes a possibility for Member States to exempt medium-sized entities, which often focus on only one business, activity from the obligations to disclose unnecessary information in the notes to the annual accounts. This concerns the breakdown of net turnover into categories of activity and geographical markets and the formation expenses of the company.

6TH COMPANY LAW DIRECTIVE (DIVISIONS)

The Directive governs division by acquisition, division by the formation of new companies and division under the supervision of a judicial authority. The process consists of stages:

- the drawing-up of draft terms of division. The draft terms must contain a required minimum of particulars, including the share exchange ratio and the new rights of shareholders. The draft must be published; the administration or management bodies shall draw up a detailed written report explaining the draft terms of division and setting out the legal and economic grounds for them; shareholders shall be provided with independent expert's written report concerning draft documents and be entitled to inspect certain merger documents.

- a discussion, within each of the companies, by a general meeting of shareholders, ending in a vote on the division decision. Once it has been taken, the merger decision must also be published;

Where shares in the recipient companies are allocated to the shareholders of the company being divided otherwise than in proportion to their rights in the capital of that company, Member States may provide that the minority shareholders of that company may exercise the right to have their shares purchased.

Civil liability attaches to the members of the administrative or management bodies of a company being divided in respect of misconduct on the part of members of those bodies in preparing and implementing the division and to the experts responsible for drawing up for that company the report in respect of misconduct on the part of those experts in the performance of their duties.

DIRECTIVE 2007/63/EC (AMENDMENT OF THE 6TH COMPANY LAW DIRECTIVE)

Directive permits not to have an independent expert's report on the occasion of division of public limited liability companies if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.

The deadline for implementation is 31 December 2008.

7TH COMPANY LAW DIRECTIVE (CONSOLIDATED ACCOUNTS)

Directive defines the circumstances in which consolidated accounts are to be drawn up. Any company (parent company) which legally controls another company (subsidiary company) is under a duty to prepare consolidated accounts. In most cases, legal control takes the form of the holding of a majority of voting rights. Member States may also require consolidated accounts to be prepared in other cases where a parent company has only a minority shareholding but exercises de facto control.

The Directive sets out the methods of drawing up consolidated accounts:

- Consolidated accounts comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts. These documents constitute a composite whole. Consolidated accounts must give a true and fair view of the assets, liabilities, financial position and profit or loss of the companies included therein taken as a whole.
- The book values of shares in the capital of companies included in a consolidation must be set off against the proportion which they represent of the capital and reserves of those companies. Such set-off must be effected on the basis of book values as at the date on which the companies are included in the consolidation for the first time.
- The consolidated accounts must be drawn up on the same date and by the same methods as the annual accounts of the parent company.

The Directives establishes a system of auditing under which a company which prepares consolidated accounts must have them audited by one or more persons authorised to audit accounts

under the laws of the Member State which govern that company.

The person or persons responsible for auditing the consolidated accounts must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.

The Directives lay down rules on disclosure. The consolidated accounts, the consolidated annual report and the auditor's report must be published in accordance with the provisions of the first Directive.

PROPOSAL FOR AMENDMENT OF THE 7ST COMPANY LAW DIRECTIVE

It is proposed that parent companies with no material subsidiaries shall no longer need to prepare consolidated accounts. Therefore, the proposal clarifies the relationship between Directive 83/349/EC (consolidated accounts) and the International Financial Reporting Standards (IFRS).

8TH COMPANY LAW DIRECTIVE 84/253/EEC (AUDITORS)

The Directive lays down the requirements applicable to the persons responsible for carrying out audits of accounting documents. Those persons must be of good repute and may not engage in any activity incompatible with the auditing of such documents.

A natural person may be approved to carry out statutory audits of accounting documents only after: having attained university entrance level; completed a course of theoretical instruction; undergone practical training; and passed an examination of professional competence of university, final examination level organized or recognized by the State. Some exceptions might apply.

Approved persons are subject to liability if they do not carry out audits honestly and independently.

Names and addresses of all natural persons and firms of auditors approved by them to carry out statutory audits of accounting documents have to be made available to the public.

11TH COMPANY LAW DIRECTIVE 89/666/EEC (DISCLOSURE REQUIREMENTS IN RESPECT OF BRANCHES)

The Directive applies to branches of public and private companies situated in a Member State other than that in which the company is established. Branches of companies from another Member State must publish documents which include the following information:

- the address of the branch;
- the activities of the branch;
- the company's place of registration and registration number;
- particulars of the company directors.

The branch no longer needs to publish branch accounts but it must publish the annual accounts and annual report of the company as audited and published in accordance with the law of the Member State by which the company is governed.

PROPOSAL FOR AMENDMENT OF THE 11TH COMPANY LAW DIRECTIVE

It is proposed to allow the re-use of translations that have already been certified in one Member State, when a company has opened a branch abroad.

11TH COMPANY LAW DIRECTIVE 89/666/EEC (DISCLOSURE REQUIREMENTS IN RESPECT OF BRANCHES)

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- the address of the branch;
- the activities of the branch;
- the company's place of registration and registration number;
- particulars of the company directors.

The branch no longer needs to publish branch accounts but it must publish the annual accounts and annual report of the company as audited and published in accordance with the law of the Member State by which the company is governed.

12TH COMPANY LAW DIRECTIVE 89/666/EEC (SINGLE-MEMBER PRIVATE LIMITED LIABILITY COMPANIES)

A private limited companies company may have a single member by virtue of its being formed, or by virtue of all its shares coming to be held, by a single person (single-member company).

Where a company becomes a single-member company because all its shares have come to be held by a single person, that fact, together with the identity of the single member, must either be entered in a register kept by the company and accessible to the public or be recorded in the file or entered in the companies' register.

The single member exercises the powers of a general meeting of the company. Decisions taken by the single member and contracts between him and his company as represented by him must be recorded in minutes or drawn up in writing.

The Directive also applies to the public limited companies as where Member States allow public companies to be single-member.

DIRECTIVE 2005/56/EC (CROSS BORDER MERGERS)

From the Corporate governance perspective the Cross-border Mergers Directive is important as regards several aspects:

- The principle that the common draft terms of cross-border merger must be approved by the general meeting of each of those companies.
- The management or administrative organ of each of the merging companies shall draw up a report intended for the members explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees.
- An independent expert report on the merger must be drawn up. It will not be required if all the members of each of the companies involved in the merger have so agreed. The expert report and the proposed cross-border merger report must be made available at least one month before the date of the general meeting.
- Participation on employees on the Board-level. The basic rule is that the applicable participation rules shall be those of the country in which the company resulting from the cross-border merger has its registered office. However, there are three important exceptions to this basic rule, to safeguard existing participation rights. If these exceptions apply, as a basic principle the SE procedure will be relevant. This means there must be negotiations on the participation of employees between the management of the merging companies and the employee representatives in a Special Negotiating Body. If the parties fail to reach agreement on employee participation within a given time frame standard rules for participation may apply.

DIRECTIVE 2007/36/EC (SHAREHOLDERS' RIGHTS)

Directive regulates the exercise of certain rights of shareholders in listed companies. The key new rules are:

- Shareholders shall be notified about the GM not later than on the 21st day before the day of the meeting in a manner ensuring fast access to it on a non-discriminatory basis.
- The company shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. It is prohibited to impose an obligation to use only media whose operators are established on the territory of the Member State.
- The minimum stake in the company providing shareholder with the right to put items on the agenda and to table draft resolutions shall not exceed 5 % of the share capital.
- Prohibition to subject right to vote to any requirement that the shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting and to further restrict the rights of a shareholder to sell or otherwise transfer his shares during the period between the record date and the general meeting.
- Permission to offer to the shareholders any form of participation in the general meeting by electronic means.
- Disclosure of the voting results on the issuer's internet site
- Right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders.
- Abolition of existing constraints on the eligibility of people to act as proxy holder and of excessive formal requirements for the appointment of the proxy holder;
- Permission for shareholders to appoint a proxy holder by electronic means.
- Possibility to vote by correspondence in advance of the general meeting.

Securities Law Directives

DIRECTIVE 2001/34/EC (ADMISSION OF SECURITIES TO OFFICIAL LISTING)

The Directive consolidates the existing measures concerning the conditions for admission of securities to official stock-exchange listing and the financial information that listed companies must make available to investors.

The Directive applies to all securities for which admission to official listing is requested and those admitted, irrespective of the legal nature of their issuer. It is required to disclose the information about the company by publishing the prospectus. It lays down the requirements for the drawing-up, approval and distribution of the prospectus.

The home Member State, i.e. the country where the issuer has its registered office, is the sole base for provision of the documents. The use of a common language, be it a language accepted by the competent authorities of the home and/or host Member State(s) or a language that is customary in the sphere of international, is foreseen.

DIRECTIVE 2003/71/EC (PROSPECTUS DIRECTIVE)

Directive harmonizes requirements for the drafting, approval and distribution of the prospectus to be published when securities are offered to the public and/or admitted to trading on a regulated market.

Directive prohibits offering the securities to the public or admitting the securities to trading on a regulated market without prior publication of a prospectus (certain exceptions apply, eg. when the total issue is EUR 2.5 million or less it is not obligatory to produce a prospectus). A prospectus is a disclosure document containing essential financial and non-financial information that an issuer makes available to potential investors when it issues securities (shares, bonds, derivatives, etc.) to raise capital and/or when it wants its securities admitted to trading on stock markets. Directive and its implementing acts provide the requirements for the content of Prospectus.

Prospectus has to be approved by the competent authority of the home Member State. The issuer is entitled to raise capital throughout the EU on the basis of this single approval from a regulatory authority in one Member State (so-called European passport for issuers).

Directive also imposes civil liability of issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the

guarantor for the information given in a prospectus. Those persons are obliged to include the declaration that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

Regulation (EC) No 1787/2006 and Regulation (EC) No 809/2004 contain important implementing measures of the Directive as regards the format of the prospectus, the documents relating to the information to be included in the prospectus, the methods for publishing the prospectus and disseminating advertisements.

DIRECTIVE 2004/25/EC (TAKEOVER BIDS)

The Directive establishes minimum guidelines for the conduct of takeover bids involving the securities admitted to trading on a regulated market (some exemptions apply; eg. securities issued by the central banks). Main principles established by the Directive:

- equal treatment of all holders of securities; if a person acquires control of a company, the other holders of securities must be protected;
- sufficient time and information for the addressees to be able to reach a properly informed decision; the board of the offeree company must give its views on the effects of implementation of the bid on employment, the conditions of employment and the locations of the company's places of business;
- the board of the offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

- an offeror must announce a bid only after ensuring that he can fulfil in full any cash consideration;

- an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

The Directive establishes the mandatory bid principle: where a natural or legal person, as a result of his own acquisition or the acquisition by persons acting in concert with him, holds securities of a company which give him a specified percentage of voting rights in that company, giving him control of that company, such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid must be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price. The percentage of voting rights which confers control and the method of its calculation are not set up by the Directive and must be determined by the rules of the Member State.

The decision to make a bid shall be made public without delay and that the supervisory authority shall be informed of the bid. Offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. The Directive requires that employees or representatives of the offeree company must be informed in detail in the event of a takeover bid. It even extends the obligation to inform or consult staff to the employees of the offeror company. Time allowed for the acceptance of a bid may not be less than two weeks or more than ten weeks from the date of publication of the offer document.

The Directive bans the takeover defenses, i.e. requirement that the Board must obtain the prior authorisation of its shareholders

before taking any defensive action. However, this requirement is optional. Member States might leave it up to the companies themselves to decide whether or not to apply this rule.

The requirement to freeze members' extraordinary rights (such as multiple voting rights, appointment rights and restrictions on the transfer of securities) during the bid is also optional. Member States leave it up to the companies themselves to decide whether or not to apply this rule.

The Directive provides for a "squeeze-out right" enabling a majority shareholder to require the remaining minority shareholders to sell him their securities at a fair price:

- where the offeror holds securities representing not less than 90% of the capital carrying voting rights in the offeree company. Member States may set a higher threshold that may not, however, be higher than 95% of the capital carrying voting rights and 95% of the voting rights;
- where, following acceptance of the bid, he has acquired or firmly contracted to acquire securities representing not less than 90% of the capital carrying voting rights and 90% of the voting rights comprised in the bid.

The Directive also provides for a "sell-out right" enabling minority shareholders to require the majority shareholder to buy their securities following a takeover bid at a fair price.

DIRECTIVE 2004/109/ (TRANSPARENCY)

The Directive lays down periodic, ongoing or *ad hoc* disclosure requirements for issuers whose securities are already admitted to trading on a regulated market, to shareholders, to natural or legal persons holding voting rights or financial instruments that influence voting rights.

Issuers shall make public periodic information which relates to the financial situation of the issuer and that of the enterprises it controls. The issuers shall provide the annual financial report, the half-yearly report and interim management statements.

The Directive imposes ongoing information requirements whenever events change the breakdown of major holdings that affect the allocation of voting rights. The notification to the issuer shall be effected not later than four trading days after the event. The issuer then makes public the information no later than three trading days after receipt of the notification if the information has not already been made public by the competent authority.

Legislation on European Company Type

REGULATION (EC) 2001/2157 (STATUTE FOR A EUROPEAN COMPANY)

The main points on the formation of the European Company (SE) are:

- SE can be formed by: merger, formation of a holding company, formation of a joint subsidiary, or conversion of a public limited company previously formed under national law.
- SE must have a minimum capital of EUR 120 000. Where a Member State requires a larger capital for companies exercising certain types of activity, the same requirement will also apply to an SE.
- The registered office of the SE must be the place where it has its central administration.
- The registration and completion of the liquidation of an SE must be disclosed for information purposes in the Official Journal of the European Communities. Every SE must be registered in the State where it has its registered office, in a register designated by the law of that State.
- The Statutes of the SE must provide as governing bodies the general meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (single-tier system).
- Under the two-tier system the SE is managed by a management board. The member or members of the management board have the power to represent the company in dealings with third parties and in legal proceedings. They are appointed and removed by the supervisory board. No person may be a member of both the management board and the supervisory

board of the same company at the same time.

- Under the single-tier system, the SE is managed by an administrative board. The member or members of the administrative board have the power to represent the company in dealings with third parties and in legal proceedings. The administrative board may delegate only the management to one or more of its members.
- The following operations require the authorisation of the supervisory board or the deliberation of the administrative board:
 - any investment project requiring an amount more than the percentage of subscribed capital;
 - the setting-up, acquisition, disposal or closing down of undertakings, businesses or parts of businesses where the purchase price or disposal proceeds account for more than the percentage of subscribed capital;
 - the raising or granting of loans, the issue of debt securities and the assumption of liabilities of a third party or suretyship for a third party where the total money value in each case is more than the percentage of subscribed capital;
 - the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year;
 - the percentage referred to above is to be determined by the Statutes of the SE. It may not be less than 5 % nor more than 25 %.

The SE must draw up annual accounts comprising the balance sheet, the profit and loss account and the notes to the accounts,

and an annual report giving a fair view of the company's business and of its position; consolidated accounts may also be required.

- In tax matters, the SE is subject to the tax regime of the national legislation applicable to the company and its subsidiaries.

DIRECTIVE 2001/86/EC (EMPLOYEE PARTICIPATION IN SE)

The Directive regulates the employee participation in the supervision and strategic development of the European company (SE).

Several models of participation are possible: firstly, a model in which the employees form part of the supervisory board or of the administrative board, as the case may be; secondly, a model in which the employees are represented by a separate body; and finally, other models to be agreed between the management or administrative boards of the founder companies and the employees in those companies, the level of information and consultation being the same as in the case of the second model. The general meeting may not approve the formation of an SE unless one of the models of participation defined in the Directive has been chosen.

The employees' representatives must be provided with such office space, financial and material resources, and other facilities as to enable them to perform their duties properly.

If the two parties do not reach a satisfactory arrangement, a set of standard principles set out in the Annex to the Directive becomes applicable.

With regard to a European company formed through a merger, the standard principles relating to worker participation will apply

where at least 25% of the employees had the right to participate in decisions before the merger.

REGULATION (EEC) NO 2137/85 (EUROPEAN ECONOMIC INTEREST GROUPING)

The purpose of the grouping is to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. An EEIG may not invite investment by the public. There is no minimal capital requirements and each member of the EEIG has unlimited joint and several liability for its debts. If EEIG makes any profits, they will be apportioned among the members and taxed accordingly.

An EEIG can be formed by companies, firms and other legal entities as well as individuals carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services. An EEIG must have at least two members from different Member States. An EEIG is formed by the contract for the formation which shall be filed at the registry designated by each Member State.

Each member of an EEIG has one vote, although the contract for its formation may give certain members more than one vote provided that no one member holds a majority of the votes. The Regulation lists those decisions for which unanimity is required. The EEIG must have at least two organs: the members acting collectively and the manager or managers. The managers represent and bind the EEIG in its dealings with third parties even where their acts do not fall within the objects of the grouping.

DRAFT REGULATION ON THE STATUTE FOR A EUROPEAN PRIVATE COMPANY

It is proposed that SPE will be a limited liability company which shares would not be publicly traded on any market. SPE does not have minimal capital requirement.

SPE may be set up by any individual or legal entity, from scratch, or by the transformation, merger or division of existing companies. It may have its registered office in one Member State and conduct its activities in another; it may also transfer its registered office to another Member State

Shareholders enjoy a broad freedom to determine the manner in which shareholders take their decisions (meeting, telephone or video conference). Shareholders are also free to determine the rights attached to shares such as voting rights and rules on share transfers

SPE can have a single director or several directors, a one-tier or a two-tier board system. However, if the SPE is subject to employee participation, the chosen management structure must allow for the exercise of this right. The shareholders of the SPE decide on the appointment and removal of directors.

Directors have a duty to act in the best interests of the company which is owed to the SPE and may only be enforced by the company. A standard of care is the care and skill reasonably required in the conduct of business. Directors are required to avoid any actual or potential conflicts of interests. Directors are liable for any loss or damage by the SPE due to the breach of their duties deriving from the Statute, articles of association or a resolution of shareholders. However other aspects of liabilities, e.g. the consequences of the breach of duties or any business judgement rule, are governed by national law

Recommendations on Corporate Governance

RECOMMENDATION 2004/913/EC (REMUNERATION OF DIRECTORS OF LISTED COMPANIES)

It is recommended that:

1. All listed companies should release a statement of their policy on directors' remuneration for the following year. It should include information on the breakdown of fixed and variable remuneration, on performance criteria and on the parameters for annual bonus schemes or non-cash benefits. It should also explain the company's contract policy. The company should not have to disclose commercially-sensitive information.
2. Remuneration policy for directors should be on the agenda of the shareholders' general meeting. To increase accountability, it should be submitted to a vote which may be either binding or advisory. An advisory vote would require neither directors' contractual entitlement or remuneration policy to be amended.
3. Information on the remuneration of individual directors shall be disclosed: this should include detailed information about: the remuneration and/or emoluments of individual directors; the shares or rights to share options granted to them; their contribution to supplementary pension schemes; and any loans, advances or guarantees to each director.
4. Variable remuneration schemes under which directors are paid in shares, share options or any other right to acquire shares should be subject to prior approval of the Annual General Meeting of Shareholders. The approval relates to the system of remuneration and the rules applied to establish individual remuneration under the scheme. It would not relate to the individual remuneration of directors.

RECOMMENDATION 2005/162/EC (INDEPENDENT DIRECTORS)

Recommendation includes minimum standards for the qualifications, commitment and independence of non-executive or supervisory directors.

The main principles in the Recommendation are:

- The administrative, managerial and supervisory bodies should include overall an appropriate balance of executive/managing and non-executive/supervisory directors so that no individual or small group can dominate decision-making.
- Boards should be organised so that a sufficient number of independent non-executive or supervisory directors play an effective role in defining and dealing with potential conflicts of interest. To this end, nomination, remuneration and audit committees should normally be created within the (supervisory) board.
- A director is considered independent when free from any business, family or other relationship - with the company, its controlling shareholder or the management - which might jeopardise his or her judgement.
- The (supervisory) board should be composed of members who, taken together, have the diversity of knowledge, judgement and experience to properly complete their tasks.
- All directors should devote to their duties the necessary time and attention. When the appointment of a director is proposed, his or her other significant professional commitments should be disclosed.

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