Book 2 Legal Persons

Title 2.1 General Provisions

Article 2:1 Public legal persons
- 1. The State, the Provinces, the Municipalities, the Water Boards and all other bodies to which legislative power has been granted under the Dutch Constitution have legal personality.
- 2. Other bodies charged with governmental duties only have legal personality if this results from what has been specified by or pursuant to law.
- 3. The below listed Articles of the present Title (Title 2.1), except **Article** 2:5, do not apply to public legal persons as meant in the previous paragraphs.

Article 2:2 Churches and other religious communities
- 1. Religious communities and their independent subdivisions and bodies in which they are united, have legal personality.
- 2. They are governed by their own charter insofar the rules thereof are not in conflict with law. With the exception of **Article** 2:5, the below listed Articles of the present Title (Title 2.1) do not apply to them. Nevertheless, these Articles may be applied accordingly as far as this is in agreement with the charter of the religious community and the nature of the mutual relationships within that community.

Article 2:3 Private legal persons
Associations (*'verenigingen'*), Cooperatives (*'coöperaties'*), Mutual Insurance Societies (*'onderlinge waarborgmaatschappijen'*), Open Corporations*) (*'naamloze vennootschappen'*), Closed Corporations**) *'besloten vennootschappen'*) and Foundations (*'stichtingen'*) have legal personality.

*) Open Corporations are the equivalent of public limited companies under English law, i.e. companies with free tradable shares
**) Closed Corporations are the equivalent of private limited companies under English law, i.e. companies with restricted tradable shares.

Article 2:4 Defective formation and (property of) non-existing legal persons
- 1. A legal person cannot come to existence in the absence of a deed signed by a notary insofar the law requires such a deed for the formation of this type of legal person. A deed signed by a notary, which is not authentic, shall only prevent the formation of the intended legal person if this legal person would have been called into existence on the basis of a testamentary disposition (last will) laid down in that deed.
- 2. The nullification of a voidable juridical act through which a legal person has been formed, does not affect the existence of that legal person. The invalidity of the participation of one or

more founders of the legal person does in itself not affect the validity of the participation of the remaining founders.
- 3. Where property has been created in the name of a non-existing legal person, the court shall appoint, upon the request of an interested party or of the Public Prosecution Service, one or more liquidators. **Article** 2:22 shall apply accordingly.
- 4. Property created in the name of a non-existing legal person shall be liquidated (wound up) in the same way as that of a dissolved legal person of the intended type. The persons who have acted as Directors of the non-existing legal person are joint and several liable for all debts belonging to the before mentioned property as far as these debts have become due and demandable during the period in which these persons acted as Director. These persons are also liable for debts arisen from juridical acts which have been performed [by themselves or others] during that period on behalf of that property, as far as no other person is liable for these debts on the basis of the previous sentence. When no person can be made liable for a debt on the basis of one of the two previous sentences, the persons who have performed the act which caused the debt are joint and several liable for it.
- 5. If a valid legal person has been formed in order to make it the legal successor of the property created in the name of a non-existing legal person, then the court may order, upon request, that this property does not need to be liquidated (wound up), but may be brought into the validly formed legal person.

Article 2:5 Equalisation of legal persons with natural persons
As far as it concerns the law of property, a legal person is tantamount (equal) to a natural person, unless the contrary results from law.

Article 2:6 Publication of information and consequences of a lack of publication
- 1. Changes made to the articles of incorporation or the internal regulations (by-laws) of a legal person, that have to be published by virtue of the present Book (Book 2 of the Civil Code), cannot be invoked against counterparties and third persons who were unaware of these changes as long as that publication has not been made and, in the event of a change of the articles of incorporation, as long as the legally required publication of the changed articles of incorporation has not been made. The same applies in respect of an appeal to the fact that a legal person is dissolved as long as its dissolution has not been published in the legally required way.
- 2. Where the articles of incorporation indicate that the Board of Directors or a Director has no power to represent the legal person in performing a juridical act, an appeal to such lack of power, that normally would be permitted according to law, has no effect towards a counterparty who was unaware of the lack of power if the limitation or exclusion of that power was not published in the legally required way at the moment on which that juridical act was performed. The same applies to an appeal to a limitation of the power of representation of others than Directors to whom such power has been granted under the articles of incorporation.
- 3. The legal person cannot invoke the incorrectness or incompleteness of the data registered at the commercial register against a counterparty who was unaware of this incorrectness or incompleteness. A correct and complete registration elsewhere or a publication of the articles of incorporation [in the commercial register] is in itself not sufficient evidence that the counterparty was aware of the incorrectness or incompleteness.

- 4. As far as the law does not provide otherwise, the counterparty of a legal person cannot appeal to his unawareness of a fact which has been published in the legally required way, unless this publication has not been made in each way required by law [when more registrations in the commercial register or a registration in another public register is required] or unless not the legally required notification of such publication has been made.
- 5. The two preceding paragraphs do not apply to judicial decisions registered in the bankruptcy register or the register for official moratoriums on payment.

Article 2:7 Lack of power to act for the legal person itself (ultra vires doctrine)
A juridical act performed by a legal person is voidable if, due to this act, the purpose (objective) of the legal person, as described in its articles of incorporation, has been exceeded and the counterparty was aware or ought to have been aware of this without any research of his own; only the legal person may invoke this ground of voidability.

Article 2:8 Reasonableness and fairness within the organisation of the legal person
- 1. The legal person and those who pursuant to law and the articles of incorporation are involved in its organization, must behave towards each other in accordance with what is required by standards of reasonableness and fairness.
- 2. A rule applicable between them pursuant to law, common practice (usage), the articles of incorporation, the internal regulations (by-laws) or a resolution (decision of a body of the legal person) has no effect as far as this would be unacceptable in the given circumstances to standards of reasonableness and fairness.

Article 2:9 Performance of tasks and liability of Directors
- 1. Each Director is responsible towards the legal person for a proper performance of the tasks assigned to him. All duties of Directors that have not been assigned by or pursuant to law or the articles of incorporation to one or more other Directors, shall belong to the duties (tasks) of a Director.
- 2. Each Director is responsible for the general conduct of affairs. He is liable for the full consequences of an improper performance of duties, unless, also in regard of the tasks assigned to the other Directors, he is not gravely to blame for it and he neither has been negligent in taking measures to avert the consequences of that improper performance of duties.

Article 2:10 Bookkeeping
- 1. The Board of Directors is obliged to keep accounting records of the assets and liabilities of the legal person and of everything regarding the activities of the legal person in accordance with the requirements arising from these activities, and it must store the books, documents and other data storage media in such a way that at all times the rights and obligations of the legal person can be known.
- 2. Without prejudice to other Titles of this Book (Book 2 of the Civil Code), the Board of Directors must, within six months after the end of the accounting year, draw up the balance sheet and the profit and loss account (income statement) of the legal person.

- 3. The Board of Directors is obliged to store the books, documents and other data storage media meant in paragraph 1 and 2 for a period of seven years.
- 4. With the exception of the balance sheet and the profit and loss account (income statement), that have been put on paper, all written information and information placed on data storage media may be transferred to and stored on (other) data storage media, provided that the transfer results in a correct and complete reproduction of the information and that this information is available and can be made readable throughout the entire storage period within a reasonable time.

Article 2:10a Accounting year
The accounting year (financial year) of a legal person is a calendar year, if no other accounting year (financial year) has been designated in the articles of incorporation of that legal person.

Article 2:11 Liability of a legal person in its capacity as Director of another legal person
Where a legal person is liable in its capacity as Director of another legal person, also the persons who, at the moment on which this liability arose, are a Director of the first mentioned legal person, shall be joint and several liable.

Article 2:12 Denial of voting rights in the articles of incorporation
The right to vote on a resolution through which the legal person grants one or more rights to certain persons other than in their capacity as member, shareholder or member of a body, can be denied in the articles of incorporation to these persons and to their spouses, registered partners or blood relatives in the direct line; the same applies to the right to vote on a resolution through which the legal person gratuitously releases certain persons from a debt.

Article 2:13 Validity of votes; voting result
- 1. A vote is null and void in the same situations as in which a one-sided (unilateral) juridical act is null and void; a vote is never voidable and it is therefore not possible to nullify it on a ground of voidability.
- 2. Where a person without legal capacity is a member of an Association (*'vereniging'*), he may exercise his voting right himself insofar the articles of incorporation of that Association (*'vereniging'*) do not oppose to this; if the articles of incorporation do oppose, the right to exercise his voting right belongs to his legal representative.
- 3. Unless the articles of incorporation provide otherwise, the chairman's decision on the voting result, expressed in the meeting of a body of the legal person, is decisive. The same applies with regard to the chairman's decision on the content of a resolution, expressed in the meeting of a body of the legal person, insofar votes are taken on an unwritten proposal.
- 4. Where the correctness of the decision of the chairman is disputed immediately after this decision has been expressed, the votes are taken once again if this is requested by the majority of the meeting or, when the original voting did not take place by call or not in writing, by one of the persons present at the meeting who is entitled to vote. As a consequence of this new voting the legal effects of the original voting cease to exist.

Article 2:14 Null and void resolutions; ratification
- 1. A resolution (decision) of a body of a legal person that is contrary to law or the articles of incorporation is null and void, unless the law indicates otherwise.
- 2. Where a resolution is null and void because it was passed by a body of a legal person without an act of or notification to another body of that legal person, as required pursuant to law or the articles of incorporation, it may be ratified by that other body. Where a requirement (form) is set for the absent act, this requirement (form) shall apply as well to the ratification of the resolution.
- 3. A ratification is no longer possible after the expiration of a reasonable period which set for this purpose by the body that had passed the resolution or by the counterparty to whom the resolution was addressed.

Article 2:15 Voidable resolutions
- 1. Without prejudice to what has been specified elsewhere in law with regard to the possibility of a nullification of a resolution (decision) on a ground of voidability, a resolution of a body of a legal person is voidable:
a. if it has been passed in conflict with the provisions of law or the articles of incorporation that regulate the making of resolutions;
b. if it is in conflict with the standards of reasonableness and fairness imposed by **Article** 2:8;
c. if it is in conflict with an internal regulation (by-law) of the legal person.
- 2. The provisions containing the requirements to which **Article** 14, paragraph 2, refers, are not among those meant in the previous paragraph under point (a).
- 3. A voidable resolution is nullified by a judicial decision of the District Court in whose district the legal person has its domicile:
a. upon a request submitted against the legal person by someone who has a legitimate interest in the compliance with the requirement which has not been observed, or;
b. upon a request of the legal person submitted, by virtue of a resolution of the Board of Directors, against the person who is pointed out by the provisional relief judge of the District Court upon a request made for this purpose of the legal person; in that case the costs of proceedings will be borne by the legal person.
- 4. When a Director submits a request in his own name, the legal person shall request the provisional relief judge of the District Court to appoint someone who shall act instead of the Board of Directors in respect of the dispute.
- 5. The right to claim the nullification of a voidable resolution ceases to exist one year after the day on which either sufficient publicity has been given to the resolution or the interested party has become aware of the resolution or has been given sufficient notice thereof.
- 6. A resolution voidable on the ground mentioned in paragraph 1, under point (a), may be ratified by a later resolution passed to this effect [as a result the voidable resolution will be repaired with retroactive effect to the day on which it was passed]; that later resolution is subject to the same requirements as the to be ratified resolution. The ratification has no effect as long as an earlier submitted request for nullification of the to be ratified resolution is pending. If the legal claim is awarded, then the voidable resolution, which is nullified by the court, is regarded to be taken once again by means of the later resolution in which it was ratified [as a result the voidable resolution is repaired from the day on which the later resolution was passed], unless the contrary results from the necessary implications of that later resolution.

Article 2:16 Effect of the nullity or nullification of a resolution; protection of third persons
- 1. When the legal person has been a party to the proceedings, the final and binding judicial decision establishing the nullity of a null and void resolution of a legal person or nullifying a voidable resolution of a legal person is binding for every one, except that the extraordinary legal actions (legal revocation and third party objection) remain applicable. Each member or shareholder is entitled to file a request for a legal revocation.
- 2. Where the resolution of a legal person is a juridical act of that legal person addressed to a counterparty, or where it is a requirement for the validity of such a juridical act, the nullity or nullification of that resolution cannot be invoked against that counterparty if he was not aware nor ought to have been aware of the defect in the resolution. The nullity or nullification of a resolution in which a Director or Supervisory Director has been appointed, may nevertheless be invoked against the appointed person; the legal person must, however, compensate the damage which the appointed person suffers as a result thereof, yet only if this person was not aware nor ought to have been aware of the defect in the resolution.

Article 2:17 Duration of the existence of a legal person
A legal person is formed (established) for an indefinite period of time.

Article 2:18 Conversion of legal persons
- 1. A legal person may convert itself into a legal person of another type, subject to the following paragraphs.
- 2. For a conversion is required:
a. a resolution passed for this purpose in accordance with the requirements for a resolution to amend the articles of incorporation and, unless a Foundation *('stichting')* is converted, passed with at least nine tenths of the votes cast;
b. a resolution to amend the articles of incorporation, and;
c. a notarial deed of conversion that includes the new articles of incorporation.
- 3. A majority of votes as meant in the previous paragraph, under point (a), is not required for a conversion of an Open Corporation (*'naamloze vennootschap')* into a Closed Corporation (*'besloten vennootschap'*), or vice versa.
- 4. Where it concerns a conversion of or into a Foundation (*'stichting'*) or a conversion of an Open or Closed Corporation (*'naamloze of besloten vennootschap'*) into an Association (*'vereniging'*) also the authorization of the court is required.
- 5. Only the to be converted legal person may request the District Court to authorise the conversion, under submission of a notarial draft of the notarial deed of conversion. The request is denied if a required resolution is null and void or if a legal claim for the nullification of such a resolution is pending. It is denied also when the interests of the persons entitled to vote who have not given their consent or of others of whom at least one person has turned to court, have been observed insufficiently. When the conversion is subject to an authorisation of the court, the notary will confirm in de notarial deed of conversion that this authorisation has been given on the basis of the draft of the notarial deed.
- 6. After the conversion of a Foundation (*'stichting'*) the articles of incorporation must show that the Foundation's property, as it was on the moment of conversion, and the fruits (benefits)

thereof may only with authorisation of the court be used in another way than as required prior to the conversion. The same applies to the articles of incorporation of a legal person who has acquired the property of a Foundation (*'stichting'*) and the fruits (benefits) thereof through a merger or split up (demerger).
- 7. The legal person asks the keeper of the public registers where this legal person was registered prior to the conversion and where it must be registered thereafter, or, in case of an Association (*'vereniging'*), where it had been registered voluntarily, to register the conversion.
- 8. A conversion does not end the existence of the legal person.

Article 2:19 Dissolution of a legal person
- 1. A legal person becomes dissolved:
a. when its General Meeting has passed a resolution for this purpose or, if the legal person is a Foundation (*'stichting'*), when its Board of Directors has passed such a resolution unless the articles of incorporation of the Foundation (*'stichting'*) provide otherwise;
b. when an event occurs which, according to the legal person's articles of incorporation, leads to its dissolution, and which is not a resolution, nor an act aiming at its dissolution;
c. when it has been declared bankrupt and either its bankruptcy ends because of the state of the insolvency estate as meant in **Article** 16(1) of the Dutch Bankruptcy Act or it is declared insolvent as referred to in **Article** 173(1) of the Dutch Bankruptcy Act;
d. when there are no members at all if it is an Association (*'vereniging'*), a Cooperative (*'coöperatie'*) or a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*);
e. when the Chamber of Commerce has taken a decision as meant in **Article** 2:19a;
f. when the court has dissolved it in situations set for this purpose by law.
- 2. In a situation as referred to in paragraph 1, under point (b) or (d), the District Court shall declare, upon the request of the Board of Directors, an interested person or the Public Prosecution Service, whether the legal person is dissolved and when (what date) this has occurred. This court order is final and binding for everyone. Where the legal person is registered in a public register, the clerk of the court shall ensure that the final and binding court order, holding the earlier meant declaration, will be registered there.
- 3. The dissolution is reported to the keeper of the public registers where the legal person is registered:
- in the situations referred to in paragraph 1, under point (a), (b) and (d): by the liquidator, if there is one present, and otherwise by the Board of Directors;
- in the situation referred to in paragraph 1, under point (c): by the bankruptcy liquidator;
- in the situation referred to in paragraph 1, under point (e): by the Chamber of Commerce;
- in the situation referred to in paragraph 1, under point (f): by the clerk of the court.
- 4. If the legal person no longer has any assets at the time of its dissolution, it will cease to exist as of that moment. In that event the Board of Directors or, where **Article** 2:19a is applicable, the Chamber of Commerce reports its ending to the keeper of the public registers where the legal person is registered.
- 5. After its dissolution the legal person continues to exist insofar this is necessary for the liquidation (winding up) of its property. In documents and announcements that are released by the legal person, the words 'in liquidation' must be added to the name of the legal person.
- 6. In the event of a winding up (liquidation) the legal person ceases to exist at the moment on which the winding up (liquidation) ends. The liquidator or the bankruptcy liquidator reports to

the keeper of the public registers where the legal person is registered that it has ceased to exist.
- 7. The data and information registered in the public registers with regard to the legal person at the moment on which it ceases to exist, are kept there for at least ten years after that moment.

Article 2:19a Dissolution of a legal person by the Chamber of Commerce
- 1. An Open Corporation (*'naamloze vennootschap'*), a Closed Corporation (*'besloten vennootschap'*), a Cooperative (*'coöperatie'*) or a Mutual Insurance Society (*'onderlinge waarborgmaatschapij'*), registered at the commercial register, shall be dissolved by a decision of the Chamber of Commerce where the legal person is registered, if the Chamber of Commerce has evidence that at least two of the following circumstances are applicable:
a. the legal person has not paid the sum due for its registration or for the registration of its enterprise in the commercial register for at least one year after the date on which that sum should have been paid;
b. no Directors of the legal person are registered in the commercial register for a period of at least one year, whereas neither a report for such a registration has been made, or, if Directors are registered, one of the following events is applicable to all of the registered Directors:
1°. the Directors are deceased;
2°. the Directors appear to be unreachable for at least one year at the addresses mentioned in the commercial register and also at the addresses mentioned in the municipal personal record database or, instead of this last event, no addresses are mentioned in that database for at least one year;
c. the legal person has failed for at least one year to comply with its obligation to disclose its annual accounting records or the balance sheet and notes in accordance with Articles 2:394, 2:396 or 2:397;
d. the legal person has not responded properly for at least one year to a letter of formal notice as referred to in **Article** 9, paragraph 3, of the General State Act on Taxation, to file a tax declaration (tax return) for company (corporation) tax.
- 2. An Association (*'vereniging'*) or Foundation (*'stichting'*) which itself is registered in the commercial register, but which does not conduct an enterprise that is registered as such in the commercial register, shall be dissolved by a decision of the Chamber of Commerce where the legal person is registered, if the Chamber of Commerce has evidence that the event mentioned in paragraph 1, under point (a), is applicable, and that the legal person is in default for at least one year of paying the sum due for its registration in the commercial register.
- 3. If the Chamber of Commerce has knowledge of facts indicating that a legal person is eligible for a dissolution as meant in paragraph 1 or 2, it will notify the legal person and its Directors of the intention to dissolve the legal person; this notification is made by registered letter, send to the last known addresses of the legal person and its Directors, mentioning not only the intention to dissolve the legal person, but as well the grounds on which this intention is based. The Chamber of Commerce registers this notification in the commercial register. Where an event as meant in paragraph 1, under point (b), applies, the Chamber of Commerce ensures that the notification is published as well in the Dutch Gazette. As far as the costs of this publication cannot be recovered from the property of the legal person, they are borne by the Minister of Justice.
- 4. Eight weeks after the date of the registered letter the Chamber of Commerce will dissolve the legal person by decision, unless the Chamber prior to this moment has received evidence that the event mentioned in the notification meant in paragraph 3 is not or no longer applicable.

- 5. The decision of the Chamber of Commerce will be announced to the legal person and its registered Directors.
- 6. The Chamber of Commerce ensures that the dissolution is published in the Dutch Gazette. Paragraph 3, last sentence, applies accordingly.
- 7. If it is not possible to appoint one or more liquidators on the basis of **Article** 2:23, paragraph 1, the Chamber of Commerce shall operate as liquidator of the property of the dissolved legal person, subject to the provisions of **Article** 2:19, paragraph 4. Upon the request of the Chamber of Commerce, the District Court shall appoint one or more other liquidators.
- 8. If an appeal is lodged with the Board of Appeal for Trade and Industry (*'College van Beroep voor het Bedrijfsleven'*) against a decision of the Chamber of Commerce as referred to in paragraph 4, the Chamber of Commerce will make a registration thereof in the commercial register. The decision on appeal will be registered there as well. If the decision on appeal leads to the annulment (revision) of the decision of the Chamber of Commerce, the Chamber of Commerce ensures that it is published in the Dutch Gazette. During the period that the legal person had ceased to exist in consequence of the decision to dissolve it, there are grounds as meant in **Article** 3:320 of the Civil Code for the extension of the prescription period of rights of actions available to or against the legal person.

Article 2:20 Prohibited legal persons
- 1. Where the activities of a legal person are contrary to public order, the District Court shall prohibit and dissolve that legal person upon the request of the Public Prosecution Service.
- 2. Where the purpose (objective) of a legal person, as defined in its articles of incorporation, is contrary to public order, the District Court shall dissolve that legal person upon the request of the Public Prosecution Service. Before the dissolution, the District Court may grant the legal person for a specific period of time the opportunity to adjust its purpose (objective) in such a way that it no longer is contrary to public order.
- 3. A legal person that is mentioned on the list referred to in **Article** 2, third paragraph, of Regulation (EC) No 2580/2001 of the European Council of 27 December 2001 (OJEC L 344), in Annex I of Regulation (EC) No 881/2002 of the European Council of 27 May 2002 (OJEC L 139), or that is mentioned and marked with a star in the Annex to the Common Position No. 2001/931 of the European Council of 27 December 2001 (OJEC L 344), is prohibited by law and not authorized to perform juridical acts.

Article 2:21 Dissolution of a legal person by the court
- 1. The District Court dissolves a legal person if:
a. defects (imperfections) are attached to its formation;
b. its articles of incorporation do not meet the statutory requirements;
c. it does not fall under the statutory definition of its legal type.
- 2. The District Court does not dissolve the legal person if the court has granted the legal person for a specific period of time the opportunity to comply with the necessary statutory requirements and the legal person has fulfilled these requirements within that period.
- 3. The District Court may dissolve a legal person if it violates the legal prohibitions set in Book 2 of the Civil Code for this type of legal person or if it acts to a serious degree in breach of its articles of incorporation.

- 4. The dissolution is ordered by the District Court upon a request to this end of an interested party or of the Public Prosecution Service.

Article 2:22 Fiduciary administration of property
- 1. The court where a request for the dissolution of a legal person is pending, may upon request place the property of that legal person under a fiduciary administration; the court order mentions the date as of which it will take effect.
- 2. The court appoints in its court order one or more legal administrators and regulates their powers and remuneration.
- 3. As far as the court does not provide otherwise, the bodies of the legal person cannot pass any resolution without the prior consent of the legal administrator, and the legal representatives of the legal person cannot perform any juridical act in the name of the legal person without the cooperation of the legal administrator.
- 4. The court may at any time change or withdraw a court order as meant in the previous paragraphs; the fiduciary administration ends in any event once the judicial decision on the request for the dissolution of the legal person has become final and binding.
- 5. The legal administrator sends to the keeper of the public registers where the legal person is registered, the court order in which the fiduciary administration and his appointment are ordered and also the necessary data about himself that must be registered for Directors.
- 6. When a legal person, as a result of a fiduciary administration of its property, has no power to perform a juridical act, but it performs such an act anyway prior to a registration as meant in the previous paragraph, then this juridical act will be valid if the counterparty was not aware nor ought to have been aware of the fiduciary administration.

Article 2:22a Court order temporarily taking away the shareholder's power to alienate or encumber shares
- 1. Before or when the Public Prosecution Service lodges a request for the dissolution of an Open Corporation (*'naamloze vennootschap'*) or a Closed Corporation (*'besloten vennootschap'*), it may ask the court by petition (application) to order that the shareholders, until the judicial decision on the before meant request becomes final and binding, shall miss the power to dispose of the shares or to encumber them with a pledge or usufruct.
- 2. The court decides after a brief examination. The court order is given under the condition that the request for a dissolution is lodged within a period of time to be set by court. Against this court order no appeal is available.
- 3. The court order is served without delay, if possible on the same day, by bailiff's writ on the shareholders and the Open or Closed Corporation (*'naamloze'* or *' besloten vennootschap'*). The clerk of the court ensures that the court order is registered in the public registers where the legal person is registered.
- 4. The shareholders may file an objection against the court order within eight days after it has been served on them by bailiff's writ as referred to in the previous paragraph. Such an objection does not suspend the court order, except for the right of the shareholders to request the provisional relief judge for a judicial decision on the matter in summary proceedings. An objection against the court order cannot be based on the statement that the shareholder wishes or has the intention to transfer his shares.

- 5. The request for a dissolution of the Open or Closed Corporation (*'naamloze'* or *'besloten vennootschap'*) must be served by bailiff's writ on the shareholder within eight days after it has been lodged.

Article 2:23 Liquidator
- 1. To the extent that the District Court or the articles of incorporation have not appointed any other liquidators, the Directors will act as liquidators of the property of the dissolved legal person. With regard to liquidators who are not appointed by the court, the provisions for the appointment, suspension and discharge (dismissal) of Directors and the provisions for exercising supervision over Directors shall apply, insofar the articles of incorporation do not provide otherwise. The property of a legal person which has been dissolved by the court, is wound up by one or more liquidators appointed by that court.
- 2. Where the court discharges a liquidator, it may appoint one or more other liquidators. In the absence of any liquidator, the District Court shall appoint one or more liquidators upon the request of an interested party or the Public Prosecution Service. A liquidator appointed by the court is entitled to a remuneration granted by that court.
- 3. The appointment of a liquidator by the court takes effect on the day following the one on which the clerk of the court has notified the liquidator of his appointment; the clerk of the court makes this notification instantly if the court order of the appointment is enforceable immediately and, otherwise, as soon as it has become final and binding.
- 4. Every liquidator reports to the keeper of the public registers where the legal person is registered, his appointment as liquidator and the data about himself that must be registered for Directors.
- 5. The District Court may discharge a liquidator as of a particular day, either upon the request of the liquidator himself or, on account of compelling reasons, upon the request of a co-liquidator, the Public Prosecution Service, or of its own motion (ex officio).
- 6. The discharged liquidator shall render account to the ones who continue the winding up of the property of the dissolved legal person. Where his successor has been appointed by the court, account shall be rendered in front of the court.

Article 2:23a Powers, duties and liabilities of a liquidator
- 1. Unless the articles of incorporation provide otherwise, a liquidator has the same powers, duties and liabilities as a Director, provided that these are compatible with his role as liquidator.
- 2. In the event of two or more liquidators, each of them may perform all acts and activities, unless otherwise specified. In case of a disagreement between the liquidators, each of them may request the involved court or, otherwise, the Subdistrict Court, to settle their dispute. The court referred to in the preceding sentence shall also establish the distribution of their remuneration.
- 3. Both, the District Court and the magistrate (*'rechter-commissaris'*) appointed by that court in the winding up process, may issue instructions necessary for the winding up, whether or not through an order in executorial form. The liquidator is obliged to follow their directions. No appeal or other legal action is available against these instructions and directions.
- 4. If it appears to the liquidator that the liabilities (debts) of the legal person probably will outweigh the assets (benefits) of the legal person, he shall file a request for bankruptcy, unless all known creditors, when asked, agree with the continuation of a winding up outside bankruptcy.

- 5. The previous provisions of the present **Article** and the provisions of Articles 2:23b up to and including 2:23c do not apply to a winding up in bankruptcy.

Article 2:23b Surplus in case of a winding up

- 1. What remains from the property of the dissolved legal person after all creditors are satisfied, shall be distributed by the liquidator, in proportion to every one's entitlement, to those who according to the articles of incorporation are entitled to it or, otherwise, to the members or shareholders. If no other person is entitled to the surplus, the liquidator shall distribute it to the State which shall use it as far as possible in accordance with the purpose (objective) of the dissolved legal person.
- 2. The liquidator renders in writing account of the winding up; the amount and composition of the surplus must show from this written account. When there are two or more persons entitled to the surplus, the liquidator shall make a distribution plan that contains the bases for the distribution.
- 3. Insofar the surplus consists of other assets than cash money and the articles of incorporation or court order do not provide any other indication, the following methods qualify as an appropriate way of distribution:

a. apportionment of a portion of the surplus to each of the entitled persons;
b. over-apportionment to one or more entitled persons against payment of the excess value to the other entitled persons;
c. distribution of the net proceeds after sale.

- 4. The written account of the winding up and the distribution plan shall be deposited for inspection by the liquidator at the office of the public registers where the legal person is registered, and in any event at the office of the legal person itself, if such an office is available, or at another place within the judicial district where the legal person has its domicile. These documents remain there for public inspection for a period of two months. The liquidator shall publish in a daily newspaper where and until what time these documents are available for inspection. The court may order an announcement in the Dutch Gazette.
- 5. Within two months after the written account and the distribution plan have been deposited and the deposit for inspection has been published and announced in accordance with paragraph 4, any creditor or entitled person may file an objection against the account rendered by means of a petition (application) lodged with the District Court. The liquidator gives notice of such objections in the same way as he has done with regard to the written account and distribution plan.
- 6. Whenever the financial situation of the property gives rise to it, the liquidator may make an advance distribution to the entitled persons. After the commencement of the objection period, he shall not make such advance distributions without authorization of the court.
- 7. Once the withdrawal of or the judicial decisions on each objection has become irrevocable (final and binding), the liquidator gives notice thereof in the same way as he has done with regard to the objections filed. Where the judicial decision leads to a change in the distribution plan, the liquidator shall give notice of the changed distribution plan in the same way.
- 8. Cash funds not disposed of within six months after the last payment was made available, will be kept in deposit for payment by the liquidator.
- 9. The winding up ends at the moment on which no further assets (benefits) are known to the liquidator.

- 10. If a court has been involved in the winding up, the liquidator shall render account of his administration to that court within one month after the ending of the winding up.

Article 2:23c Ending an reopening of the winding up
- 1. If, after the legal person has ceased to exist, a creditor or entitled person presents himself with an entitlement to the surplus or there appear to be other assets (benefits) after all, then the District Court may, upon the request of an interested person, reopen the winding up and, if necessary, appoint a liquidator. In that event the legal person shall come to existence again, but exclusively for the completion of the reopened winding up. The liquidator has the power to claim back from each entitled person what he has received too much out of the surplus.
- 2. During the period in which the legal person had ceased to exist, there are grounds as meant in **Article** 3:320 of the Civil Code for the extension of the prescription period of rights of actions available to or against the legal person.

Article 2:24 Duty to keep (store) the books, documents and other data storage media
- 1. The books, documents and other data storage media of the dissolved legal person must be kept (stored) for seven years after the legal person has ceased to exist. Keeper is the person who has been appointed as such by or pursuant to the articles of incorporation or by the General Meeting or, where it concerns a Foundation (*'stichting'*), by the Board of Directors.
- 2. Where a keeper as meant in the previous paragraph is absent and the last liquidator is not prepared to keep the involved books, documents and data storage media, a keeper shall be appointed, upon the request of an interested person, by the Subdistrict Court in whose subdistrict the legal person had its domicile; in that event the keeper will be appointed, if possible, from the persons who were involved in the legal person. No appeal or legal actions are available against such appointment.
- 3. Within eight days after the commencement of his duty to keep the involved books, documents and data storage media, the keeper must report his name and address to the public registers where the dissolved legal person was registered.
- 4. The Subdistrict Court referred to in paragraph 2 may, upon request, grant permission to any interested party to inspect the involved books, documents and data storage media, if the legal person was a Foundation (*'stichting'*), and otherwise to anyone who shows that he has a legitimate interest in such an inspection in his capacity as former member or shareholder of the legal person, or as holder of certificates of its shares, or as legal successor of such a member, shareholder or holder of certificates.

Article 2:24a Definition of a ‘subsidiary’
- 1. A subsidiary of a legal person is:
a. a legal person in which another legal person or one or more of its subsidiaries, whether or not under a contract with other persons entitled to vote, is able to exercise, solely or jointly, more than one half of the voting rights at the General Meeting;
b. a legal person with regard to which another legal person or one or more of its subsidiaries, whether or not under a contract with other persons entitled to vote, is able to appoint or discharge, solely or jointly, more than one half of the members of the Board of Directors or the

Supervisory Board, even if all persons entitled to vote would cast their vote.
- 2. With a subsidiary is equated a commercial partnership acting in its own name in which the legal person or one or more of its subsidiaries participate as a partner who is fully liable towards the creditors of that commercial partnership for all debts.
- 3. For the purpose of paragraph 1, rights attached to shares shall not be linked to a person who holds these shares on behalf of someone else. Rights attached to shares shall be linked to the person on whose behalf these shares are held, if this person has the power to decide how these rights are to be exercised or if he has the power to acquire these shares.
- 4. For the purpose of paragraph 1, voting rights attached to pledged shares are linked to the pledgee (holder of the pledge) if he has the power to decide how these rights are to be exercised. If the shares, however, are encumbered with a pledge as security for a loan which the pledgee has provided in the ordinary course of his business, then the voting rights shall only be linked to him if he has exercised them in his own interest.

Article 24b Definition of a ‘group’
A group is an economic unit in which legal persons and commercial partnerships are organizationally interconnected. Group companies are legal persons and commercial partnerships interconnected to each other in one group.

Article 24c Definition of a 'participating interest'
- 1. A participating interest in a legal person is present when another legal person or a commercial partnership or one or more of its subsidiaries for their own account, either solely or jointly, have provided or have caused the provision of capital (recourses) to the first mentioned legal person in order to be interconnected with that legal person for a long-lasting period of time in support of their own activities. If one fifth or more of the issued share capital is paid up (is held), a participating interest is presumed to be present.
- 2. A participating interest in a commercial partnership is present if a legal person or its subsidiary:
a. is fully liable as partner towards the creditors of the commercial partnership for all debts, or;
b. is otherwise a partner in that commercial partnership in order to be interconnected with that commercial partnership for a long-lasting period of time in support of its own activities.

Article 24d Assessment of appeared members shareholders, their representatives and cast votes
- 1. In determining to what extent the members or shareholders have cast their votes or to what extent they are present or represented, or in determining to what extent share capital is paid up or represented, no account is taken of memberships or shares with regard to which the law or a provision in the articles of incorporation as meant in **Article** 2:228,paragraph 5, specifies that no vote may be cast.
- 2. In derogation from paragraph 1, account is taken of shares with regard to which a provision in the articles of incorporation as meant in **Article** 2:228,paragraph 5, specifies that no vote may be cast, where it concerns the application in respect of a Closed Corporation (‘besloten vennootschap’) of Articles 2:24c, 2:63a, 2:152, 2:201a, 2:220, 2:224a, 2:262, 2:265a, 2:333a,

paragraph 2, 2:334ii, paragraph 2, 2:336, paragraph 1, 2:346, 2:379, paragraph 1 and 2, 2:407, paragraph 2, 2:408, paragraph 1, and 2:414.

Article 25 Mandatory law
It is only possible to derogate from the statutory provisions of the present Book (Book 2) as far as the law allows a derogation.

Title 2.2 Associations

Article 2:26 Definition of a normal 'Association'
- 1. An Association (*'vereniging'*) is a legal person with members, pursuing a particular purpose which is different from the purpose described in **Article** 2:53, paragraph 1 or 2.
- 2. An Association (*'vereniging'*) is formed by means of a more-sided (multilateral) juridical act.
- 3. An Association (*'vereniging'*) may not distribute profits among its members.

Article 2:27 The notarial deed of incorporation
- 1. Where an Association (*'vereniging'*) is formed by notarial deed, the following provisions have to be observed.
- 2. The notarial deed must be executed in the Dutch language. If the Association (*'vereniging'*) has its seat in the province of Friesland ('Fryslân'), the notarial deed may be executed as well in the Frisian language. A procuration (power of attorney) to cooperate with the execution of the notarial deed must be granted in writing.
- 3. The notarial deed contains the articles of incorporation (also known as articles of Association).
- 4. The articles of incorporation include:
a. the name of the Association (*'vereniging'*) and the municipality in the Netherlands where it has its seat;
b. the purpose (objective) of the Association (*'vereniging'*);
c. the obligations of the members towards the Association (*'vereniging'*), or the way in which such obligations may be imposed;
d. the method of convening the General Meeting;
e. the method for the appointment and dismissal of the Directors (Officers) of the Association (*'vereniging'*);
f. how the surplus of the Association (*'vereniging'*) must be used in case of a dissolution of the Association (*'vereniging'*), or how this use will be determined.
- 5. The notary, in front of whom the notarial deed of incorporation is executed, shall ensure that the deed is in accordance with the provisions of paragraph 2 up to and including 4. In the event of a defect, the notary is personally liable towards those who have suffered damage as a result.

Article 2:28 Articles of incorporation embodied in a notarial deed

- 1. Where an Association (*'vereniging'*) is not formed in accordance with paragraph 1 of the previous Article, its General Meeting may pass a resolution to embody the articles of incorporation in a notarial deed.
- 2. In that event paragraph 2 up to and including 5 of the previous **Article** apply accordingly.

Article 2:29 Registration in the commercial register
- 1. The Directors of an Association (*'vereniging'*) of which the articles of incorporation are embodied in a notarial deed, are responsible for the registration of the Association (*'vereniging'*) in the commercial register, and must deposit a certified copy or an authentic extract of the notarial deed of incorporation at the office of that register (Chamber of Commerce).
- 2. As long as no application for an initial registration or deposit has been lodged with the keeper of the commercial register, each Director is jointly and severally liable, in addition to the Association (*'vereniging'*), for juridical acts through which he has committed (bound) the Association (*'vereniging'*).

Article 2:30 'Informal Association' with limited legal capacity to acquire property
- 1. An Association (*'vereniging'*) of which the articles of incorporation are not embodied in a notarial deed (a so called 'informal Association'), cannot acquire registered property and cannot be an heir.
- 2. The Directors of such an Association (*'vereniging'*) are jointly and severally liable, in addition to the Association (*'vereniging'*), for debts arising from a juridical act of the Association (*'vereniging'*) that have become due and demandable during their period as Director. After their resignation they remain jointly and severally liable for debts arising from a juridical act performed during their period as Director, yet only to the extent that no other person, in addition to the Association (*'vereniging'*), is liable for these debts pursuant to the previous sentence. A liability pursuant to one of the preceding sentences does not rest on the ones who have not been consulted in advance about the juridical act and who, when they became aware of that act, have refused to accept any responsibility for it as Director. When no other person, in addition to the Association (*'vereniging'*), can be made liable for a debt on the basis of one of the two previous sentences, the persons who have performed the juridical act which caused the debt are jointly and severally liable for it.
- 3. The Directors of an Association (*'vereniging'*) as meant in the present **Article** (informal Association), may have it registered in the commercial register. If they do so and the articles of incorporation are made in writing, they must deposit a copy thereof at the office of the register (Chamber of Commerce).
- 4. Where the registration referred to in the preceding paragraph has been made, the persons who are liable on account of paragraph 2 shall only be liable as far as the counterparty makes plausible that the Association (*'vereniging'*) shall not perform the obligation.

Article 2:31 *[repealed on 01.01.1992]*

Article 2:32 *[repealed on 01.09.1994]*

Article 2:33 Admission of members
Unless the articles of incorporation provide otherwise, the Board of Directors resolves (decides) on the admission of a new member; when the Board of Directors refuses to admit a new member, the General Meeting may still decide to admit the involved person as member.

Article 2:34 Membership is personal (not freely transferable)
- 1. The membership of an Association (*'vereniging'*) is personal, unless the articles of incorporation provide otherwise.
- 2. If a legal person is a member of an Association and this legal person ceases to exist as a result of a merger or split up (demerger), then its membership shall pass to the acquiring legal person or, respectively, to one of the acquiring legal persons in accordance with the description appended to the notarial deed of the split up (demerger), unless the articles of incorporation of the Association (*'vereniging'*) provide otherwise.

Article 2:34a Obligations attached to membership
Obligations may only be attached to the membership by or pursuant to the articles of incorporation of the Association (*'vereniging'*).

Article 2:35 Ending of membership; removal of a member
- 1. The membership of an Association (*'vereniging'*) ends:
a. when the involved member dies, unless the articles of incorporation of the Association (*'vereniging'*) permit a passage of membership under the law of succession;
b. when it is terminated by the member;
c. when it is terminated by the Association (*'vereniging'*);
d. when the member is removed as such.
- 2. The Association (*'vereniging'*) may terminate a membership in the situations mentioned for this purpose in its articles of incorporation and, furthermore, when a member no longer meets the requirements for membership as set under the articles of incorporation and, in addition, when a continuation of membership reasonably cannot be expected of the Association (*'vereniging'*). Where the Association (*'vereniging'*) terminates a membership, the Board of Directors has the power to do so, unless the articles of incorporation have granted this power to another body of the Association (*'vereniging'*).
- 3. The removal of a member may only be ordered when this member has acted in violation of the articles of incorporation, the internal regulations (by-laws) or a resolution of the Association (*'vereniging'*), or when this member has harmed the Association (*'vereniging'*) unreasonably.
- 4. The removal of a member is ordered by the Board of Directors, unless the articles of incorporation have granted this power to another body of the Association (*'vereniging'*). The removed member is given notice of his removal as soon as possible; the notice must be in writing, mentioning as well the grounds for the removal. Within one month after the removed member has received the earlier meant notification, he may lodge an appeal with the General Meeting or with another body of the Association (*'vereniging'*) or a third party designated for this purpose in the articles of incorporation, unless the resolution (decision) to remove him as

member was taken by the General Meeting. The articles of incorporation may enclose other provisions for such an appeal, on the understanding that the period for appeal cannot be shorter than one month. During the period for appeal and pending an appeal the removed member is suspended.
- 5. When the membership has ended in the course of an accounting (financial) year, the annual contribution nevertheless remains chargeable in full, unless the articles of incorporation provide otherwise.
- 6. The Association (*'vereniging'*) ensures that the members prior to the termination of the membership are easily able to inspect the necessary information. The information in any case is mentioned prominent on the head page of the website and on pages 1, 2 and 3 of the member magazine, if an Association (*'vereniging'*) makes use of such means of communication.

Article 2:36 Termination of membership
- 1. Unless the articles of incorporation provide otherwise, the membership may be terminated as of an effective date at the end of an accounting (financial) year, with due observance of a term of notice of four weeks; the General Act on Terms does not apply to this term of notice. The membership may be terminated in any event as of an effective date at the end of the accounting (financial) year following the one in which the notice of termination was given or, if a continuation of membership reasonably cannot be expected, with immediate effect.
- 2. A termination in violation of the provisions in the preceding paragraph, shall terminate the membership at the earliest time allowed after the effective date mentioned under the defect termination.
- 3. A member may terminate his membership with immediate effect within one month after he has been informed or become aware of a resolution (decision) restricting his rights or increasing his obligations; this resolution shall not apply to him after such a termination. This right of termination may be denied to the members of the Association (*'vereniging'*) in the articles of incorporation as far as it concerns a change in rights and obligations that are described precisely in the articles of incorporation and, furthermore, in general as far as it concerns a change in financial rights and financial obligations.
- 4. A member may also terminate his membership with immediate effect within one month after he has been informed about a resolution to convert the Association (*'vereniging'*) into a legal person of a different type or about a resolution on a merger or split up (demerger) of the Association (*'vereniging'*).

Article 2:37 Appointment, suspension and dismissal of Directors
- 1. The Board of Directors is appointed from the members. The articles of incorporation may however specify that also non-members may be appointed as Director.
- 2. The appointment is made by the General Meeting. The articles of incorporation may include other provisions for the way in which Directors can be appointed, provided that each member is able to participate, either directly or indirectly, in the voting on the appointment of the Directors.
- 3. The articles of incorporation may provide that one or more of the members of the Board of Directors, yet no more than one half, may be appointed by others than the members of the Association (*'vereniging'*).
- 4. If the articles of incorporation specify that a Director must be appointed at a meeting from a

binding list of nominated candidates, then the binding force of that list may be removed by a resolution passed at that meeting with at least two thirds of the votes cast. The articles of incorporation may require that there must be an opportunity for at least a certain (minimal) number of votes to be cast at that meeting.
- 5. When a member of the Board of Directors on the basis of the articles of incorporation is to be appointed by the members of the Association (*'vereniging'*) or by sections of the Association (*'vereniging'*) outside a convened meeting, then the members of the Association (*'vereniging'*) must be given the opportunity to nominate certain candidates. The articles of incorporation may provide that this right only belongs to a number of members jointly, provided that their number is set no higher than one fifth of the members allowed to participate in the election. The articles of incorporation may also provide that candidates who have been nominated in this way, will be appointed only if at least a certain number of votes have been cast in their favour, provided that this number is set no higher than two thirds of the number of the votes cast.
- 6. Even when a Director is appointed for a fixed term, he may be dismissed or suspended by the body which appointed him. The court is not able to order the restoration of the employment contract between the Association (*'vereniging'*) and the Director as referred to in **Article** 7:682 of the Civil Code.
- 7. Unless the articles of incorporation provide otherwise, the Board of Directors appoints its chairman, secretary and treasurer from its members.

Article 2:38 General Meeting; participation; right to vote
- 1. Subject to what is provided in the next Article, all members who are not suspended may attend the General Meeting and may cast one vote there; a suspended member may attend the meeting where the resolution to suspend him is considered and he is entitled to speak at this meeting on his behalf. The articles of incorporation may grant particular members more than one vote.
- 2. Unless the articles of incorporation provide otherwise, the President and Secretary of the Board of Directors or their substitutes shall operate as Chairman and Secretary of the General Meeting.
- 3. The articles of incorporation may provide that persons belonging to other bodies of the Association (*'vereniging'*) who are not a member of the Association (*'vereniging'*) may vote at the General Meeting. The number of votes to be cast by them may in total not exceed one half of the number of votes to be cast by the members of the Association (*'vereniging'*).
- 4. Unless the articles of incorporation provide otherwise, a person who is entitled to vote pursuant to paragraph 1 or 3, may grant a written proxy to vote on his behalf to another person entitled to vote.
- 5. The requirement that the proxy must be granted in writing is fulfilled as well when the proxy is recorded electronically.
- 6. The articles of incorporation may provide that a person who is entitled to vote pursuant to paragraph 1 or 3, may exercise his voting right by electronic means of communication.
- 7. For the purposes of paragraph 6, it is required that the person entitled to vote can be identified through the electronic means of communication, that he immediately can obtain knowledge of what is said or exchanged at the meeting and that he is able to exercise his voting right. The articles of incorporation may require in addition that the person entitled to vote has the opportunity to participate by electronic means of communication in the deliberations.

- 8. The articles of incorporation may provide that votes cast by electronic means of communication on a date prior to the General Meeting, yet not earlier than thirty days prior to that meeting, are equated with votes cast at that meeting itself.
- 9. Conditions may be set by or pursuant to the articles of incorporation for the use of electronic means of communication. If these conditions are set pursuant to the articles of incorporation, they will be announced in the convening notice for the General Meeting.

Article 2:39 Council of Members (delegates); referendum
- 1. The articles of incorporation may provide that the General Meeting shall consist of delegates (Council of Members) elected by and from the members of the Association (*'vereniging'*). The method of election and the number of delegates are regulated in the articles of incorporation. Each member of the Association (*'vereniging'*) must have the opportunity to participate, directly or indirectly, in the election. **Article** 2:37 paragraph 4 and 5 shall apply accordingly to such an election. **Article** 38 paragraph 3 shall apply accordingly to persons who belong to other bodies of the Association (*'vereniging'*) and who are not a delegate.
- 2. The articles of incorporation may provide that specific resolutions of the General Meeting are subjected to a referendum. The articles of incorporation must specify in which events such a referendum is to be held and within which period and how it is to be held. Pending the outcome of the referendum, the implementation of the resolution shall be suspended.

Article 2:40 Duty and powers of the General Meeting; passing a resolution outside a convened General Meeting
- 1. Within the Association (*'vereniging'*), the General Meeting is conferred with all powers insofar that these powers are not granted by law or the articles of incorporation to other bodies of the Association (*'vereniging'*).
- 2. A unanimous decision of all members of the Association (*'vereniging'*) or, where appropriate, of all delegates, taken outside a convened meeting, has the same force as a resolution of the General Meeting, provided that it was taken with the knowledge of the Board of Directors.

Article 2:41 The convening of a General Meeting
- 1. The Board of Directors shall convene a General Meeting as often as it regards that this is appropriate, or when it is obliged to do so by virtue of the law or the articles of incorporation. The articles of incorporation may delegate this power to others than the Board of Directors.
- 2. Where a number of members of the Association (*'vereniging'*) or delegates who are entitled to cast at least one tenth of votes at the General Meeting or a smaller number of such members or delegates as provided for by the articles of incorporation, request the Board of Directors in writing to convene a General Meeting, the Board of Directors is obliged to convene such a General Meeting within four weeks after the request was lodged.
- 3. If no actions have been taken by the Board of Directors within fourteen days after the request was lodged, then the involved applicants may proceed to convene a General Meeting themselves in the way in which the General Meeting is convened by the Board of Directors or by means of an announcement published in a daily newspaper that is read widely in the place where the Association (*'vereniging'*) is established, unless the articles of incorporation indicate that the

General Meeting must be convened in another way when the Board of Directions does not take any actions as referred to in the present paragraph. Where the applicants themselves have convened a General Meeting pursuant to the previous sentence, they may assign other persons than the members of the Board of Directors to preside the meeting and to take the minutes.
- 4. Unless the articles of incorporation provide otherwise, the requirement that the request must be made in writing, as mentioned in paragraph 2, is satisfied as well when the request is recorded electronically.
- 5. Unless the articles of incorporation provide otherwise, the convening notice for a General Meeting may be given by means of an electronically transmitted message if a member of the Association (*'vereniging'*) or a delegate has given his consent to do so; such an electronically transmitted message must be send to the address disclosed by the involved member or delegate for this purpose; it must be readable and reproducible.

Article 2:41a Sections of an Association
Articles 2:37 up to and including 2:41 apply accordingly to sections (‘afdelingen’) of an Association (*'vereniging'*) which are not a legal person, but which do have a General Meeting and a Board of Directors of their own; what is provided in those Articles with reference to the articles of incorporation, may be specified in the internal regulations of a section (by-laws of that section).

Article 2:42 Amendment of the articles of incorporation; proposal to dissolve the Association
- 1. The articles of incorporation of an Association (*'vereniging'*) can be amended only by a resolution of the General Meeting, convened by notice, in which is mentioned that an amendment of the articles of incorporation will be proposed at this meeting. The period of notice for such a meeting shall at least be seven days.
- 2. The persons who convened the General Meeting in order to vote on a proposal to amend the articles of incorporation, must deposit a copy of that proposal in order to enable the members of the Association (*'vereniging'*) to inspect it properly; the copy of the proposal must contain the proposed amendment to the letter; the copy of the proposal must be deposited for inspection at least five days prior to the meeting at a location suitable for this purpose, and it must remain at that location until the end of day on which the meeting is held. The different sections of the Association (*'vereniging'*) and the delegates referred to in **Article** 2:39 must have received the proposal at least fourteen days prior to the meeting, in which case the previous sentences of the present paragraph are not applicable.
- 3. The provisions of paragraph 1 and 2 do not apply if all members of the Association (*'vereniging'*) or, where appropriate, all delegates are present or represented at the General Meeting and the resolution to amend the articles or incorporation is passed unanimously at that meeting.
- 4. The provisions of paragraph 1 and 2 of the present **Article** and the provisions of the next **Article** apply accordingly to a resolution for the dissolution of the Association (*'vereniging'*).

Article 2:43 Formalities for the amendment of the articles of incorporation (and the dissolution of the Association)

- 1. Unless the articles of incorporation provide otherwise, a resolution to amend the articles of incorporation requires a majority of two thirds of the votes cast.
- 2. As far as the power (possibility) to amend the articles of incorporation has been excluded, such an amendment is nevertheless possible by means of a resolution passed by unanimous votes at a meeting where all members of the Association ('vereniging) or, where appropriate, all delegates are present or represented.
- 3. A provision in the articles of incorporation limiting the power (possibility) to amend one or more other provisions of those articles of incorporation, can be amended only with due observance of the same limitation.
- 4. A provision in the articles of incorporation excluding the power (possibility) to amend one or more other provisions of those articles of incorporation, can be amended only by means of a resolution passed by unanimous votes at a meeting where all members of the Association ('vereniging) or, where appropriate, all delegates are present or represented.
- 5. If the Association has full legal capacity, then an amendment of its articles of incorporation shall only take effect after a notarial deed has been drawn up of the amendment. The Directors are obliged to deposit a certified copy of the amendment and of the amended articles of incorporation at the office of the commercial register (Chamber of Commerce).
- 6. Where a copy of the articles of incorporation of an Association with limited legal capacity ('informal Association') has been deposited at the office of the commercial register (Chamber of Commerce) in accordance with **Article** 2:30, the Directors of such an Association are obliged to deposit a copy of the amendment and of the amended articles of incorporation at that office.

Article 2:44 Duties and powers of the Board of Directors
- 1. Subject to any restrictions under the articles of incorporation, the Board of Directors is charged with the administration and management of the Association (*'vereniging'*).
- 2. Only if this results from the articles of incorporation, the Board of Directors is empowered to resolve (decide) to enter into agreements for the acquisition, alienation (passage) and encumbrance of registered property, and to enter into agreements under which the Association (*'vereniging'*) engages itself as surety or joint and several co-debtor or through which it guarantees performance by a third person or engages itself to provide security for the debt of someone else. The articles of incorporation may limit this power or attach conditions to it. Such exclusions, limitations and conditions apply as well to the authority of the Board of Directors to represent the Association (*'vereniging'*) in performing the before mentioned juridical acts, unless the articles of incorporation provide otherwise.

Article 2:45 Authority to represent the Association
- 1. The Board of Directors represents the Association (*'vereniging'*) as far as the law does not provide the contrary.
- 2. The articles of incorporation may empower one or more Directors with the authority to represent the Association (*'vereniging'*). They may indicate that a Director is only allowed to represent the Association with the cooperation of one or more other persons [usually another Director].
- 3. The authority to represent the Association (*'vereniging'*), granted to the Board of Directors or a Director, either solely or jointly with others, is unlimited and unconditional as far as the law

does not provide the contrary. A legally permitted or prescribed limitation of or condition for the authority of representation may only be invoked by the Association (*'vereniging'*).
- 4. The articles of incorporation may also grant authority of representation to other persons than Directors.

Article 2:46 Rights and obligations stipulated by the Association for account of its members
As far as the articles of incorporation do not provide the contrary, the Association (*'vereniging'*) may stipulate rights on behalf of its members; to the extent that the articles of incorporation specifically grant this power to the Association (*'vereniging'*), the Association may enter into commitments and obligations for account of its members. The Association (*'vereniging'*) may claim performance of the rights stipulated on behalf of its members and recover damages related to these rights, unless the involved member opposes to this.

Article 2:47 Conflict of interests between the Association and a Director or Supervisory Director
In all situations in which the Association (*'vereniging'*) has a conflict of interest with one or more of its Directors or Supervisory Directors, the General Meeting may appoint one or more persons to represent the Association (*'vereniging'*).

Article 2:48 Financial statements and annual accounts
- 1. Within six months after the end of the accounting year, except when this period has been extended by the General Meeting, the Board of Directors reveals at the General Meeting an annual report on the course of events within the Association (*'vereniging'*) and on the policy conducted. It submits the balance sheet and the profit and loss account (income statement), added with notes, for approval to the General Meeting. These documents are signed by the Directors and Supervisory Directors; where the signature of one or more of them is missing, this shall be reported, mentioned as well the reason for this. After the expiration of the before mentioned period, each member of the Association (*'vereniging'*) may file a legal claim in court against all Directors to force them to comply with these obligations.
- 2. When the Association (*'vereniging'*) does not have a Supervisory Board, and no statement of an accountant as referred to in **Article** 2:391 paragraph 1 is submitted to the General Meeting with regard to the correctness of the documents meant in the second sentence of paragraph 1, the General Meeting shall for each accounting year appoint a committee of at least two persons who are not a member of the Board of Directors. The committee shall examine the documents referred to in the second sentence of paragraph 1, and shall report to the General Meeting on its findings. The Board of Directors shall provide all information which the committee requires for its investigation; it will display to the committee, upon request, all cash and valuables and it will allow the committee to inspect the books, records and other data carriers of the Association (*'vereniging'*).
- 3. An Association (*'vereniging'*) which conducts one or more enterprises that, pursuant to law, have to be registered in the commercial register, mentions in the profit and loss account (income statement) the net turnover of these enterprises.

Article 2:49 Annual accounts and annual report of an Association with a so called ‘large enterprise’

- 1. Annually, within six months after the end of the accounting year, except when this period has been extended with at the most five months by the General Meeting in view of particular circumstances, the Board of Directors of an Association (*'vereniging'*) as meant in **Article** 2:360, paragraph 3, draws up the annual accounts, and deposits these documents at the office of the Association (*'vereniging'*) for inspection by the members of the Association (*'vereniging'*). Within the same period, the Board of Directors also deposits the annual report for inspection by those members, unless **Article** 2:396, paragraph 7, or **Article** 2:403 applies to the Association (*'vereniging'*).
- 2. The annual accounts are signed by the Directors and the Supervisory Directors; where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this.
- 3. The annual accounts shall be adopted by the General Meeting, which is to be convened by the Board of Directors no later than one month after the end of the period referred to in paragraph 1. An adoption of the annual accounts does not implicate a discharge of the liability for the Directors or Supervisory Directors.
- 4. **Article** 2:48, paragraph 1, does not apply to an Association (*'vereniging'*) as meant in **Article** 2:360, paragraph 3. **Article** 2:48, paragraph 2, is applicable to such an Association (*'vereniging'*), on the understanding that the word ‘documents’ means the documents that have to be submitted pursuant to paragraph 1.
- 5. An Association (*'vereniging'*) as meant in **Article** 2:360, paragraph 3, may only recover a deficit from the statutory reserves as far is this is permitted by law.
- 6. Upon request, the Minister of Economic Affairs may, for compelling reasons, grant relief from the obligation to draw up, submit and adopt the annual accounts.

Article 2:50 Availability of the financial statements and annual accounts

An Association as meant in **Article** 2:360, paragraph 3, ensures that its drawn up annual accounts, the annual report and the information which has to be added pursuant to **Article** 2:392, paragraph 1, are available at its office as of the day on which the convening notice is given for a General Meeting for the adoption of the annual accounts. The members of the Association (*'vereniging'*) may inspect these documents there and may obtain a free copy thereof.

Article 2:50a Liability of Directors and Supervisory Directors in case of a bankruptcy of the Association

Articles 2:131, 2:138, 2:139, 2:149 and 2:150 shall apply accordingly in the event of a bankruptcy of an Association (*'vereniging'*) of which the articles of incorporation are embodied in a notarial deed and which is subject to corporation tax.

Article 2:51 Required registrations in case of a bankruptcy or an official moratorium on payment

In the event of a bankruptcy (‘faillissement’) or an official moratorium on payment (‘surséance van betaling’) of an Association (*'vereniging'*) that is registered in the commercial register, the

announcements which have to be published in the Dutch Gazette by virtue of the Bankruptcy Act, shall be reported also for registration to the keeper of the commercial register by the person who is charged with the publication of these announcements in the Dutch Gazette [i.e. by the bankruptcy liquidator or, respectively, the administrator appointed by the court under the moratorium].

Article 2:52 Written articles of incorporation required for a derogation from the statutory provisions of Title 2.2
As far as it is permitted to derogate from the statutory provisions of the present Title (Title 2.2), this can be done only be means of a written provision in the articles of incorporation.

Title 2.3 Cooperatives And Mutual Insurance Societies

Section 2.3.1 General provisions

Article 2:53 Definition of a 'Cooperative'
- 1. A Cooperative (*'coöperatie'*) is an Association*) (*'vereniging'*) formed by notarial deed as a Cooperative (*'coöperatie'*). According to its articles of incorporation it must have the purpose (objective) to provide for certain material needs of its members on the basis of contracts, other than insurance agreements, concluded with those members in the course of its business, which it conducts or causes to be conducted for this reason for the benefit of its members.
- 2. A Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) is an Association*) (*'vereniging'*) formed by notarial deed as a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*). According to its articles of incorporation it must have the purpose (objective) to conclude insurance agreements with its members in the course of its insurance business, which it conducts for this reason for the benefit of its members.
- 3. The articles of incorporation of a Cooperative (*'coöperatie'*) may allow the Cooperative to conclude the same kind of agreements with non-members as it concludes with its members; the same applies to the articles of incorporation of a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) in which any obligation of the members or former members to contribute to any deficits is excluded.
- 4. If a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) makes use of the possibility mentioned in the previous paragraph, then it may not do so to such extent that the agreements with its members are only of minor importance.

***)** Most provisions for Associations apply therefore as well to a Cooperative and Mutual Insurance Society (see **Article** 2:53a)

Article 2:53a Applicability of the provisions of Title 2.2 to Cooperatives and Mutual Insurance

Societies
The provisions of the previous Title (Title 2.2), with the exception of **Article** 2:26, paragraph 3, and **Article** 2:44, paragraph 2, apply as well to a Cooperative (*'coöperatie'*) and Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*), insofar the present Title (Title 2.3) does not provide a derogation therefrom.

Article 2:54 Formation of a Cooperative of Mutual Insurance Society
- 1. A Cooperative (*'coöperatie'*) and Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) are formed by means of a more-sided (multilateral) juridical act embodied in a notarial deed.
- 2. The name of a Cooperative (*'coöperatie'*) must include the word "Cooperative" (*'coöperatief'*) and that of a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) the word "mutual" (*'onderlinge'*) or "reciprocal" (*'wederkerige'*). The name of the legal person must contain at the end the abbreviation W.A., B.A or U.A. in conformity with what has been provided under **Article** 2:56 with regard to the liability of its members*).

***)** W.A. stands for statutory liability (*'wettelijke aansprakelijkheid'*)
B.A. stands for limited liability (*'beperkte aansprakelijkheid'*)
U.A. stands for exclusion of any liability (*'uitsluiting van aansprakelijkheid'*)

Article 2:54a [*repealed on 25.11.1988]*

Article 2:55 Liability of members and former members for deficits of the legal person
- 1. Those who were a member of the Cooperative (*'coöperatie'*) at the moment of its dissolution or less than one year prior to that moment, are towards the legal person liable for a deficit in accordance with the criteria set for this purpose in the articles of incorporation; where a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) has been dissolved as a result of its insolvency after it was declared bankrupt, the period of one year is not calculated from the day of the dissolution, but from the day of the declaration of bankruptcy. The articles of incorporation may provide for a liability period of more than one year.
- 2. Where the articles of incorporation do not provide criteria to determine the liability of the members, all members shall be liable for equal parts.
- 3. When it is not possible to recover a deficit from one or more members or former members in accordance with their liability, then the other members or former members shall be liable for the unrecovered part, each in proportion to his share of liability. This liability even exists when the liquidators have waived their right to recover the deficit from one or more members or former members on the ground that exercising this right would not lead to a benefit for the estate in liquidation. If the liquidation (winding up) is supervised by persons who have been charged with such supervision under law, then the liquidators may only waive the before mentioned right of recovery with the authorization of those persons.
- 4. The liable members and former members must immediately pay their share in the estimated deficit, as well as an increase of 50 % thereof or of such lesser amount as the liquidators regard

sufficient for a provisional coverage of the additional imputation of the recovery costs and of the shares of those who may not pay their part of the deficit.
- 5. A member or former member is not entitled to set off a debt imposed on him pursuant to the present Article.

Article 2:56 Exclusion or limitation of the obligation to contribute to a deficit
- 1. In derogation from what is specified in the previous Article, a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) may in its articles of incorporation exclude or limit to a maximum any obligation of its members or former members to contribute to a deficit of the legal person. The members may only invoke such exclusion or limitation if the legal person has added to the end of its name the abbreviation "U.A." (exclusion of liability), respectively, "B.A." (limited liability). A legal person to which the first sentence has not been applied, adds to the end of its name the abbreviation "W.A." (statutory liability)*).
- 2. The said legal persons are obliged to mention and use their full name [including the relevant abbreviations], except in telegrams and advertisements.

***)** U.A. stands for exclusion of any liability ('uitsluiting van aansprakelijkheid')
B.A. stands for limited liability ('beperkte aansprakelijkheid')
W.A. stands for statutory liability ('wettelijke aansprakelijkheid')

Article 2:57 Supervisory Board
- 1. The articles of incorporation of a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) may provide for a Supervisory Board. The Supervisory Board consists of one or more natural persons.
- 2. The Supervisory Board is responsible for exercising supervision over the administration and policies of the Board of Directors and over the general course of events within the legal person and the enterprise related to it. It provides assistance and advice to the Board of Directors. In the performance of their duties the Supervisory Directors are guided by the interests of the legal person and the enterprise related to it.
- 3. Unless the articles of incorporation provide otherwise, the Supervisory Board is empowered to suspend at any time any Director appointed by the General Meeting. The General Meeting may at any time lift such a suspension.
- 4. Except in a situation as referred to in **Article** 2:47, the Supervisory Board shall represent the legal person in all situations in which there is a conflict of interest (of the legal person) with one or more Directors other than in connection with the conclusion or amendment of contracts that are concluded in equal circumstances with all members (by the legal person). The articles of incorporation may, however, derogate from this provision.
- 5. The articles of incorporation may set additional provisions regarding the duties and powers of the Supervisory Board and its members.
- 6. Unless the articles of incorporation provide otherwise, the General Meeting may grant a salary to the Supervisory Directors for their work preformed in their capacity as member of the Supervisory Board.
- 7. Unless the articles of incorporation have granted the Supervisory Directors a right to vote, they shall, in their capacity as Supervisory Director, merely have an advisory vote at the General

Meeting.
- 8. The Board of Directors provides the Supervisory Board in time with the information it needs for the performance of its duties.

Article 2:57a Appointment of Supervisory Directors
- 1. **Article** 2:37 applies accordingly to the appointment of Supervisory Directors who were not already appointed under the notarial deed of incorporation, unless they are appointed pursuant to **Article** 2:63f.
- 2. Where a candidate is recommended or nominated for an appointment as Supervisory Director, his age and profession are mentioned, as well as the positions he holds or has held insofar these positions are of importance for the fulfilment of his duties as Supervisory Director. Mentioned as well are the legal persons of which he is already a Supervisory Director; if there are legal persons amongst them that belong to the same group, it is sufficient to mention that group. The reasons for recommendation and nomination will be substantiated.

Article 2:58 Annual accounts and annual report
- 1. Annually, within six months after the end of the accounting year, except when this period has been extended with at the most five months by the General Meeting in view of particular circumstances, the Board of Directors draws up the annual accounts, and deposits these documents at the office of the legal person for inspection by its members. Within the same period, the Board of Directors shall also deposit the annual report for inspection by its members, unless **Article** 2:396, paragraph 7, or **Article** 2:403 applies to the legal person. The annual accounts shall be adopted by the General Meeting, which is to be convened by the Board of Directors no later than one month after the end of the period referred to in the previous sentence. **Article** 2:48, paragraph 2, applies accordingly. An adoption of the annual accounts does not implicate a discharge of liability for the Directors or Supervisory Directors.
- 2. The drawn up annual accounts are signed by the Directors and the Supervisory Directors; where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this.
- 3. The legal person ensures that the drawn up annual accounts, the annual report and the information which has to be added pursuant to **Article** 2:392, paragraph 1, are available at its office as of the day on which the convening notice is given for a General Meeting for the adoption of the annual accounts. The members of the legal person may inspect these documents there and may obtain a free copy thereof.
- 4. A deficit may only be recovered from the statutory reserves as far is this is permitted by law.
- 5. Upon request, the Minister of Economic Affairs may, for compelling reasons, grant relief from the obligation to draw up, submit and adopt the annual accounts.

Article 2:59 Making a change in contracts concluded with the members
- 1. A resolution (decision) of one of the bodies of a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) cannot bring about any changes in the contracts which the Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) has concluded with its members in the course of its business, unless the

Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) has reserved this power explicitly in the to be changed contract itself. A reference in the to be changed contract to the legal person's articles of incorporation, internal regulations (by-laws), standard terms and conditions or similar documents, is not sufficient for this purpose.
- 2. A change made in accordance with the previous paragraph, may only be invoked by the Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) against a member who has been informed about that change in writing.

Article 2:60 Conditions for a resignation from membership
A Cooperative (*'coöperatie'*) may in its articles of incorporation subject a resignation from membership by its members to certain conditions, provided that these conditions are in conformity with the purpose and necessary implications of the Cooperative (*'coöperatie'*) and that the possibility to resign from membership is preserved. To the extent that such a condition goes beyond of what is permitted, it has no effect.

Article 2:61 Specific provisions for a Cooperative
Where the articles of incorporation of a Cooperative (*'coöperatie'*) do not entirely exclude any obligation of its members and former members to contribute to a deficit, the following provisions of the present **Article** shall apply as well to that Cooperative (*'coöperatie'*)
a. an application for membership must be made in writing. The applicant is informed in writing whether he is admitted or rejected as member. When he is admitted, he shall be informed as well of the number under which he is registered as member in the records of the Cooperative (*'coöperatie'*). Nevertheless, in order to prove the admission to membership, it is not necessary that there appears to be a written application and a written report as referred to in the previous sentence.
b. the documents with which the membership is requested, will be kept by the Board of Directors for a period of at least ten years. These documents, however, do not have to be kept insofar it concerns members whose membership may show from a dated statement in the records of the Cooperative (*'coöperatie'*) that is signed by the involved members themselves.
c. a termination of membership can only take place either by separate writing, or by a dated statement in the records of the Cooperative (*'coöperatie'*) that is signed by the involved member himself. The member who has terminated his membership, receives a written acknowledgement thereof from the Board of Directors. When this written acknowledgement is not given within fourteen days, the member is entitled to terminate his membership once again by bailiff's writ and charge the costs thereof to the Cooperative (*'coöperatie'*).
d. a copy of the membership list, certified by the Board of Directors, must be deposited at the office of the commercial register (Chamber of Commerce) at the occasion of the registration of the Cooperative (*'coöperatie'*) in that register. Within one month after the end of each accounting year, a written report of the changes which the membership list has shown in the course of the accounting year, shall be added by the Board of Directors to the membership list that already was deposited at the office of the commercial register; where the Chamber of Commerce requests so, a new membership list must be deposited.

Article 2:62 Specific provisions for a Mutual Insurance Society
The following provision of the present **Article** apply specifically to a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*):
a. a person who, as policy-holder, has a current insurance agreement with the Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) is by operation of law also a member of that Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*). It is possible to derogate from this provision if the Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*), according to its articles of incorporation, is allowed to insure policy-holders who are not a member.
b. unless the articles of incorporation provide otherwise, the membership which arises from an insurance agreement continues to exist until all insurance agreements of that member with the Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) have ended. Where the rights and obligations derived from such an insurance agreement are transferred or passed to another person, the membership, as far as it results from that agreement, passes as well to that other party, all except for derogating provisions in the articles of incorporation.
c. if the guarantee capital of a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) is divided into shares, Articles 2:79 up to and including 2:89, 2:90 up to and including 2:92, 2:95, 2:96, paragraph 1, 2:98 paragraph 1 and 6, and 2:98c, paragraph 1 and 2, shall apply accordingly.

Article 2:63 Prohibition to misuse the terms ‘Cooperative’, ‘mutual’ and ‘reciprocal’
- 1. It is prohibited for a natural or legal person who is not a Cooperative (‘coöperatie) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) to conduct business using the term "Cooperative" (*'coöperatief*'), "mutual" (*‘onderlinge’*) or "reciprocal" *(‘wederkerig’*).
- 2. In case of a violation of this prohibition, any Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) may claim in court that the offender refrains from using the prohibited term in the conduct of his business, on payment of a penalty for each violation of which the amount is to be set by court.

Section 2.3.2. The supervisory board of a large Cooperative and large Mutual Insurance Society

Article 2:63a Definition of ‘dependent company’
In this Section (Section 2.3.2), a 'dependent company' means:
a. a legal person to which the Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or one of its dependent companies has provided, for its own account, either solely or jointly, at least one half of the issued capital.
b. a commercial partnership of which an enterprise is registered in the commercial register and in which the Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) participates as a partner who is fully liable towards the creditors of that commercial partnership for all debts.

Article 2:63b Mandatory registrations at the commercial register; 'large'-criteria
- 1. A Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) to which paragraph 2 applies, must within two months after the date on which its General Meeting has adopted the annual accounts, file a declaration with the commercial register in which is stated that the Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) meets the requirements of paragraph 2. Until **Article** 2:63c becomes applicable, the Board of Directors mentions in all subsequent annual reports the moment on which that declaration was filed; if the declaration is removed from the commercial register, then this will be mentioned in the first annual report that is made after the removal.
- 2. The obligation to file a declaration as meant in paragraph 1, exists:
a. when the legal person's equity (total assets minus liabilities) according to the balance sheet with notes amounts up to at least a level set for this purpose by Royal Decree [as of 1 September 2000 this level is set at € 13,000,000];
b. when the legal person or a dependent company is obliged, pursuant to law, to establish a Works Council, and;
c. when the legal person and its dependent companies jointly employ on average at least one hundred employees in the Netherlands.
- 3. Not more than once every two years the level mentioned in paragraph 2, under point (a), is increased or decreased in proportion to the movements of a price index set by Order in Council and as of a date set by that Order in Council; it will be rounded to the nearest one million Euros. The level will not be re-established as long as the level, calculated on the basis of the price index without application of any rounding off, differs less than one million Euro from the last fixed level.
- 4. In paragraph 2, under point (b), the term 'equity' (total assets minus liabilities) means, as far as it is related to a limited partnership (*'commanditaire vennootschap'*): the total of the contribution which is made or still has to be made by limited partners in dependent companies that are a limited partnership themselves, as far as this does not lead to any double counting.

Article 2:63c Mandatory application of the statutory two-tier structure
- 1. Articles 2:63f up to and including 2:63j apply to a legal person with regard to which a declaration as referred to in **Article** 2:63b has been registered in the commercial register for three continuous years. This period is deemed not to be interrupted if a removal of the declaration, which had occurred wrongfully during that period, has been made undone.
- 2. The removal of the registration on the ground that the legal person no longer meets the requirements of **Article** 2:63b, paragraph 2, shall only end the applicability of Articles 2:63f up to and including 2:63j when three years have passed since that removal, without any obligation for the legal person to file such a declaration once again in the meantime.
- 3. The Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) brings its articles of incorporation in agreement with Articles 2:63f up to and including 2:63j, which must be accomplished at the latest on the date as of which these Articles become applicable pursuant to paragraph 1.

Article 2:63d Holding companies and dispensations
- 1. Articles 2:63f up to and including 2:63j do not apply to a legal person that limits its activities exclusively or almost exclusively to the provision of management and financing services to its dependent companies and to other legal persons in which itself or its dependent companies participate as referred to in **Article** 2:24c, provided that the employees of Dutch dependant companies are represented in a Works Council which has the powers meant in Articles 2:158 and 2:268.
- 2. The Minister of Justice may, after consultation of the Economic and Social Council (*'Sociaal-Economische Raad'* or *'SER'*), grant a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) relief from one or more obligations imposed by Articles 2:63f up to and including 2:63j. When such a relief is granted, conditions and other obligations may be attached to it. Such a relief may be amended or revoked.

Article 2:63e Voluntary application of the statutory two-tier structure
A Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) to which **Article** 2:63c does not apply, may in its articles of incorporation specify that Articles 2:63f up to and including 2:63j shall apply accordingly to the appointment and dismissal of its Supervisory Directors and to the responsibilities and powers of its Supervisory Board, provided that the Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or a dependent company has established a Works Council to which the provisions of the Works Council Act apply. Such a specification in the articles of incorporation loses its validity as soon as the Works Council no longer exists or the provisions of the Works Council Act no longer apply to that Works Council.

Article 2:63f Appointment of Supervisory Directors
- 1. A large Cooperative (*'coöperatie'*) and a large Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) must have a Supervisory Board.
- 2. The Supervisory Directors shall be appointed, except in a situation as referred to in paragraph 8, by the General Meeting upon a nomination by the Supervisory Board, as far as the appointment has not already been made under the articles of incorporation or prior to the moment on which the present **Article** became applicable to the legal person.
- 3. The Supervisory Board consists of at least three members [this must all be natural persons]. Where its number of members is less than three, the Supervisory Board shall, without delay, take measures to complement the number of members.
- 4. The General Meeting, the Works Council and the Board of Directors may recommend certain persons to the Supervisory Board to be nominated as Supervisory Director. The Supervisory Board shall inform them in time if, and for what reason, a vacancy in the Supervisory Board has to be filled.
- 5. With due observance of **Article** 2:57a, paragraph 2, the Supervisory Board shall announce the name of the nominated person to the Works Council and the General Meeting.
- 6. The General Meeting shall appoint the nominated person, unless the Works Council, within two months after the announcement, or the General Meeting itself in its first meeting after the two-months period, objects to the nomination:

a. on the ground that the provisions of paragraph 4, second sentence, or paragraph 5, have not been properly observed;
b. on the ground that it is to be expected that the nominated person is incapable to perform the duties of a Supervisory Director, or;
c. on the ground that it is to be expected that the Supervisory Board, after an appointment in agreement with the nomination, shall not be composed properly.
- 8. Despite of the objection of the Works Council, the nominated candidate shall be appointed if the Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal has declared this objection to be unfounded upon the request of a representative who has been designated for this purpose by the Supervisory Board. Where the General Meeting has made an objection or where the nominated candidate was not appointed at a meeting convened to this end, the Enterprise Chamber (*'Ondernemingskamer'*) shall appoint this candidate as Supervisory Director upon the request of the before mentioned representative, unless it regards the objection of the General Meeting to be valid.
- 9. A defence may be conducted by a representative designated for this purpose by the General Meeting or the Works Council that made the objection referred to in paragraph 6.
- 10. No appeal or legal action is available against the decision of the Enterprise Chamber (*'Ondernemingskamer'*). The Enterprise Chamber (*'Ondernemingskamer'*) is not able to give a decision on the costs of proceedings.
- 11. For the purposes of the present Article, by a ‘Works Council’ is understood the Works Council of the enterprise of the legal person or its dependent company. In the event that there are two or more Works Councils, then each of them has equal powers. Where a Central Works Council has been established for the involved enterprise or enterprises, the powers granted under the present **Article** to the Works Council shall belong to the Central Works Council. The Works Council shall not take a decision as meant in the present **Article** until it has discussed the matter at least once with the legal person.

Article 2:63g Appointment of Supervisory Directors when Supervisory Directors are absent
- 1. When there are no Supervisory Directors at all, the Works Council and the Board of Directors may recommend persons to the General Meeting to be appointed as Supervisory Director. The one who convenes the General Meeting, shall notify the Works Council and Board of Directors in time that the appointment of Supervisory Directors will be the subject of considerations at the meeting.
- 2. The appointment shall be effective unless the Works Council, within two months after it has received the announcement in which the name of the to be appointed person is stated in accordance with **Article** 2:63f, paragraph 5, has filed an objection with the legal person. Despite of this objection, the appointment shall take effect if the Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal has declared this objection to be unfounded upon the request of a representative who has been designated for this purpose by the General Meeting.
- 3. **Article** 2:63f, paragraph 10 and 11, shall apply accordingly.

Article 2:63h Incompatibility of positions
- 1. The position of Supervisory Director cannot be held by:

a. persons employed by the legal person;
b. persons employed by a dependent company of the legal person;
c. the Directors of and the persons employed by an employees' organization (labour union) which is regularly involved at determining the conditions of employment of the persons referred to under (a) and (b).
- 2. The articles of incorporation may provide, for a maximum of two thirds of the number of Supervisory Directors, that the Supervisory Directors are to be appointed from a group to which at least the members of the legal person belong.

Article 2:63i Resignation, dismissal and suspension
- 1. A Supervisory Director shall resign at the latest on the day on which he has been a Supervisory Director for four years since his last appointment. This period may be extended in the articles of incorporation up until the day of the first General Meeting after the expiration of the four-years period or up until the day of the first General Meeting after the day on which the present **Article** became applicable to the legal person.
- 2. The Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal may, upon request, dismiss a Supervisory Director for neglecting his duties or for other compelling reasons, or because of a severe change of circumstances as a result of which it reasonably cannot be expected of the legal person to accept that the Supervisory Director keeps his position. The request may be lodged by a representative designated for this purpose by the Board of Directors, the General Meeting or the Works Council. **Article** 2:63f, paragraph 11, applies accordingly.
- 3. A Supervisory Director can be suspended only by the Supervisory Board. The suspension expires by operation of law if no request as meant in paragraph 2 has been lodged with the Enterprise Chamber (*'Ondernemingskamer'*) within two months after the suspension took effect.

Article 2:63j Resolutions that need the approval of the Supervisory Board
- 1. The approval of the Supervisory Board is required for resolutions of the Board of Directors on:
a. the issuance of debentures (debt certificates) by the legal person;
b. the issuance of debentures (debt certificates) by a limited partnership (*'commanditaire vennootschap'*) or general partnership (*'vennootschap onder firma'*) of which the legal person is a fully liable partner;
c. the application for the admission of debentures (debts certificates) as meant under point (a) and (b) to a regulated market or multilateral trading facility as referred to in **Article** 1:1 of the Financial Supervision Act or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State, or on the application for a withdrawal of such admission;
d. the start or termination by the legal person or its dependent company of a long-lasting alliance (collaboration) with another legal person or commercial partnership, or the start or termination by the legal person or its dependent company as fully liable partner in a limited partnership (*'commanditaire vennootschap'*) or general partnership *('vennootschap onder firma'*), always only when such alliance (collaboration) or its termination is of fundamental importance for the legal person;
e. the acquisition of a participating interest with a value of at least one-quarter of the amount of

the legal person's equity (total assets minus liabilities), to be determined according to its balance sheet with explanatory notes, by the legal person itself or by a dependant company, in the capital of a Corporation (*'vennootschap'*), and on any significant increase or decrease of such participating interest;
f. investments which require an amount equal to one-quarter of the equity (total assets minus liability) of the legal person, to be determined according to its balance sheet and explanatory notes;
g. a proposal to amend the articles of incorporation of the legal person;
h. a proposal to dissolve the legal person;
i. a declaration of bankruptcy (*'faillissement'*) or an application for an official moratorium on payment (*'surséance van betaling'*) for the legal person itself;
j. the termination of the employment agreements of a substantial number of employees of the legal person or a dependent company, to be effectuated either simultaneously or within a short period of time;
k. a significant change in the conditions of employment of a substantial number of employees of the legal person or a dependent company.
- 2. The absence of the Supervisory Board's approval on a resolution as referred to in paragraph 1, does not affect the authority of representation of the Board of Directors or the Directors.
- 3. A resolution of the legal person as referred to in paragraph 1, under point (d), (e), (f), (j) and (k), shall always require some resolution of the Board of Directors [this to ensure that it is not possible to go around the approval of the Supervisory Board by delegating the power to pass those resolutions to other bodies of the legal person].

Section 2.3.3 Appeal

Article 2:63k Appeal: jurisdiction of the Rotterdam District Court
In derogation from **Article** 8:7 of the General Administrative Law Act, the District Court of Rotterdam has jurisdiction on appeals lodged against decisions to refuse, amend or withdraw the exemption, as well as against decisions to grant an exemption as far as conditions are attached to it or limitations have been imposed in it.

Title 2.4 Open Corporations (Public Limited Companies)

Section 2.4.1 General provisions

Article 2:64 Definition of an 'Open Corporation'; formation
- 1. An Open Corporation (*'naamloze vennootschap'*) is a legal person with an authorized capital divided in transferable shares. A shareholder is not personally liable for what is performed in the name of the Corporation and he is not obliged to contribute to the losses of the Corporation for more than what he has paid up or still has to pay up on his shares. At least one share is held by

another than, and not for account of, the Corporation or its subsidiaries.
- 2. The Corporation is formed (incorporated) by one or more persons by means of a notarial deed. The notarial deed of incorporation is signed by every founder (incorporator) and by everyone who according to this deed takes one or more shares.
- 3. The notarial deed of incorporation must have been executed within three months after the date on which the declaration of no objection was issued by the Minister of Justice, under the penalty of expiration of that declaration. Upon the request of any interested party, the Minister of Justice may extend this period for compelling reasons with at the most three months.

Article 2:65 Dutch language; written procuration
The notarial deed of incorporation of an Open Corporation (*'naamloze vennootschap'*) is executed in the Dutch language. A procuration (power of attorney) to cooperate in the execution of the notarial deed must be granted in writing.

Article 2:66 Content of the deed of incorporation
- 1. The notarial deed of incorporation must contain the articles of incorporation of the Open Corporation (*'naamloze vennootschap'*). The articles of incorporation contain the name, the seat and the purpose (objective) of the Open Corporation (*'naamloze vennootschap'*).
- 2. The name starts or ends with the words *"Naamloze Vennootschap"* (literally meaning: 'Nameless Corporation"***)**, either written in full, or abbreviated to "N.V.".
- 3. The seat must be located in the Netherlands.

***)** The word "Naamloos" ('Nameless') refers to the fact that an Open Corporation, contrary to a Closed Corporation, may not only issue registered shares, which in Dutch are called 'shares to name', but also shares to bearer of which the proprietor, seen from the point of view of the Corporation, is anonymous, i.e. not registered under any name in the register of shareholders or any other records of the Corporation, and therefore nameless.

Article 2:67 Content of the articles of incorporation
- 1. The articles of incorporation specify the amount of the authorized share capital and the number and the amount of the shares in Euros to at the most two decimal places. When there are different types (classes) of shares, then the articles of incorporation specify the number and the amount of each type (class). The notarial deed of incorporation specifies the amount of the issued share capital and of the paid up part thereof. When there are different types (classes) of shares, then the amounts of the issued share capital and paid up share capital are specified for each type (class). The notarial deed of incorporation specifies in addition for all persons who have taken shares at the formation (incorporation), the data referred to in **Article** 2:86, paragraph 2, under point (b) and (c), including the number and type (class) of the shares he has taken and the amount that he has paid up on these shares.
- 2. The authorized and issued share capital must amount to at least the minimum capital. The minimum capital is forty-five thousand Euros. This amount is raised by Order in Council if the laws of the European Communities order an increase of the issued share capital. For Open Corporations existing on the day before this increase enters into force, such increase shall only

become effective eighteen months after that day.
- 3. The paid up (called up) part of the issued share capital must amount to at least forty-five thousand Euros.
- 4. At least one fifth of the authorized share capital must have been issued.
- 5. An Open Corporation (*'naamloze vennootschap'*) which has come to existence before 1 January 2002 may specify the amount of its authorized share capital and the amount of the shares in guilders to at the most two decimal places.

Article 2:67a Conversion of amounts into Euros
- 1. If an Open Corporation (*'naamloze vennootschap'*), of which the articles of incorporation specify the amount of the authorized share capital and the amount of shares in guilders, converts these amounts into Euros, then the amount of the authorized share capital and of the paid up part thereof is calculated in accordance with the finally fixed conversion price as referred to in **Article** 109L, paragraph 4, of the Treaty on the European Union, rounded up to two decimal places. The rounded amount of each share in Euros may at the most be 15% higher or lower than the original nominal amount of the share in guilders. The total of the amounts of shares in Euros as meant in **Article** 2:67 shall represent the authorized share capital. The sum of the amounts of the issued shares and the paid up part thereof in Euros shall be the amount in Euros of the issued share capital and the paid up share capital. The notarial deed specifies the amount in Euros of the issued share capital and the paid up part thereof.
- 2. When, after a conversion as referred to in paragraph 1, the sum of the amounts of the issued shares is higher than the amount of the issued share capital as converted in accordance with the finally fixed conversion price as referred to in **Article** 109L, paragraph 4, of the Treaty on the European Union, then the difference will be charged to the distributable reserves or the reserves meant in **Article** 2:389 or 2:390. If these reserves are not sufficient, then the Corporation shall create a negative reserve to the amount of the difference that could not be charged to the distributable and non-distributable reserves. Until the difference has been written off from retained profits or from to be created reserves, the Corporation is not allowed to make a distribution as referred to in **Article** 2:105. By complying with the provisions of this paragraph the shares are deemed to be fully paid up.
- 3. When, after a conversion as referred to in paragraph 1, the sum of the amounts of the issued shares is lower than the amount of the issued share capital as converted in accordance with the finally fixed conversion price as referred to in **Article** 109L, paragraph 4, of the Treaty on the European Union, then the Corporation shall maintain a non-distributable reserve to the amount of the difference. **Article** 2:99 does not apply.

Article 2:67b Change of the amount of the shares in derogation from **Article** 2:67a
If the Corporation changes the amount of the shares in another way than specified in **Article** 2:67a, then such a change requires the approval of each group of shareholders whose rights are harmed as a result thereof. Where such a change leads to an entitlement to money or debt-claims, the total amount thereof may not exceed one tenth of the changed nominal amount of the shares.

Article 2:67c Denomination in guilders and the use of an equivalent amount in Euros

- 1. An Open Corporation (*'naamloze vennootschap'*) of which the articles of incorporation specify the authorized share capital and the amount of the shares in guilders, may use in its contacts with others the equivalent amount in Euros to at the most two decimal places, provided that, when doing so, it refers to the present Article. The use of such an equivalent has no legal effect.
- 2. Where an Open Corporation (*'naamloze vennootschap'*), of which the articles of incorporation specify the authorized share capital and the amount of the shares in guilders, after 1 January 2002 brings about a change in these articles to one or more provisions in which an amount is expresses in guilders, all amounts in the articles of incorporation must be converted into Euros. **Article** 2:67a and 2:67b shall apply in such an event.

Article 2:68 *[repealed on 01-07-2011]*

Article 2:69 Registration in the commercial register
- 1. The Directors are responsible for the registration of the Open Corporation (*'naamloze vennootschap'*) in the commercial register, and must deposit at the office of that register (Chamber of Commerce) an authentic extract of the notarial deed of incorporation and of the documents attached to it pursuant to **Article** 2:93a, 2:94 and 2:94a as well as a copy of the documents compiled pursuant to **Article** 2:94a, paragraph 4, last sentence. They must, at the same time, report to the keeper of the commercial register for registration the total of the real and estimated costs made or to be made for account of the Corporation in connection with its formation (incorporation).
- 2. The Directors are jointly and severally liable, in addition to the Open Corporation (*'naamloze vennootschap'*), for any juridical act performed during their directorship through which the Corporation has been committed (bound) in a period prior to the moment on which:
a. the application for the initial registration in the commercial register was lodged, together with the to be deposited extracts and copies;
b. the paid up share capital amounts at least the minimum capital required for the formation (incorporation) of an Open Corporation (*'naamloze vennootschap'*), and;
c. at least one quarter of the nominal value of the share capital issued at the formation (incorporation) has been paid up.
- 3. The liability referred to in paragraph 2, under point (b) and (c), does not apply if **Article** 2:94a, paragraph 4, last sentence, has been applied and the payments, necessary to comply with **Article** 2:67, paragraph 3, and **Article** 2:80, paragraph 1, have been called up on behalf of the Corporation immediately after the accountant certificate (auditor's report) was given.

Article 2:70 *[repealed on 01.01.1992]*

Article 2:71 Conversion of an Open Corporation into a legal person of a different type
- 1. When an Open Corporation (*'naamloze vennootschap'*) converts itself on the basis of **Article** 2:18 into an Association (*'vereniging'*), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*), each shareholder shall become a member, unless he has

claimed a compensation as referred to in paragraph 2.
- 2. **Article** 2:100 applies to a resolution for the conversion of the Open Corporation (*'naamloze vennootschap'*), unless the Open Corporation (*'naamloze vennootschap'*) is converted into a Closed Corporation (*'besloten vennootschap'*). After such a resolution any shareholder who has not given his consent to it, may claim compensation from the Corporation for the loss of his shares. Such a claim must be filed with the Corporation in writing, within one month after the Corporation has notified the shareholder that he may claim such a compensation. The notice is given in the same way as the convening notice for a General Meeting.
- 3. When no agreement can be reached, the compensation shall be assessed by one or more independent experts, to be appointed, upon the request of either party, by the District Court at the moment that the court's authorisation for a conversion is requested, or by the provisional relief judge of that court. Articles 2:351 and 2:352 shall be applicable.

Article 2:72 Conversion of a legal person of another type into an Open Corporation
- 1. When a Closed Corporation (*'besloten vennootschap'*) converts itself on the basis of **Article** 2:18 into an Open Corporation (*'naamloze vennootschap'*), a certificate of an accountant (auditor's report) as referred to in **Article** 2:393, paragraph 1, shall be attached to the notarial deed of conversion, from which shows that the equity (total assets minus liabilities) of the Corporation on a specific day within five months prior to the conversion in any event corresponded to the paid and called up share capital.
- 2. When another legal person than a Closed Corporation (*'besloten vennootschap'*) converts itself on the basis of **Article** 2:18 into an Open Corporation (*'naamloze vennootschap'*), the following documents must be attached to the notarial deed of conversion:
a. a certificate of an accountant (auditor's report) as referred to in **Article** 2:393, paragraph 1, indicating that the equity (total assets minus liabilities) of the Corporation on a specific day within five months prior to the conversion in any event equals the sum of the paid up part of the issued share capital as specified in the notarial deed of conversion; the value of what will be paid on the shares in the period after that day until at the latest a day immediately following the conversion may be added to that equity (total assets minus liabilities).
b. if the legal person has members: the written consent of each member whose shares are not fully paid up by means of a conversion of the reserves of that legal person;
c. if a foundation is converted: the required authorization of the court.
- 3. When an Association (*'vereniging'*), cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) converts itself on the basis of **Article** 2:18 into an Open Corporation (*'naamloze vennootschap'*), each member shall become a shareholder. The conversion cannot be made as long as a member still is able to terminate his membership by virtue of **Article** 2:36, paragraph 4.

Article 2:73 *[repealed on 01.09.1994]*

Article 2:74 Dissolution of an Open Corporation
- 1. Upon the request of the Public Prosecution Service, the District Court shall dissolve an Open Corporation (*'naamloze vennootschap'*) when that Corporation is no longer able to realize its

objective (purpose) due to a lack of assets, and the District Court may dissolve the Open Corporation (*'naamloze vennootschap'*) when that Corporation has ceased its activities through which it tried to realize its objective (purpose). The Public Prosecution Service informs the Chamber of Commerce in whose commercial register the Corporation is registered of its intention to file a request for the dissolution of that Corporation.
- 2. The District Court shall dissolve an Open Corporation (*'naamloze vennootschap'*) upon the request of the Public Prosecution Service if the Corporation's issued share capital or the paid up part thereof is less than the required minimum capital.
- 3. Before ordering the dissolution, the District Court may give the Corporation the opportunity to remove (repair) the legal defects or to convert itself into a Closed Corporation (*'besloten vennootschap'*), both to be accomplished within a specific period set by court.

Article 2:75 Mentioning of the name and domicile; mentioning of the issued share capital and the paid up part thereof
- 1. The full name of the Open Corporation (*'naamloze vennootschap'*) and its domicile (address) must appear clearly from all writings, printed documents and announcements which are issued by the Corporation or in which the Corporation is defined as a party to an act or event, all with the exception of telegrams and advertisements.
- 2. If the Open Corporation (*'naamloze vennootschap'*) makes mention of its (authorized) share capital, then it must mention in any event also the nominal amount of its issued share capital and how much of that issued share capital has been paid up.

Article 2:76 *[repealed on 25.11.1988]*

Article 2:76a Definition of an 'Investment Company with Variable Capital'
- 1. An 'Investment Company with Variable Capital' means an Open Corporation (*'naamloze vennootschap'*):
a. which has the exclusive purpose (objective) to invest its capital (assets) in such a way that the risks involved are spread in order to let its shareholders share in the return on the investments;
b. of which the Board of Directors, according to the articles of incorporation, is empowered to issue, acquire and dispose of shares in the Corporation's capital;
c. for which a license or a declaration for the placement under supervision for the issuance of its shares as meant in the Financial Supervision Act has been granted to a management company, and;
d. of which the articles of incorporation specify that the Corporation is an Investment Company with Variable Capital.
- 2. The Corporation reports to the keeper of the commercial register (Chamber of Commerce) and to the Netherlands Authority for the Financial Markets (AFM) that it is an "Investment Company with Variable Capital". These last words must be used clearly in all writings, printed documents and announcements which are issued by the investment company with variable capital or in which this company is defined as a party to an act or event, all with the exception of telegrams and advertisements.

Article 2:77 'Office of the commercial register'
Where in the present Title (Title 2.4) the office of the commercial register is mentioned, by 'commercial register' is understood the register kept by the Chamber of Commerce which is authorized to register the Corporation pursuant to **Article** 18, sixth and seventh paragraph, of the Commercial Register Act 2007.

Article 2:78 'Issued part of the authorized share capital'
Where the articles of incorporation refer to the holders of as much shares as jointly constitute a certain part of the authorized share capital of the Corporation, by 'capital' is understood the issued part of the authorized share capital, unless the contrary appears from the articles of incorporation.

Article 2:78a 'Body of the Corporation'
For the purpose of Articles 2:87, 2:96, 2:96a, 2:101, paragraph 6, and 2:129, by a 'body of the Corporation' is understood the General Meeting, the meeting of holders of shares of a particular type (class), the Board of Directors, the Supervisory Board and the joint meeting of the Board of Directors and the Supervisory Board.

Section 2.4.2 The shares

Article 2:79 Definition of 'shares' and 'fractional shares'
- 1. Shares are the parts into which the authorized capital of an Open Corporation (*'naamloze vennootschap'*) is divided according to its articles of incorporation.
- 2. Fractional shares are the parts into which the shares are or may be split according to the articles of incorporation of the Open Corporation (*'naamloze vennootschap'*).
- 3. The statutory provisions for shares and shareholders of the present Title (Title 2.4), shall apply accordingly to fractional shares and holders of fractional shares to the extent that the contrary does not appear from these provisions.

Article 2:80 Obligation to pay up the issued shares
- 1. On subscription for a share the nominal amount thereof must be paid to the Corporation and also, if the share is taken for a larger amount, the difference between those amounts. It is possible to stipulate that a proportion of the payable sum, not exceeding three fourths of the nominal amount, only has to be paid after the Corporation has called it in.
- 2. Persons who in the conduct of their business or professional practice are engaged in the issuance of shares for their own account, may be allowed, by agreement, to pay less than the nominal amount on the shares taken, provided that at least ninety-four percent of this lower amount is paid up in money, at the latest when the shares are taken.

- 3. A shareholder cannot entirely or partially be relieved from his obligation to pay up his share, except for what is provided in **Article** 2:99.
- 4. A shareholder and, in the situation referred to in **Article** 2:90, a former shareholder are not entitled to sett off a debt imposed on them pursuant to the present Article.

Article 2:80a Payment for allotted shares in (foreign) currency
- 1. The payment for an allotted share must be made in money to the extent that no other kind of contribution has been agreed upon.
- 2. Before or on the formation (incorporation) of the Corporation, a payment can be made only in foreign currency if the notarial deed of incorporation specifies that a payment in foreign currency is permitted; after the formation (incorporation), such a payment can only be made with the consent of the Open Corporation (*'naamloze vennootschap'*). Payment in a currency that is a unit of the Euro by virtue of **Article** 109L, fourth paragraph, of the Treaty on the European Union, is not regarded as a payment in foreign currency.
- 3. A payment in foreign currency will result in the performance of the obligation to pay up the shares to the extent that the paid up sum can be converted (exchanged) freely into Dutch currency. Decisive is the exchange rate on the day of payment or, if the payment was made more than one month before the formation (incorporation), on the day of formation (incorporation) or, after application of the next sentence, on the day meant therein. The Corporation may demand payment at an exchange rate on a fixed day, chosen within two months before the last day on which the payment must be made, provided that the shares or depository receipts for those shares will be admitted immediately after their issuance to a regulated market or multilateral trading facility as meant in **Article** 1:1 of the Financial Supervision Act for which a licence is granted in another Member State or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State.

Article 2:80b Contributions other than money
- 1. If another contribution than money has been agreed upon, then this contribution must be eligible for a valuation on the basis of economic standards. A right to claim the performance of work or services cannot be contributed.
- 2. A contribution other than money must be made immediately after the share is taken or after the day on which an additional payment, which may be made through a contribution other than money, must have been received by the Corporation or on which such contribution has been agreed upon.

Article 2:81 No other obligation than to pay up the nominal amount
It is not possible, not even by means of an amendment of the articles of incorporation, to impose on a shareholder, against his will, any other obligation than to pay up the nominal amount of his share.

Article 2:82 Registered shares (shares to name) and shares to bearer
- 1. The articles of incorporation specify whether the shares in the Corporation are registered

shares (shares to name) or shares to bearer.
2. If a share can be both, a registered share as well as a share to bearer, the Open Corporation (*'naamloze vennootschap'*) must issue, upon the request of the shareholder, one share to bearer for one fully paid up registered share or vice versa, as far as the articles of incorporation do not provide otherwise, and this against payment of at the most the cost price of the conversion.
- 3. Certificates of shares to bearer may only be issued to shareholders against payment of at least the full amount still payable on those shares, except for what is provided in **Article** 2:80, paragraph 2.
- 4. If shares to bearer are converted into registered shares by means of an amendment of the articles of incorporation, then the shareholder cannot exercise the rights attached to a share until he has surrendered the share certificate to the Corporation. This rule shall apply accordingly if holders of shares to bearer as a result of a merger or split up of the Corporation have become holders of registered shares, on the understanding that it is sufficient in such event to hand in the share certificate.

Article 2:83 Protection of third persons who afterwards have acquired a share in good faith
Towards someone who has acquired a share in good faith after it had been obtained by the subscriber to whom it was allotted initially, the Open Corporation (*'naamloze vennootschap')* is unable to prove that, where it concerns a share to bearer, this share is not fully paid up, or, where it concerns a registered share, that a smaller amount has been paid up on that share than the paid up amount mentioned by the Corporation on the share certificate related to that share.

Article 2:84 Power of the liquidator and bankruptcy liquidator
The liquidator of an Open Corporation (*'naamloze vennootschap'*) and, in the event of bankruptcy, the bankruptcy liquidator are empowered to call up and collect all due payments not yet made on allotted shares, no matter what the articles of incorporation may specify with regard to this.

Article 2:85 Register of shareholders
- 1. The Board of Directors of the Open Corporation (*'naamloze vennootschap'*) keeps a register in which the names and addresses of all holders of registered shares are recorded, and in which is mentioned as well the date on which they acquired their shares, the date of acknowledgement by the Corporation or of the official service on the Corporation, and the amount paid up on each share. In this register are recorded also the names and addresses of those who have a right of usufruct or pledge on the shares, with mention of the date on which they acquired their limited property right, the date of acknowledgment by the Corporation or of the official service on the Corporation, and the persons entitled to exercise the rights attached to these shares pursuant to **Article** 2:88, paragraph 2 and 4, and 2:89.
- 2. The register shall be updated regularly; it shall mention as well each granted relief from liability for not fully paid up shares.
- 3. The Board of Directors shall present to a shareholder, usufructuary or pledgee, upon request and free of charge, an extract from the register in respect of his entitlement to a share. If the share is encumbered with a usufruct or pledge, the extract mentions as well who is entitled to

exercise the rights referred to in **Article** 2:88, paragraph 2 and 4, and 2:89.
- 4. The Board of Directors shall deposit the register of shareholders at the office of the Corporation for inspection by its shareholders and by the usufructuaries and pledgees who are entitled to exercise the rights referred to in paragraph 4 of Articles 2:88 and 2:89. The preceding sentence shall not apply to the part of the register that is kept outside the Netherlands in compliance with laws or stock exchange rules applicable there. The data from the register about not fully paid up shares are available for inspection to everyone; a copy or extract of this information shall be provided against payment of at the most the cost price.

Article 2:86 Issuance and transfer of registered shares and limited property rights in such shares
- 1. The issuance and transfer of registered shares, other than those referred to in **Article** 2:86c, or the transfer of limited property rights in such shares requires a notarial deed to which the involved persons are a party, executed for this purpose in front of a Dutch notary. No separate notarial deed is required for the issuance of registered shares which are taken on the formation (incorporation) of the Open Corporation (*'naamloze vennootschap'*).
- 2. The notarial deed of issuance or transfer must specify:
a. the legal basis for the juridical act [i.e. for the issuance or transfer] and the way in which the share or the limited property right in a share has been acquired;
b. the name, forename, date of birth, place of birth, domicile (residence) and address of the natural persons who are a party to the notarial deed;
c. the type, name, domicile (seat) and address of the legal persons which are a party to the notarial deed;
d. the number and type (class) of shares to which the notarial deed relates, and;
e. the name, domicile (seat) and address of the Corporation that has issued the shares to which the juridical act relates.

Article 2:86a Effect of a transfer towards the Corporation and third persons
- 1. Where a registered share or a limited property right therein has been transferred in accordance with **Article** 2:86, paragraph 1, the transfer shall have legal effect as well towards the Corporation by operation of law. Except in the event that the Corporation itself is a party to the juridical act, the rights attached to the shares can be exercised only after the Corporation has acknowledged the juridical act upon a request of one of the parties, or after the notarial deed has been officially served on the Corporation in accordance with the provisions of **Article** 2:86b, or after the Corporation has acknowledged the juridical act of its own motion by means of a registration of the new shareholder or limited proprietor in the register of shareholders in the way referred to in paragraph 2.
- 2. Where the Corporation has become aware of a juridical act as referred to in paragraph 1, it may of its own motion, as long as no acknowledgement of the juridical act has been requested by one of the parties and no notarial deed has been officially served on the Corporation, acknowledge that juridical act by means of a registration of the person who has acquired the share or a limited property right therein in the register of shareholders. If it makes such a registration, it shall immediately notify the involved parties thereof by registered letter, with the request to submit a copy or extract as meant in **Article** 2:86b, paragraph 1, to the Corporation. After the Corporation has received such a copy or extract, it shall make a note on it in proof of

the acknowledgement, in the way as prescribed by **Article** 2:86b for such acknowledgement; the day of registration shall be noted as date of acknowledgement.
- 3. If a juridical act as meant in paragraph 1 has been performed which has not lead to a corresponding change in the register of shareholders, this juridical act cannot be invoked against the Corporation, nor against others who in good faith have regarded the person registered in the register of shareholders as the shareholder or proprietor of a limited property right in a share.

Article 2:86b Formal requirements for an acknowledgement by or an official service on the Corporation
- 1. Except in the situation as meant in **Article** 2:86a, paragraph 2, the acknowledgement shall take place in the notarial deed itself [by a declaration of acknowledgement of the Corporation in that deed] or on the basis of the submission of an authentic copy or extract of that notarial deed to the Corporation.
- 2. In the event of an acknowledgement based on the submission of an authentic copy or extract of the notarial deed, the Corporation shall place a dated declaration of acknowledgement on the submitted document.
- 3. An official service on the Corporation requires that an authentic copy or extract of the notarial deed is served by bailiff's writ on the Corporation.

Article 2:86c Transfer of registered shares in a Corporation whose shares are traded on the stock exchange
- 1. The following provisions of the present **Article** shall apply to the transfer of registered shares in an Open Corporation (*'naamloze vennootschap'*) whose shares (to bearer) or depositary receipts for shares are admitted to a regulated market or multilateral trading facility as meant in **Article** 1:1 of the Financial Supervision Act, or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State, or whose shares (to bearer) or depositary receipts for shares, as reasonably may be expected at the time of the juridical act (delivery of registered shares), will be admitted soon to such markets; the provisions of the present **Article** shall apply as well to the transfer of limited property rights in registered shares or depository receipts of a before meant Open Corporation (*'naamloze vennootschap'*).
- 2. The transfer of a registered share or the transfer of a limited property right in such a share requires a (notarial or private) deed, drawn up for this purpose, and in addition, except when the Corporation itself is a party to the juridical act, a written acknowledgement by the Corporation of the transfer. The acknowledgement takes place in the deed itself, or by a dated declaration of acknowledgment on the deed or on a copy or extract thereof signed by a notary or the alienating party (transferor), or in the manner provided for in paragraph 3. With an acknowledgement is equated an official service of the before mentioned deed, copy or extract on the Corporation. Where it concerns the transfer of not fully paid up shares, the acknowledgement can only take place when the date on which the (notarial or private) deed has been drawn up is fixed in such a way that it is certain that this is the correct date***)**.
- 3. Where a share certificate has been issued for a registered share, the articles of incorporation may in addition require that this share certificate is surrendered to the Corporation. This requirement does not apply if the share certificate is lost, stolen or destroyed, while it cannot be

replaced according to the articles of incorporation. If the share certificate is surrendered to the Corporation, the Corporation may acknowledge the transfer by placing a note on the share certificate from which such acknowledgement shows, or by replacement of the surrendered share certificate by a new share certificate which is put in the name of the acquiring party (transferee).
- 4. A pledge may be established also without an acknowledgement by or official service on the Corporation. In that event **Article** 3:239 of the Civil Code applies accordingly, in which case the acknowledgement by or the official service on the Corporation shall replace the notice referred to in paragraph 3 of that Article.

***)** In case of a notarial deed, drawn up by a notary, the deed will always include such a fixed date. The same applies when it concerns a private deed, drawn up by the parties themselves, which is registered by the Tax Authorities, in the sense that it contains a stamp of the date on which it was received by these Authorities.

Article 2:86d Duplicate of a certificate of a share to bearer
- 1. The holder of a certificate of a share to bearer may request the Corporation to provide him a duplicate of a lost share certificate.
- 2. The holder must make plausible that the share certificate is lost, indicating the characteristics of the relevant share certificate.
- 3. The Corporation shall publish the request for a duplicate in the price list of a regulated market or multilateral trading facility as specified in **Article** 1:1 of the Financial Supervision Act, or in the price list of a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State or, if the shares are not listed therein, in a daily newspaper which is spread nationwide.
- 4. Any interested party may, within six weeks from the day after the publication of the request, lodge a petition with the District Court in order to object against the provision of the duplicate.
- 5. If no objection is made in time or if the objection is denied in a final and binding court order, then de duplicate will be provided against payment of its cost price. The duplicate shall replace the lost share certificate. After the duplicate has been handed over, no rights can be derived from the share certificate which has been replaced.
- 6. The present **Article** does not apply insofar the articles of incorporation of the Open Corporation (*'naamloze vennootschap'*) enclose a system to replace lost share certificates.

Article 2:87 Restrictions on the transferability of shares
- 1. The articles of incorporation may restrict the transferability of registered shares. This restriction may not be such that a transfer is impossible or extremely difficult. The same applies to the apportionment of shares which belong to a community of property. A transfer in violation of a restriction is invalid.
- 2. If the articles of incorporation subject a transfer of shares to the approval of a body of the Corporation or of a third party, the approval is deemed to have been granted if no decision is given on a request for such an approval within a period set for this purpose in the articles of incorporation not exceeding three months, or if the shareholder, at the moment on which he received the rejection of his request for an approval, has not at the same time received a list of one or more possible candidates who are willing to buy the shares to which his request relates.

The arrangement for the sale of shares to such possible candidates must be such that the shareholder, who demands so, obtains a price equal to the value of the share or shares to be transferred, as valuated by one or more independent experts.
- 3. Where the articles of incorporation provide that a shareholder, who wants to dispose of one or more of his shares, must offer those shares first to his co-shareholders or to a third party to be appointed by a body of the Corporation, the arrangement must be such that the shareholder, who demands so, obtains a price equal to the value of the share or shares to be transferred, as valuated by one or more independent experts. The shareholder remains entitled to withdraw (revoke) his offer, provided that this is done within one month after he has obtained knowledge of the candidates to whom he may sell all the shares to which his offer relates, and at what price. If it has been ascertained that not all of the shares to which the offer relates will be bought (by those candidates), the offeror may freely transfer all shares during a period set in the articles of incorporation of at least three months, to be calculated from the moment of that ascertainment.
- 4. The Corporation itself may only be a candidate as referred to in paragraph 2 and 3 with the consent of the shareholder.
- 5. Provisions in the articles of incorporation regarding the transferability of shares shall not apply if the shareholder by law is required to transfer his share to a previous shareholder.

Article 2:87a Obligation of a shareholder to offer and transfer his shares to someone else
- 1. The articles of incorporation may provide that the shareholder, in specific situations defined for this purpose in the articles of incorporation, has the obligation to offer and transfer his shares to someone else. The articles of incorporation may specify in such event that, as long as the shareholder does not comply with his obligation to offer or transfer his shares to someone else, his right to vote, to addend the General Meeting and to receive distributions will be suspended.
- 2. The articles of incorporation may provide that, if a shareholder has not complied within a reasonable period with his obligation to offer or transfer his shares as imposed on him by those articles, the Corporation will be irrevocably authorized to offer and transfer the shares in his name to someone else. When there are no candidates to whom the shareholder could transfer his shares in accordance with the arrangement in the articles of incorporation, the Corporation shall not be authorized to represent the shareholder in the before meant way, and the shareholder shall be released irrevocably from the provisions meant in paragraph 1.
- 3. The arrangement must be such that the shareholder, who demands so, obtains a price equal to the value of his share or shares, as valuated by one or more independent experts.

Article 2:87b Quality requirements for a shareholder
- 1. The articles of incorporation may provide that the right of a shareholder to vote, to addend the General Meeting and to receive distributions will be suspended if this shareholder does not or no longer meets one or more specific requirements defined in the articles of incorporation.
- 2. If the shareholder is unable to exercise one or more of the rights referred to in paragraph 1 because he does not or no longer meets one or more specific requirements defined in the articles of incorporation, and he is not obliged to offer and transfer his shares to someone else, then he will be released irrevocably from these requirements when the Corporation has not put forward, within three months after the shareholder has made a request to this end, one or more candidates to whom the shareholder may transfer all of his shares in accordance with an arrangement set for

this purpose in the articles of incorporation.
- 3. This arrangement must be such that the shareholder, who demands so, obtains a price equal to the value of his share or shares, as valuated by one or more independent experts.

Article 2:88 Encumbrance of shares with a usufruct
- 1. The shareholder's right to encumber his share with a usufruct cannot be excluded or limited in the articles of incorporation.
- 2. The shareholder has the right to vote on shares encumbered with a usufruct.
- 3. Notwithstanding the foregoing paragraph, the right to vote belongs to the usufructuary if this has been provided when the usufruct was established, and the usufructuary is a person to whom the shares may be transferred freely. If the usufructuary is not a person to whom the shares may be transferred freely, then he shall only have the right to vote if this has been provided when the usufruct was established and both, that provision in the notarial deed of establishment and – in case of a transfer of the usufruct – the passage (transfer) of the right to vote, have been approved by the body of the Corporation that is designated in the articles of incorporation to approve an intended transfer of shares, or – if such body has not been designated in the articles of incorporation - by the General Meeting. It is possible to derogate in the articles of incorporation from the previous sentences of this paragraph. Also in the event of a usufruct as meant in **Article** 4:19 and 4:21 of the Civil Code, the right to vote shall belong to the usufructuary, unless something else has been provided when the usufruct was established, either by the parties themselves or by the Subdistrict Court on the basis of **Article** 4:23, paragraph 4, of the Civil Code.
- 4. The shareholder without a right to vote, and the usufructuary with a right to vote, have the rights which the law provides to holders of depository receipts issued for shares in collaboration with the Corporation***)**. The usufructuary without a right to vote has these rights, unless they have been denied to him when the usufruct was established or in the articles of incorporation of the Corporation.
- 5. If the articles of incorporation of the Corporation do not provide otherwise, the shareholder also has the rights arising from a share with respect to the acquisition of shares, on the understanding that the value of those rights must be compensated to the usufructuary insofar he is entitled thereto under the usufruct****)**.

***)** See for these rights in particular the Articles 2:102, 2:110, 2:113, 2:114, 2:117, 2:329, 2:346 and 3:259.
****)** The usufructuary is entitled to the fruits (benefits) of the shares, like dividends. However, when such dividends are distributed in the form of issued additional shares (stock dividend), these shares shall belong to the shareholder (unless the articles of incorporation provide otherwise). But in that event the shareholder has the obligation to pay the value of those shares to the usufructuary.

Article 2:89 Encumbrance of shares with a pledge
- 1. The shareholder's right to encumber his share to bearer with a pledge cannot be excluded or limited in the articles of incorporation. Registered shares may be encumbered with a pledge as far as the articles of incorporation do not provide otherwise.

- 2. The shareholder has the right to vote on pledged shares.
- 3. Notwithstanding the foregoing paragraph, the right to vote belongs to the pledgee if this has been provided when the pledge was established, and the pledgee is a person to whom the shares may be transferred freely. If the pledgee is not a person to whom the shares may be transferred freely, then he shall only have the right to vote if this has been provided when the pledge was established, and this provision in the notarial deed of establishment has been approved by the body of the Corporation that is designated in the articles of incorporation to approve an intended transfer of shares, or – if such body has not been designated in the articles of incorporation - by the General Meeting. When someone else acquires the rights of the pledgee, he shall only have the right to vote if the passage (transfer) of this right to him has been approved by the body of the Corporation meant in the previous sentence or, in the absence of such a body, by the General Meeting. It is possible to derogate in the articles of incorporation from the three previous sentences.
- 4. The shareholder without a right to vote, and the pledgee with a right to vote, have the rights which the law provides to holders of depository receipts issued for shares in collaboration with the Corporation***)**. The pledgee without a right to vote has these rights, unless they have been denied to him when the pledge was established or when the pledge passed to someone else, or when they have been denied to him in the articles of incorporation of the Corporation.
- 5. The provisions in the articles of incorporation regarding the passage and transfer of shares shall apply to the passage and transfer of shares by the pledgee and to an acquisition of the pledged shares by the pledgee himself, on the understanding that the pledgee exercises all rights in respect of the passage and transfer of shares belonging to the shareholder, and that he performs all of the shareholder's obligations in connection therewith.
- 6. If a pledge has been established in accordance with **Article** 2:86, paragraph 4, then the rights under that **Article** shall only belong to the pledgee after the pledge has been acknowledged by the Corporation or has been officially served on the Corporation.

***)** See for these rights in particular the Articles 2:102, 2:110, 2:113, 2:114, 2:117, 2:329,, 2:346 and 3:259.

Article 2:89a Corporation itself acquires a pledge on its own shares
- 1. An Open Corporation ('naamloze vennootschap') may only acquire a pledge on its own shares (i.e. shares it has issued itself) or on depositary receipts issued by it for such shares, when:
a. the to be pledged shares are fully paid up;
b. the nominal amount of the to be pledged own shares and depository receipts, together with the nominal amount of the own shares and depository receipts that are already held by the Corporation or on which the Corporation already has acquired a pledge, do not amount to more than one tenth of the issued share capital, and;
c. the General Meeting has approved the pledge agreement.
- 2. The present **Article** does not apply when a financial enterprise as meant in the Financial Supervision Act, that is permitted to conduct a banking business in the Netherlands pursuant to that Act, acquires in the normal course of its business a pledge on (its own) shares or depository receipts. For the purpose of **Article** 2:98, paragraph 2, and 2:98a, such shares and depository receipts are not taken into consideration.

Article 2:90 Liability of previous shareholders
- 1. After a transfer or apportionment of a not fully paid up share, each of the previous shareholders remains jointly and severally liable towards the Open Corporation (*'naamloze vennootschap'*) for the amounts that still have to be paid up on the share. The Board of Directors may, jointly with the Supervisory Board, release a previous shareholder from any further liability by means of an authentic or registered private deed; in such case, however, the shareholder remains liable for amounts which have to be paid on the share on account of an additional call up made within one year after the day on which the authentic deed was executed or, respectively, on which the private deed was registered.
- 2. If a previous shareholder makes a payment to the Corporation, he acquires the rights which the Corporation could exercise against the previous shareholders.

Article 2:91 *[repealed on 01.01.1992]*

Article 2:91a Information duty when a shareholder holds the entire share capital of the Corporation
- 1. The holder of shares to bearer who has acquired all shares in the capital of the Corporation, informs the Corporation thereof in writing within eight days after his last acquisition.
- 2. The holder of shares to bearer who no longer holds all shares in the capital of the Corporation because a third person has acquired one or more of his shares, informs the Corporation thereof in writing within eight days after the moment on which he no longer holds all shares. If the holder of all shares dies or ceases to exist as a result of a merger or split up, the acquiring parties inform the Corporation thereof in writing within one month after the death, respectively, the merger or split up.
- 3. If all shares in the capital of the Corporation belong to a marital community of property or to a community of property of a registered partnership, then for the purpose of the present **Article** the Corporation is deemed to have one single shareholder, while each of the co-proprietors has the obligation to inform the Corporation as meant in the present Article.
- 4. For the purpose of the present Article, shares held by the Corporation or its subsidiaries are not taken into account.

Article 2:92 Equal rights for shareholders (and holders of depository receipts)
- 1. Insofar the articles of incorporation do not provide otherwise, all rights and obligations attached to shares are equal in proportion to their nominal amount.
- 2. The Open Corporation (*'naamloze vennootschap'*) shall treat the shareholders, respectively, the holders of depository receipts who are in the same position, in the same way.
- 3. The articles of incorporation may provide that particular rights in respect of exercising control in the Corporation, as specified in the articles of incorporation, are attached to shares of a certain type (class).

Article 2:92a Buy out of minority shareholders

- 1. The person who, as a shareholder, has provided for his own account at least 95% of the issued share capital of the Open Corporation (*'naamloze vennootschap'*), may file a legal claim against the other shareholders to demand a transfer of their shares to him (the plaintiff). The same applies if two or more group companies together have provided this part of the issued share capital and they jointly file a legal claim to demand a transfer of the shares to one of them.
- 2. The Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal shall decide in first instance on a legal claim as referred to in the previous paragraph. Only an appeal in cassation is available against its decision.
- 3. If one or more of the defendants are in default of appearance, the court must of its own motion examine whether the plaintiff or plaintiffs meet the requirements set out in paragraph 1.
- 4. The court shall reject the legal claim in favour of all defendants, if one of the defendants, despite the compensation, would suffer a serious material loss as a result of the transfer*), or if one of the defendants holds a share to which, according to the articles of incorporation, particular rights are attached in respect of the exercise of control in the Corporation, or if the plaintiff towards one of the defendants has waived his right to file the before meant legal claim.
- 5. If the court finds that paragraph 1 and 4 do not prevent the awarding of the legal claim, it may order that one or three experts make a report about the value of the to be transferred shares. The first three sentences of **Article** 2:350, paragraph 3, and Articles 2:351 and 2:352 shall apply. The court shall determine the price of the to be transferred shares on the basis of their value on a specific day set by the court. As long as and to the extent that the fixed price has not been paid, this price will be raised with an interest, equal to the statutory interest, running as of that day until the day of transfer; distributions on the shares that have been made payable during that period, shall be used, on the pay day, for a partial payment of the price.
- 6. When the court awards the legal claim, it shall order the party who filed the legal claim to acquire the shares to pay the fixed price with interest to those to whom these shares belong or will belong [like heirs or buyers] against delivery by those persons of the unencumbered shares. The court decides on the costs of proceedings as it regards appropriate. No costs of proceedings can be imposed on a defendant who is in default of appearance.
- 7. When the judicial decision to transfer the shares has become final and binding, the party who filed the legal claim to acquire the shares shall inform the holders of the to be transferred shares, of whom he knows the address, in writing about the day and place of payment and about the price that will be paid. He shall publish this information also in a national daily newspaper, unless all relevant addresses are known to him.
- 8. The party who filed the legal claim to acquire the shares is always able to release himself from the obligations referred to in paragraphs 6 and 7, by depositing the fixed price, as determined for all of the to be transferred shares, including the accrued interest, with the Ministry of Justice, making notice at the same time of the usufructs, pledges and seizures with which the involved shares, to his knowledge, are encumbered. As a result of this last notification a seizure attached to the shares passes over (will become attached) to the right to receive payment of the deposited amounts. As a result of the before mentioned deposit, the shares will pass unencumbered to the party who filed the legal claim to acquire them, whereas a possible usufruct or pledge on the shares passes over to (shall become established on) the right to receive payment of the deposited amounts. No rights against the Corporation can be derived from distributions which have been made payable on share certificates and dividend warrants after the shares have passed to the party who filed the legal claim to acquire them. The acquiring party

shall, at that moment, give notice of the deposit made with the Ministry of Justice and of the price for each share in the way meant in paragraph 7.

***)** For instance when the Corporation has engaged itself towards one of the defendants not to compete with his business as long as he is a shareholder of the Corporation, or when one of the defendants, if he should transfer his block of shares, would have to pay Income Tax because he had a so called 'serious interest' in the share capital over the last five years (a substantial interest is involved if a natural person – whether or not together with his partner – own at least 5% of the shares, share options or profit-sharing certificates in an Open Corporation (*'naamloze vennootschap'*) or Closed Corporation ('besloten vennootschap') or in a cooperative; in that situation the income from a substantial interest may be subject to 25% income tax).

Section 2.4.3 The capital of an Open Corporation

Article 2:93 Juridical acts performed in the name of a still to be formed Open Corporation
- 1. It is possible to perform juridical acts in the name of an Open Corporation (*'naamloze vennootschap'*) which still has to be formed (incorporated); from such juridical acts, however, can only arise rights and obligations for the Corporation when it has ratified these juridical acts after its formation (incorporation), either explicitly or tacitly, or when it has become engaged (bound) due to paragraph 4.
- 2. The persons who have performed a juridical act in the name of a still to be formed Corporation, are jointly and severally liable for that act until the Corporation has ratified it after its formation (incorporation), unless the contrary has been stipulated explicitly in respect of that juridical act.
- 3. If the Corporation has ratified the juridical act but fails to perform the obligations which arise from it, then the persons who have acted in the name of the still to be formed Corporation are jointly and severally liable for the damage which a third person suffers as a result, if they knew or reasonably could have known that the Corporation could not comply with these obligations, all without prejudice to any possible liability of the Directors on account of a ratification. The knowledge that the Corporation could not comply with its obligations, is presumed to be present when the Corporation is declared bankrupt within one year after its formation (incorporation).
- 4. In the notarial deed of incorporation the founders (incorporators) can only engage (bind) the Corporation directly to the following juridical acts: the issuance of shares, the acceptance of contributions paid up on those shares, the appointment of Directors, the appointment of Supervisory Directors and the performance of juridical acts as meant in **Article** 2:94, paragraph 1***)**. If a founder (incorporator) has observed insufficient diligence in respect thereof, then Articles 2:9 and 2:138 shall apply accordingly.

***)** In the notarial deed of incorporation the founders usually also ratify explicitly, in the name of the formed legal person, all juridical acts that have been performed prior to that moment in the name and on behalf of the still to be formed legal person.

Article 2:93a Bank declaration
- 1. If money is paid up on shares prior to or at the formation (incorporation), then one or more declarations must be attached to the notarial deed of incorporation, indicating that the amounts which will be paid to the Corporation for shares to be issued upon its formation (incorporation):
a. will be at the disposal of the Open Corporation (*'naamloze vennootschap'*) immediately after its formation (incorporation), or;
b. remained at one single moment, not more than five months prior to the formation (incorporation), on a separate account which, after the formation (incorporation), will be exclusively at the disposal of the Open Corporation (*'naamloze vennootschap'*), provided that the Open Corporation (*'naamloze vennootschap'*) accepts these payments in the notarial deed of incorporation.
- 2. If a payment is made in foreign currency, then the declaration must show which amount could be converted freely into Dutch currency on a day of which the exchange rate was decisive for the obligation to pay up the shares as specified in **Article** 2:80a, paragraph 3.
- 3. A declaration as referred to in paragraph 1 may be issued only by a financial enterprise as meant in the Financial Supervision Act, that is permitted to conduct a banking business in the European Union or in a State which is a party to the Agreement on the European Economic Area. The declaration may be issued only to a notary.
- 4. Where, prior to the formation (incorporation), amounts have been withdrawn from the account meant in paragraph 1, under point (b), the founders (incorporators) are jointly and severally liable towards the Corporation for the reimbursement of those amounts, until the Corporation has explicitly ratified the withdrawals.
- 5. The notary must immediately notify the bank, from which he received the declaration, of the formation (incorporation). When the formation (incorporation) is cancelled, he must return the declaration to that bank.
- 6. Where, after the formation (incorporation), a payment has been made in foreign currency, the Corporation shall deposit, within two weeks after that payment, a declaration as referred to in paragraph 2 of a bank meant in paragraph 3 at the office of the commercial register.

Article 2:94 Juridical acts that may be burdensome for the Open Corporation
- 1. The following juridical acts must be included in full either in the notarial deed of incorporation itself, or in an original document or a certified extract thereof attached to that deed and to which the notarial deed of incorporation refers:
a. juridical acts performed in connection with the subscription for shares that impose special obligations on the Open Corporation (*'naamloze vennootschap'*);
b. juridical acts performed in connection with the acquisition of shares on another basis than on which the public may participate in the share capital of the Open Corporation (*'naamloze vennootschap'*);
c. juridical acts performed with the intention to provide some advantage to a founder of the Open Corporation (*'naamloze vennootschap'*) or to a third person involved at its formation (incorporation);
d. juridical acts performed to bring in another contribution than money.
If the previous sentence has not been observed, then the before mentioned juridical acts cannot impose any obligations on the Corporation, nor can they grant any rights to the Corporation.

- 2. After the formation (incorporation), the juridical acts meant in the previous paragraph may only be performed without the approval of the General Meeting if and to the extent that the articles of incorporation explicitly have empowered the Board of Directors to perform such juridical acts.
- 3. The agreements referred to in **Article** 2:80, paragraph 2, are excluded from what is provided in the present Article.

Article 2:94a Valuation of a contribution in kind made to the Corporation upon its formation
- 1. If, at the formation (incorporation), another contribution than money has been agreed as consideration for allotted shares, then the founders (incorporators) must make a description of what has been contributed, with mention of the value attributed to the contributed assets and of the valuation methods used. These methods must be in accordance with generally accepted valuation standards. The description must relate to the condition (state) of what has been contributed on a day not more than six months prior to the formation (incorporation). The description must be signed by all founders (incorporators) and must be attached to the notarial deed of incorporation.
- 2. An auditor (accountant) as meant in **Article** 2:393, paragraph 1, must issue an audit report with regard to the description of the contributions, which report will be attached to the notarial deed of incorporation. In this report the auditor (accountant) states that, according to generally accepted valuation standards, the value of what has been contributed equals at least the amount in money that must be paid up for the allotted shares. If it has become known that the value has decreased considerably after the moment on which the description was made, then a second audit report is required.
- 3. The description and the audit report are not required if this has been provided in the articles of incorporation in respect of:
a. contributions existing of transferable securities (stock market shares) or money market instruments as referred to in **Article** 1:1 of the Financial Supervision Act, provided that these transferable securities (stock market shares) and money market instruments are valuated at the weighted average price at which they have been traded on a regulated market as meant in **Article** 1:1 of the Financial Supervision Act during a period of three months prior to the effective date of contribution;
b. contributions other than money, not being transferable securities (stock market shares) or instruments as referred to in point (a), that have been valuated by an independent person who, according to his education and work experience, is an expert in making such valuations, provided that his expert valuation is made in accordance with generally accepted valuation standards, and that the value of what is contributed is assessed on a day not more than six months prior to the effective date of contribution.
c. contributions other than money, not being transferable securities (stock market shares) or instruments as referred to in point (a), of which the value is derived from annual accounts adopted for the last accounting year prior to the year of contribution, and which have been subject to an audit in accordance with Directive 2006/43/EC of the European Parliament and Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC, and repealing Council Directive 84/253/EEC.
- 4. If, prior to the formation (incorporation), it has become known that the valuation price,

which was used as basis for the calculation, was affected by exceptional circumstances due to which the value of the contributed securities (stock market shares) or instruments as referred to in paragraph 3, under point (a), will be significantly different on the effective date of contribution, or if, prior to the formation (incorporation), it has become known that the value of the contributions meant in paragraph 3, under point (b) or (c), will be significantly different on the effective date of contribution on account of new extraordinary circumstances, then the founders (incorporators) must make a description after all, which is to be signed by all founders (incorporators), and with regard to which an audit report as referred to in paragraph 2 has to be issued. The description and audit report must be attached to the notarial deed of incorporation. Where the contribution is made after the formation (incorporation), while it has become known in the period between the formation (incorporation) and the effective date of contribution that circumstances as meant in the first sentence have occurred, the Board of Directors must make a description after all, with regard to which an audit report as referred to in paragraph 2 has to be issued.

- 5. If, at the formation (incorporation), another contribution than money has been agreed as consideration for allotted shares, and paragraph 3 has been applied, then the Corporation shall deposit, within one month after the effective date of contribution, a declaration of the founders (incorporators) at the office of the commercial register; this declaration must contain a description of the contribution, with mention of the value attributed to the contributed assets and of the valuation methods used. In this declaration must be mentioned also that the attributed value at least equals the amount in money that must be paid up for the allotted shares, and that no new extraordinary circumstances have occurred in the period between the valuation day and the effective date of contribution. The declaration must be signed by all founders (incorporators); if the signature of one or more of them is missing, this will be noted on the declaration, with mention of the reason for this.

- 6. The description and auditors report are not required if the following conditions are met***)**:

a. all founders (incorporators) have decided to renounce the making of a description by experts;

b. one or more legal persons to which Title 2.9 applies or which meet, according to the applicable law, the requirements of the Fourth Council Directive of the European Communities on Company Law, shall take all of the to be issued shares for a consideration (a to be made contribution) other than money;

c. each contributing legal person has, at the moment of contribution, non-distributable reserves at its disposal to the amount of the nominal value of the shares it will take; insofar this is necessary, the Board of Directors must have separated these non-distributable reserves from the distributable reserves;

d. each contributing legal person declares that it will place at the disposal of the Open Corporation (*'naamloze vennootschap'*) at least the nominal value of the shares it will take, in order to enable the Corporation to pay off the debt-claims of third persons that arise in the period between the issuance of the shares and one year after the day on which the adopted annual accounts of the Corporation for the accounting year in which the contribution was made, have been deposited at the office of the commercial register, insofar the Corporation cannot satisfy these debt-claims and the involved creditors have reported their debt-claims in writing, within two years after the day on which the annual accounts were deposited, to one of the contributing legal persons.

e. each contributing legal person has deposited at the office of the commercial register its last adopted balance sheet with explanatory notes, and not more than eighteen months have passed

since the balance sheet date;
f. each contributing legal person separates a reserve to the amount of the nominal value of the shares it will take, from the reserves of which the nature does not oppose to such a separation.
g. the Corporation reports the decision meant in point (a) to the office of the commercial register, and every contributing legal person reports its declaration as referred to in point (d) to the same office.
- 7. If the previous paragraph has been applied, a contributing legal person may not, during the period meant in that paragraph under point (d), dispose of the shares that it has received in return for its contribution, and it must, up until two years after that period, maintain the reserve meant in that paragraph under point (f). Afterwards, this reserve must be maintained to the amount of the still outstanding debt-claims that were reported in the way as mentioned in the previous paragraph under point (d). The initial reserve will be reduced with payments made on these reported debt-claims*).
- 8. The contributing legal person and all of the creditors meant in paragraph 6, under point (d), may request the Subdistrict Court in whose territory the domicile of the Corporation is located, to place the involved debt-claims of the creditors of the Corporation under a fiduciary administration of property, which has as purpose to satisfy these debt-claims from the amounts which have been placed at the disposal of the Corporation pursuant to paragraph 6, under point (d). Insofar this is necessary, the provisions of the Bankruptcy Act regarding the verification of debt-claims and the liquidation (winding up) of property shall apply accordingly. A creditor cannot set off his debt-claim (demandable of the Corporation) against a debt that he owes to a contributing legal person. If a debt-claim subject to a fiduciary administration of property passes to someone else, it will remain under that fiduciary administration. The same applies to a foreclosure of such a debt-claim, except where it concerns the recovery of debts resulting from acts performed by the legal administrator in the exercise of his duties. The Subdistrict Court shall regulate the powers and remuneration of the legal administrator; it may change its court order at all times*).

) The provisions in paragraph 6 – 8 contain an exemption to the rules that apply when a contribution other than money is made to pay up allotted shares that have been issued by an Open Corporation ('naamloze vennootschap'*). This exemption is based on **Article** 10(4) of the Second Council Directive of 13 December 1976, which tried to simplify a legal reorganisation of a concern (group of affiliated corporations), by making it possible to create subsidiaries in the form of an Open Corporation (*'naamloze vennootschap'*) more easily. It is, however, very strict and complicated. In practice it is hardly ever used, also because subsidiaries are generally formed as Closed Corporations (*'besloten vennootschappen'*).

Article 2:94b Valuation of a contribution in kind made to the Corporation after its formation
- 1. If, after the formation (incorporation), another contribution than money has been agreed as consideration for allotted shares, the Corporation shall make a description, in accordance with **Article** 2:94a, paragraph 1, of what has been contributed. The description must relate to the condition (state) of what has been contributed on a day not more than six months prior to the day on which the allotted shares are taken or on which the additional contribution other than money must have been received by the Corporation or on which such contribution has been agreed upon. The description must be signed by all Directors; if the signature of one or more of them is

missing, this will be noted on the description, with mention of the reason for this.
- 2. **Article** 2:94a, paragraph 2, applies accordingly.
- 3. In the situations meant in **Article** 2:94a, paragraph 3, under point (a), (b) and (c), the Board of Directors may decide to renounce the making of a description and of an audit report. If, prior to the effective date of contribution, it has become known that circumstances have occurred as referred to in **Article** 2:94a, paragraph 4, first sentence, then the Board of Directors must make a description after all, with regard to which an audit report as meant in **Article** 2:94a, paragraph 2, has to be issued.
- 4. If, after the formation (incorporation), another contribution than money has been agreed as consideration for allotted shares, and paragraph 3 has been applied, then the Corporation shall deposit, not later than eight days prior to the effective date of contribution, an announcement at the office of the commercial register; this announcement must contain a description of the contribution, with mention of the value attributed to the contributed assets, the valuation methods used, the names of the persons making the contribution, the amount of the issued share capital that has been paid up in consequence thereof and the date of the resolution for the issuance of shares meant in **Article** 2:96, paragraph 1. In this announcement must be mentioned also that the attributed value at least equals the amount in money that must be paid up for the allotted shares, and that no new extraordinary circumstances have occurred in regard of the valuation of the contribution. The notification must be signed by all Directors; if the signature of one or more of them is missing, this will be noted in the announcement, with mention of the reason for this. Within one month after the effective date of contribution, the Board of Directors shall deposit a declaration at the office of the commercial register, in which is mentioned that, in regard of the valuation, no new extraordinary circumstances have occurred in the period between the day on which the announcement meant in the first sentence has been deposited and the effective date of contribution. The declaration must be signed by all Directors; if the signature of one or more of them is missing, this will be noted on the declaration, with mention of the reason for this.
- 5. When a description and audit report as referred to in paragraph 3, second sentence, remains absent and the contribution is made according to **Article** 2:94a, paragraph 3, under point (b) or (c), then one or more shareholders, who on the day of the resolution for the issuance of shares as meant in **Article** 2: 96, paragraph 1, represent, either solely or jointly, at least 5% of the issued share capital, may request the Board of Directors to make a description after all, with regard to which an audit report as meant in **Article** 2:94a, paragraph 2, has to be issued. The Board of Directors shall implement this request, provided that the shareholders have notified their request to the Board of Directors at the latest on the day prior to the effective date of contribution, and that they, when they made their request, still represent 5% of the issued share capital as it was before the resolution for the issuance of shares had passed.
- 6. When all shareholders have decided to renounce the making of a description and an audit report, and the Corporation has acted in agreement with **Article** 2:94, paragraph 6, under point (b) up to and including (g), then no description or audit report is required, and **Article** 2:94a, paragraph 7 and 8, shall apply accordingly.
- 7. Within eight days after the day on which the shares were taken or on which an additional contribution other than money became due and demandable, the Corporation shall deposit an audit report in respect of the contribution, or a copy of that report, at the office of the commercial register, with mention of the names of the persons who made the contribution and of the amount of the issued share capital that has been paid up in consequence thereof.
- 8. The present **Article** does not apply as far as the contribution consists of shares or depository

receipts for shares in another corporation or of rights or dividend-right shares (bonus shares) that may be converted in shares or depository receipts of shares in another corporation, with regard to which the Corporation has released a public offer, provided that these transferable securities or a part thereof are admitted to a regulated market or multilateral trading facility as specified in **Article** 1:1 of Financial Supervision Act, or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State.

Article 2:94c Acquisition of assets from the founders of the Corporation

- 1. A juridical act performed by the Open Corporation (*'naamloze vennootschap'*) without the approval of the General Meeting or without an audit report as meant in paragraph 3, may be nullified on behalf of the Corporation, if this juridical act:

a. necessarily implies the acquisition of assets, including debt-claims which are to be set off against a debt, that less than one year prior to the formation (incorporation) belonged to one of the founders (incorporators), and;

b. is performed within two years after the Corporation was registered for the first time in the commercial register.

- 2. If the approval of the General Meeting is requested, the Corporation shall make a description of the assets that will be acquired and of the counter performance which the Corporation has to perform in respect of this acquisition. The description must relate to the condition (state) of the described assets and counter performance on a day after the formation (incorporation). The description mentions the value which has been attributed to the involved assets and to the counter performance, and the valuation methods used. These methods must be in accordance with generally accepted valuation standards. The description must be signed by all Directors; if the signature of one or more of them is missing, this will be noted on the description, with mention of the reason for this.
- 3. **Article** 2:94a, paragraph 2, applies accordingly, on the understanding that the audit report states that, according to generally accepted valuation standards, the value of the assets that will be acquired equals at least the value of the counter performance.
- 4. **Article** 2:94b, paragraph 3, applies accordingly. Where a juridical act has been performed under the application of the preceding sentence, it cannot be nullified on the basis of paragraph 1 on the ground that an audit report as meant in paragraph 3 of the present **Article** is absent. **Article** 2:94b, paragraph 4, applies accordingly, on the understanding that the date of the juridical act referred to in paragraph 1 must be mentioned in the description.
- 5. **Article** 2:102 applies accordingly to the obligation to deposit the documents meant in the previous paragraphs and to provide copies thereof.
- 6. Within eight days after the performance of the juridical act or after the approval by the General Meeting, if granted afterwards, the Corporation shall deposit the audit report referred to in paragraph 3, or a copy thereof, at the office of the commercial register.
- 7. The present **Article** does not apply to:

a. assets acquired at a public auction or at an exchange,

b. assets which, under the stipulated conditions, may be regarded to have been acquired by the Corporation in the normal conduct of its business;

c. acquisitions with regard to which an audit report as referred to in **Article** 2:94a, paragraph 2, has been issued;

d. acquisitions resulting from a merger or split up.

Article 2:94d [*repealed on 20-01-1986*]

Article 2:95 Corporation is not allowed to subscribe for its own shares
- 1 The shares of an Open Corporation (*'naamloze vennootschap'*) may not be subscribed for by that Corporation itself.
- 2. Shares taken by the Corporation in violation of the previous paragraph, pass at the moment on which they are taken to the Directors jointly. Each Director is jointly and severally liable for the full payment of these shares and for the statutory interest accrued as of that moment. Where the shares were issued at the formation (incorporation), this paragraph shall apply accordingly to the founders (incorporators) jointly.
- 3. If another person subscribes for a share in his own name, but for account (on behalf) of the Corporation that issued that share, he shall be deemed to have subscribed for it for his own account.

Article 2:96 Power to issue new shares
- 1. An Open Corporation (*'naamloze vennootschap'*) may, after its formation (incorporation), only issue shares pursuant to a resolution of the General Meeting or of another body of the Corporation designated for this purpose by a resolution of the General Meeting or in the articles of incorporation, always for a period not exceeding five years. When such a designation is made, the number of shares which may be issued by the designated body must be specified as well. The designation may be extended, each time for not more than five years. It is not possible to withdraw (revoke) a designation, unless the contrary has been provided when the designation was made.
- 2. When there are different types (classes) of shares, then a valid resolution of the General Meeting for the issuance of shares or for a designation as meant in paragraph 1, requires a prior or simultaneous approving resolution (decision) of each group of holders of shares of the same type (class) whose rights are affected by the issuance of shares.
- 3. Within eight days after a resolution of the General Meeting for the issuance of shares or for a designation as meant in paragraph 1, the Corporation deposits the full text of that resolution at the office of the commercial register.
- 4. Within eight days after each calendar quarter, the Corporation shall deposit at the office of the commercial register a report of each issuance of shares in the preceding calendar quarter, with mention of the number and type (class) of the shares issued.
- 5. The present **Article** shall apply accordingly to the granting of rights to subscribe for shares, but shall not apply to the issuance of shares to a person who previously already had acquired a right to subscribe for shares.

Article 2:96a Pre-emptive subscription right of shareholders
- 1. Subject to the following two paragraphs, each shareholder has a pre-emptive subscription right with regard to the issuance of new shares, and this in proportion to the total nominal amount of his shares. Unless the articles of incorporation provide otherwise, however, he has no pre-emptive subscription right with regard to shares issued for a contribution other than money.

He has neither a pre-emptive subscription right with regard to shares issued to the employees of the Open Corporation (*'naamloze vennootschap'*) or of a group company.
- 2. As far as the articles of incorporation do not provide otherwise, the holders of shares who:
a. do not or only to a limited extent participate (share) in the profits above a certain percentage of the nominal value of their shares, or;
b. do not or only to a limited extent participate (share) in a liquidation surplus above the nominal value of their shares;
have no pre-emptive subscription right with regard to newly to be issued shares.
- 3. As far as the articles of incorporation do not provide otherwise, shareholders have no pre-emptive subscription right with regard to the issuance of new shares of one of the types (classes) as referred to in the previous paragraph under point (a) and (b).
- 4. The issuance of new shares with regard to which a pre-emptive subscription right exists, and the period during which such a pre-emptive subscription right may be exercised, are published by the Corporation in the Dutch Gazette ('Staatscourant') and in a daily newspaper which is spread nationwide, unless all existing shares are registered and the publication is notified in writing to all shareholders at the addresses disclosed by them.
- 5. Pre-emptive subscription rights may be exercised for at least two weeks after the date of publication in the Dutch Gazette or after the written notice was sent to the shareholders.
- 6. Pre-emptive subscription rights may be limited or excluded by a resolution of the General Meeting. In the proposal for such a resolution, the reasons for the proposal and the selection of the proposed issue price must be explained in writing. Pre-emptive subscription rights may be limited or excluded also by a body of the corporation designated under **Article** 2:96, paragraph 1, if a resolution of the General Meeting or the articles of incorporation have designated and empowered this body for a specific period of time, not exceeding five years, to limit or exclude pre-emptive subscription rights. The designation may be extended, each time for not more than five years. It is not possible to withdraw (revoke) a designation, unless the contrary has been provided when the designation was made.
- 7. A resolution of the General Meeting to limit or exclude a pre-emptive subscription right or to make a designating, requires a majority of at least two thirds of the votes cast, if less than one-half of the issued share capital is represented at the Meeting. Within eight days after the resolution, the Corporation shall deposit the full text of that resolution at the office of the commercial register.
- 8. When rights are granted for the acquisition of to be issued new shares, the shareholders shall have a similar pre-emptive right; the preceding paragraphs shall apply accordingly. Shareholders have no pre-emptive rights with regard to shares issued to a person who previously already had acquired a right to subscribe for shares.

Article 2:96b Exemption for Investment Companies
Articles 2:96 and 2:96a do not apply to an Investment Company with Variable Capital.

Article 2:97 Allotment of shares for a smaller amount than the announced amount of issuance
In the event that new shares are issued after the formation (incorporation) under an announcement of the amount for which those shares are to be issued, while in reality only a

smaller amount can be allotted, then this last amount shall be allotted only if the conditions for the issuance of shares provide for such a possibility.

Article 2:98 Acquisition by an Open Corporation of its own shares
- 1. The acquisition by an Open Corporation (*'naamloze vennootschap'*) of not fully paid up shares in its own capital is null and void.
- 2. An Open Corporation (*'naamloze vennootschap'*) may acquire fully paid up own shares only if it acquires these shares without payment of any counter performance (gratuitously) or if the Corporation's equity (total assets minus liabilities), reduced with the acquisition price of the to be acquired shares, is not less than the paid and called up part of its share capital plus the reserves which must be maintained pursuant to law or the articles of incorporation. Without prejudice to what has been provided in the previous sentence, if the shares of the Corporation are admitted to a regulated market or multilateral trading facility as meant in **Article** 1:1 of the Financial Supervision Act, or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State, then the nominal amount of the own shares which the Corporation shall acquire or already holds or on which it has already obtained a pledge or which are held by its subsidiary may not exceed one-half of its issued share capital.
- 3. For the requirement meant in paragraph 2 is decisive the amount of the Corporation's equity (total assets minus liabilities) according to the last adopted balance sheet, reduced with the acquisition price for the to be acquired shares in the capital of the Corporation, reduced in addition with the amount of the loans referred to in **Article** 2:98c, paragraph 2, and with any distributions of profits or reserves to others that the Corporation and its subsidiaries became indebted after the balance sheet date. When more than six months have passed since the end of an accounting year without an adoption of the annual accounts, then an acquisition pursuant to paragraph 2 is not permitted.
- 4. An acquisition of own shares other than on a gratuitous basis is permitted only if and insofar as the General Meeting has authorized the Board of Directors to make such an acquisition. This authorization is valid for a maximum of five years. In derogation from the previous sentence, such an authorization shall only be valid for at the most eighteen months in the event that the shares of the Corporation are admitted to a regulated market or multilateral trading facility as meant in **Article** 1:1 of the Financial Supervision Act, or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State. The General Meeting specifies in its authorization how many own shares the Corporation may acquire, the way in which they may be acquired and the limits between which the acquisition price must stay. The articles of incorporation may exclude or limit the possibility for the Corporation to acquire its own shares.
- 5. An authorization as referred to in the previous paragraph is not required if the articles of incorporation allow the Corporation to acquire its own shares for the purpose of transferring them to the employees of the Corporation or of a group company on the basis of a scheme made for these employees. These shares must be included in the price list of a stock exchange.
- 6. Paragraph 1 up to and including 4 do not apply where the Corporation acquires its own shares under universal title***)**.
- 7. Paragraph 2 up to and including 4 do not apply where a financial enterprise, which by virtue of the Financial Supervision Act is permitted to conduct a banking business, has acquired its own shares upon the instruction and on behalf of someone else.

- 8. Paragraph 2 up to and including 4 do not apply to an Investment Company with Variable Capital. The issued capital of such an Investment Company, reduced with the nominal amount of its own shares that are held by that Company itself, must at least amount to one tenth of its authorized share capital.
- 9. Where the word ‘shares’ is used in the present Article, this includes ‘depository receipts for shares’.

***)** A Corporation may acquire its own shares under universal title as a result of a merger or split up or as an heir in the estate of a deceased person.

Article 2:98a Legal effects of an unlawful acquisition by the Corporation of its own shares
- 1. An acquisition by the Open Corporation (*'naamloze vennootschap'*) of its own registered shares in violation of paragraph 2 up to and including 4 of the preceding Article, is null and void. The Directors are jointly and severally liable towards the alienating party who passed the shares in good faith to the Corporation and who has suffered damage as a result of the null and void acquisition.
- 2. Where the Open Corporation (*'naamloze vennootschap'*) has acquired own shares to bearer or depository receipts issued for own shares in violation of paragraph 2 up to and including 4 of the preceding Article, these shares to bearer and depository receipts will pass, at the moment of acquisition, to the Directors jointly. Each Director is jointly and severally liable for the reimbursement to the Corporation of the acquisition price, raised with the statutory interest accrued as of that moment.
- 3. On the expiration of a period of three years after the Corporation has been converted into an Open Corporation (*'naamloze vennootschap'*) or after it has acquired its own shares under universal title or without payment of any counter performance (gratuitously), the Corporation may no longer hold, either solely or jointly with its subsidiaries, more shares in its own capital than one tenth of the issued share capital; shares in the capital of the Corporation on which the Corporation itself has a pledge, are included in such calculation. Shares in the capital of the Corporation which are held by the Corporation itself, shall pass at the end of the three-year period to the Directors jointly. Each Director is jointly and severally liable for the obligation towards the Corporation to pay the value of the shares, as calculated at that moment, raised with the statutory interest accrued as of that moment. Where the word ‘shares’ is used in the present Article, this includes ‘depository receipts for shares’.
- 4. The preceding paragraph applies accordingly where the Corporation has acquired a not fully paid up own share under universal title that has not been disposed of or retired (eliminated and taken out of circulation) by the Corporation within three years after the moment on which it was acquired.
- 5. Paragraph 3 applies accordingly where the Corporation has acquired an own share or a depository receipt for such a share pursuant to paragraph 5 of the previous **Article** without authorization of the General Meeting, which share or depository receipt is held by the Corporation for more than one year.

Article 2:98b Shares in the Corporation acquired in the name of another person for account of the Corporation

When another person acquires in his own name, yet for account of the Open Corporation (*'naamloze vennootschap'*), one or more shares in the capital of the Corporation or one or more depository receipts for such shares, he must, without delay, transfer these shares and depository receipts to the Corporation against payment. If these shares are registered shares, then paragraph 2 of the previous **Article** shall apply accordingly.

Article 2:98c Prohibitions for the Corporation in connection with the taking or acquisition of its own shares by others

- 1. An Open Corporation (*'naamloze vennootschap'*) may not provide security (collateral), give a price guarantee for shares, vouch for third persons otherwise or make itself jointly and severally liable for a third person's debt in addition to or instead of that third person or otherwise, if this is done for the purpose of a subscription for or the acquisition of its own shares or depositary receipts for such shares by others. This prohibition also applies to its subsidiaries.
- 2. A Corporation and its subsidiaries may not grant loans if this is done for the purpose of a subscription for or the acquisition of its own shares or depositary receipts for such shares by others, unless the Board of Directors has resolved (decided) to do so and the following requirements are met:

a. the granting of the loan, including the interest received by the Corporation and the securities (collaterals) provided to the Corporation, are in agreement with fair market conditions;
b. the Corporation's equity (total assets minus liabilities), reduced with the amount of the granted loan, is not less than the paid and called up share capital plus the reserves which must be maintained pursuant to law or the articles of incorporation;
c. the creditworthiness (solvency) of the third party or, if it concerns an agreement between more than two parties, of each involved party, has been carefully examined;
d. where the loan is granted for the purpose of a subscription for shares within the framework of an increase of the issued share capital of the Corporation or for the purpose of obtaining shares in the Corporation's capital, the price for which the shares are taken or acquired must be fair.

- 3. For the requirement meant in paragraph 2, under point (b), is decisive the amount of the Corporation's equity (total assets minus liabilities) according to the last adopted balance sheet, reduced with the acquisition price for the to be taken or acquired shares in the capital of the Corporation, reduced in addition with any distributions of profits or reserves to others that the Corporation and its subsidiaries became indebted after the balance sheet date. When more than six months have passed since the end of an accounting year without an adoption of the annual accounts, then a subscription or acquisition pursuant to paragraph 2 is not permitted.
- 4. The Corporation maintains a non-distributable reserve equal to the amount of the granted loans referred to in paragraph 2.
- 5. A resolution (decision) of the Board of Directors to grant a loan as referred to in paragraph 2, is subject to the prior approval of the General Meeting. The resolution of the General Meeting for that approval is taken by a majority of at least two thirds of the votes cast, if less than one-half of the issued share capital is represented at the meeting. In derogation from the previous sentence, such a resolution has to be taken by a majority of at least 95% of the votes cast, in the event that the shares of the Corporation are admitted to a regulated market or a multilateral trading facility as meant in **Article** 1:1 of the Financial Supervision Act.
- 6. When the approval referred to in paragraph 5 is requested to General Meeting, this will be reported in the convening notice for that General Meeting. Concurrent with the convening notice,

a report is deposited at the office of the commercial register for inspection by the shareholders and holders of depository receipts for shares issued in collaboration with the Corporation, mentioning the reasons for granting the loan, the importance involved with that transaction for the Corporation, the terms and conditions on which the loan will be granted, the price for which the shares will be taken or acquired by the third person, and the risks connected to the loan in respect of the liquidity and solvency of the Corporation.
- 7. Within eight days after the approval referred to in paragraph 5 has been given, the Corporation shall deposit a report as meant in paragraph 6, or a copy thereof, at the office of the commercial register.
- 8. Paragraph 1 up to and including 7 do not apply if shares or depositary receipts for shares are taken or acquired by or for employees of the Corporation or of a group company.
- 9. Paragraph 1 up to and including 7 do not apply to a financial enterprise as meant in the Financial Supervision Act, that is permitted to conduct a banking business in the Netherlands pursuant to that Act, insofar that enterprise acts in the ordinary course of its business.

Article 2:98d Acquisition of shares in the Corporation by its subsidiaries
- 1. A subsidiary may not, for its own account, subscribe for or cause the subscription for shares in the capital of an Open Corporation (*'naamloze vennootschap'*). A subsidiary may only, for its own account, acquire or cause the acquisition of such shares as far as the Corporation itself is permitted to acquire its own shares on the basis of **Article** 2:98, paragraph 1 up to and including 6.
- 2. When the previous paragraph has not been observed, the Directors of the Open Corporation (*'naamloze vennootschap'*) are jointly and severally liable towards the involved subsidiary for reimbursement of the acquisition price, raised with the statutory interest accrued as of the moment on which the shares were taken or acquired in violation of the provisions of paragraph 1. The payment of this compensation is made against the transfer of the involved shares. A Director is not obliged to reimburse the acquisition price if he proves that the Corporation is not to blame for the fact that the subsidiary has taken or acquired the shares in violation of the provision of paragraph 1.
- 3. A subsidiary may no longer hold, or cause to hold, for its own account more shares in the capital of an Open Corporation (*'naamloze vennootschap'*), either solely or jointly with that Corporation or its other subsidiaries, than one tenth of the issued share capital of that Corporation, as soon as three years have passed:
a. since it became a subsidiary;
b. since the Corporation of which it is a subsidiary was converted into an Open Corporation (*'naamloze vennootschap'*), or;
c. since it acquired, as subsidiary, shares in the capital of the Open Corporation (*'naamloze vennootschap'*) under universal title or without payment of a counter performance (gratuitously).
The Directors of the Open Corporation (*'naamloze vennootschap'*) are jointly and severally liable towards the involved subsidiary for compensating the value of the shares which that subsidiary holds or causes to hold beyond the before mentioned limits, which value is to be calculated at the end of the three-year period, raised with the statutory interest accrued as of that moment. The payment of this compensation is made against the transfer of the involved shares. A Director is not obliged to pay such compensation if he proves that the Corporation is not to blame for the fact that the subsidiary still holds or causes to hold the shares beyond the before mentioned

limits.
- 4. Where the word ‘shares’ is used in the present Article, this includes ‘depository receipts for shares’.

Article 2:99 Reduction of the Corporation’s capital
- 1. The General Meeting may resolve (decide) to reduce the issued share capital through a retirement (elimination) of shares or by a reduction of the nominal amount of the shares by means of an amendment of the articles of incorporation. Such a resolution must specify the shares to which it relates and the way in which the resolution is to be implemented.
- 2. A resolution for the retirement (elimination) of shares may only concern shares which the Corporation holds itself (treasury shares) or of which it holds the depository receipts (treasury receipts) as well as all of the shares of a specific type (class) with regard to which, prior to their issuance, the articles of incorporation already provided that they could be retired (redeemed and eliminated) against repayment, or shares balloted for redemption and retirement (elimination) that belong to a type (class) of shares with regard to which, prior to their issuance, the articles of incorporation already provided that they could be balloted for redemption and retirement (elimination) against repayment.
- 3. A reduction of the nominal amount of shares without repayment and without a relief from the obligation to pay up the shares must be effectuated proportionally in respect of all shares of the same class. The requirement of proportionality may be set aside with the consent of all shareholders.
- 4. A partial repayment on shares or a partial relief from the obligation to pay up the shares is only possible if this is done for the implementation of a resolution (decision) for a reduction of the nominal amount of the shares. Such a repayment or relief must be effectuated proportionally in respect of all of the shares, unless, prior to the issuance of shares of a specific type (class), the articles of incorporation already provided that a repayment or relief may be effectuated exclusively in respect of those shares; in that last event the requirement of proportionality applies to those shares. The requirement of proportionality may be set aside with the consent of all shareholders.
- 5. When there are different types (classes) of shares, then a resolution (decision) of the General Meeting for the reduction of the Corporation’s capital requires a prior or simultaneous approving resolution (decision) of each group of holders of shares of the same type (class) whose rights are affected by the resolution of the General Meeting.
- 6. A resolution of the General Meeting for the reduction of the Corporation’s capital requires a majority of at last two thirds of the votes cast, if less than one-half of the issued share capital is represented at the Meeting. This provision applies accordingly to a resolution as meant in paragraph 5.
- 7. The convening notice for a meeting where a resolution as referred to in the present **Article** is to be passed, reports the purpose (objective) of the reduction of the Corporation’s capital and the way in which such a reduction is to be implemented. **Article** 2:123, paragraph 2, 3 and 4, shall apply accordingly.

Article 2:100 Publication requirements regarding a reduction of the Corporation’s capital
- 1. The Open Corporation (*'naamloze vennootschap'*) deposits the resolutions meant in **Article**

2:99, paragraph 1, at the office of the commercial register, and makes an announcement thereof in a national daily newspaper.
- 2. The Corporation must provide security (collateral) to each creditor who requests so or provide him with other guarantees in order to assure that his debt-claim will be satisfied; if the Corporation fails to comply with this provision, then the objections of the creditor as referred to in the next paragraph shall be acknowledged as valid. The provisions of this paragraph do not apply if the creditor has sufficient guarantees that his debt-claim will be performed or when the Corporation has sufficient property to assure that his debt-claim will be performed.
- 3. Within two months after the announcement meant in paragraph 1, any creditor may file a petition at the District Court through which he makes an objection against the resolution (decision) for a reduction of the Corporation's capital, with mention of the security or other guarantee he seeks. The District Court shall reject the request if the applicant fails to make plausible that, as a result of the reduction of the Corporation's capital, there is a legitimate doubt that his debt-claim will be satisfied, and that the Corporation has provided insufficient security or other guarantees therefore.
- 4. Before the District Court gives its decision, it may enable the Corporation to provide certain security or another kind of guarantee within a period to be set by court. If the Corporation's capital has been reduced already, the District Court may order, upon a filed request, that security or another kind of guarantee is provided to the applicant (creditor), under a financial penalty for non-compliance.
- 5. A resolution for the reduction of the Corporation's capital shall not take effect as long as an objection may still be filed. If an objection is filed in time, the resolution shall only take effect when the objection has been withdrawn or when the court order in which that objection was denied has become enforceable. Where the reduction of the Corporation's capital requires an amendment of the articles of incorporation, the involved notarial deed may not be executed prior to the moment meant in the previous sentence.
- 6. If the Corporation reduces its capital to an amount not less than its own equity (total assets minus liabilities), and this reduction is made because of the loss that the Corporation has suffered, then it does not need to provide any security or another kind of guarantee, whereas the resolution shall take effect immediately.
- 7. The present **Article** does not apply if an Investment Company with Variable Capital resolves (decides) to retire (eliminate) its own shares, provided that it has acquired these shares lawfully.

Article 2:101 Annual accounts and annual report
- 1. Annually, within five months after the end of the accounting year of the Corporation, except when this period has been extended with at the most six months by the General Meeting in view of particular circumstances, the Board of Directors draws up the annual accounts, and deposits these documents at the office of the Corporation for inspection by its shareholders. If shares or other transferable securities, issued by the Corporation, are admitted to a regulated market as meant in the Financial Supervision Act, this period is four months after the end of the accounting year of the Corporation, without the possibility to extend it. Within the same period, the Board of Directors shall also deposit the annual report for inspection by its shareholders, unless **Article** 2:396, paragraph 7, or **Article** 2:403 applies to the Corporation. The Board of Directors of a Corporation to which Articles 2:158 up to and including 2:161 and 2:164 applies, shall send the annual accounts as well to the Works Council meant in **Article** 2:158, paragraph 11.

- 2. The annual accounts are signed by the Directors and the Supervisory Directors; where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this.
- 3. The annual accounts are adopted by the General Meeting. An adoption of the annual accounts does not implicate a discharge of liability for the Directors or Supervisory Directors.
- 4. Resolutions on the basis of which the annual accounts are adopted, may not be subjected in the articles of incorporation to the approval of a body of the Corporation or of a third person.
- 5. The articles of incorporation may not contain any provision on the basis of which it is permitted to set any requirement or binding proposal for the annual accounts or for any item thereof.
- 6. The articles of incorporation may provide that another body of the Corporation than the General Meeting has the power to decide which part of the result of an accounting year shall be reserved, or how a loss shall be written-off.
- 7. Upon request, the Minister of Economic Affairs may, for compelling reasons, grant relief from the obligation to draw up, submit and adopt the annual accounts. No relief may be granted in respect of the adoption of the annual accounts of a Corporation which has issued shares or other transferable securities that are admitted to a regulated market as meant in the Financial Supervision Act.

Article 2:102 Inspection of the annual accounts at the office of the Corporation
- 1. The Open Corporation (*'naamloze vennootschap'*) ensures that the annual accounts, the annual report and the information which has to be added pursuant to **Article** 2:392, paragraph 1, are available at its office as of the day on which the convening notice is given for a General Meeting for the adoption of these accounting documents. Persons holding shares in the Corporation or holding depository receipts for such shares that are issued in collaboration with the Corporation, may inspect these documents at the office of the Corporation and may obtain a free copy thereof.
- 2. Where it concerns shares to bearer or depository receipts to bearer or debentures to bearer (debts certificates) issued by the Corporation which are in circulation still, the involved documents, as far as they have to be made public, are available for inspection to everyone; a copy or extract thereof shall be provided against payment of at the most the cost price. This right ceases to exist when the involved documents are deposited at the office of the commercial register.

Article 2:103 [*repealed on 31-12-2006*]

Article 2:104 Writing off of deficits from the reserves
A deficit may only be written off from the statutory reserves as far is this is permitted by law.

Article 2:105 Distribution of profits
- 1. As far as the articles of incorporation do not provide otherwise, the Corporation’s profits are for the benefit of the shareholders.

- 2. The Open Corporation (*'naamloze vennootschap'*) may only distribute its profits to its shareholders and to other persons with an entitlement to its distributable profits as far as its equity (total assets minus liabilities) exceeds the sum of the paid and called up capital plus the reserves which must be maintained pursuant to law or the articles of incorporation.
- 3. Profits are distributed after the annual accounts, from which shows that such a distribution is permitted, have been adopted.
- 4. The Corporation may make interim distributions of profits only if the articles of incorporation permit so and the requirement of paragraph 2 is met according to a to be made interim capital account. This interim capital account relates to the state of the Corporation's property (capital) on a day not earlier than the first day of the third month before the month in which the resolution for a distribution of profits was made public. It is prepared in accordance with generally accepted valuation methods. The reserves that have to be maintained pursuant to law or the articles of incorporation have to be included in that interim capital account. The interim capital account must be signed by the Directors. Where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this. Within eight days after the day on which the resolution for a distribution of profits has been made public, the Corporation deposits the interim capital account at the office of the commercial register.
- 5. In calculating the profit distribution, the shares which the Corporation holds in its own capital (treasury shares) shall be taken into account as well, unless the articles of incorporation provide otherwise.
- 6. In calculating the amount of the profits to be distributed on each share, only the amount of the obligatory payments on the nominal amount of the shares is taken into account, unless the articles of incorporation provide otherwise.
- 7. The articles of incorporation may provide that the claim of a shareholder does not become prescribed after a period of five years, but after a longer period. Then such a provision in the articles of incorporation shall apply accordingly to the claim of a holder of a depository receipt for a share against the shareholder.
- 8. A distribution of profits in violation of the provisions of paragraph 2 or 4 must be reimbursed by the shareholder or other person entitled to the Corporation's profits, but only if he knew or ought to have known that this distribution was not permitted.
- 9. None of the shareholders may be excluded entirely from sharing in the profits.
- 10. The articles of incorporation may provide that the profits to which holders of shares of a specific type (class) are entitled, shall be reserved in full or in part for their benefit.

Article 2:106 [*repealed on 01-09-1981*]

Title 2.5 Closed Corporations (Private Limited Companies)

Section 2.5.1 General provisions

Article 2:175 Definition of a 'Closed Corporation'; formation

- 1. - 1. A Closed Corporation with limited liability (*'besloten vennootschap'*) is a legal person with a capital that is divided into one or more transferable shares. The shares are all registered shares. A shareholder is not personally liable for what is performed in the name of the Corporation and he is not obliged to contribute to the losses of the Corporation for more than what he has paid up or still has to pay up on his shares, without prejudice to what is provided in **Article** 2:192. At least one share with voting right is kept by another than, and other than for account of, the Corporation or one of its subsidiary companies
- 2. The Corporation is formed (incorporated) by one or more persons by means of a notarial deed. The notarial deed of incorporation is signed by every founder (incorporator) and by everyone who according to this deed takes one or more shares.

Article 2:176 Dutch language; written procuration
The notarial deed of incorporation of a Closed Corporation *('besloten vennootschap'*) is executed in the Dutch language. A procuration (power of attorney) to cooperate in the execution of the notarial deed must be granted in writing.

Article 2:177 Content of the deed of incorporation
- 1. The notarial deed of incorporation must contain the articles of incorporation of the Closed Corporation (*'besloten vennootschap'*). The articles of incorporation contain the name, the seat and the purpose (objective) of the Closed Corporation (*'besloten vennootschap'*).
- 2. The name starts or ends with the words *"Besloten Vennootschap"* (literally meaning: 'Close Corporation"*), either written in full, or abbreviated to "B.V.".
- 3. The seat must be located in the Netherlands.

***)** The word "Besloten" ('Close') refers to the fact that a Closed Corporation, contrary to an Open Corporation, may only issue registered shares and no shares to bearer; the registered shares are not freely transferable, in the sense that other shareholders must be given the opportunity to buy them first, whether or not for a fixed price.

Article 2:178 Content of the articles of incorporation
- 1. The articles of incorporation specify the nominal amount of the shares. When there are different types (classes) of shares, then the articles of incorporation specify the nominal amount of each type (class). The notarial deed of incorporation specifies the amount of the issued share capital and of the paid up part thereof. When there are different types (classes) of shares, then the amounts of the issued share capital and paid up share capital are specified for each type (class). The notarial deed of incorporation specifies in addition for all persons who have taken shares at the formation (incorporation), the data referred to in **Article** 2:196, paragraph 2, under point (b) and (c), including the number and type (class) of the shares each person has taken and the amount that he has paid up on these shares.
- 2. The amount of the authorized share capital and issued share capital and the paid up part thereof, as well as the nominal amount of the shares may be specified in foreign currency. A Closed Corporation ('besloten vennootschap') which has come into existence before 1 January

2002 may specify the amount of the authorized share capital and the nominal amount of the shares in guilders to at the most two decimal places.

Article 2:178a Conversion of amounts into Euros
If a Closed Corporation (*'besloten vennootschap'*), of which the articles of incorporation specify the amount of the authorized share capital and the amount of shares in guilders, converts these amounts into Euros, then the amount of the authorized share capital and of the paid up part thereof is calculated in accordance with the finally fixed conversion price as referred to in **Article** 109L, paragraph 4, of the Treaty on the European Union, rounded up to two decimal places. The rounded amount of each share in Euros may at the most be 15% higher or lower than the original nominal amount of the share in guilders. The total of the amounts of shares in Euros as meant in **Article** 2:178 shall represent the authorized share capital. The sum of the amounts of the issued shares and the paid up part thereof in Euros shall be the amount in Euros of the issued share capital and the paid up share capital. The notarial deed specifies the amount in Euros of the issued share capital and the paid up part thereof.

Article 2:178b Change of the amount of the shares in derogation from **Article** 2:178a
If the Corporation changes the amount of the shares in another way than specified in **Article** 2:178a, then such a change requires the approval of each group of shareholders whose rights are harmed as a result thereof. Where such a change leads to an entitlement to money or debt-claims, the total amount thereof may not exceed one tenth of the changed nominal amount of the shares.

Article 2:178c Denomination in guilders and the use of an equivalent amount in Euros
- 1. A Closed Corporation (*'besloten vennootschap'*) of which the articles of incorporation specify the authorized share capital and the amount of the shares in guilders, may use in its contacts with others the equivalent amount in Euros to at the most two decimal places, provided that, when doing so, it refers to the present Article. The use of such an countervalue (equivalent) has no legal effect.
- 2. Where a Closed Corporation (*'besloten vennootschap'*), of which the articles of incorporation specify the authorized share capital and the amount of the shares in guilders, after 1 January 2002 brings about a change in these articles to one or more provisions in which an amount was expressed in guilders, all amounts in the articles of incorporation must be converted into Euros or another foreign currency. **Article** 2:178a and 2:178b shall apply in such event.

Article 2:179 *[repealed on 01-07-2011]*

Article 2:180 Registration in the commercial register
- 1. The Directors have the obligation to cause the registration of the Closed Corporation (*'besloten vennootschap'*) in the commercial register and must deposit at the office of that register (Chamber of Commerce) an authentic extract of the notarial deed of incorporation and of the documents attached to it pursuant to **Article** 2:204.

- 2. The Directors are each, in addition to the Closed Corporation (*'besloten vennootschap'*), joint and several liable for any juridical act performed during their directorship through which the Corporation has been committed (bound) in the period prior to the moment on which the application for the initial registration in the commercial register was lodged, together with the to be deposited extracts and copies .

Article 2:181 Conversion of a Closed Corporation into a legal person of a different type
- 1. When a Closed Corporation (*'besloten vennootschap'*) converts itself on the basis of **Article** 2:18 into an Association (*'vereniging'*), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*), each shareholder shall become a member, unless he has claimed a compensation as referred to in paragraph 2.
- 2. After a resolution for a conversion in an Association (*'vereniging'*), Foundation (*'stichting'*), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) each shareholder, including each holder of shares without a voting right or without right in the profits, who has not consented with the resolution for a conversion, may claim from the Closed Corporation a compensation for the loss of his shares. The request for such compensation must be made in writing to the Closed Corporation within one month after the Closed Corporation has notified the shareholder that he may request for such compensation. This notification is made in the same manner as in which a convening notice for a General Meeting has to be send.
- 3. When the Closed Corporation (*'besloten vennootschap'*) converts itself into an Open Corporation (*'naamloze vennootschap'*), each holder of shares without a voting right or a right in the profits, who has not consented with the resolution for a conversion, may file a request for compensation with the Closed Corporation. The request for compensation must be made within one month after the Closed Corporation has notified the shareholder that he may request for such compensation. This notification is made in the same manner as in which a convening notice for a General Meeting has to be issued. The shares to which the request relate cease to exist at the moment on which the conversion takes effect.
- 4. The proposal for a conversion mentions the amount of the compensation meant in paragraph 2 and 2, as assessed by one or more independent experts. The experts shall report on the valuation in writing, which report is send together with the convening notice for the General Meeting at which de decision (resolution) shall be taken on the conversion. When, on account of the articles of incorporation or an agreement to which the Closed Corporation (*'besloten vennootschap'*) and the relevant shareholder are a party, provisions are applicable between parties for the assessment of the value of the shares or of the compensation, the experts shall make their report with due observance thereof. The appointment of experts may be skipped, if the articles of incorporation or an agreement to which the Closed Corporation (*'besloten vennootschap'*) and the relevant shareholder are a party, contain one set of clear criteria on the basis of which the compensation can be assessed easily.
- 5. **Article** 2:231, paragraph 4, does not apply to a resolution for an amendment of the articles of incorporation within the scope of a conversion of the Closed Corporation (*'besloten vennootschap'*) into a legal person of another type.
- 6. When an authorization of the court is required for the conversion as meant in **Article** 2:18, paragraph 4 and 5, it shall be denied also if the interests of the holders of shares without a voting right and without a richt in the profits are insufficiently considered.

Article 2:182 Objection against a conversion of the Closed Corporation into another legal type
- 1. The Closed Corporation (*'besloten vennootschap'*) deposits the resolution for its conversion in an Association (*'vereniging'*), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) at the office of the commercial register (Chamber of Commerce) and makes an announcement thereof in a national daily newspaper.
- 2. The Closed Corporation (*'besloten vennootschap'*) must, on the penalty that an objection as meant in paragraph 3 will be declared valid, provide security (collateral) to every creditor who request so or provide him with other guarantees that his debt-claim will be satisfied. This does not apply if the creditor has sufficient guarantees that his debt-claim will be performed or when the Corporation has sufficient property to assure that his debt-claim will be satisfied.
- 3. Within two months after the announcement meant in paragraph 1, any creditor may file a petition with the District Court through which he makes an objection against the resolution (decision) for a conversion of the Closed Corporation (*'besloten vennootschap'*), with mention of the security or guarantees he seeks.
- 4. Before the District Court gives its decision, it may enable the Closed Corporation (*'besloten vennootschap'*) to provide certain security or another kind of guarantee within a period to be set by the court. If the Corporation has been converted already, the District Court may order, when a legal remedy is sought, that security or another kind of guarantee is provided to the applicant (creditor), under a penalty payment for non-compliance.
- 5. The resolution for the conversion of the Closed Corporation (*'besloten vennootschap'*) shall not take effect as long as an objection may be filed still. If an objection is filed in time, the resolution shall only take effect when the objection has been withdrawn or when the court order in which that objection was denied has become enforceable. De notarial deed meant in **Article** 2:18, paragraph 2, cannot be executed prior to that moment.

Article 2:183 Conversion of a legal person of another type into a Closed Corporation
- 1. When a legal person converts itself on the basis of **Article** 2:18 into a Closed Corporation ('besloten vennootschap'), then the following documents shall be attached to the notarial deed of conversion:
a. if the legal person has members: the written consent of each member whose shares are not fully paid up by means of a conversion of the reserves of the legal person;
b. if a Foundation (*'stichting'*) is converted: the authorization of the court for the conversion.
- 2. When an Association (*'vereniging'*), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) converts itself on the basis of **Article** 2:18 into a Closed Corporation (*'besloten vennootschap'*), each member shall become a shareholder. The conversion cannot be made as long as a member still is able to terminate his membership by virtue of **Article** 2:36, paragraph 4.
- 3. As long as a shareholder, a usufructuary, and a pledgee have not been registered as such after the conversion in the register meant in **Article** 2:194 (register of shareholders), they cannot exercise any rights attached to the shares. Without his consent no shares without a right to the profits or without a voting right can be issued to him. Insofar share certificates were issued, such a registration cannot take place before the involved share certificates are handing in to the Corporation.

Article 2:184 *[repealed on 01.09.1994]*

Article 2:185 Dissolution of a Closed Corporation
- 1. Upon the request of the Public Prosecution Service, the District Court shall dissolve a Closed Corporation (*'besloten vennootschap'*) when that Corporation is no longer able to realize its objective (purpose) due to a lack of assets, and the District Court may dissolve the Closed Corporation (*'besloten vennootschap'*) when that Corporation has ceased its activities through which it tried to realize its objective (purpose). The Public Prosecution Service informs the Chamber of Commerce in whose commercial register the Corporation is registered of its intention to file a request for the dissolution of that Corporation.
-2. Before ordering the dissolution, the District Court may give the Corporation the opportunity to remove (repair) the legal defects within a specific period to be set by court.

Article 2:186 Mentioning of the name and domicile; mentioning of the issued share capital and the paid up part thereof
- 1. The full name of the Closed Corporation (*'besloten vennootschap'*) and its domicile (address) must appear clearly from all writings, printed documents and announcements which are issued by the Corporation or in which the Corporation is defined as a party to an act or event, all with the exception of telegrams and advertisements.
- 2. If the Closed Corporation (*'besloten vennootschap'*) makes mention of its (authorized) share capital, then it must mention in any event also the nominal amount of its issued share capital and how much of that issued share capital has been paid up.

Article 2:187 *[repealed on 25.11.1988]*

Article 2:188 'Office of the commercial register'
Where in the present Title (Title 2.5) the office of the commercial register is mentioned, by 'commercial register' is understood the register kept by the Chamber of Commerce which is authorized to register the Corporation pursuant to **Article** 18, sixth and seventh paragraph, of the Commercial Register Act 2007.

Article 2:189 'Issued part of the authorized share capital'
Where the articles of incorporation refer to the holders of as much shares as jointly constitute a certain part of the authorized share capital of the Corporation, by 'capital' is understood the issued part of the authorized share capital, unless the contrary appears from the articles of incorporation.

Article 2:189a 'Body of the Corporation'
For the purpose of Articles 2:192, 2:197, paragraph 3, 2:198, paragraph 3, 2:206, 2:210,

paragraph 6, 2:216, paragraph 1, 2:227, paragraph 2, 2:239 and 2:244, a body of the Corporation is understood as the General Meeting, the meeting of holders of shares of a certain type (class) or indication, the Board of Directors, the Supervisory Board and the joint meeting of the Board of Directors and the Supervisory Board.

Section 2.5.2 The shares

Article 2:190 Rights with no voting right and no entitlement to a distribution
Rights that neither enclose a voting right nor an entitlement to a distribution of profits or reserves, are not regarded as a share.

Article 2:191 Obligation to pay up the issued shares
- 1. On subscription for a share the nominal amount thereof must be paid to the Corporation. It is possible to stipulate that a proportion of the nominal amount, not exceeding three fourths thereof, has to be paid only after the Corporation has called it in.
- 2. A shareholder cannot entirely or partially be relieved from his obligation to pay up his share, except for what is provided in **Article** 2:208.
- 3. A shareholder and, in the situation referred to in **Article** 2:199, a former shareholder are not entitled to sett off a debt imposed on them pursuant to the present Article.

Article 2:191a Payment for allotted shares in (foreign) currency
- 1. The payment for an allotted share must be made in money to the extent that no other kind of contribution has been agreed upon.
- 2. Before or on the formation (incorporation) of the Corporation, a payment can be made only in foreign currency if the notarial deed of incorporation specifies that a payment in foreign currency is permitted; after the formation (incorporation), such a payment can only be made with the consent of the Closed Corporation (*'besloten vennootschap'*). Payment in a currency that is a unit of the Euro by virtue of **Article** 109L, fourth paragraph, of the Treaty on the European Union, is not regarded as a payment in foreign currency.
- 3. A payment in foreign currency will result in the performance of the obligation to pay up the shares to the extent that the paid up sum can be converted (exchanged) freely into Dutch currency. Decisive is the exchange rate on the day of payment or, if the payment was made more than one month before the formation (incorporation) of the Corporation, on the day of formation (incorporation).

Article 2:191b Contributions other than money
- 1. If another contribution than money has been agreed upon, then this contribution must be eligible for a valuation on the basis of economic standards. A right to claim the performance of work or services cannot be contributed.

- 2. A contribution other than money must be made immediately after the share is taken or after the day on which an additional payment, which may be made through a contribution other than money, must have been received by the Corporation or on which such contribution has been agreed upon.

Article 2:192 Obligations and requirements attached to shares (of a certain class)
- 1. The articles of incorporation may with regard to all shares or to shares of a certain type (class) or indication:
a. specify that certain obligations, to be performed towards the Closed Corporation (*'besloten vennootschap'*) or third persons or between shareholders mutually, are attached to the shareholdership;
b. attach requirements to the shareholdership;
c. determine that a shareholder, in situations specified in the articles of incorporation, is obliged to transfer his shares or a part thereof or to make an offer for such transfer.
An obligation or requirement as referred to in the previous sentence under (a), (b) or (c) cannot be imposed upon the shareholder against his will, not even under a condition or time stipulation.
- 2. The articles of incorporation may specify that the coming into force of an obligation or requirement as meant in paragraph 1 under (a), (b) or (c) is dependent of a resolution (decision) of a body of the Closed Corporation (*'besloten vennootschap'*) designated for this purpose in the articles of incorporation.
- 3. An arrangement in de articles of incorporation as meant in paragraph 1, under (c), has to be as such that a shareholder, who requires so, obtains a price for his shares equal to the value of his shares as valuated by one or more independent experts. The articles of incorporation may provide for a valuation method in derogation from the previous sentence. Such a deviating valuation method, however, cannot be imposed upon a shareholder against his will.
- 4. The articles of incorporation may specify that, as long as a shareholder does not comply with an obligation inserted in the articles of incorporation or does not meet a requirement inserted in those articles, his right to vote, his right to (acquire) distributions or his right to attend the General Meeting will be postponed. If a shareholder cannot exercise one or more of the rights mentioned in the previous sentence and the shareholder is not obliged to transfer his shares or make an offer thereto, the postponement shall elapse when the Closed Corporation (*'besloten vennootschap'*) has not, within three months after a request of the shareholder to do so, designated candidates to whom the shareholder may transfer his shares in accordance with an arrangement in the articles of incorporation. Paragraph 3 applies accordingly. The postponement of rights shall elapse if the postponement has the result that none of the shareholders is able to exercise his right to vote.
- 5. The articles of incorporation may specify that, if a shareholder has not, within reasonable time, complied with an obligation as meant in paragraph 1, under (c), the Closed Corporation (*'besloten vennootschap'*) shall be irrevocably authorized, as representative of the relevant shareholder, to offer the shares to someone else or to transfer the shares to someone else. The Closed Corporation (*'besloten vennootschap'*) is also authorized to make such offer for a transfer or to deliver the shares during the bankruptcy of the shareholder or during the time that a debt repayment scheme for natural persons is applicable to him. Where there are no candidates to whom the shareholder can transfer the shares for which he has made an offer by virtue of paragraph 1, under (c), the Closed Corporation (*'besloten vennootschap'*) shall not have an

authorization (power of attorney) as mentioned before and the shareholder will irrevocably be released from his obligation to make an offer for a transfer or to transfer his shares as well as from the postponement of rights as meant in paragraph 4.

Article 2:192a Request to the Closed Corporation to designate other candidates to buy up shares
- 1. If a shareholder, who is not bound by an obligation or requirement imposed by the articles of incorporation as referred to in **Article** 2:192, paragraph 2, wants to alienate his shares, but a transfer of his shares is impossible or extremely difficult because the intended acquiring party is bound by such obligation or requirement, then he may request the Closed Corporation (*'besloten vennootschap'*) to designate other candidates to whom he may transfer his shares in accordance with the arrangement in the articles of incorporation. **Article** 2:192, paragraph 3, applies accordingly to that arrangement. If the Closed Corporation (*'besloten vennootschap'*) has not, within three months after such request was made, designated such candidates, the shareholder is allowed during a period of six months after the expiration of that three-months period, to transfer his shares to someone else and the party acquiring these shares shall not be bound by the obligation or requirement imposed by the articles of incorporation.
- 2. Paragraph 1 applies accordingly if a transfer of shares is impossible or extremely difficult because the intended acquiring party is bound by a valuation method specified in the articles of incorporation by which the alienating shareholder is not bound.

Article 2:193 Power of the liquidator and bankruptcy liquidator
The liquidator of a Closed Corporation (*'besloten vennootschap'*) and, in the event of bankruptcy, the bankruptcy liquidator are empowered to call up and collect all due mandatory payments not yet made on the shares. This power exists irrespective of what is specified in this regard in the articles of incorporation or what has been stipulated on the basis of **Article** 2:191, paragraph 1, on the understanding that, when it has been stipulated that a payment on shares shall occur at a moment after the day on which the Corporation was declared bankrupt, a payment of the cash value thereof on the day of the declaration of bankruptcy shall be adequate.

Article 2:194 Register of shareholders
- 1. The Board of Directors of the Closed Corporation (*'besloten vennootschap'*) keeps a register in which the names and addresses of all shareholders are recorded, and in which is mentioned as well the date on which they acquired their shares, the date of acknowledgement by the Corporation or of the official service on the Corporation, and the amount paid up on each share. Where no voting right is attached to shares on account of **Article** 2:228, paragraph 5, these shares are mentioned as shares without a voting right. In this register are recorded also the names and addresses of those who have a right of usufruct or pledge on the shares, with mention of the date on which they acquired their limited property right, the date of acknowledgment by the Corporation or of the official service on the Corporation, and with mention of the rights attached to the encumbered shares. In the register are recorded as well the names and addresses of the holders of depository receipts issued for shares to which a voting right is attached, with mention of the date on which the right to attend the General Meeting was attached to their depository receipt, and the date of acknowledgement by the Corporation or of the official service on the

Corporation.
- 2. The register shall be updated regularly; it shall mention as well each granted relief from liability for not fully paid up shares.
- 3. Shareholders and others who pursuant to paragraph 1 have to be recorded in the register, shall provide the Board of Directors timely with the necessary data (information) for such recording.
- 4. If asked for, the Board of Directors shall provide gratuitously to a shareholder, a usufructuary, a pledgee and a holder of a depository receipt issued for a share to which a right to attend the General Meeting is attached, an extract from the register in respect of his right to a share or to a depository receipt issued for a share. If the share is encumbered with a usufruct or pledge, the extract mentions as well who is entitled to exercise the rights referred to in **Article** 2:197, 2:198 and 2:227.
- 5. The Board of Directors shall deposit the register of shareholders at the office of the Corporation for inspection by its shareholders and by the usufructuaries and pledgees who are entitled to exercise the rights referred to in Articles 2:227, paragraph 2,and by the holders of depository receipts issued for shares to which under the articles of incorporation a right to attend the General Meeting is attached. The data from the register about not fully paid up shares are available for inspection to everyone; a copy or extract of this information shall be provided against payment of at the most the cost price .

Article 2:195 Restriction on transfer of shares
- 1. Unless the articles of incorporation provide otherwise, a valid transfer of shares requires that the shareholder who wants to dispose of one or more of his shares, firstly offers those shares to his co-shareholders in proportion to the number of shares that is held by each of them at the moment that such offer is made. To holders of shares of a certain type (class) or indication to which pursuant to an arrangement in the articles of incorporation no right to vote or participation in the profit or reserves is attached, can only be offered by virtue of the previous sentence shares of the same type (class) or indication, unless the articles of incorporation provide otherwise. The shareholder obtains, if he requests so, a price of his co-shareholders equal to the value of his shares as valuated by one or more independent experts. If it is ascertained that not all of the shares to which the offer relates will be bought for cash (by co-shareholders or other candidates), the offeror may freely transfer all his shares during a period of three months, to be calculated from the moment of that ascertainment.
- 2. For the purpose of paragraph 1, a transfer made pursuant to a bequest is deemed to be a transfer made by the deceased.
- 3. The transferability of shares may be excluded in the articles of incorporation for a specific period of time. A transfer in violation of such an exclusion in the articles of incorporation is invalid. An arrangement in the articles of incorporation as meant in the first sentence requires the consent of all holders of shares to which the exclusion of transferability relates.
- 4. The transferability of shares may be restricted also in another manner than in accordance with paragraph 1 or 3. A transfer in violation with a restriction in the articles of incorporation is invalid. Such an arrangement in the articles of incorporation has to be as such that a shareholder who wants to transfer his shares obtains, if he requests so, a price equal to the value of his shares as valuated by one or more independent experts. The articles of incorporation may provide for a valuation method which derogates from the previous sentence. Such a deviating valuation

method, however, cannot be imposed on a shareholder against his will.
- 5. Provisions in the articles of incorporation in regard of the transferability of shares are not applicable if the transfer, because of those provisions, is impossible or extremely difficult, unless this is the result of an in the articles of incorporation inserted exclusion as meant in paragraph 3 or a valuation method by which the shareholder is bound.
- 6. Where the shareholder is required under law to transfer his share to a previous shareholder, paragraph 1 and the arrangement in the articles of incorporation regarding the transferability of shares shall not apply
- 7. In the event of a seizure by foreclosure, a bankruptcy, a debt repayment scheme for natural persons, the making of a bequest, an apportionment from a community of property or a pledge, the court may declare paragraph 1 and the arrangement in the articles of incorporation regarding the transferability of shares, either entirely or in part, inapplicable. A request for such court decision may be lodged by the seizing creditor, the bankruptcy liquidator, an interested person by the making of the bequest or by the apportionment, or the pledgee, respectively. The court shall only award the request, if need be in derogation from **Article** 474g, paragraph 4, of the Code of Civil Procedure, if the interests of the applicant undoubtedly request so and the interests of others are not harmed disproportionately as a result of such an award. The court may order that the Closed Corporation (*'besloten vennootschap'*) must enable the seizing creditor or bankruptcy liquidator to inspect the register of shareholders meant in **Article** 2:194.

Article 2:195a *[repealed on 01-10-2012]*

Article 2:195b *[repealed on 01-10-2012]*

Article 2:196 Issuance and transfer of registered shares and limited property rights in such shares
- 1. The issuance and transfer of shares*) or the transfer of limited property rights in such shares requires a notarial deed to which the involved persons are a party, executed for this purpose in front of a Dutch notary. No separate notarial deed is required for the issuance of shares which are taken on the formation (incorporation) of the Closed Corporation (*'besloten vennootschap'*).
- 2. The notarial deed of issuance or transfer must specify:
a. the legal basis for the juridical act [i.e. for the issuance or transfer] and the way in which the share or the limited property right in a share has been acquired;
b. the name, forename, date of birth, place of birth, domicile (residence) and address of the natural persons who are a party to the notarial deed;
c. the type, name, domicile (seat) and address of the legal persons which are a party to the notarial deed;
d. the number and type (class) of shares to which the notarial deed relates, and;
e. the name, domicile (seat) and address of the Corporation that has issued the shares to which the juridical act relates.

) A Closed Corporation ('besloten vennootschap'*) may only issue registered shares.

Article 2:196a Effect of a transfer towards the Corporation and third persons
- 1. A delivery (transfer) of a share*) or a delivery (transfer or establishment) of a limited property right therein in accordance with **Article** 2:196, paragraph 2, has effect also against the Closed Corporation (*'besloten vennootschap'*). Except in the event that the Closed Corporation (*'besloten vennootschap'*) itself is a party to the juridical act, the rights attached to the share can be exercised only after the Corporation has acknowledged the juridical act or after the notarial deed has been officially served on the Corporation in conformity with the provisions of **Article** 2:196b, or after the Corporation has acknowledged the juridical act of its own motion by means of a registration [of the new shareholder or limited proprietor] in the register of shareholders in the way referred to in paragraph 2.
- 2. The Closed Corporation (*'besloten vennootschap'*) that bears knowledge of the juridical act meant in paragraph 1, may of its own motion, as long as no acknowledgement of the juridical act has been requested and no notarial deed has been officially served on the Corporation, acknowledge that juridical act by means of a registration of the person who has acquired the share or a limited property right therein in the register of shareholders. If it makes such a registration, it shall immediately notify the involved parties thereof by registered letter, with the request to submit a copy or extract as meant in **Article** 2:196b, paragraph 1, to the Corporation. After the Corporation has received such a copy or extract, it shall make a note on it in proof of the acknowledgement, in the way as prescribed by **Article** 2:196b for such acknowledgement; the day of registration shall be noted as date of acknowledgement.
- 3. If a juridical act as meant in paragraph 1 has been performed which has not been followed by a corresponding change in the register of shareholders, this juridical act cannot be invoked against the Closed Corporation (*'besloten vennotschap'*), nor against others who in good faith have regarded the person registered in the register of shareholders as the shareholder or proprietor of a limited property right in a share.

) A Closed Corporation ('besloten vennootschap'*) may only issue registered shares.

Article 2:196b Formal requirements for an acknowledgement by or an official service on the Corporation
- 1. Except in the situation as meant in **Article** 2:196a, paragraph 2, the acknowledgement shall take place in the notarial deed itself [by a declaration of acknowledgement of the Corporation in that deed] or on the basis of the submission of an authentic copy or extract of that notarial deed to the Corporation.
- 2. In the event of an acknowledgement based on the submission of an authentic copy or extract of the notarial deed, the Corporation shall place a dated declaration of acknowledgement on the submitted document.
- 3. An official service on the Corporation requires that an authentic copy or extract of the notarial deed is served by bailiff's writ on the Corporation.

Article 2:196c Submission or official service regarding the transfer of a depository receipt
Articles 2:196a and 2:196b apply accordingly in regard of the delivery (transfer) of a depository receipt issued for a share to which a right to attend the General Meeting is attached, on the

understanding that the submission to or official service on the Corporation as meant in **Article** 2:196b has to be made of a copy of the deed of transfer.

Article 2:197 Encumbrance of shares with a usufruct
- 1. The shareholder's right to encumber his share with a usufruct cannot be excluded or limited in the articles of incorporation.
- 2. The shareholder has the right to vote on shares encumbered with a usufruct.
- 3. In derogation from the previous paragraph, the right to vote shall belong to the usufructuary if this has been determined when the usufruct was established or, afterwards, by an agreement between the shareholder and the usufructuary, and the usufructuary is a person to whom the shares may be transferred freely. If the usufructuary is a person to whom the shares cannot be transferred freely, the right to vote shall only belong to him if this has been determined when the usufruct was established or, aferwards, by an agreement between the shareholder and usufructuary, provided that both, such determination (at the establishment or by an agreement) and – in case of a transfer of the usufruct – the transition (change-over) of the right to vote has been approved by a body of the Corporation assigned for this purpose in the articles of incorporation or – in the absence of such assignment – by the General Meeting. It is possible to derogate in the articles of incorporation from what is provided in the previous sentence. The right to vote shall belong to the usufructuary also in the event of a usufruct as meant in **Article** 4:19 and 4:21, unless something else has been determined when the usufruct was established, either by the parties themselves or by the Subdistrict Court on the basis of **Article** 4:23, paragraph 4. Articles 2:196a and 2:196b apply accordingly to the written agreement meant in the first and second sentence.
- 4. The shareholder who, on account of a usufruct, has no right to vote, and the usufructuary to whom belongs the right to vote, have the rights which the law provides to holders of depository receipts issued for shares to which the right to attend the General Meeting is attached. The usufructuary without a right to vote has these rights if the articles of incorporation provide so and nothing else has been determined at the establishment or transfer of the usufruct.
- 5. The rights arising from a share with respect to the acquisition of shares belong to the shareholder, on the understanding that he has to compensate the value of those rights to the usufructuary, insofar as the usufructuary is entitled thereto under the usufruct*).

*) The usufructuary is entitled to the fruits (benefits) of the shares, like dividends. However, when such dividends are distributed in the form of issued additional shares (stock dividend), these shares shall belong to the shareholder (unless the articles of incorporation provide otherwise). But in that event the shareholder has the obligation to pay the value of those shares to the usufructuary.

Article 2:198 Encumbrance of shares with a pledge
- 1. The shares may be encumbered with a pledge as far as the articles of incorporation do not provide otherwise.
- 2. The shareholder has the right to vote on pledged shares.
- 3. In derogation from the previous paragraph, the right to vote shall belong to the pledgee if this has been determined, whether or not under a condition precedent, when the pledge was

established or, afterwards, by an agreement between the shareholder and the pledgee, and the pledgee is a person to whom the shares may be transferred freely. If the pledgee is a person to whom the shares cannot be transferred freely, the right to vote shall only belong to him if this has been determined, whether or not under a condition precedent, when the usufruct was established or, afterwards, by an agreement between the shareholder and pledgee, provided that both, such determination (at the establishment or by an agreement) and – when another person succeeds in the rights of the pledgee - the transition (change-over) of the right to vote has been approved by a body of the Corporation assigned for this purpose in the articles of incorporation or – in the absence of such assignment – by the General Meeting. It is possible to derogate in the articles of incorporation from what is provided in the previous two sentences. Articles 2:196a and 2:196b apply accordingly to the written agreement meant in the first and second sentence.
- 4. The shareholder who, on account of a pledge, has no right to vote, and the pledgee to whom belongs the right to vote, have the rights which the law provides to holders of depository receipts issued for shares to which the right to attend the General Meeting is attached. The pledgee without a right to vote has these rights if the articles of incorporation provide so and nothing else has been determined at the establishment or transition (changing-over) of the pledge.
- 5. It is possible to determine at the establishment of the pledge that **Article** 2:196a, paragraph 2, shall not apply. In that case, **Article** 2:239, paragraph 3 and 4, shall apply accordingly, on the understanding that the notification meant in **Article** 2:196, paragraph 2, shall be replaced by an acknowledgement by or an official service on the Corporation.
- 6. An arrangement in the articles of incorporation regarding the alienation and transfer of shares shall apply to an alienation and transfer of the shares by the pledgee or when the ownership of the shares falls to the pledgee himself, on the understanding that the pledgee, with regard to such alienation and transfer, shall exercise all rights belonging to the shareholder and shall comply with all of the shareholder's obligations in regard.

Article 2:199 Liability of previous shareholders
- 1. After a transfer or apportionment of a not fully paid up share, each of the previous shareholders remains jointly and severally liable towards the Closed Corporation (*'besloten vennootschap'*) for the amounts that still have to be paid up on the share. The Board of Directors may, jointly with the Supervisory Board, release a previous shareholder from any further liability by means of an authentic or registered private deed; in such case, however, the shareholder remains liable for amounts which have to be paid on the share on account of an additional call up made within one year after the day on which the authentic deed was executed or, respectively, on which the private deed was registered.
- 2. If a previous shareholder makes a payment to the Corporation, he acquires the rights which the Corporation could exercise against the previous shareholders.

Article 2:200 *(repealed on 01.01.1992)*

Article 2:201 Equal rights for shareholders (and holders of depository receipts)
- 1. Insofar the articles of incorporation do not provide otherwise, all rights and obligations attached to shares are equal in proportion to their nominal amount.

- 2. The Closed Corporation (*'besloten vennootschap'*) shall treat the shareholders, respectively, the holders of depository receipts who are in the same position, in the same way.
- 3. The articles of incorporation may provide that particular rights in respect of exercising control in the Corporation, as specified in the articles of incorporation, are attached to shares of a certain type (class) or indication.

Article 2:201a Buy out of minority shareholders
- 1. He who, as a shareholder, has provided for his own account at least 95% of the issued share capital of the Closed Corporation (*'besloten vennootschap'*) and may exercise at least 95% of the voting rights in its General Meeting, may file a legal claim against the other shareholders to demand a transfer of their shares to him (the plaintiff). The same applies if two or more group companies together provide this part of the issued share capital and together may exercise this part of the voting rights, and they jointly file a legal claim to demand a transfer of the shares to one of them.
- 2. The Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal shall decide in first instance on a legal claim as referred to in the previous paragraph. Only an appeal in cassation is available against its decision.
- 3. If one or more of the defendants are in default of appearance, the court must of its own motion examine whether the plaintiff or plaintiffs meet the requirements set out in paragraph 1.
- 4. The court shall reject the legal claim in favour of all defendants, if one of the defendants, despite the compensation, would suffer a serious material loss as a result of the transfer*), or if one of the defendants holds a share to which, according to the articles of incorporation, particular rights are attached in respect of the exercise of control in the Corporation, or if the plaintiff towards one of the defendants has waived his right to file the before meant legal claim.
- 5. If the court finds that paragraph 1 and 4 do not prevent the awarding of the legal claim, it may order that one or three experts make a report about the value of the to be transferred shares. The first three sentences of **Article** 2:350, paragraph 3, and Articles 2:351 and 2:352 shall apply. The court shall determine the price of the to be transferred shares on the basis of their value on a specific day set by the court. As long as and to the extent that the fixed price has not been paid, this price will be raised with an interest, equal to the statutory interest, running as of that day until the day of transfer; distributions on the shares that have been made payable during that period, shall be used, on the pay day, for a partial payment of the price.
- 6. When the court awards the legal claim, it shall order the party who filed the legal claim to acquire the shares to pay the fixed price with interest to those to whom these shares belong or will belong [like heirs or buyers] against delivery by those persons of the unencumbered shares. The court decides on the costs of proceedings as it regards appropriate. No costs of proceedings can be imposed on a defendant who is in default of appearance.
- 7. When the judicial decision to transfer the shares has become final and binding, the party who filed the legal claim to acquire the shares shall inform the holders of the to be transferred shares, of whom he knows the address, in writing about the day and place of payment and about the price that will be paid. He shall publish this information also in a national daily newspaper, unless all relevant addresses are known to him.
- 8. The party who filed the legal claim to acquire the shares is always able to release himself from the obligations referred to in paragraphs 6 and 7, by depositing the fixed price, as determined for all of the to be transferred shares, including the accrued interest, with the

Ministry of Justice, making notice at the same time of the usufructs, pledges and seizures with which the involved shares, to his knowledge, are encumbered. As a result of this last notification a seizure attached to the shares passes over (will become attached) to the right to receive payment of the deposited amounts. As a result of the before mentioned deposit, the shares will pass unencumbered to the party who filed the legal claim to acquire them, whereas a possible usufruct or pledge on the shares passes over to (shall become established on) the right to receive payment of the deposited amounts. No rights against the Corporation can be derived from distributions which have been made payable on share certificates and dividend warrants after the shares have passed to the party who filed the legal claim to acquire them. The acquiring party shall, at that moment, give notice of the deposit made with the Ministry of Justice and of the price for each share in the way meant in paragraph 7.

) For instance when the Corporation has engaged itself towards one of the defendants not to compete with his business as long as he is a shareholder of the Corporation, or when one of the defendants, if he should transfer his block of shares, would have to pay Income Tax because he had a so called 'serious interest' in the share capital over the last five years (a substantial interest is involved if a natural person – whether or not together with his partner – own at least 5% of the shares, share options or profit-sharing certificates in a Closed Corporation ('besloten vennootschap'*) or Open Corporation (*'naamloze vennootschap'*) or in a Cooperative (*'coöperatie'*); in that situation the income from a substantial interest may be subject to 25% income tax).

Article 2:202 No issuance of bearer depository receipts
No bearer depository receipts for shares may be issued. In the event of a violation of this provision, the rights attached to a share cannot be exercises as long as bearer depository receipts are in circulation.

Section 2.5.3 The capital of a Closed Corporation

Article 2:203 Juridical acts performed in the name of a still to be formed Closed Corporation
- 1. It is possible to perform juridical acts in the name of a Closed Corporation (*'besloten vennootschap'*) which still has to be formed (incorporated); from such juridical acts, however, can only arise rights and obligations for the Corporation when it has ratified these juridical acts after its formation (incorporation), either explicitly or tacitly, or when it has become engaged (bound) due to paragraph 4.
- 2. The persons who have performed a juridical act in the name of a still to be formed Closed Corporation (*'besloten vennootschap'*), are jointly and severally liable for that act until the Corporation has ratified it after its formation (incorporation), unless the contrary has been stipulated explicitly in respect of that juridical act.
- 3. If the Corporation has ratified the juridical act but fails to perform the obligations which arise from it, then the persons who have acted in the name of the still to be formed Corporation are jointly and severally liable for the damage which a third person suffers as a result, if they knew or reasonably could have known that the Corporation could not comply with these obligations,

all without prejudice to any possible liability of the Directors on account of a ratification. The knowledge that the Corporation could not comply with its obligations, is presumed to be present when the Corporation is declared bankrupt within one year after its formation (incorporation).
- 4. The founders (incorporators) can only bind the Closed Corporation (‘besloten vennootschap’) in the notarial deed of incorporation by the issuance of shares, the acceptance of contributions paid up on those shares, the appointment of Directors, the appointment of Supervisory Directors, the performance of juridical acts as meant in **Article** 2:204, paragraph 1*) and the payment of the costs related to the formatin (incorporation). If a founder (incorporator) has observed insufficient diligence (prudence) in respect thereof, then Articles 2:9 and 2:138 shall apply accordingly..

*) In the notarial deed of incorporation the founders usually also ratify explicitly, in the name of the formed legal person, all juridical acts that have been performed prior to that moment in the name and on behalf of the still to be formed legal person. This is allowed under the condition that the Directors at the moment of such ratification did not know and reasonably not ought to have known that de Corporation (meanwhile) is not (no longer) able to perform the obligations from the ratified juridical acts. If this condition is not met, the Directors are (remain) joint and several liable for these obligations.

Article 2:203a *[repealed on 01-10-2012]*

Article 2:204 Juridical acts that may be burdensome for the Closed Corporation
- 1. The following juridical acts must be included in full either in the notarial deed of incorporation itself, or in an original document or a certified extract thereof attached to that deed and to which the notarial deed of incorporation refers:
a. juridical acts performed in connection with the subscription for shares that impose special obligations on the Closed Corporation (*'besloten vennootschap'*);
b. juridical acts performed with the intention to provide some advantage to a founder of the Closed Corporation (*'besloten vennootschap'*) or to a third person involved at its formation (incorporation);
c. juridical acts performed to bring in another contribution than money.
If the previous sentence has not been observed, then the before mentioned juridical acts cannot impose any obligations on the Corporation, nor can they grant any rights to the Corporation.
- 2. After the formation (incorporation), the juridical acts meant in the previous paragraph may only be performed without the approval of the General Meeting if and to the extent that the articles of incorporation explicitly have empowered the Board of Directors to perform such juridical acts.

Article 2:204a Valuation of a contribution in kind made to the Corporation upon its formation
- 1. If, at the formation (incorporation), another contribution than money has been agreed as consideration for allotted shares, then the founders (incorporators) must draw up a description of what has been contributed, with mention of the value attributed to the contributed assets and of the valuation methods used. The description must relate to the condition (state) of what has been

contributed on a day not more than six months prior to the formation (incorporation). The drawn up description is signed by all founders (incorporators). The Corporation deposits this declaration at its office for inspection by the holders of shares and by others to whom the right to attend the General Meeting belongs.
- 2. If, prior to the moment on which the contribution is brought in, it is or has become known that the value thereof has decreased substantially after the day meant in paragraph 1, second sentence, then a new description shall be required.

Article 2:204b Valuation of a contribution in kind made to the Corporation after its formation
- 1. If, after the formation (incorporation), another contribution than money has been agreed as consideration for allotted shares, the Corporation shall make a description, in accordance with **Article** 2:204a, paragraph 1, of what has been contributed. The description must relate to the condition (state) of what has been contributed on a day not more than six months prior to the day on which the allotted shares are taken or on which the additional contribution other than money has been issued by the Corporation or on which such contribution has been agreed upon. The description must be signed by all Directors; if the signature of one or more of them is missing, this will be noted on the description, with mention of the reason for this. The Corporation deposits the description at its office for inspection by the holders of its shares and by others to whom a right to attend the General Meeting belongs.
- 2. **Article** 2:204, paragraph 2, shall apply accordingly.
- 3. The present **Article** does not apply as far as the contribution consists of shares, depository receipts issued for shares, rights for a conversion therein or dividend certificates (bonus shares), all in or of another legal person, with regard to which the Corporation has released a public offer, provided that these transferable securities or a part thereof are admitted to a regulated market or multilateral trading facility as specified in **Article** 1:1 of Financial Supervision Act, or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a EU Member State. .

Article 2:204c *[repealed on 01-10-2012]*

Article 2:205 Corporation is not allowed to subscribe for its own shares
The shares of a Closed Corporation (*'besloten vennootschap'*) may not be subscribed for by that Corporation itself.

Article 2:206 Power to issue new shares
- 1. A Closed Corporation (*'besloten vennootschap'*) may, after its formation (incorporation), only issue shares pursuant to a resolution of the General Meeting, as far as no other body of the Corporation has been designated for this purpose in the articles of incorporation. The General Meeting may delegate this power to another body of the Corporation and may withdraw (revoke) such delegation of power.
- 2. The previous paragraph applies accordingly to the granting of rights to subscribe for shares,

but shall not apply to the issuance of shares to a person who previously already had acquired a right to subscribe for shares.

Article 2:206a Pre-emptive subscription right of shareholders
- 1. As far as the articles of incorporation do not provide otherwise, each shareholder has a pre-emptive subscription right with regard to the issuance of new shares, and this in proportion to the total nominal amount of his shares, subject to the following two paragraphs. He has no pre-emptive subscription right with regard to shares issued to the employees of the Corporation or of a group company.
- 2. - 2. As far as the articles of incorporation do not provide otherwise, the holders of shares who:
a. do not or only to a limited extent participate (share) in the profits above a certain percentage of the nominal value of their shares, or;
b. do not or only to a limited extent participate (share) in a liquidation surplus above the nominal value of their shares, or;
c. to which, pursuant to an arrangement in the articles of incorporation on the basis of **Article** 2:228, paragraph 2, no voting right is attached;
have no pre-emptive subscription right with regard to newly to be issued shares.
- 3. As far as the articles of incorporation do not provide otherwise, shareholders have no pre-emptive subscription right with regard to the issuance of new shares of one of the types (classes) as referred to in the previous paragraph under point (a), (b) and (c).
- 4. The issuance of new shares with regard to which a pre-emptive subscription right exists, and the period during which such a pre-emptive subscription right may be exercised, are announced in writing by the Corporation to all shareholders at the addresses as disclosed by them to the Corporation. Unless the articles of incorporation provide otherwise, the requirement of a written announcement shall be met as well if the announcement is recorded electronically.
- 5. Pre-emptive subscription rights may be exercised for at least four weeks after the date on which the announcement was made.
- 6. As far as the articles of incorporation do not provide otherwise, the shareholders have a pre-emptive subscription right where it concerns rights granted for the acquisition of (subscription for) to be issued new shares of another type (class) than the one defined in paragraph 2, under point (a), (b) and (c). Shareholders have no pre-emptive rights with regard to shares issued to a person who previously already had acquired a right to subscribe for shares.

Article 2:207 Acquisition by a Closed Corporation of its own shares
- 1. The Board of Directors decides over the acquisition of shares in the capital of the Closed Corporation (*'besloten vennootschap'*)*). The acquisition by a Closed Corporation (*'besloten vennootschap'*) of not fully paid up shares in its own capital is null and void.
- 2. The Closed Corporation (*'besloten vennootschap'*) is not allowed, except where this occurs gratuitously, to acquire not fully paid up own shares if its equity (total assets minus liabilities), reduced with the acquisition price of the to be acquired own shares, is less than the reserves which must be maintained pursuant to law or the articles of incorporation, or if the Board of Directors knows or reasonably ought to foresee that the Closed Corporation (*'besloten vennootschap'*) after the acquisition shall no longer be able to continue the payment of its due

and collectable debts.
- 3. If the Closed Corporation (*'besloten vennootschap'*), after an acquisition other than a gratuitous one, is not able to continue the payment of its due and collectable debts, then the Directors who knew that result at the moment of acquisition or who reasonably ought to have foreseen that result at that moment, are joint and several liable towards the Closed Corporation (*'besloten vennootschap'*) for compensation of the deficit which has arisen on account of the acquisition, raised with the statutory interest running as of the day of acquisition. **Article** 2:248, paragraph 5, applies accordingly. Not liable is the Director who proves that it is not due to him that the Closed Corporation (*'besloten vennootschap'*) has acquired the shares and, in addition, that he has not been negligent in taking measures to avert the consequences thereof.
For the purpose of the present Article, a person who has laid down the corporate policy or has co-participated therein as if he was a Director is equated with a Director.
The alienator of the shares who knew or reasonably ought to have foreseen that the Closed Corporation (*'besloten vennootschap'*) would no longer be able to continue the payment of its due and collectable debts after the acquisition, is towards the Closed Corporation (*'besloten vennootschap'*) liable for compensation of the deficit which has arisen on account of the acquisition of his shares, to at the most the acquisition price for the shares alienated by him, raised with the statutory interest running as of the day of acquisition.
When the Directors have paid the debt-claim by virtue the first sentence, then the compensation meant in de previous sentence is made to them in proportion to the part that each Director has paid. The Directors and the alienator are not entitled to setoff a debt imposed on them pursuant to the present Article.
- 4. The articles of incorporation may exclude or limit the acquisition by the Closed Corporation ('besloten vennootschap') of its own shares.
- 5. The previous paragraphs do not apply where the Closed Corporation ('besloten vennootschap'i) acquires its own shares under universal title.
- 6. For the purpose of the present **Article** the word 'shares' includes 'depository receipts issued for shares'.

) A Closed Corporation ('besloten vennootschap'*) may only issue registered shares.

Article 2:207a Legal effects of an unlawful acquisition by the Corporation of its own shares
- 1. An acquisition by the Closed Corporation (*'besloten vennootschap'*) of its own shares*) at the expense of the reserves meant in **Article** 2:207, paragraph 2, or in violation of an exclusion or limitation as meant in **Article** 2:207, paragraph 4, is null and void. The Directors are jointly and severally liable towards the alienating party who in good faith passed the shares to the Corporation and who has suffered damage as a result of the null and void acquisition.
- 2. If the Closed Corporation (*'besloten vennootschap'*) has acquired own shares under universal title and this acquisition has the result that the Closed Corporation, together with its subsidiary companies, holds all shares with voting rights in its capital, then the lowest numbered share with a voting right shall, at that moment, pass over by operation of law to the Directors jointly. When a numbering of shares is absent, a share with voting right shall be assigned by lot. Each Director is joint and several liable for the compensation to be paid to the Closed Corporation (*'besloten vennootschap'*) of the value of the share at the moment of acquisition, raised with the statutory interest running as of that moment.

- 3. Each not paid up share in its capital that the Closed Corporation (*'besloten vennootschap'*) has acquired under universal title**) and that has not been disposed of or retired (eliminated and taken out of circulation) within three years thereafter, shall at the end of the last day of that three-year period pass over by operation of law to the Directors jointly. The last sentence of paragraph 2 applies accordingly.
- 4. For the purpose of the present **Article** the word 'shares' includes 'depository receipts issued for shares'.

) A Closed Corporation ('besloten vennootschap'*) may only issue registered shares.
**) A Corporation may acquire its own shares under universal title as a result of a merger or split up or as an heir in the estate of a deceased person.

Article 2:207b Shares in the Corporation subscribed for or acquired in the name of another person for account of the Corporation
When another person in his own name subscribes for or acquires one or more shares in the capital of the Closed Corporation (*'besloten vennootschap'*) or depository receipts issued for such shares, yet for account of the Closed Corporation itself, he shall be deemed to have subscribed for or acquired these shares or depository receipts for his own account.

Article 2:207c *[repealed on 1 October 2012]*

Article 2:207d Acquisition of shares in the Corporation by its subsidiaries
- 1. A subsidiary company may not for its own account subscribe or cause the subscription for shares*) in the capital of a Closed Corporation (*'besloten vennootschap'*). Subsidiary companies may only for their own account under particular title, and other than gratuitously, acquire or cause the acquisition of such shares, if the Board of Directors of the Closed Corporation (*'besloten vennootschap'*) has given its approval to such acquisition. An acquisition under particular title in violation of the previous sentence is null and void. **Article** 2:207, paragraph 2, applies accordingly to the resolution (decision) of the Board of Directors on the approval. **Article** 2:207, paragraph 3, applies accordingly, on the understanding that the joint en several liability of the Directors exists towards the subsidiary company.
- 2. When a legal person, after it has become a subsidiary company or after it has acquired under universal title as a subsidiary company shares in the capital of the Closed Corporation (*'besloten vennootschap'*), together with the Closed Corporation and the latter's other subsidiary companies holds or causes to hold for its own account all shares with voting right in the capital of the Closed Corporation, then the lowest numbered share shall, at the moment on which that legal person became a subsidiary company or on which the shares were acquired, pass over by operation of law to the Directors jointly. When a numbering of shares is absent, a share with voting right shall be assigned by lot. Each Director is joint and several liable for the compensation to be paid to the subsidiary company of the value of the share at the moment on which the subsidiary company became a subsidiary company or at the moment of acquisition, raised with the statutory interest running as of that moment.

- 3. For the purpose of the present **Article** the word ‘shares’ includes ‘depository receipts issued for shares’.

) A Closed Corporation ('besloten vennootschap'*) may only issue registered shares.

Article 2:208 Reduction of the Corporation’s capital
- 1. - 1. The General Meeting may resolve (decide) to reduce the issued share capital through a retirement (elimination) of shares or by a reduction of the nominal amount of the shares by means of an amendment of the articles of incorporation. Such a resolution must specify the shares to which it relates and the way in which the resolution is to be implemented.
- 2. A resolution for the retirement (elimination) of shares may only concern shares which the Corporation holds itself (treasury shares) or of which it holds the depository receipts (treasury receipts) as well as all of the shares of a specific type (class) or indication with regard to which, prior to their issuance, the articles of incorporation already provided that they could be retired (redeemed and eliminated) against repayment, or shares of a certain type (class) or indication balloted for redemption and retirement (elimination), with regard to which, prior to their issuance, the articles of incorporation already provided that they could be balloted for redemption and retirement (elimination) against repayment. In other situations a retirement (elimination) of shares is only possible with the consent of all involved shareholders.
- 3. A reduction of the nominal amount of shares without repayment and without a relief from the obligation to pay up the shares must be effectuated proportionally in respect of all shares of the same type (class) or indication. The requirement of proportionality may be set aside with the consent of all involved shareholders.
- 4. A relief from the obligation to pay up the shares is only possible if this is done for the implementation of a resolution (decision) for a reduction of the nominal amount of the shares. Such a relief must be effectuated proportionally in respect of all of the shares, unless, prior to the issuance of shares of a specific type (class) or indication or afterwards with the consent of all holders of shares of that specific type (class) or with that specific indication, the articles of incorporation provide that a relief or repayment may be effectuated exclusively in respect of those shares; in that last event the requirement of proportionality applies to those shares. The requirement of proportionality may be set aside with the consent of all involved shareholders.
- 5. The convening notice for a General Meeting where a resolution as referred to in the present **Article** is to be passed, mentions the purpose (objective) of the reduction of the Corporation’s capital and the way in which such a reduction is to be implemented. **Article** 2:233, paragraph 2, 3 and 4, shall apply accordingly.
- 6. **Article** 2:216, paragraph 2 up to and including 4 shall apply accordingly to a resolution for the reduction of the issued share capital with repayment on the shares. A repayment or relief from the obligation to pay up on the shares within the meaning of the present **Article** is only allowed to the extent that the equity (total assets minus liabilities) is larger than the reserves which have to be maintained pursuant to law or the articles of incorporation.

Article 2:209 Publication requirements regarding a reduction of the Corporation’s capital
- 1. The Closed Corporation (*'besloten vennootschap'*) deposits the resolutions meant in the previous **Article** at the office of the commercial register, and makes an announcement thereof in

a national daily newspaper.
- 2. The Corporation must provide security (collateral) to each creditor who requests so or provide him with other guarantees in order to assure that his debt-claim will be satisfied; if the Corporation fails to comply with this provision, then the objections of the creditor as referred to in the next paragraph shall be acknowledged as valid. The provisions of this paragraph do not apply if the creditor has sufficient guarantees that his debt-claim will be performed or when the Corporation has sufficient property to assure that his debt-claim will be performed.
- 3. Within two months after the announcement meant in paragraph 1, any creditor may file a petition at the District Court through which he makes an objection against the resolution (decision) for a reduction of the Corporation's capital, with mention of the security or other guarantee he seeks. The District Court shall reject the request if the applicant fails to make plausible that, as a result of the reduction of the Corporation's capital, there is a legitimate doubt that his debt-claim will be satisfied, and that the Corporation has provided insufficient security or other guarantees therefore.
- 4. Before the District Court gives its decision, it may enable the Corporation to provide certain security or another kind of guarantee within a period to be set by court. If the Corporation's capital has been reduced already, the District Court may order, upon a filed request, that security or another kind of guarantee is provided to the applicant (creditor), under a financial penalty for non-compliance.
- 5. A resolution for the reduction of the Corporation's capital shall not take effect as long as an objection may still be filed. If an objection is filed in time, the resolution shall only take effect when the objection has been withdrawn or when the court order in which that objection was denied has become enforceable. Where the reduction of the Corporation's capital requires an amendment of the articles of incorporation, the involved notarial deed may not be executed prior to the moment meant in the previous sentence.
- 6. If the Corporation reduces its capital to an amount not less than its own equity (total assets minus liabilities), and this reduction is made because of the loss that the Corporation has suffered, then it does not need to provide any security or another kind of guarantee, whereas the resolution shall take effect immediately.

Article 2:210 Annual accounts and annual report
- 1. Annually, within five months after the end of the accounting year of the Corporation, except when this period has been extended with at the most six months by the General Meeting in view of particular circumstances, the Board of Directors draws up the annual accounts, and deposits these documents at the office of the Corporation for inspection by its shareholders. Within the same period, the Board of Directors shall also deposit the annual report for inspection by its shareholders, unless **Article** 2:396, paragraph 7, or **Article** 2:403 applies to the Corporation. The Board of Directors of a Corporation to which Articles 2:268 up to and including 2:271 and 2:274 applies, shall send the annual accounts as well to the Works Council meant in **Article** 2:268, paragraph 11.
- 2. The annual accounts are signed by the Directors and the Supervisory Directors; where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this.
- 3. The annual accounts are adopted by the General Meeting. An adoption of the annual accounts does not implicate a discharge of liability for the Directors or Supervisory Directors.

- 4. Resolutions on the basis of which the annual accounts are adopted, may not be subjected in the articles of incorporation to the approval of a body of the Corporation or of a third person.
- 5. The articles of incorporation may not contain any provision on the basis of which it is permitted to set any requirement or binding proposal for the annual accounts or for any item thereof.
- 6. The articles of incorporation may provide that another body of the Corporation than the General Meeting has the power to decide which part of the result of an accounting year shall be reserved, or how a loss shall be written-off.
- 7. Upon request, the Minister of Economic Affairs may, for compelling reasons, grant relief from the obligation to draw up, submit and adopt the annual accounts.

Article 2:211 [*repealed on 01-01-1984*]

Article 2:212 Inspection of the annual accounts at the office of the Corporation
- 1. The Closed Corporation (*'besloten vennootschap'*) ensures that the annual accounts, the annual report and the information which has to be added pursuant to **Article** 2:392, paragraph 1, are available at its office as of the day on which the convening notice is given for a General Meeting for the adoption of these accounting documents. Shareholders and the other persons with a right to attend the General Meeting may inspect these documents at the office of the Corporation and may obtain a free copy thereof.
- 2. Where it concerns shares to bearer or depository receipts to bearer or debentures to bearer (debts certificates) issued by the Corporation which are in circulation still, the involved documents, as far as they have to be made public, are available for inspection to everyone; a copy or extract thereof shall be provided against payment of at the most the cost price. This right ceases to exist when the involved documents are deposited at the office of the commercial register.

Article 2:213 [*repealed on 01-01-1984*]

Article 2:214 [*repealed on 01-01-1984*]

Article 2:215 Writing off of deficits from the reserves
A deficit may only be written off from the statutory reserves as far is this is permitted by law.

Article 2:216 Distribution of profits
- 1. The General Meeting is empowered with the allocation (appropriation) of the profits which have been determined by adoption of the annual accounts, and with the adoption of the distributions, to the extent that the equity (total assets and liability) of the Closed Corporation (*'besloten vennootschap'*) exceeds the reserves which have to be maintained by virtue of law or the articles of incorporation. The articles of incorporation may limit the powers meant in the first

sentence or assign these to another body of the Closed Corporation.
- 2. A resolution (decision) for a distribution has no effect as long as the Board of Directors has not given its approval to it. The Board of Directors shall only deny its approval if it knows or reasonably ought to foresee that the Closed Corporation (*'besloten vennootschap'*), after the distribution, shall no longer be able to continue the payment of its due and collectable debts.
- 3. If the Closed Corporation *('besloten vennootschap'*), after a distribution, is not able to continue the payment of its due and collectable debts, then the Directors who knew that result at the moment of the distribution or who reasonably ought to have foreseen that result at that moment, are joint and several liable towards the Closed Corporation (*'besloten vennootschap'*) for compensation of the deficit which has arisen on account of the distribution, raised with the statutory interest running as of the day of distribution. **Article** 2:248, paragraph 5, applies accordingly. Not liable is the Director who proves that it is not due to him that the Closed Corporation (*'besloten vennootschap'*) has made the distribution and, in addition, that he has not been negligent in taking measures to avert the consequences thereof.
The person who acquired the distribution while he knew or reasonably ought to have foreseen that the Closed Corporation (*'besloten vennootschap'*) would no longer be able to continue the payment of its due and collectable debts after the distribution, is towards the Closed Corporation (*'besloten vennootschap'*) liable for compensation of the deficit which has arisen on account of the distribution, to at the most the amount or value of the distribution he received, raised with the statutory interest running as of the day of distribution.
When the Directors have paid the debt-claim by virtue of the first sentence, then the compensation meant in the third sentence is made to them in proportion to the part that each Director has paid. With regard to a debt that is imposed pursuant to the first or third sentence, the debtor has no right of setoff.
- 4. For the purpose of paragraph 3 a Director is equated with a person who has laid down the corporate policy or has co-participated therein as if he was a Director. The legal claim (right of action) cannot be filed against an administrator appointed by the court.
- 5. In calculating each distribution, the shares that the Closed Corporation (*'besloten vennootschap'*) holds in its own capital (treasury shares) are not taken into account, unless the articles of incorporation provide otherwise.
- 6. In calculating the amount which is to be distributed on each share, only the amount of the obligatory payments on the nominal amount of the shares is taken into account. It is possible to derogate from the previous sentence in the articles of incorporation or each time with the approval of all shareholders.
- 7. The articles of incorporation may provide that shares of a certain type (class) or indication do not or only in a limited way enclose a right of sharing in the profits or reserves of the Closed Corporation (*'besloten vennootschap'*).
- 8. For an arrangement in the articles of incorporation as meant in paragraph 6 or 7, the approval is required of all holders of shares whose rights are harmed by such amendment of the articles of incorporation.
- 9. The articles of incorporation may provide that the claim of a shareholder does not become prescribed after a period of five years, but shall elapse after a longer period of time. Such a provision in the articles of incorporation shall in that event apply accordingly to the claim of a holder of a depository receipt against the shareholder of the share for which that depository receipt was issued.
- 10. The articles of incorporation may provide that the profits to which holders of shares of a

specific type (class) are entitled, shall be reserved in full or in part for their benefit.
- 11. Paragraph 3 does not apply to distributions in the form of shares in the capital of the Closed Corporation (*'besloten vennootschap'*), nor to the crediting of not paid up shares.

Title 2.6 Foundations

Article 2:285 Definition of a 'Foundation'; no members and no (profit) distributions allowed
- 1. A Foundation (*''stichting''*) is a legal person formed by means of a juridical act, that has no members, and that intents to realize an objective (purpose), mentioned in its articles of incorporation, by using capital (property) which has been brought in for this purpose.
- 2. If the articles of incorporation grant one or more persons the power to fill vacancies in a body of the Foundation (*'stichting'*), then solely on this ground the Foundation (*'stichting'*) cannot be regarded to have members.
- 3. The objective (purpose) of a Foundation (*'stichting'*) may not include the making of distributions to its founders (incorporators) or to those who are participating in its bodies or to others, except, as regards the latter, when these distributions are made for charitable (philanthropic) or social purposes.

Article 2:286 Formation of a Foundation
- 1. A Foundation (*'stichting'*) must be formed by notarial deed .
- 2. The notarial deed must be executed in the Dutch language. If the Foundation (*'stichting'*) has its seat in the province of Friesland (‘Fryslân’), the notarial deed may be executed as well in the Frisian language. A procuration (power of attorney) to cooperate with the execution of the notarial deed, must be granted in writing. A Foundation (*'stichting'*) may be formed by means of a last will (testamentary disposition), embodied in a notarial deed which is executed in another language than Dutch or Frisian; yet, the articles of incorporation must also in that case be written in the Dutch or Frisian language.
- 4. The articles of incorporation include:
a. the name of the Foundation (*'stichting'*), with the word *''stichting''* ('Foundation') as part of the name;
b. the purpose (objective) of the Foundation (*'stichting'*);
c. the method for the appointment and removal (dismissal) of the Directors of the Foundation (*'stichting'*);
d. the municipality in the Netherlands where the Foundation (*'stichting'*) has its seat;
e. the use of a surplus after the Foundation (*'stichting'*) has been wound up on account of its dissolution, or the way in which the use of such a surplus shall be determined in that event.
- 5. The notary, in front of whom the notarial deed of incorporation is executed, shall ensure that this deed is in accordance with the provisions of paragraph 2 up to and including 4. In the event of a defect, the notary is personally liable towards those who have suffered damage as a result.

Article 2:287 Absence of a seat in the articles of incorporation

Where the articles of incorporation do not designate any seat of the Foundation (*'stichting'*), the Foundation shall have its seat in the municipality where the notary, in front of whom the notarial deed of incorporation was executed, has his office at the time of the execution of that deed.

Article 2:288 [*repealed on 01-01-2003*]

Article 2:289 Registration of the Foundation in the commercial register
- 1. The Directors of a Foundation (*'stichting'*) are responsible for the registration of the Foundation (*'stichting'*) and of the name, surname and residence or last residence of the founder or founders in the commercial register, and must deposit a certified copy or an authentic extract of the notarial deed of incorporation at the office of that register (Chamber of Commerce).
- 2. As long as no application for an initial registration or deposit as meant in paragraph 1 has been lodged with the keeper of the commercial register, each Director is jointly and severally liable, next and in addition to the Foundation (*'stichting'*), for juridical acts through which he has committed (bound) the Foundation (*'stichting'*).

Article 2:290 [*repealed on 01-01-1992*]

Article 2:291 Duties and powers of the Board of Directors
- 1. Subject to any restrictions under the articles of incorporation, the Board of Directors is charged with the administration and management of the Foundation (*'stichting'*).
- 2. Only if this results from the articles of incorporation, the Board of Directors is empowered to resolve (decide) to enter into agreements for the acquisition, alienation (passage) and encumbrance of registered property, and to enter into agreements under which the Foundation (*'stichting'*) engages itself as surety or joint and several co-debtor or through which it guarantees performance by a third person or engages itself to provide security for the debt of someone else. The articles of incorporation may limit this power or attach conditions to it. Such exclusions, limitations and conditions apply as well to the authority of the Board of Directors to represent the Foundation (*'stichting'*) in performing the before mentioned juridical acts, unless the articles of incorporation provide otherwise.

Article 2:292 Authority to represent the Foundation
- 1. The Board of Directors represents the Foundation (*'stichting'*) as far as the law does not provide the contrary.
- 2. The articles of incorporation may empower one or more Directors with the authority to represent the Foundation (*'stichting'*). They may indicate that a Director is only allowed to represent the Foundation (*'stichting'*) with the cooperation of one or more other persons [usually another Director].
- 3. The authority to represent the Foundation (*'stichting'*), granted to the Board of Directors or to a Director, either solely or jointly with others, is unlimited and unconditional as far as the law does not provide the contrary. A legally permitted or prescribed limitation of or condition for the

authority of representation may only be invoked by the Foundation (*'stichting'*).
- 4. The articles of incorporation may also grant authority of representation to other persons than Directors.

Article 2:293 Amendment of the articles of incorporation
The articles of incorporation of a Foundation can only be amended by the bodies of the Foundation if the articles of incorporation provide for such possibility. Such an amendment must be made by notarial deed, on the penalty that the amendment will be null and void. The Directors must deposit an authentic extract of the amendment and of the amended articles of incorporation at the office of the register meant in **Article** 2:289 (commercial register).

Article 2:294 Amendment of the articles of incorporation by the court
- 1. If an unchanged continuation of the articles of incorporation would lead to consequences which reasonable could not have been wanted when the Foundation (*'stichting'*) was formed (incorporated), and the articles of incorporation do not provide a possibility to amend them or the persons empowered to make such amendments refuse to do so, then the District Court may amend the articles of incorporation upon the request of a founder, the Board of Directors or the Public Prosecution Service,.
- 2. When doing so, the District Court shall derogate as little as possible from the existing articles of incorporation; if it is necessary to amend the objective (purpose) of the Foundation, the District Court shall point out an objective (purpose) that is connected to the existing objective (purpose). With due observance of the foregoing, the District Court is empowered, where necessary, to amend the articles of incorporation in another way than as requested.
- 3. In conformity with the two preceding paragraphs, the District Court may amend the articles of incorporation to prevent the dissolution of the Foundation (*'stichting'*) on the basis of one of the grounds meant in **Article** 2:21 or **Article** 2:301, paragraph 1, under (a).

Article 2:295 Nullification of a resolution for an amendment which might lead to the dissolution of the Foundation
A resolution to amend the articles of incorporation may at any time, upon the request of the Foundation (*'stichting'*), an interested party or the Public Prosecution Service, be nullified by the District Court if the amendment would have the result that the Foundation could be dissolved on the basis of one of the grounds referred to in **Article** 2:21 or **Article** 2:301, paragraph 1, while this amendment does not lead to any conversion of the Foundation into another type of legal person. Articles 2:15, paragraph 3 and 4, and 2:16 shall be applicable in that event.

Article 2:296 District Court may exercise of its own motion the powers granted under the two preceding Articles
In legal proceedings in which the dissolution of the Foundation (*'stichting'*) is requested on the basis of one of the grounds as meant in **Article** 2:21 or 2:301, paragraph 1, under (a), the District Court may exercise the powers, granted under the two preceding Articles, of its own motion.

Article 2:297 Supervision by the Public Prosecution Service
- 1. Where there is serious doubt as to whether the law or the articles of incorporation are observed in good faith, the Public Prosecution Service of the District Court is authorized to request the Board of Directors of the Foundation to provide it with information.
- 2. When the Board of Directors has not or not properly complied with such a request, the provisional relief judge of the District Court may order, upon request, that the books, records and other data carriers of the Foundation (stitching) are made available for inspection by the Public Prosecution Service and that the valuables of the Foundation (*'stichting'*) are shown to the Public Prosecution Service. No appeal or appeal in cassation is available against such a court order of the provisional relief judge.

Article 2:297a Persons who cannot be appointed as Director of a particular Foundation*)
- 1. The present **Article** applies to a Foundation (*'stichting'*) which:
a. by or pursuant to law is obliged to make a financial account that is equal to or corresponding with the annual accounts meant in Title 2:9, and;
b. at two consecutive balance sheet dates, without interruption afterwards at two consecutive balance sheet dates, has not met al least two of the requirements referred to in **Article** 2:397, paragraph 1 and 2. **Article** 2:398, paragraph 5, is applicable. For the purpose of **Article** 2:397, paragraph 1, net-turnover is read as the total of revenues of the enterprise or, respectively, as the total of benefits insofar as the Foundation includes these in the financial account by or pursuant to law.
- 2. The following persons cannot be appointed as a Director of a Foundation (*'stichting'*) as meant in paragraph 1:
a. persons who are a Supervisory Director or who, if the tasks of the Directors within that legal person are divided between executive and non-executive Directors, are a non-executive Director for more than two legal persons;
b. persons who are chairman of the Supervisory Board of a legal person or of the Board of Directors of a legal person if the tasks of the Directors are divided between executive and non-executive Directors.
- 3. For the purpose of the present Article:
a. a person who is a member of a supervisory body instituted by or pursuant to the articles of incorporation of a legal person is equated with a Supervisory Director;
b. the appointments for various legal persons which are connected with each other in a group count as one appointment;
c. the reference to legal persons concerns: the legal type of an Open Corporation (*'naamloze vennootschap'*) and a Closed Corporation (*'besloten venootschap'*) that at two consecutive balance sheet dates, without interruption afterwards at two consecutive balance sheet dates, has not met at least two of the requirements as referred to in **Article** 2:397, paragraph 1 and 2, and a Foundation (*'stichting'*) as meant in **Article** 2:297a, paragraph 1.
d. an executive Director is equated with a Director within the meaning of the preamble of paragraph 1, if the tasks of the Directors are divided between executive and non-executive Directors;
e. a temporary appointment in accordance with **Article** 2:249a, paragraph 2, or **Article** 2:356 under (c), is not regarded as an appointment.

- 4. Where an appointment is null and void pursuant to the previous paragraphs, this has no effect on the validity of the decision-taking (passing of resolutions) in which is participated.

*) In force as of 1 January 2013.

Article 2:297b Persons who cannot be appointed in a supervisory body of a particular Foundation*)
- 1. If a supervisory body has been instituted within a Foundation (*'stichting'*) as meant in **Article** 2:297a, paragraph 1, then the following persons cannot be appointed for that body: persons who are a Supervisory Director or a non-executive Director for five or more other legal persons. The chairmanship of the Supervisory Board or the Board of Directors, if the tasks of the Directors are divided between executive and non-executive Directors, counts twice.
- 2. For the purpose of the present Article:
a. a person who is a member of a supervisory body instituted by or pursuant to the articles of incorporation of a legal person is equated with a Supervisory Director;
b. the appointments for various legal persons which are connected with each other in a group count as one appointment;
c. the reference to legal persons concerns: the legal type of an Open Corporation (*'naamloze vennootschap'*) and a Closed Corporation (*'besloten venootschap'*) that at two consecutive balance sheet dates, without interruption afterwards at two consecutive balance sheet dates, has not met at least two of the requirements as referred to in **Article** 2:397, paragraph 1 and 2, and a Foundation *('stichting'*) as meant in **Article** 2:297a, paragraph 1.
d. an executive Director is equated with a Director within the meaning of the preamble of paragraph 1, if the tasks of the Directors are divided between executive and non-executive Directors;
e. a temporary appointment in accordance with **Article** 2:249a, paragraph 2, or **Article** 2:356 under (c), is not regarded as an appointment.
- 3. Where an appointment is null and void pursuant to the previous paragraphs, this has no effect on the validity of the decision-taking (passing of resolutions) in which is participated.

*) In force as of 1 January 2013.

Article 2:298 Removal of a Director by the court
- 1. A Director:
a. who has done something or has omitted to do something in a way that is in violation of law or the articles of incorporation, or who can be blamed for maladministration (mismanagement), or;
b. who has not or not properly complied with a court order given by the provisional relief judge of the District Court pursuant to **Article** 2:297,
may be removed (dismissed) by the District Court. Such a removal (dismissal) may be ordered upon the request of the Public Prosecution Service or of any interested party.
- 2. Pending the investigations, the District Court may take interim measures to be effectuated within the Board of Directors, and it may suspend the involved Director.
- 3. A Director who has been removed (dismissed) by the District Court, is not allowed to be a Director of any Foundation for a period of five years.

Article 2:299 Vacancies within the Board of Directors to be filled by the court
Whenever the Board of Directors is partially or entirely not in conformity with the relevant provisions of the articles of incorporation, while the articles of incorporation do not enclose a provision for this matter, the District Court may, upon the request of any interested party or the Public Prosecution Service, fill the vacancies within the Board of Directors. In doing so, the District Court shall observe the articles of incorporation as much as possible.

Article 2:299a Reporting the net-turnover of the enterprises of the Foundation
A Foundation (*'stichting'*) which maintains one or more enterprises that pursuant to law have to be registered in the commercial register, reports the net-turnover of these enterprises in its profit and loss statement.

Article 2:300 Annual accounts and annual report of a Foundation with a so called 'large enterprise'
- 1. Annually, within six months after the end of the accounting year, except when this period has been extended by the body of the Foundation referred to in paragraph 3 with at the most five months in view of particular circumstances, the Board of Directors of a Foundation (*'stichting'*) as meant in **Article** 2:360, paragraph 3, draws up the annual accounts, and deposits these documents at the office of the Foundation (*'stichting'*) for inspection by those who participate in the body meant in paragraph 3. Within the same period, the Board of Directors also deposits the annual report and the data which are to be added pursuant to **Article** 2:392, paragraph 1, for inspection by those who participate in the body meant in paragraph 3, unless **Article** 2:396, paragraph 7, as far as it concerns the annual report, or **Article** 2:403 applies to the Foundation (*'stichting'*). Those who participate in the body meant in paragraph 3, are entitled to obtain, free of charge, a copy of the before meant documents.
- 2. The annual accounts are signed by the Directors and by those who are a member of the Supervisory Body; where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this.
- 3. The annual accounts shall be adopted no later than one month after the end of the relevant period referred to in paragraph 1 by the body that is authorized to do so under the articles of incorporation. If the articles of incorporation do not grant such authorization to any body, this authorization may be exercised by the Supervisory Body and, in the absence of such a Supervisory Body, by the Board of Directors.
- 4. A Foundation (*'stichting'*) as meant in **Article** 2:360, paragraph 3, may only recover a deficit from the statutory reserves as far is this is permitted by law.
- 5. Upon request, the Minister of Economic Affairs may, for compelling reasons, grant relief from the obligation to draw up, submit and adopt the annual accounts.

Article 2:300a Liability of the Directors of a Foundation
Articles 2:131, 2:138, 2:139, 2:149 and 2:150 shall apply accordingly in the event of the bankruptcy of a Foundation (*'stichting'*) subjected to Company Tax.

Article 2:301 Dissolution of a Foundation by the court
- 1. The District Court shall dissolve a Foundation (*'stichting'*) upon the request of an interested party or the Public Prosecution Service, if:
a. the assets (property) of the Foundation (*'stichting'*) are absolutely insufficient to realize its objective (purpose), and the possibility that sufficient assets (property) may be acquired in the foreseeable future through contributions (donations) or in another way is highly unlikely;
b. the objective (purpose) of the Foundation (*'stichting'*) has been realized or can no longer be realized, while a change of the Foundation's objective (purpose) cannot be considered.
- 2. The District Court may, when it denies a request as referred to in **Article** 2:294, simultaneously dissolve the Foundation (*'stichting'*) of its own motion.

Article 2:302 Registration of judicial decisions in the commercial register
Final and binding judicial decisions that bring about:
- a deletion, addition or change of what has been registered in the commercial register;
- an amendment of the articles of incorporation of the Foundation (*'stichting'*),
- a change in or completion of the Board of Directors, or;
- the nullification of a resolution for the amendment of the articles of incorporation,
will be registered in the register meant in **Article** 2:289 (commercial register) by the clerk of the court before which the case was last pending.

Article 2:303 Announcement of a bankruptcy or moratorium on payment
When a Foundation (*'stichting'*) has been declared bankrupt (*'faillissement'*) or when a moratorium on payment (*'surseance van betaling'*) has been granted to a Foundation (*'stichting'*), then the announcement, which under the Bankruptcy Act (*'Faillissementswet'*) has to be published in the Government Gazette, will also be presented for registration to the keeper of the register meant in **Article** 2:289 (commercial register) by him who is charged with the publication thereof in the Government Gazette.

Article 2:304 A pension fund in the form of a Foundation
- 1. For the purpose of **Article** 2:285, participants in a pension fund or in a fund as referred to in **Article** 7:631, paragraph 3, under (c), will not be regarded as members of a Foundation (*'stichting'*) that operates as such a fund
- 2. For the purpose of **Article** 2:285, paragraph 3, distributions resulting from an entitlement to pension or from an entitlement on the basis of an employment agreement in which a stipulation as meant in **Article** 7:631, paragraph 3, under (c) is included, will not be regarded as distributions to the founders of such a Foundation (*'stichting'*) or to those who participate in its bodies.

Article 2:305 [*repealed on 01-01-1984*]

Article 2:306 [*repealed on 01-01-1984*]

Article 2:307 [*repealed on 01-01-1984*]

Title 2.7 Merger And Division

Section 2.7.1 General provision

Article 2:308 Application of statutory provisions on a merger and division
- 1. The statutory provisions of the present Title (Title 2.7) apply to Associations (*'verenigingen'*) , Cooperatives (*'coöperaties'*), Mutual Insurance Societies (*'onderlinge waarborgmaatschappijen'*), Foundations (*'stichtingen'*), Open Corporations (*'naamloze vennootschappen'*) and Closed Corporations (*'besloten vennootschappen'*).
- 2. The before meant statutory provisions do not apply to Associations with limited legal capacity (Informal Associations as meant in **Article** 2:30) nor to Associations of Owners (as meant in **Article** 5:124)
- 3. Furthermore, the present Title (Title 2.7) applies to an Open Corporation (*'naamloze vennootschap'*), Closed Corporation (*'besloten vennootschap'*) and a European Cooperative Society that merges with a limited liability company*) or cooperative company**) formed (incorporated) under the law of another Member State of the European Union or the European Economic Area.

*) The term ‘limited liability company’ refers to the public and private limited liability companies defined in **Article** 2(1) of Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies. It includes companies referred to in **Article** 1 of Directive 68/151/EEC and companies with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and subject under the national law governing it to conditions concerning guarantees such as are provided for by Directive 68/151/EEC for the protection of the interests of members and others. It covers at least all public and private limited liability companies with share capital.
) Member States may decide not to apply the before mentioned Directive to cross-border mergers involving a cooperative society even in the cases where the latter would fall within the definition of "limited liability company" as laid down in **Article 2(1). The Netherlands has decided explicitly to apply the Direction also to such so cooperative societies, which are called in this Title ‘cooperative companies’, so that reference in a statutory provision to a company may include, where appropriate, such cooperative society too.

Section 2.7.2 General provisions regarding mergers

Article 2:309 Definition of ‘merger’; passage of property under universal title
A merger is a juridical act of two or more legal persons through which one of them acquires, under universal title, the property (assets and liabilities) of the other, or through which a new legal person, who has been formed (incorporated) by them jointly under that juridical act, acquires their property (assets and liabilities) under universal title.

Article 2:310 Type of legal persons capable of merging with each other
- 1. Legal persons may merge with legal persons of the same type.
- 2. Where the acquiring legal person has been newly formed (incorporated), it must be of the same type as that of the merging legal persons.
- 3. For the purpose of the present Article, Open Corporations (*'naamloze vennootschappen'*) and Closed Corporations (*'besloten vennootschappen'*) are regarded as legal persons of the same type.
- 4. An acquiring Association (*'vereniging'*), Cooperative (*'coöperatie'*), Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or Foundation (*'stichting'*) may as well merge with an Open Corporation (*'naamloze vennootschap'*) or Closed Corporation (*'besloten vennootschap'*) of which it holds all shares. An acquiring Foundation (*'stichting'*), Open Corporation (*'naamloze vennootschap'*) or Closed Corporation (*'besloten vennootschap'*) may merge as well with an Association (*'vereniging'*), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) of which it is the sole member.
- 5. A dissolved legal person may not merge if a distribution has been made already out of its property on account of a winding-up (liquidation).
- 6. A legal person may not merge during its bankruptcy or during the time that a moratorium on payment is applicable on its behalf.

Article 2:311 Merging legal persons that cease to exist
- 1. Except for the acquiring legal person, the merging legal persons will cease to exist as soon as the merger takes effect.
- 2. The members or shareholders of the disappearing legal persons shall become, as a result of the merger, member or shareholder of the acquiring legal person, except in the situations referred to in Articles 2:310, paragraph 4, 2:333, 2:333a or 3:333h, paragraph 3, or when pursuant to the exchange ratio of shares not even an entitlement in one single share exists.

Article 2:312 Merger proposal and its content
- 1. The Boards of Directors of the legal persons to be merged shall prepare a merger proposal.
- 2. This proposal shall specify at least:
a. the type, name and seat (registered office) of the legal persons to be merged;
b. the articles of incorporation of the acquiring legal person as read before and after the merger or, if the acquiring legal person is to be newly formed (incorporated), the draft of the notarial deed of incorporation;
c. any rights and compensations that will be allocated (granted) pursuant to **Article** 2:320, for account of the acquiring legal person, to those persons who, other than in their capacity as member or shareholder, may exercise particular rights against the disappearing legal persons,

like rights to a distribution of profits or rights to take (acquire) shares, and from what moment on;
d. the benefits that, in connection with the merger, will be allocated (granted) to a Director or Supervisory Director of a legal person to be merged or to someone else involved at the merger;
e. the intentions with regard to the composition of the Board of Directors after the merger and, if a Supervisory Board will be present, with regard to the composition thereof;
f. for each of the disappearing legal persons: the moment as of which financial data will be accounted for in the annual accounts or other financial statements of the acquiring legal person;
g. the intended measures relating to the transfer of membership or share ownership of the disappearing legal persons;
h. the intentions regarding the continuation or termination of operations;
i. which persons or bodies, where appropriate, shall have to approve the resolution (decision) to enter into a merger.
- 3. The merger proposal is signed by the Directors of each of the merging legal persons; where the signature of one or more of them is missing, this will be reported, with mention of the reasons therefor.
- 4. Unless all merging legal persons are Associations (*'verenigingen'*) or Foundations (*'stichtingen'*), the merger proposal must have been approved by the Supervisory Boards and signed by all Supervisory Directors; where the signature of one or more of them is missing, this will be reported, with mention of the reasons therefor. Furthermore, the merger proposal shall mention the impact of the proposed merger on the size (proportion) of goodwill and the distributable reserves of the acquiring legal person.

Article 2:313 Explanation on the merger proposal; interim annual account or capital account
- 1. The Board of Directors of each of the legal persons to be merged shall, in a written explanation, mention the reasons for the merger, including a clarification of effects to be expected on operations, and a further commentary from a legal, economical and social point of view.
- 2. If the last accounting year (financial year) of the legal person, with regard to which an annual account or another financial statement has been adopted, has expired more than six months before the merging proposal is deposited for public inspection, the Board of Directors shall prepare a separate annual account or interim capital account. Such account shall relate to the state of the legal person’s property (assets and liabilities) on a day not earlier than the first day of the third month before the month in which the merger proposal was deposited or disclosed for inspection. It is prepared in accordance with the lay-out (arrangement) and valuation methods that have been used in the last adopted annual account or other financial statement, unless the grounds for a deviation are well substantiated and relate to the fact that the current (up to date) value differs significantly form the book value. The reserves that have to be maintained pursuant to law or the articles of incorporation have to be included in that account.
- 3. Where it concerns a disappearing legal person, no explanation is required in the situations referred to in Articles 2:310, paragraph 4, and 2:333, unless others than the acquiring legal person may exercise a particular right against the disappearing legal person, like a right to a distribution of profits or a right to take (acquire) shares.
- 4. Paragraph 1 does not apply if the members or shareholders of the legal persons to be merged have agreed so.

- 5. Paragraph 2 does not apply if the legal person meets the requirements concerning the half-yearly financial accounting referred to in **Article** 5:25d of the Financial Supervision Act.

Article 2:313a [*repealed on 06-08-1987*]

Article 2:314 Documents to be deposited at the commercial register
- 1. Each of the legal persons to be merged shall deposit for inspection at the office of the commercial register or makes public at the commercial register by electronic means of communication;
a. the merger proposal;,
b. the last three adopted annual accounts or other financial statements of the legal persons to be merged, including the auditor's (accountant's) certificate in respect thereof, insofar as these documents are or have to be deposited (made available) for public inspection;
c. the annual reports of the legal persons to be merged over the last three accounting years (financial years), insofar as these documents are or have to be deposited (made available) for public inspection;
d. interim capital accounts or not yet adopted annual accounts, insofar as such documents are required pursuant to **Article** 2:313, paragraph 2, and insofar as the annual accounts of the legal person have to be deposited (made available) for public inspection.
- 2. At the same time, the Board of Directors shall deposit for public inspection the before meant documents, including the annual accounts and annual reports that do not have to be made available for public inspection, together with the explanation of the Boards of Directors, at the office of the legal person or, in the absence of such an office, at the residence of one of the Directors, or makes these documents available by electronic means of communication. Up until the merger, and for a period of at least six months thereafter, these documents shall remain available at the address of the legal person or, respectively, at the address of the residence of the involved Director for inspection or remain available by electronic means of communication for inspection, all on behalf of the members or shareholders and of those who may exercise a particular right against the legal person, like a right to a distribution of profits or the right to take (acquire) shares. During that period the before mentioned persons are entitled to receive, free of charge, a copy of these documents. A copy may be provided by electronic means of communication if a member or shareholder has agreed to that. The legal person is not obliged to provide copies in the event that the members or shareholders have the possibility to save (record) an electronic copy of the document.
- 3. The legal persons to be merged shall announce in a national daily newspaper that the before meant documents are deposited for inspection or can be checked, with mention of the public registers where they can be found or where they are electronically available and of the address where they are deposited pursuant to paragraph 2 or where they are electronically available for inspection.
- 4. If the Works Council or Employee Participation Council of a legal person to be merged, or an Association of Workers (union) of which employees of the legal person or its subsidiaries are a member, has filed a written advise or written comments, then this advise or these comments shall be deposited, simultaneously with the merger proposal or immediately after they were received, at the address meant in paragraph 2. The second up and including the fifth sentence of

paragraph 2 shall apply accordingly.
- 5. If the Boards of Directors of the legal persons to be merged amend (change) the merger proposal, then paragraph 1 up to and including 4 shall apply accordingly.
- 6. Paragraph 2 and 4 do not apply to Foundations (*'stichtingen'*).

Article 2:315 Change of circumstances
- 1. The Board of Directors of each legal person to be merged is obliged to inform the General Meeting and the other legal persons to be merged about any important change in assets and liabilities that appeared after the merger proposal and that has affected the statements in the merger proposal or in the explanation.
- 2. Within a Foundation (*'stichting'*) this obligation has to be complied with towards those who, according to the articles of incorporation, have to approve the merger.
- 3. Paragraph 1 does not apply if the members or shareholders of the legal persons to be merged have agreed so.

Article 2:316 Guarantees for creditors; objections raised by creditors
- 1. Where a creditor of one of the legal persons to be merged demands that security or another guarantee for the performance of his debt-claim is provided, at least one of the legal persons to be merged has to provide such security or guarantee, on the penalty that an objection as meant in the following paragraph will be declared valid. This, however, does not apply if the creditor has adequate guarantees already or if the financial position of the acquiring legal person after the merger does not offer less guarantees for the performance of the debt-claim than before.
- 2. Up until one month after the moment on which all of the legal persons to be merged have made the announcement that the merger proposal has been deposited or disclosed for public inspection, each creditor may, by means of a petition lodged with the District Court, raise an objection against the merger proposal, with mention of the guarantee that is sought. The District Court shall deny the request if the applicant has not made plausible that the financial state of the acquiring legal person after merger provides less guarantees that the debt-claim will be satisfied, and that not sufficient guarantees have been obtained from the legal person.
- 3. Before the court shall give its decision, it may grant the involved legal persons the opportunity to provide, within a period set by the court, a guarantee specified by the court.
- 4. If an objection is raised in time, the notarial deed of merger may be executed only when the objection is withdrawn or the termination of the objection has become enforceable.
- 5. If the notarial deed of merger was executed already, the court may, in regard of an instituted legal action or legal remedy, order that a guarantee specified by the court has to be provided, which order may be rendered under a periodic penalty payment set by the court in the event of non-compliance.

Articles 2:317 Body within the legal person that adopts the resolution for a merger
- 1. The resolution for a merger is adopted (passed) by the General Meeting; within a Foundation (*'stichting'*) such a resolution is adopted (passed) by those who are empowered to amend the articles of incorporation or, if no one is allowed to make such an amendment, by the Board of Directors. The resolution may not differ from the merger proposal.

- 2. A resolution for a merger may be adopted (passed) only on the expiry of one month since the day on which all merging legal persons have announced that they have deposited the merger proposal for public inspection.
- 3. A resolution for a merger is adopted (passed) in the same manner as a resolution to amend the articles of incorporation. Where, according to the articles of incorporation, such an amendment requires the approval of another body or person, this requirement shall apply as well to a resolution for a merger. When the articles of incorporation require different voting majorities for the amendment of separate provisions of the articles of incorporation, then a resolution for a merger requires the largest of these voting majorities. When the articles of incorporation rule out (exclude) the possibility to amend the provisions of the articles of incorporation, then the votes of all members or shareholders entitled to vote are required. The preceding two sentences remain inapplicable when the involved provisions of the articles of incorporation continue to apply unabated after the merger.
- 4. Paragraph 3 does not apply where the articles of incorporation provide for a different arrangement for resolutions for a merger.
- 5. A resolution for a merger of a Foundation (*'stichting'*) requires the approval of the District Court, unless the articles of incorporation make it possible to amend all of its provisions. The District Court denies a request for such approval if there are well-founded grounds to believe that the merger is contrary to the interests of the Foundation (*'stichting'*).

Article 2:317a [*repealed on 06-08-1987*]

Article 2:318 Notarial deed of merger; date that the merger takes effect
- 1. The merger is effectuated by notarial deed and shall take effect from the day following the one on which that deed is executed. The notarial deed of merger may only be executed within six months after the announcement that the merger proposal has been deposited or disclosed for public inspection or, if this is not allowed as a result of a raised objection, within one month after the withdrawal of that objection or after the termination of that objection has become enforceable.
- 2. At the end of the notarial deed of merger the notary shall declare that it has appeared to him that all formal requirements for the necessary resolutions, imposed pursuant to the present and the following Sections and the articles of incorporation for the realization of a merger, have been met, and that furthermore all other requirements, imposed pursuant to the present and following Sections and the articles of incorporation, have been observed.
- 3. Within eight days after the execution of the notarial deed of merger, the acquiring legal person shall cause the registration of the merger in the commercial register where each merged legal persons and the acquiring legal person are registered, always according to the statutory registration duty relevant for each of these legal persons. A copy of the notarial deed of merger, including the notarial declaration at the end thereof, shall be deposited at the office of each register.
- 4. Within one month, the acquiring legal person shall report the merger to the keepers of other public registers where a passage (transfer) of rights or the merger can be registered. Where registered property has passed to the acquiring legal person as a result of the merger, the acquiring legal person is obliged to present, within this period, the documents required for the

registration of a merger to the keeper of the public registers meant in Section 1 of Title 1 of Book 3.

Article 2:319 Pledge or usufruct on a disappearing membership right or share
- 1. When a membership right or a share in a disappearing legal person was encumbered with a pledge or usufruct, then what has come in the place of that membership right or share will become encumbered with that pledge or usufruct.
- 2. When a pledge or usufruct was established on a membership right or a share for which nothing else comes in the place, then the acquiring legal person must provide an equivalent substitution.

Article 2:320 Particular rights that may be exercised against a disappearing legal person
- 1. A person who, other than in his capacity as member or shareholder, may exercise a particular right against a disappearing legal person, like a right to a distribution of profits or a right to take (acquire) shares, must obtain an equivalent right in the acquiring legal person, or a compensation.
- 2. In the absence of an agreement on such compensation, this compensation shall be assessed by one or more impartial experts, to be appointed by the provisional relief judge of District Court in whose judicial territory the domicile of the acquiring legal person is located, upon the request of either party.
- 3. **Article** 2:319 shall apply accordingly to a pledge or usufruct that was established on such particular rights.

Article 2:321 Last accounting year and last annual account; statutory reserves
- 1. At the moment as of which the acquiring legal person shall account for the financial data of a disappearing legal person in its own annual accounts or other financial statements, the last accounting year (financial year) of the disappearing legal person shall be ended
- 2. The obligations regarding the annual accounts or other financial statements of the disappearing legal person shall, after the merger, be incumbent on the acquiring legal person.
- 3. Valuation differences between the assessment of the assets and liabilities in the last annual accounts or other financial statements of the disappearing legal person and in the first annual accounts or other financial statements in which the acquiring legal person accounts for those assets and liabilities, must be explained.
- 4. The acquiring legal person has to create statutory reserves in the same way as in which the disappearing legal person had to maintain statutory reserves, unless the statutory basis for maintaining such reserves has elapsed.

Article 2:322 Amendment or dissolution of existing agreements by the court
- 1. Where the merger leads to the result that an agreement of a merging legal person, to standards of reasonableness and fairness, should not be continued unchanged, the court shall amend or dissolve that agreement upon the request of one of the involved parties. Such amendment or dissolution may be ordered with retroactive effect.

- 2. The right to bring a legal claim as meant in the previous paragraph ceases to exist on the expiry of six months since the notarial deed of merger was deposited for public inspection at the office of the public registers of the domiciles of the merging legal persons.
- 3. If the counterparty suffers damage as a result of an amendment or dissolution of the agreement, then the legal person is obliged to pay a compensation to him.

Article 2:323 Annulment of the merger
- 1. The court may only annul a merger:
a. if the notarial deed of merger, signed by the notary, is not an authentic document;
b. on the ground of a failure to comply with Articles 2:310, paragraph 5 or 6, 2:316, paragraph 4, or 2:318, paragraph 2;
c. if a resolution of the General Meeting or, in the event of a Foundation (*'stichting'*), of the Board of Directors, required for the merger, is null and void, not in force or subject to a ground of voidability;
d. on the ground of a failure to comply with **Article** 2:317, paragraph 5.
- 2. The annulment is effectuated by a decision of the court in whose judicial territory the domicile of the acquiring legal person is located, rendered upon a legal claim (right of action) against that legal person brought by a member, shareholder, Director or other interested party. A merger which is not annulled by the court, is valid.
- 3. The right to file a legal claim (right of action) for annulment of the merger ceases to exist when the defect (failure) is repaired, or on the expiry of six months since the notarial deed of merger was deposited for inspection at the office of the public registers of the domiciles of the merging legal persons.
- 4. A merger shall not be annulled:
a. if the legal person, within a period set by the court, has repaired the defect (failure);
b. if it would be difficult to undo the effects of the merger that already have set in.
- 5. Where the plaintiff, who has filed a legal claim (right of action) for annulment of the merger, has suffered damage as a result of a defect (failure) which could have led to an annulment, and the court does not annulled the merger, then the court may order the legal person to pay compensatory damages. The legal person may take recourse for this against those who are to blame for the defect (failure) and, although not beyond the advantage conferred, against those who have gained a benefit from the defect (failure) .
- 6. The clerk of the court where the legal claim (right of action) was last pending, shall ensure that the annulment gets registered at the commercial register where the merger has to be registered pursuant to **Article** 2:318, paragraph 2.
- 7. The legal persons are jointly and severally liable for obligations which have come to existence for account of the legal person in which they have merged, in the period after the merger en prior to the moment on which the annulment was registered in the public registers.
- 8. The final and binding decision of the court to annul the merger is binding for everyone. It is not possible for third parties to raise an objection; a revocation is neither possible.

Article 2:323a [*repealed on 06-08-1987*]

Article 2:323b [*repealed on 06-08-1987*]

Section 2.7.3 Special statutory provisions for mergers of Open and Closed Corporations

Article 2:324 Application of the present Section
The present Section (Section 7.2.3) applies if an Open or Closed Corporation (*'naamloze of besloten vennootschap'*) enters into a merger.

Article 2:325 Shares (exchange ratio, surcharges, withdrawal)
- 1. If shares or depositary receipts for shares in the capital of a Corporation to be merged are admitted to a regulated market or multilateral trading facility as meant in **Article** 1:1 of the Financial Supervision Act or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a Member State, then the exchange ratio may be made dependant on the price of those shares, respectively, those depository receipts on that market or trading facility on one or more moments to be determined in the merger proposal, chosen before the day on which the merger takes effect.
- 2. Where there is an entitlement to money or debt-claims (debt receivables) on account of the exchange ratio of shares, the total joint amount thereof may not exceed one-tenth of the nominal amount of the allotted shares.
- 3. In the notarial deed of merger the acquiring Corporation may withdraw shares in its own capital, held either by itself or by another merging Corporation, to at the most the nominal amount of the shares that it allots to its new shareholders. Articles 2:99, 2:100, 2:208 and 2:216 do not apply in that event.
- 4. Shares in the capital of the disappearing Corporation, held by or on behalf (for account) of the merging Corporations, cease to exist.

Article 2:326 Additional information in the merger proposal
The merger proposal states in addition to the items listed in **Article** 2:312:
a. the exchange ratio of shares and, where applicable, the amount of the payments made on account of the exchange ratio;
b. as of which moment and to what extent the shareholders of the disappearing Corporations will share (participate) in the profits of the acquiring Corporation;
c. how many shares possibly might be withdrawn under application of **Article** 2:325, paragraph 3.

Article 2:327 Additional information in the written explanation
The Board of Directors must report in its written explanation on the merger proposal:
a. according to which method or methods the exchange ratio of shares is established;
b. whether this method or these methods were appropriate in this particular event;
c. to which valuation each method resulted;

d. if more than one method is used: whether the comparative importance of the used methods, as applied in the valuation, is regarded as acceptable to generally applicable standards, and;
e. which particular difficulties, if any, have been encountered when making the valuation and when establishing the exchange ratio.

Article 2:328 Auditors certificate and report on additional items
- 1. An auditor (accountant) as meant in **Article** 2:393, appointed by the Board of Directors, has to examine the merger proposal and certify whether the proposed exchange ratio of shares, in view of, among others, the documents attached to it, is reasonable in his opinion. He must also certify that the sum of the equities (total amount of assets minus liabilities) of the disappearing Corporations, each determined to the day to which the involved Corporation's annual account or interim capital account relates, at least equalled, under the application of generally accepted standards for valuation methods, the nominal amount that is paid-up on the total shares which their shareholders acquire due to the merger, increased with payments to which they are entitled on account of the exchange ratio.
- 2. The auditor (accountant) also has to prepare a report stating his opinion about the written explanation of the Board of Directors meant in **Article** 2:327.
- 3. If two or more of the merging Corporations are Open Corporations (*'naamloze vennootschappen'*), then only the same person may be appointed as auditor (accountant) if the President of the Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal has approved such appointment upon a uniform request.
- 4. The auditors (accountants) are equally competent to hold their examination at all merging Corporations.
- 5. **Article** 2:314 applies accordingly to the certificate (statement) of the auditor (accountant); **Article** 2:314, paragraph 2 and 3, applies accordingly to the report (survey) of the auditor (accountant) .
- 6. The first full sentence of paragraph 1 and paragraph 2 does not apply when the shareholders of the merging Corporations have agreed with that.

Article 2:329 Right of inspection of holders of depository receipts for shares
Article 2:314, paragraph 2, applies as well to holders of depository receipts issued for shares in collaboration with the Corporation.

Article 2:330 Merger resolution of the General Meeting
- 1. The General Meeting's resolution for a merger requires in any event a majority of at least two-thirds if less than one-half of the issued share capital is represented at the meeting. In the merger of a Corporation concerns an investment company ad meant in the Financial Supervison Act, of which the objective is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.
- 2. When there are different types (classes) of shares, then, in addition to the merger resolution

of the General Meeting, a prior or simultaneous approving resolution (decision) is required of each group of holders of shares of the same type (class) whose rights are affected by the merger. **Article** 2:231, paragraph 4, does not apply in regard of a resolution for a merger. **Article** 2:226, paragraph 2, does not apply with regard to a mergers as referred to in **Article** 2:333h. The required approval can be given only when one month has passed since the day on which all merging Corporations have announced that a merger proposal is deposited or disclosed for inspection.
- 3. The minutes of General Meetings where the resolution for a merger has passed or where it has been approved pursuant to paragraph 2 are drawn up by notarial deed.

Article 2:331 Merger resolution of the Board of Directors
- 1. Unless the articles of incorporation provide otherwise, the acquiring Corporation may resolve (decide) to merge by resolution of the Board of Directors.
- 2. Such resolution (decision) of the Board of Directors, however, can be adopted (taken) only if the Corporation has mentioned that it intends to pass such resolution in the announcement indicating that the merger proposal has been deposited for inspection.
- 3. Such resolution (decision) cannot be adopted (taken) if one or more shareholders representing together at least one-twentieth of the issued share capital, or such lesser part as specified in the articles of incorporation, have requested the Board of Directors within one month after the before meant announcement to convene a General Meeting in order to decide on the merger. Articles 2:317 and 2:330 are applicable in such event.
- 4. If an acquiring legal person merges with a Corporation of which it holds all shares, then the disappearing legal person may resolve (decide) by a resolution of the Board of Directors to enter into the merger, unless the articles of incorporation provide otherwise.

Article 2:332 *[repealed on 01-07-2011]*

Article 2:333 Simplified merger in case of 100%-participating interest
- 1. If the acquiring Corporation merges with a Corporation of which it holds all shares or with an Association (verenging), Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) of which it is the only member, then Articles 2:326 up to and including 2:328 do not apply.
- 2. If someone, or another person on his behalf (for his account), holds all shares in the capital of the Corporations to be merged, and the acquiring Corporation does not allot any shares under the notarial deed of merger, then Articles 2:326 up to and including 2:328 do not apply.
- 3. If an acquiring Association (verenging), Cooperative (*'coöperatie'*), Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or Foundation (*'stichting'*) merges with an Open or Closed Corporation (naamloze of *'besloten vennootschap'*) of which it holds all shares, then only **Article** 2:329 of the present Section will be applicable.

Article 2:333a Triangle merger; group companies
- 1. The notarial deed of merger may provide that the shareholders of the disappearing

Corporations become shareholders of a group company of the acquiring Corporation. In such event these shareholders will not become shareholder of the acquiring Corporation.
- 2. A merger meant in the previous paragraph is possible only if the group company, solely or jointly with another group company, provides for the entire issued share capital of the acquiring Corporation. Articles 2:317, paragraphs 1 up to and including 4, 2:330 and 2:331 apply accordingly to the resolution (decision) of the group company.
- 3. The group company which allots the shares is regarded, next to the acquiring Corporation, as a merging legal person. The obligations to which the acquiring Corporation is subjected under Articles 2:312 up to and including 2:329 are incumbent on such group company, with the exception of the obligations under Articles 2:316, 2:317, 2:318, paragraph 4, 2:321, paragraph 2 and 4, 2:323, paragraph 7; for the purpose of **Article** 2:328, paragraph 3, such group company remains excluded. Articles 2:312, paragraph 2, under (b), 2:320, 2:325, paragraph 3, and 2:326, paragraph 1, under (b), shall in such event not apply to the acquiring Corporation.

Section 2.7.3A Special statutory provisions for cross-border mergers

Article 2:333b Application of Section 2.7.3A to cross-border mergers
- 1. The present Section (Section 2.7.3A) applies if an Open Corporation (*'naamloze vennootschap'*), Closed Corporation (*'besloten vennootschap'*) or a European Cooperative Society merges with a limited liability company*) or cooperative company**) formed under the law of another Member State of the European Union or the European Economic Area.
- 2. The present Section (Section 2.7.3A) does not apply to an Open Corporation (*'naamloze vennootschap'*) which is an investment company within the meaning of the Financial Supervision Act of which the units (rights of participation), upon the request of their holders, are repurchased or redeemed, directly or indirectly, out of the assets of the investment company.

*) The term ‘limited liability company’ refers to the public and private limited liability companies defined in **Article** 2(1) of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. It includes companies referred to in **Article** 1 of Directive 68/151/EEC and companies with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and subject under the national law governing it to conditions concerning guarantees such as are provided for by Directive 68/151/EEC for the protection of the interests of members and others;It covers at least all public and private limited liability companies with share capital.
) Member States may decide not to apply the before mentioned Directive to cross-border mergers involving a cooperative society even in the cases where the latter would fall within the definition of "limited liability company" as laid down in **Article 2(1). The Netherlands has decided to apply the Direction to such so called ‘cooperative companies’.

Article 2:333c Types of companies from different Member States that can enter into a cross-border merger
- 1. An Open of Closed Corporation (*'naamloze of besloten vennootschap'*) may merge with a limited liability company which is formed (incorporated) under the law of another Member State

of the European Union or of the European Economic Area. Furthermore, an Open or Closed Corporation (*'naamloze of besloten vennootschap'*) may be the acquiring company in a merger between limited liability companies that are formed (incorporated) under the law of another Member State of the European Union or European Economic Area.
- 2. A European Cooperative Society with its seat (registered office) in the Netherlands may merge with a cooperative company which is formed (incorporated) under the laws of one or more other Member States of the European Union or European Economic Area. A European Cooperative Society with its seat (registered office) in the Netherlands may, furthermore, be an acquiring company in a merger between cooperative companies formed (incorporated) under the laws of one or more other Member States of the European Union or European Economic Area. Articles 2:324 up to and including 2:333 apply as well to such merger, unless otherwise provided in the present Section (Section 2.7.3A).
- 3. An Open or Closed Corporation (*'naamloze of besloten vennootschap'*) may merge, under the application of **Article** 2:333a, with a limited liability company in accordance and pursuant to the law of another Member State of the European Union or European Economic Area, provided that the acquiring company and the group company meant in **Article** 2:333a, paragraph 1, are limited liability companies (Corporations) with their seat (registered office) in the Netherlands.
- 4. An investment company meant in **Article** 2:333b, paragraph 2, may merge with a public limited liability company formed (incorporated) under the law of another Member State of the European Union or European Economic Area of which the objective is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

Article 2:333d Additional information to be listed in the merger proposal
The joint merger proposal lists, in addition to the items mentioned in **Article** 2:312 and 2:326, the following information:
a. the type (form), name and seat (registered office) of the acquiring company;
b. the likely impact of the merger on employment;
c. if relevant, information on the procedure for adopting rules relating to employee participation as referred to in **Article** 2:333k within the acquiring company;
d. information about the valuation of assets and liabilities which shall pass to the acquiring Corporation;
e. the date of the last adopted or pursuant to **Article** 2:313 prepared annual account that is used to assess the conditions for the merger;
f. a proposal for the amount of compensatory damages for a share under the application of **Article** 2:333h.

Article 2:333e Publication of information in the Dutch Government Gazette
- 1. The merging company shall publish for all merging companies in the Dutch Government Gazette:
a. the type (form), name and seat (registered office);

b. the indication and registration number at the register where the data relating to the merging companies are recorded;
c. the arrangements under which the rights of minority shareholders and creditors may be exercised, and the address where they may obtain, at no cost, full information about those rights.
- 2. When there are more merging companies (Corporations) with a seat (registered office) in the Netherlands, they may comply with the before meant obligation through a joint publication.
- 3. **Article** 2:314, paragraph 3, does not apply.

Article 2:333f Availability of the written explanation for the Works Council or employees
Up until the moment of the merger the written explanation referred to in **Article** 2:314, paragraph 2, shall be available for inspection for the Works Council or, if a Works Council is absent in the enterprise maintained by the company, for employees of the company.

Article 2:333g Additional information in the auditor's certificate
The auditor's certificate referred to in **Article** 2:328, paragraph 1, second sentence, mentions the nominal paid-up amount of the total joint shares that the shareholders have acquired pursuant to the merger, increased with payments to which they are entitled under the exchange ratio, and increased also with the total amount of compensations which the shareholders may claim on the basis of **Article** 2:333h.

Article 2:333h Request for compensation
- 1. If the acquiring company is a company formed (incorporated) under the law of another Member State of the European Union or European Economic Area, the shareholder of a disappearing Dutch company who has voted against the merger resolution may lodge a request [against that Dutch company in the Netherlands] for the payment of a compensation within one month after the date of that resolution.
- 2. In the absence of an agreement on the amount of that compensation, this compensation shall be assessed, upon the request of either party, by one or more independent experts to be appointed by the president of the Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal.
- 3. The shares to which the request relates, cease to exist at the moment that the merger takes effect.
- 4. For the purpose of the present **Article** holders of depository receipts for shares as meant in **Article** 2:118a are equated with shareholders.

Article 2:333i Information to be assured in a certificate of a notary
- 1. A merger in which the acquiring company is a company formed (incorporated) under the law of another Member State of the European Union or European Economic Area shall take effect, in derogation from **Article** 2:318, paragraph 1, in the way and on the date as specified by the law of the State where the acquiring company has its seat (registered office).
- 2. **Article** 2:318, paragraph 2, does not apply.
- 3. The notary shall certify that it has appeared to him that the procedural requirements

(formalities) are complied with in respect of all resolutions (decisions) for the participation of the Dutch company in a cross-border merger required pursuant to Sections 7.2.2, 7.2.3 and 7.2.3A and the articles of incorporation, and that, for the rest, the relevant provisions of the present Section (Section 7.2.3A) for such merger have been observed.
- 4. Where the acquiring company is a company formed (incorporated) under the law of another Member State of the European Union or European Economic Area, the notary may only issue the certificate referred to in paragraph 3 if no request for compensation as meant in **Article** 2:333h is lodged [in the Netherlands against the involved Dutch company], or if such compensation has been paid out already, unless the other merging companies have decided that the acquiring company has to pay that compensation. In the latter case the notary mentions in his certificate that the request is lodged.
- 5. Where the acquiring company is a company formed (incorporated) under Dutch law, the notary shall certify at the end of the notarial deed of merger meant in **Article** 2:318, paragraph 1, that is has appeared to him that the procedural requirements (formalities) referred to in that paragraph have been complied with, and that the disappearing companies have passed a resolution on the same merger proposal, and that the arrangements relating to employee participation are adopted in accordance with **Article** 2:333k.

Article 2:333j Formalities for the keeper of the commercial register
The keeper of the commercial register where the acquiring legal person is registered, shall promptly after the registration of the merger inform the registers defined in **Article** 2:333e where the disappearing companies are registered .

Article 2:333k Requirements in regard of employee participation
- 1. Arrangements related to employee participation are, in the present Article, understood as arrangements for employee participation as meant in **Article** 1:1, paragraph 1, of the Act Employees Involvement in a European Legal Person.
- 2. If:
a. at least one of the merging companies in the six months prior to the date on which the merger proposal was deposited or disclosed for public inspection as referred to in **Article** 2:314, has employed, on average, more than five hundred employees, and the arrangements relating to employee participation apply to that merging company, or;
b. arrangements relating to employee participation apply to one of the merging companies, and the acquiring company does not meet the requirements of **Article** 2:157, 2:158 up to and including 2:164 or 2:158 up to and including 2:161 and 2:164 or 2:267, 2:268 up to and including 2:274 or 2:268 up to and including 2:271 and 2:274;
then the following Articles will apply accordingly:
- **Article** 12, paragraph 2 up to and including 4 of the European Regulation, (EC) No 2157/2001, of the Council of the European Union of 8 October 2001 on the Statute for a European Company (SE), and;
- Articles 1:4 up to and including 1:12, 1:14, paragraph 1, 2, 3 and 4, under (a), 1:16, 1:17, 1:18, paragraph 1, under (a), (h), (i) and (j), and paragraph 3 and 6, 1:20, 1:21, paragraph 2, under (a), except that in the percentage of 25 mentioned in that provision is replaced by 33 ?, paragraph 4 and 5, 1:26, paragraph 3, and 1:31, paragraph 2, of the Act Employees Involvement in a

European Legal Person, and;
- **Article** 670, paragraph 4 and 1,1 and 670a, paragraph 1, under (a), of Book 7 of the Civil Code.
- 3. The General Meeting of each merging company may decide to discard the opening of negotiations on arrangements relating to employee participation. This decision means that the standard rules for arrangements for employee participation as referred to in **Article** 1:31 of the Act Employees Involvement in European Legal Persons shall apply to the acquiring company as of the date of registration of the merger.
- 4. The special negotiating body referred to in **Article** 1:1 of the Act Employees Involvement in European Legal Person may decide to discard the opening of negotiations or to terminate negotiations on arrangements relating to employee participation. This decision ends the procedure to conclude an agreement in accordance with **Article** 1:11, paragraph 1, of the Act Employees Involvement in a European Legal Person. Such decision of the special negotiating body requires a majority of two-thirds of its members, also representing two-thirds of the employees and coming from at least two Member States.
- 5. If the acquiring company is a company formed (incorporated) under Dutch law, the application of Articles 2:158 up to and including 2:164 or 2:158 up to and including 2:161 and 2:164 or 2:268 up to and including 2:274 or 2:268 up to and including 2:271 and 2:274 or the effect of the employees participation shall be specified in the articles of incorporation.
- 6. The General Meeting may attach to the merger resolution meant in **Article** 2:317 the condition that it approves the application of Articles 2:158 up to and including 2:164 or 2:158 up to and including 2:161 and 2:164 or 2:268 up to and including 2:274 or 2:268 up to and including 2:271 and 2:274 or the effect of the arrangements relating to employees participation. The General Meeting may, in its resolution through which it grants such approval, provide the authorization to amend the articles of incorporation to the extent necessary for such application or effect.
- 7. If a company within three years after the moment on which the merger takes effect participates in a merger as meant in the present Title (Title 7.2), the present **Article** shall apply accordingly.
- 8. In applying **Article** 1:17, paragraph 2, of the Act Employees Involvement in a European Legal Person, the period of six months referred to in **Article** 2:318, paragraph 1, is extended to three months after the end of the extended negotiation period meant **Article** 1:17, paragraph 2, of the Act Employees Involvement in a European Legal Person, on the understanding that the maximum period will be one year and three months.

Article 2:333l No annulment of a cross-border merger in case of non-observance of Section 7.2.3A
It is not possible to pronounce (order) the nullification or annulment of a merger on the basis of the present Section. **Article** 2:323 does not apply.

Section 2.7.4 General provisions regarding divisions

Article 2:334a Definition of 'pure division' and 'hive off'; party to a division

- 1. Division includes a pure division and a hive off.
- 2. A 'pure division' is a juridical act under which the property (assets and liabilities) of a legal person, which ceases to exist at the division, is acquired under universal title in accordance with the description attached to the notarial deed of division by two or more other legal persons.
- 3. A 'hive off' is a juridical act under which the property (assets and liabilities) or a part thereof of a legal person, which does not cease to exist at the division, is acquired under universal title in accordance with the description attached to the notarial deed of division by one or more other legal persons of which at least one, in accordance with what is provided in the present and next Section, allots membership rights or shares in its capital to members or shareholders of the dividing legal person, or of which at least one is formed (incorporated) at the division by the dividing legal person.
- 4. Party to the division are the dividing legal person as well as each acquiring legal person, with the exception of the legal person which is formed (incorporated) at the division.

Article 2:334b Type of legal person capable of being involved in the same division
- 1. The parties to a division must be of the same type of legal person.
- 2. Where an acquiring legal person is formed (incorporated) at the division, it must be of the same type as the dividing legal person.
- 3. For the purpose of the present Article, Open Corporations (*'naamloze vennootschappen'*) and Closed Corporations (*'besloten vennootschappen'*) are regarded as the same type of legal person.
- 4. At the division of an Association (*'vereniging'*), Cooperative (*'coöperatie'*), Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or Foundation (*'stichting'*), it is possible to form (incorporate) Open or Closed Corporations (*'naamloze of besloten vennootschappen'*), provided that the dividing legal person acquires all shares therein at the division.
- 5. A dissolved legal person may not be a party to a division if distributions have been made already on account of the winding-up (liquidation) of its property.
- 6. A legal person may not be a party to a division during its bankruptcy or the application of a moratorium on payment on its behalf.
- 7. A dividing legal person may be bankrupt or subject to the application of a moratorium on payment on its behalf, provided that all acquiring legal persons are Open or Closed Corporations (*'naamloze of besloten vennootschappen'*) formed (incorporated) at the division and the dividing legal person becomes, at the division, the sole shareholder of those Corporations. If the dividing legal person is bankrupt, then the liquidator in bankruptcy (*'curator'*) may decide to a division, with the result that the obligations incumbent pursuant to the present and next Section on the Board of Directors, shall be incumbent on the liquidator (*'curator'*); if the dividing legal person is subject to the application of a moratorium on payment on its behalf, the resolution (decision) for a division requires the approval of the legal administrator (*'bewindvoerder'*). The second sentence of **Article** 2:334d, **Article** 2:334f, paragraph 2, under (e), insofar as it concerns the value of the portion of the property (assets and liabilities) that the dividing legal person will retain; **Article** 2:334g, paragraph 2, **Article** 2:334i, paragraph 1, **Article** 2:334k, **Article** 2:334w and **Article** 334ff, paragraph 3, do not apply in the event of bankruptcy; the second sentence of **Article** 2:334d and **Article** 2:334w do not apply in the event of a moratorium on payment.

Article 2:334c Legal effects of a division for the involved parties themselves

- 1. When the entire property (all assets and liabilities) of the dividing legal person passes to one or more other legal persons involved at the division, then the dividing legal person shall cease to exist at the moment that the division enters into force.
- 2. Paragraph 1 does not apply if at least one of the acquiring legal persons is an Open or Closed Corporation (*'naamloze of besloten vennootschap'*) formed (incorporated) at the division, and the dividing legal person acquires all shares therein at the division.

Article 2:334d Value of the passed and retained property
Except where the acquiring legal persons are Open or Closed Corporations (*'naamloze of besloten vennootschappen'*), the value of the portion of the property (part of all assets and liabilities) of the dividing legal person*) that each acquiring legal person acquires must, at the moment of the division, be at least zero. Except where the dividing legal person is an Open or Closed Corporation (*'naamloze of besloten vennootschap'*), the same applies to the value of the portion of the property (part of all assets and liabilities) that the legal person**) which continues to exist retains, increased with the value of the shares it acquires at the division in the capital of the acquiring legal person***).

) This provision applies when an Association ('vereniging'*), Cooperative (*'coöperatie'*), Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or Foundation (*'stichting'*) is a legal person which acquires (a part of) the property of the legal person subject to division.
**) This provision applies when an Association (*'vereniging'*), Cooperative (*'coöperatie'*), Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or Foundation (*'stichting'*)is the legal person subject to division from which property passes on to other legal persons.
***) The value of the retained property and of the shares received in return for transferred property must, when added together, at least be zero.

Article 2:334e Position of members and shareholders
- 1. The members or shareholders of the dividing legal person become as a result of the division a member or shareholder of all acquiring legal persons.
- 2. No shares in the capital of an acquiring Corporation are acquired for shares in the capital of a dividing Corporation that are held by or on behalf (for account) of that acquiring Corporation or by or on behalf (for account) of the dividing Corporation.
- 3. Paragraph 1 shall neither apply insofar as:
a. the acquiring legal persons are Open or Closed Corporations (*'naamloze of besloten vennootschappen'*) formed (incorporated) at the division and the dividing legal person acquires all shares therein at the division;
b. **Article** 2:334cc or **Article** 2:334ii is applied with respect to the acquiring Corporation;
c. pursuant to the exchange ratio of shares not even an entitlement to one single share exists.

Article 2:334f Division proposal and its content
- 1. The Board of Directors of the parties to the division shall prepare a division proposal.
- 2. This proposal shall at least include:
a. the type, name and seat (registered office) of the parties to the division and, insofar the

acquiring legal persons are formed (incorporated) at the division, of those legal persons;
b. the articles of incorporation of the acquiring legal persons and of the dividing legal person which continues to exist, as these articles of incorporation read before and after the division or, insofar the acquiring legal persons are formed (incorporated) at the division, the draft for the notarial deed of incorporation;
c. whether the entire property (assets and liabilities) of the dividing legal person shall pass over or a part thereof;
d. a description by which can be determined in an accurate way which assets and liabilities of the dividing legal person will pass to each of the acquiring legal persons and, if not the entire property (all assets and liabilities) of the dividing legal person shall pass over, which assets and liabilities it will retain, as well as a pro forma profit and loss account or trading account of the acquiring legal persons and of the dividing legal person which continues to exist;
e. the value assessed on a date to which the annual account or interim capital account meant in **Article** 2:334g, paragraph 2, of the dividing legal person relates, and calculated with due observance of the third sentence of that paragraph, of the portion of the property (assets and liabilities) that each acquiring legal person shall acquire and of the portion that will be retained by the dividing legal person which continues to exist.
f. the rights or compensations that pursuant to **Article** 2:334p are granted for account of the acquiring legal persons to those who, in another capacity than as member or shareholder, may exercise particular rights against the dividing legal person, like rights to a distribution of profits or rights to take (acquire) shares, and as of which date such granting is made;
g. the benefits granted in connection with the division to Directors and Supervisory Directors of a party to the division or to someone else involved at the division;
h. the intentions with regard to the composition, after the division, of the Board of Directors of the acquiring legal persons and of the dividing legal person which continues to exist and, to the extent that there will be Supervisory Boards, of those Supervisory Boards;
i. the day as of which the financial data for each portion of the property (assets and liabilities) that shall pass over will be accounted for in the annual accounts or other financial statements of the acquiring legal persons;
j. the proposed measures relating to the acquisition by the members or shareholders of the dividing legal person of the membership or share ownership of the acquiring legal persons;
k. the intentions regarding the continuation or termination of operations;
l. which person or body, where appropriate, has to approve the resolution for a division.
- 3. The division proposal is signed by the Directors of each party to the division; when the signature of one or more of them is missing, this will be reported, with mention of the reasons therefor.
- 4. Unless all parties to the division are Associations (*'verenigingen'*) or Foundations (*'stichtingen'*), the proposal for a division must be approved by the Supervisory Boards and will be signed by all Supervisory Directors; when the signature of one or more of them is missing, this will be reported, with mention of the reasons therefor. The division proposal mentions furthermore the impact of the division on the amount (size) of goodwill and distributable reserves of the acquiring legal persons and of the dividing legal person which continues to exist.

Article 2:334g Written explanation; annual account and interim capital account
- 1. The Board of Directors of each party to the division shall, in a written explanation, mention

the reasons for the division, including a clarification of effects to be expected on operations, and a further commentary from a legal, economical and social point of view.
- 2. If the last accounting year (financial year) of the legal person, with regard to which an annual account or another financial statement has been adopted, has expired more than six months before the division proposal is deposited or disclosed for public inspection, the Board of Directors shall prepare a separate annual account or interim capital account. Such account shall relate to the state of the legal person's property (assets and liabilities) on a day not earlier than the first day of the third month before the month in which the division proposal was deposited for inspection. It is prepared in accordance with the lay-out (arrangement) and valuation methods that have been used in the last adopted annual account or other financial statement, unless the grounds for a deviation are well substantiated and relate to the fact that the current (up to date) value differs significantly form the book value. The reserves that have to be maintained pursuant to law or the articles of incorporation have to be included in that account.
- 3. Paragraph 2 does not apply if the legal person meets the requirements concerning the half-yearly financial accounting as referred to in **Article** 5:25d of the Financial Supervision Act.

Article 2:334h Documents to be deposited at the commercial register
- 1. Each party to the division shall deposit for inspection at the office of the commercial register or makes available for inspection there by electronic means of communication:
a. the division proposal;
b. the last three adopted annual accounts or other financial statements of the parties to the division, including the accountant's audit opinion, insofar as these documents are or have to be deposited (made available) for public inspection;
c. the annual reports of the parties to the division over the last three accounting years (financial years), insofar as these documents are or have to be deposited (made available) for public inspection;
d. interim capital accounts or not yet adopted annual accounts, insofar as such documents are required pursuant to **Article** 2:334g, paragraph 2, and insofar as the annual accounts of the legal person have to be deposited (made available) for public inspection.
- 2. At the same time, the Board of Directors shall deposit for public inspection the before meant documents, including the annual accounts and annual reports that do not have to be made available for public inspection, together with the explanation of the Boards of Directors, at the office of the legal person or, in the absence of such an office, at the residence of one of the Directors, or makes these documents available by electronic means of communication. Up until the merger, and for a period of at least six months thereafter, these documents shall remain available at the address of the legal person or, respectively, at the address of the residence of the involved Director for inspection or remain available by electronic means of communication for inspection, all on behalf of the members or shareholders and of those who may exercise a particular right against the legal person, like a right to a distribution of profits or the right to take (acquire) shares. During that period the before mentioned persons are entitled to receive, free of charge, a copy of these documents. A copy may be provided by electronic means of communication if a member or shareholder has agreed to that. The legal person is not obliged to provide copies in the event that the members or shareholders have the possibility to save (record) an electronic copy of the document.
- 3. The legal persons to be merged shall announce in a national daily newspaper that the before

meant documents are deposited for inspection or can be checked, with mention of the public registers where they can be found or where they are electronically available and of the address where they are deposited pursuant to paragraph 2 or where they are electronically available for inspection.
- 4. If the Works Council or Employee Participation Council of a party to the division, or an Association of Workers (union) of which employees of the legal person or its subsidiaries are a member, has filed a written advise or written comments, then this advise or these comments shall be deposited, simultaneously with the division proposal or immediately after they have been received, at the address meant in paragraph 2. The second up and including the fifth sentence of paragraph 2 shall apply accordingly.
- 5. If the Boards of Directors of the parties to the division amends (changes) the division proposal, then paragraph 1 up to and including 4 shall apply accordingly.
- 6. Paragraph 2 and 4 do not apply to Foundations (*'stichtingen'*).

Article 2:334i Change of circumstances
- 1. The Board of Directors of each party to the division is obliged to inform the General Meeting and the other parties to the division about any important change in the assets and liabilities that appeared after the division proposal and that has affected the statements in the division proposal or in the explanation.
- 2. Within a Foundation (*'stichting'*) this obligation has to be complied with towards those who, according to the articles of incorporation, have to approve the division.

Article 2:334j Passage of an entire legal relationship of the dividing legal person
- 1. A legal relationship to which the dividing legal person is a party, may only pass over in its entirety, on the penalty that an objection as meant in **Article** 2:334l will be declared valid.
- 2. However, where a legal relationship is connected to different assets or liabilities which pass over to various acquiring legal persons, it may be split in such a way that it passes over to all acquiring legal persons in proportion to the connection that exists between the legal relationship and the assets or liabilities that each of these legal persons acquires.
- 3. Where a legal relationship is connected as well to assets or liabilities that are retained by the dividing legal person which continues to exist, paragraph 2 shall apply accordingly with respect to that legal person.
- 4. Paragraph 1 up to and including 3 do not affect the rights which the counterparty to a legal relationship may derive from **Article** 2:334k and 2:334r.

Article 2:334k Guarantees for creditors
Where a creditor of one of the parties to the division demands that security or another guarantee for the performance of his debt-claim is provided, at least one of the parties to the division has to provide such security or guarantee, on the penalty that an objection as meant in the following paragraph will be declared valid. This, however, does not apply if the creditor has adequate guarantees already or if the financial position of the legal person which will be his debtor after the division does not offer less guarantees for the performance of the debt-claim than before.

Article 2:334l Objections against the division raised by creditors
- 1. Up until one month after the moment on which all parties to the division have made the announcement that the division proposal has been deposited or disclosed for public inspection, each creditor may, by means of a petition lodged with the District Court, raise an objection against the division on the ground that this proposal is in conflict with **Article** 2:334j or that a guarantee sought pursuant to **Article** 2:334k is not given. The District Court shall deny the request if the applicant has not made plausible that the financial state of the acquiring legal person after the division provides less guarantees that the debt-claim will be satisfied, and that not sufficient guarantees have been obtained from the legal person.
- 2. Before the court shall give its decision, it may grant the parties to the division the opportunity to amend (change) the division proposal within a period set by court, and to publish the amended (changed) proposal in conformity with **Article** 2:334h, or to provide a guarantee specified by the court.
- 3. If an objection is raised in time, the notarial deed of division may be executed only when the objection is withdrawn or the termination of the objection has become enforceable.
- 4. If the notarial deed of division has been executed already, the court may, in regard of an instituted legal action or legal remedy:
a. order that a legal relationship which has passed over in conflict with **Article** 2:334j, must be transferred, in full or in part, to one or more acquiring legal persons to be designated by the court or to the divided legal person which continues to exist, or order that two or more of these legal persons are jointly and severally liable for the obligations resulting from that legal relationship;
b. order that a guarantee specified by the court has to be provided.
The court may render such order under a periodic penalty payment set by the court in the event of non-compliance.
- 5. If the transferring or acquiring legal person sustains a loss or disadvantage due to a transfer meant in paragraph 4, under (a), then the other legal person is obliged to make up for that loss or disadvantage.

Article 2:334m Body within the legal person that adopts the resolution for a division
- 1. The resolution for a division is adopted (passed) by the General Meeting; within a Foundation (*'stichting'*) such a resolution is adopted (passed) by those who are empowered to amend the articles of incorporation or, if no one is allowed to make such an amendment, by the Board of Directors. The resolution may not differ from the division proposal.
- 2. A resolution for a division may be adopted (passed) only on the expiry of one month since the day on which all parties to the division have announced that the division proposal is deposited or disclosed for public inspection.
- 3. A resolution for a division is adopted (passed) in the same manner as a resolution to amend the articles of incorporation. Where, according to the articles of incorporation, such an amendment requires the approval of another body or person, this requirement shall apply as well to a resolution for a division. When the articles of incorporation require different voting majorities for the amendment of separate provisions of the articles of incorporation, then a resolution for a division requires the largest of these voting majorities. When the articles of incorporation rule out (exclude) the possibility to amend the provisions of the articles of incorporation, then the votes of all members or shareholders entitled to vote are required. The

preceding two sentences remain inapplicable when the involved provisions of the articles of incorporation continue to apply unabated after the division.
- 4. Paragraph 3 does not apply where the articles of incorporation provide for a different arrangement for resolutions for a division.
- 5. A resolution for a division of a Foundation (*'stichting'*) requires the approval of the District Court, unless the articles of incorporation make it possible to amend all of its provisions. The District Court denies a request for such approval if there are well-founded grounds to believe that the division is contrary to the interests of the Foundation (*'stichting'*).

Article 2:334n Notarial deed of division; date that the division takes effect
- 1. The division is effectuated by notarial deed and shall take effect from the day following the one on which that deed is executed. The notarial deed of division may only be executed within six months after the announcement that the division proposal has been deposited or disclosed for inspection or, if this is not allowed as a result of a raised objection, within one month after the withdrawal of that objection or after the termination of that objection has become enforceable.
- 2. At the end of the notarial deed of division the notary shall certify that it has appeared to him that all formal requirements for the necessary resolutions, imposed pursuant to the present and the following Sections and the articles of incorporation for the realization of a division, have been met, and that furthermore all other requirements, imposed pursuant to the present and following Sections and the articles of incorporation, have been observed.
- 3. Within eight days after the execution of the notarial deed of division, each of the acquiring legal persons and the divided legal person shall cause the registration of the division in the commercial register where each of them is registered, according to the statutory registration duty relevant for each of these legal persons. If the divided legal person has ceased to exist at the division, then each of the acquiring legal persons is obliged to make a registration. A copy of the notarial deed of division, including the notarial certification at the end thereof, shall be deposited at the office of each register.
- 4. The acquiring legal persons, each insofar as it concerns assets and liabilities that have passed to them at the division, shall report the division within one month after it has taken effect to the keepers of other public registers where a passage (transfer) of rights or the division can be registered. Where registered property has passed to an acquiring legal person as a result of the division, the divided legal person or, if that legal person has ceased to exist, each of the acquiring legal persons is obliged to present, within this period, the documents required for registration of a division to the keeper of the public registers meant in Section 1 of Title 1 of Book 3.

Article 2:334o Pledge or usufruct on membership rights or shares in the divided legal person
- 1. The proprietor (holder) of a pledge or usufruct on a membership right or on shares in the capital of the dividing legal person acquires the same real property right on what the involved member or shareholder acquires pursuant to the notarial deed of division. When the dividing legal person continues to exist after the division, the existing pledge or usufruct will besides continue to exist as well.
- 2. When a pledge or usufruct was established on a membership right or a share for which nothing else comes in the place, then the acquiring legal persons must provide an equivalent substitution to the proprietors of the before meant real property rights.

Article 2:334p Particular rights that may be exercised against a divided legal person
- 1. A person who, other than in his capacity as member or shareholder, may exercise a particular right against the dividing legal person, like a right to a distribution of profits or a right to take (acquire) shares, must either obtain so many rights in the acquiring legal persons that these rights, if appropriate together with the right that he still may exercise against the dividing legal person which continues to exist, are equivalent to his right prior to the division, or he must obtain a compensation.
- 2. In the absence of an agreement on such compensation, this compensation shall be assessed by one or more impartial experts, to be appointed by the provisional relief judge of the District Court in whose judicial territory the domicile of the dividing legal person is located, upon the request of either party.
- 3. **Article** 2:334o shall apply accordingly to a pledge or usufruct that was established on such particular rights.

Article 2:334q Last accounting year and last annual account; statutory reserves
- 1. If the divided legal person ceases to exist at the division, then its last accounting year (financial year) shall end upon the day as of which the financial data regarding its property (assets and liabilities) are accounted for in the annual accounts or other financial statements of the acquiring legal persons.
- 2. If the divided legal person ceases to exist at the division, the obligations regarding its annual accounts or other financial statements shall, after the division, be incumbent on the acquiring legal persons jointly.
- 3. Valuation differences between the assessment of the assets and liabilities in the last annual accounts or other financial statements of the divided legal person and in the first annual accounts or other financial statements in which the acquiring legal person accounts for those assets and liabilities, must be explained.
- 4. The acquiring legal persons have to create statutory reserves in the same way as in which the divided legal person had to maintain statutory reserves, unless the statutory basis for maintaining such reserves has elapsed.

Article 2:334r Amendment or dissolution of existing agreements by the court
- 1. Where the division leads to the result that an agreement of a party to the division, to standards of reasonableness and fairness, should not be continued unchanged, the court shall amend or dissolve that agreement upon the request of one of the involved parties. Such amendment or dissolution may be ordered with retroactive effect.
- 2. The right to bring a legal claim (right of action) as meant in the previous paragraph ceases to exist on the expiry of six months since the notarial deed of division was deposited for inspection at the office of the public registers of the domiciles of the acquiring legal persons and of the divided legal person.
- 3. If the counterparty suffers damage as a result of an amendment or dissolution of the agreement, then the involved legal person is obliged to pay compensation to him.

Article 2:334s Uncertainty after the division to which legal person assets or liabilities belong
- 1. Paragraph 2 up to and including paragraph 4 shall apply if it is not possible, after the division, to determine on the basis of the notarial deed of division to which legal person an asset or liability belongs.
- 2. When the entire property (all assets and liabilities) of the divided legal person has passed over, then an asset or liability as meant in paragraph 1 shall belong to the acquiring legal persons jointly. Each acquiring legal person has a share in that asset or liability in proportion to the value of the portion of the property (part of all assets and liabilities) of the divided legal person that it has acquired.
- 3. When not the entire property (not all assets and liabilities) has passed over, then an asset or liability as meant in paragraph 1 shall belong to the divided legal person.
- 4. As far as acquiring legal persons are liable for debts (liabilities) on account of paragraph 2, they shall be jointly and severally liable.

Article 2:334t Liability for debts of the divided legal person
- 1. The acquiring legal persons and the divided legal person which continues to exist are liable for obligations of the divided legal person existing at the time of the division.
- 2. Where it concerns indivisible obligations, the acquiring legal persons and the divided legal person which continues to exist are each jointly and severally liable for the entire obligation.
- 3. Where it concerns divisible obligations, the acquiring legal person to which the obligation has passed or, if the obligation has not passed to an acquiring legal person, the divided legal person which continues to exist is liable for the entire obligation. The liability for such divisible obligations of any other legal person involved at the division is limited to the value of the property (assets and liabilities) that it has acquired or retained at the division.
- 4. Other legal persons than the legal person to which the obligation has passed or, if the obligation has not passed to an acquiring legal person, than the dividing legal person which continues to exist do not have to perform that obligation before the last meant legal person has failed to comply with this obligation.
- 5. The statutory provisions for jointly and severally liable debtors apply accordingly to the liability meant in the present Article.

Article 2:334u Annulment of a division
- 1. The court may only annul a division:
a. if the notarial deed of division, signed by the notary, is not an authentic document;
b. on the ground of a failure to comply with Articles 2:334b, paragraph 5 or 6, 2:334l, paragraph 3, or the first sentence of **Article** 2:334n, paragraph 2;
c. if a resolution of the General Meeting or, in the event of a Foundation (*'stichting'*), of the Board of Directors, required for the division, is null and void, not in force or subject to a ground of voidability;
d. on the ground of a failure to comply with **Article** 2:334m, paragraph 5.
- 2. The nullification is effectuated by a decision of the court in whose judicial territory the domicile of the divided legal person is located, rendered upon a legal claim (right of action) against all acquiring legal persons and the divided legal person which continued to exist, brought

by a member, shareholder, Director or other interested party. A merger which is not nullified by the court, is valid.
- 3. The right to file a legal claim (right of action) for annulment of the division ceases to exist when the defect (failure) is repaired, or on the expiry of six months since the notarial deed of division was deposited for inspection at the office of the public registers of the domiciles of the acquiring legal persons and the divided legal person which continues to exist.
- 4. A division shall not be annulled:
a. if the defect (failure) has been repaired within a period set by the court;
b. if it would be difficult to undo the effects of the division that already have set in.
- 5. Where the plaintiff, who has filed a legal claim (right of action) for annulment of the division, has suffered damage as a result of a defect (failure) which could have led to an annulment, and the court does not annul the division, then the court may order the acquiring legal persons to pay compensatory damages. The legal persons may take recourse for this against those who are to blame for the defect (failure) and, although not beyond the advantage conferred, against those who have gained a benefit from the defect (failure)..
- 6. The clerk of the court where the legal claim (right of action) was last pending, shall ensure that the annulment gets registered at the commercial register where the division has to be registered pursuant to **Article** 2:334n, paragraph 3.
- 7. The divided legal person is, next to the involved acquiring legal person, jointly and severally liable for obligations which have come to existence for account of the acquiring legal persons in the period after the division en prior to the moment on which the annulment was registered in the public registers.
- 8. The final and binding decision of the court to annul the division is binding for everyone. It is not possible for third parties to raise an objection; a revocation is neither possible.

Section 2.7.5 Special statutory provisions for divisions through which an Open or Closed Corporation is divided or formed

Article 2:334v Application of the present Section
The present Section (Section 2.7.5) applies if, under a division, an Open or Closed Corporation (*'naamloze of besloten vennootschap'*) is divided or formed (incorporated).

Article 2:334w Additional requirements for the capital of a divided Corporation
At the time of the division, the value of the portion of the property retained by the dividing Corporation which continues to exist, increased with the value of the shares it acquires at the division in the capital of the acquiring legal persons, must at least equal the paid and called up portion of the capital plus the reserves that the Corporation immediately after the division has to maintain by law or the articles of incorporation.

Article 2:334x Shares (exchange ratio, surcharges, withdrawal)
- 1. If shares or depositary receipts for shares are admitted to a regulated market or multilateral

trading facility as meant in **Article** 1:1 of the Financial Supervision Act or to a system comparable with such regulated markets or multilateral trading facilities in a State that is not a Member State, then the exchange ratio may be made dependant on the price of those shares, respectively, those depository receipts on that market or trading facility on one or more moments to be determined in the division proposal, chosen before the day on which the division takes effect.
- 2. Where there is an entitlement to money or debt-claims (debt receivables) on account of the exchange ratio of shares, the total joint amount thereof may not exceed one-tenth of the nominal amount of the shares allotted by the involved Corporation.
- 3. In the notarial deed of division an acquiring Corporation may withdraw shares in its own capital, held either by itself or acquired pursuant to the notarial deed of division, to at the most the nominal amount of the shares it allots to its new shareholders. Articles 2:99, 2:100, 2:208 and 2:209 do not apply in that event.
- 4. Shares in the capital of the dividing Corporation, held by or on behalf (for account) of an acquiring legal person or by or on behalf (for account) of the dividing Corporation, cease to exist if the dividing Corporation ceases to exist at the division.

Article 2:334y Additional information in the division proposal
The division proposal states in addition to the items listed in **Article** 2:334f :
a. the exchange ratio of shares and, where applicable, the amount of the payments made on account of the exchange ratio;
b. as of which moment and to what extent the shareholders of the dividing Corporation will share (participate) in the profits of the acquiring Corporations;
c. how many shares possibly might be withdrawn under application of **Article** 2:334x, paragraph 3.

Article 2:334z Additional information in the written explanation
The Board of Directors must report in the written explanation on the division proposal:
a. according to which method or methods the exchange ratio of shares is established;
b. whether this method or these methods were appropriate in this particular event;
c. to which valuation each method resulted;
d. if more than one method is used: whether the comparative importance of the used methods, as applied in the valuation, is regarded as acceptable to generally applicable standards, and;
e. which particular difficulties, if any, have been encountered when making the valuation and when establishing the exchange ratio.

Article 2:334aa Auditors certificate and report for additional items
- 1. An auditor (accountant) as meant in **Article** 2:393, appointed by the Board of Directors, has to examine the division proposal and certify whether the proposed exchange ratio of shares, in view of, among others, the documents attached to it, is reasonable in his opinion.
- 2. If the dividing Corporation continues to exist after the division, the auditor (accountant) must, furthermore, certify that the value of the portion of the property (part of the assets and liabilities) which the Corporation shall retain, increased with the value of the shares it acquires at

the division in the capital of the acquiring legal persons, determined to the day to which its annual account or interim capital account relates, at least equalled, under the application of generally accepted standards for valuation methods, the paid and called up portion of the capital, increased with the reserves which the Corporation immediately after the division has to maintain pursuant to law or the articles of incorporation.
- 3. The auditor (accountant) also has to prepare a report stating his opinion about the written explanation of the Board of Directors meant in **Article** 2:334z.
- 4. If two or more of the parties to the division are Open Corporations, then only the same person may be appointed as auditor (accountant) if the President of the Enterprise Chamber (*'Ondernemingskamer'*) of the Amsterdam Court of Appeal has approved such appointment upon a uniform request.
- 5. The auditors (accountants) are equally competent to hold their examination at all parties to the division.
- 6. **Article** 2:334h applies accordingly to the certificate (statement) of the auditor (accountant); **Article** 2:334h, paragraph 2 and 3, applies accordingly to the report of the auditor (accountant) .
- 7. Paragraph 1 and 3 do not apply when the shareholders of each party to the division have agreed with that.

Article 2:334bb Statutory provisions applicable to an allotment of shares by an acquiring Corporation
- 1. **Article** 2:94a and **Article** 2:94b apply accordingly with respect to shares allotted by an acquiring Open Corporation (*'naamloze vennootschap'*). A certificate of an auditor (accountant) that is required pursuant to **Article** 2:94a or 2:204a, however, does not have to be attached to the notarial deed of incorporation.
- 2. **Article** 2:334h applies accordingly to a certificate of an auditor (accountant) required pursuant to paragraph 1.

Article 2:334cc Possible apportionment of shares in case of a pure division
- 1. In case of a pure division the notarial deed of division may provide that different shareholders of the dividing legal person will become shareholder of different acquiring legal persons. In such event:
a. the division proposal mentions, in addition to the items mentioned in Articles 2:334f and 2:334y, which shareholders shall become shareholder of which acquiring legal person;
b. the Board of Directors reports in its explanation on the division proposal according to which standards this apportionment of shares has been established;
c. the auditors (accountants) referred to in **Article** 2:334aa must certify as well that the proposed apportionment of shares, in view of, among others, the documents attached to it, is reasonable in his opinion, and;
d. the resolution for a division must be adopted (passed) by the General Meeting with a majority of three-fourths of the votes cast at a meeting in which 95 % of the issued share capital is represented .
- 2. Paragraph 1, under (c), remains inapplicable if the shareholders of each party to the division agree with that.

Article 2:334dd Right of inspection of holders of depository receipts for shares
Article 2:334h, paragraph 2, shall apply as well for holders of depository receipts for shares issued in collaboration with the Corporation.

Article 2:334ee Division resolution of the General Meeting
- 1. The General Meeting's resolution for a division requires in any event at least a majority of two-thirds if less than one-half of the issues share capital is represented at the meeting .
- 2. When there are different types (classes) of shares, then, in addition to the division resolution of the General Meeting, a prior or simultaneous approving resolution (decision) is required of each group of holders of shares of the same type (class) whose rights are affected by the division. **Article** 2:231, paragraph 4, does not apply in regard of a resolution for a division. The required approval can be given only when one month has passed since the day on which all parties to the division have announced that a division proposal is deposited or disclosed for inspection.
- 3. The minutes of General Meetings where the resolution for a division has passed or where it has been approved pursuant to paragraph 2 are drawn up by notarial deed.

Article 2:334ff Division resolution of the Board of Directors
- 1. Unless the articles of incorporation provide otherwise, an acquiring Corporation may resolve (decide) to a division by a resolution of the Board of Directors. The same applies for the dividing Corporation, provided that all acquiring Corporations formed at the division are Open or Closed Corporations (*'naamloze of besloten vennootschappen'*) and the dividing Corporation will become, at the division, the sole shareholder therein.
- 2. Such resolution (decision) of the Board of Directors, however, can be adopted (passed) only if the Corporation has mentioned that it intends to pass such resolution in the announcement that the division proposal has been deposited for inspection.
- 3. Such resolution (decision) cannot be adopted (passed) if one or more shareholders representing together at least one-twentieth of the issued share capital, or such lesser part as specified in the articles of incorporation, have requested the Board of Directors within one month after the before meant announcement to convene a General Meeting in order to decide on the division. Articles 2:334m and 2:334ee are applicable in such event.
- 4. If the acquiring legal person holds all shares in the dividing Corporation, then the dividing Corporation may resolve (decide) by a resolution of the Board of Directors to enter into the division, unless its articles of incorporation provide otherwise.

Article 2:334gg *[repealed on 01-07-2011]*

Article 2:334hh Divided legal person becomes sole shareholder of all formed acquiring Corporations
- 1. If all acquiring Corporations are formed (incorporated) at the division, and the dividing legal person will become, at the division, their sole shareholder, then Articles 2:334f, paragraph 4, fist sentence, 2:334w and 2:334y up to and including 2:334aa do not apply.

- 2. If all acquiring Corporations are formed (incorporated) at the division and the shareholders of the dividing Corporation shall become, in proportion to their shares in the dividing Corporation, shareholders of these Corporations to be formed, then the Articles 2:334g, 2:334y up to and including 2:334bb are not applicable.

Article 2:334ii Triangle division; group company
- 1. The notarial deed of division may provide that the shareholders of the dividing Corporation become shareholder of a group company of an acquiring Corporation. In that case those shareholders will not become a shareholder of that acquiring Corporation.
- 2. Such a division is possible only if the group company, solely or jointly with another group company, provides for the entire issued share capital of the acquiring Corporation. Articles 2:334m, paragraph 1 up to and including 4, 2:334ee and 2:334ff apply accordingly to the resolution (decision) of the involved group company.
- 3. The obligations to which an acquiring Corporation is subjected under Articles 2:334f up to and including 2:334dd are incumbent on such group company, with the exception of the obligations under Articles 2:334k up to and including 2:334m and 2:334q, paragraph 2 and 4. For the purpose of **Article** 2:334aa, paragraph 4, such a group company remains excluded; Articles 2:334s, 2:334t and 2:334u, paragraph 7, do not apply to that group company. In such event Articles 2:334f, paragraph 2, under (b), 2:334x, paragraph 3 and 2:334y, under (b), do not apply to the acquiring Corporation. For the purpose of Articles 2:94b and 2:204b, the acquisition by the acquiring Corporation and the allotment of shares by a group company are regarded as to be made by the same Corporation.

Title 2.8 Rules For Resolving Disputes And The Right Of Inquiry

Section 2.8.1 Rules for resolving disputes between shareholders

Article 2:335 Application of the statutory provisions of the present Section
- 1. The provisions of the present Section (Section 2.8.1) shall apply to Closed Corporations (*'besloten vennootschappen'*)*).
- 2. The provisions of the present Section (Section 2.8.1) shall also apply to Open Corporations (*'naamloze vennootschappen'*) whose articles of incorporation:
a. provide for registered shares only;
b. contain a restriction on transfer of shares, and;
c. do not allow that depository receipts to bearer of shares are issued in collaboration with the Open Corporation (*'naamloze vennootschap'*).

) A Closed Corporation ('besloten vennootschap'*) is the equivalent of a private company with limited liability under English law.
**) An Open Corporation (*'naamloze vennootschap'*) is the equivalent of a public limited liability company under English law.

Article 2:336 Legal claim for a forced transfer of shares (buy-out)
- 1. One or more shareholders who solely or jointly have provided at least one third of the issued share capital, may claim in court from another shareholder who, through his conduct, harms or has harmed the interests of the Corporation in such a way that a continuation of his share ownership reasonably can be tolerated no longer, that he transfers his shares in conformity with **Article** 2:341.
- 2. Such a legal claim (right of action) cannot be filed by the Corporation or one of its subsidiary companies. A holder of shares of which the Corporation or one of its subsidiary companies holds depository receipts, is only able to file such a legal claim (right of action) if and insofar as depository receipts are held by others. A shareholder holding shares for administrative purposes only is only able to file such a legal claim (right of action) with respect to shares administered by him if the involved holders of depository receipts have agreed to this in advance.
- 3. The District Court of the domicile of the Corporation has exclusive jurisdiction in first instance over a legal claim (right of action) as meant in the previous paragraphs. An appeal against its decision can be lodged only with the Enterprise Chamber (*'ondernemingskamer'*) of the Amsterdam Court of Appeal. **Article** 344 of the Code of Civil Procedure shall apply in such event, on the understanding that 'a full bench' is read as 'Enterprise Chamber'.
- 4. The court may stay its decision on the legal claim (right of action) for a period to be set by it if it has appeared during the legal proceedings that the Corporation or one or more of its shareholders are willing to take measures through which the damage (disadvantage) suffered by the Corporation will be made undone or limited as much as possible.
- 5. The court meant in paragraph 3, first and second sentence, has jurisdiction also over legal claims (rights of action) connected with the conduct as referred to in paragraph 1 between the same parties or between one of the parties and the Corporation.

Article 2:337 Exclusive character of a regulation for resolving disputes in the articles of incorporation or an agreement
- 1. If the articles of incorporation or an agreement enclose an arrangement for resolving disputes as meant in the present Section (Section 2.8.1), then it is not possible to appeal to that arrangement derogating from the present Section, to the extent that it makes the transfer of shares impossible or extremely difficult.
- 2. The articles of incorporation or an agreement may provide that disputes as meant in the present Section, are immediately brought to the knowledge of de Enterprise Chamber (*'Ondernemingskamer'*) of the Court of Appeal of Amsterdam or are subjected to arbitration, or that in another way is derogated from the jurisdiction of the courts as referred to in **Article** 2:336, paragraph 3 and 5.

Article 2:338 Defendant cannot dispose of his shares or encumber them with a pledge or usufruct
- 1. After the writ of summons has been officially served on the defendant up until the day that the judgment has become final and binding, the defendant cannot dispose of his shares, nor is he able to encumber them with a pledge or usufruct, unless the plaintiffs have given their consent thereto. If the plaintiffs refuse to give their consent, the court before which the dispute is

pending, may grant, upon the demand of the defendant, its authorisation if the defendant has a reasonable interest in such a juridical act. No appeal or other legal remedy is available against a decision of the court on such a demand.
- 2. After the legal claim has been awarded by the court, the defendant can only transfer the shares with due observance of the provisions of Articles 2:339 up to and including 2:341.
- 3. A temporary provision as meant in **Article** 233 of the Code of Civil Procedure can be granted with effect up until the moment that the shares are transferred. A legal claim to grant such temporary provision is considered with the utmost speed.

Article 2:339 Appointment of experts
- 1. If the legal claim is awarded, the court shall appoint one or more experts to report in writing about the price of the shares. Furthermore, Articles 194 up to and including 200 of the Code of Civil Procedure shall apply. Articles 2:351 and 2:352 shall apply accordingly. It is only possible to appeal against the judgment in which the legal claim is awarded simultaneously with an appeal against the judgment referred to in **Article** 2:340, paragraph 1, unless the court had decided otherwise. No legal remedy is available against the appointment of experts.
- 2. Where an arrangement regarding the assessment of the value of shares applies between parties on the basis of the articles of incorporation or an agreement within the meaning of **Article** 2:337, paragraph 1, the experts shall make their report with due observance of that arrangement.
- 3. In derogation from paragraph 1, the court may skip an appointment of experts if parties agree on the value of the shares and also if the articles of incorporation or an agreement within the meaning of **Article** 2:337, paragraph 1, contains clear criteria for the assessment of the value of the shares and the court is without effort able to assess the price on the basis thereof. .

Article 2:340 Fixation of the price of the shares by the court
- 1. Where experts have been appointed, the court shall fix the price of the shares after the experts have delivered their written report. In the same judgment the court shall determine which of the parties has to bear the costs of the expert's report. After having heard the Corporation on this matter, the court may also decide that the Corporation has to bear these costs. The court may divide these costs between the parties mutually or between the parties or one of them and the Corporation.
- 2. Where no experts are appointed, the court shall fix the price of the shares in the judgement in which the legal claim is awarded.
- 3. The court shall not take into account an arrangement in the articles of incorporation or an agreement regarding the assessment of the value of the shares as far as this would lead to an apparently unfair (unreasonable) price.
- 4. The judgement includes additionally an order of the court to the plaintiffs to pay in money (in cash), if necessary after application of **Article** 2:341 paragraph 5, the fixed price of the shares that are to be transfer to them. If **Article** 2:341 paragraph 6 applies, this court order also affects the holders of depository receipts issued for the shares who have agreed with the action of the plaintiffs to bring the legal claim to court.

Article 2:341 Transfer (delivery) of the involved shares

- 1. Within two weeks after a copy of the judgment meant in **Article** 2:340 paragraph 1 has been officially served on the defendant, the defendant is obliged to transfer (deliver) his shares to the plaintiffs, and the plaintiffs are obliged to take delivery of these shares against simultaneous payment of the fixed price, except as provided in paragraph 2. When the judgement has not been declared enforceable immediately, an official service of it on the defendant shall only have the effect meant in the first sentence if that official service is done after the judgement has become enforceable immediately after all or after it has become final and binding. The taking of delivery shall occur as much as possible in proportion to the value of each plaintiff's shareholding, unless agreed otherwise. Shareholders who have joined the plaintiffs as a party in the legal proceedings and who have expressed, when doing so, that they wish to be placed in the same position as the plaintiffs, are equated for this purpose with the plaintiffs.
- 2. Where the shareholder who wants to alienate one or more of his shares, has to offer them pursuant to **Article** 2:195 or an arrangement in the articles of incorporation firstly to his co-shareholders or others, the Corporation shall, without delay after a copy of the judgement was officially served on it, offer these shares in the name of the defendant, as his representative, to the shareholders or others, as much as possible with corresponding application of the law or the arrangement in the articles of incorporation, and it shall simultaneously inform those shareholders or others about the fixed price of the shares. Within one month after this offer was sent to them, they may accept it by notifying the Corporation in writing of their acceptance. Within one week after the before mentioned period has expired, the Corporation shall notify the defendant and the plaintiffs whether, and if so, how many shares have been accepted and to whom these are allocated. After receipt of this notification the defendant must, without delay, transfer (deliver) his shares to the involved co-shareholders or other persons against simultaneous payment of the price.
- 3. Where, in the situation meant in paragraph 2, no shares have been accepted or less shares have been accepted than there were offered, or the fixed price has not been paid within two weeks after the defendant, who wanted to proceed to a simultaneous transfer, received the notification of the Corporation regarding the allocation of shares, the provisions of paragraph 1 apply in respect of the shares, the remaining shares or the shares for which no timely payment was received. Paragraph 1, second sentence, shall apply accordingly.
- 4. Where the defendant is in default of transferring (delivering) his shares, the Corporation transfers (delivers) these shares in his name against simultaneous payment by the persons acquiring these shares.
- 5. Where one or more plaintiffs are in default of taking delivery of the shares against simultaneous payment of the fixed price, the other plaintiffs must, within two weeks after such default has been established, take delivery of the involved shares against simultaneous payment of the price, each of them as much as possible in proportion to the value of his shareholding.
- 6. When a plaintiff is a shareholder for administrative purposes only, the holders of depository receipts who have agreed with the plaintiffs' action to bring the legal claim to court are liable, next and in addition to that plaintiff, for what is indebted under the present Article, each of them as much as possible in proportion to the value of his holding of depository receipts. Where one or more of these holders of depository receipts are in default, the other holders of depository receipts who have agreed with the plaintiffs' action to bring the legal claim to court are obliged to satisfy that missing part, each of them as much as possible in proportion to the value of his holding of depository receipts.
- 7. Upon the request of a party, the court that has awarded the legal claim in first instance or on

appeal shall decide on any dispute relating to the implementation (performance) of the transfer or payment. No appeal or other remedy is available against such court decision.

Article 2:341a Legal effects when the judgement is declared void afterwards
- 1. Where a judgment as referred to in **Article** 2:340, paragraph 1, is declared invalid (void) after a legal remedy has been filed against it, the legal ground for the acts performed on the basis of that judgement remain intact, but an obligation shall come into existence to undue the legal effects that already have set in.
- 2. When it is difficult to undo the legal effects that already have set in, the court may, if requested, limit or exclude the obligation to undo these legal effects. It may impose on the party, who as a result thereof obtains an unfair (unreasonable) advantage, the obligation to make a payment in money to the party who has been damaged as a result thereof.

Article 2:342 Forced passage of voting rights
- 1. One or more shareholders who solely or jointly have provided at least one third of the issued share capital may claim in court from a usufructuary or pledgee of a share who has the right to vote that he passes the voting rights related to that share to the holder of the share if that usufructuary or pledgee through his conduct harms or has harmed the interests of the Corporation in such a way that a continuation of his right to vote reasonably cannot be tolerated any longer.
- 2. A copy of the writ of summons must, without delay, be officially served by the plaintiffs on the holder of the share if the latter is not also a plaintiff. **Article** 2:336, paragraphs 2, 3 and 4, and **Article** 2:339 paragraph 2 shall apply and Articles 2:337 and 2:338, paragraph 1, shall apply accordingly, in the sense that in the situation meant in **Article** 2:338, paragraph 1 and 3, the usufructuary or pledgee is not able to pass his usufruct or pledge*) to someone else.
- 3. If the legal claim for the passage of the voting rights is awarded, this passage is effectuated by and as soon as the involved judgment becomes final and binding.

*) In the sense that the debt-claim for which the pledge serves as security cannot be transferred (assigned) to someone else. It is not possible to transfer a pledge independently, disconnected from the secured debt-claim.

Article 2:342a *[repealed on 01-01-1984]*

Article 2:343 Forced take over (buy-up) of shares
- 1. A shareholder who, as a result of the conduct of one or more of his co-shareholders, is harmed in such a way in his rights or interests that a continuation of his shareholdership reasonably no longer can be expected of him, may file a legal claim in court against his co-shareholders for his withdrawal, entailing that these co-shareholders must buy up his shares in accordance with **Article** 2:343a, paragraph 1, 2 and 3. A legal claim for a withdrawal can be filed also against the Corporation on the basis of the conduct of one or more co-shareholders or of the Corporation itself. Such a legal claim against the Corporation, however, cannot be awarded to the extent that **Article** 2:98 or 2:207 precludes an acquisition of shares by the

Corporation, on the understanding, though, that no account is taken of the requirement of an authorization as meant in **Article** 2:98, paragraph 4, or of a similar provision in the articles of incorporation, nor of an amendment of the articles of incorporation to the detriment of the plaintiff after the legal claim had been brought to court. When the legal claim is awarded, **Article** 2:207, paragraph 3, shall not apply.
- 2. Articles 2:336, paragraph 3 and 5, 2:337, 2:338 paragraph 1 and 3, 2:339 and 2:340, paragraph 1, 2 and 3 apply or apply accordingly.
- 3. Where the legal claim has been filed against a shareholder, he may call another shareholder or the Corporation to court if he is of the opinion that the legal claim should have been filed solely against that shareholder or the Corporation. The summons to appear in court must be made at the latest on the day on which the statement of defence has to be filed with the court.
- 4. In determining the price of the shares the court may, if requested, apply a fair (reasonable) increase in connection with the conduct of the defendant or of others than the defendant, if it is plausible that this conduct has resulted in a decrease of the value of the shares which are to be transferred, and this decrease should not or not entirely remain for account of the plaintiff.
- 5. When the legal claim for a withdrawal is awarded, the judgment shall contain also an order to the plaintiff to transfer the relevant shares, if need be after application of **Article** 2:343a, paragraph 5, to the defendants.
- 6. The court may stay proceedings and its decision on the legal claim for a period to be determined by it, if it has appeared during the proceedings that the Corporation or one or more co-shareholders are willing to take measures which as much as possible will undo or limit the damage suffered by the shareholder.

Article 2:343a Legal effects of a judgement awarding the claim for a forced take over (buy-up)
- 1. Within two weeks after a copy of the judgment in which the price of the shares is fixed, has been served officially on the defendants, each of them is obliged to take over (buy up) the number of shares determined by the court against simultaneous payment of the fixed price, except for what is provided in paragraph 2, while the plaintiff is obliged to transfer (deliver) these shares to the defendants. Where the judgment was not been declared enforceable immediately, an official service of a copy thereof shall only have the legal effect mentioned in the first sentence if such service is done after the judgment has been declared enforceable still or if the judgement has become final and binding. Shareholders who have joined the defendants as a party in the legal proceedings and who have expressed, when doing so, that they wish to be placed in the same position as the defendants are equated for this purpose with the defendants.
- 2. If the shareholder, who wants to alienate one or more shares, has to offer these shares first to his co-shareholders or other persons pursuant to **Article** 2:195 or to an arrangement to this end in the articles of incorporation, then the Corporation shall, immediately after a copy of the judgment has been served on it, offer these shares in writing in the name of the plaintiff to the shareholders or other persons, as much as possible with corresponding application of the law or of the arrangement in the articles of incorporation, and the Corporation shall also notify these co-shareholders and other persons of the fixed price of the relevant shares. The co-shareholders and other persons may accept the offer within one month after it was sent to them by a written notification to the Corporation. Within one week after the expiration of the before meant period, the Corporation shall notify the plaintiff and defendants whether, and if so, how many shares have been accepted and to whom these are allocated. After receipt of such notification, the

plaintiff is obliged to deliver (transfer) the relevant shares immediately to the co-shareholders or the other persons who accepted the offer, against simultaneous payment of the price. Paragraph 1, second sentence, applies accordingly.
- 3. Where, in the situation as meant in paragraph 2, no shares have been accepted or less shares have been accepted than there were offered, or the fixed price has not been paid within two weeks after the plaintiff, who wanted to proceed to a simultaneous transfer, received the notification of the Corporation regarding the allocation of shares, the provisions of paragraph 1 shall apply in respect of the shares, the remaining shares or the shares for which no timely payment was received, on the understanding that the acceptance by the defendants of the shares which were not taken over [by the other shareholders or other persons] occurs as much as possible in proportion to the numbers of shares determined for each of the defendants in conformity with paragraph 1.
- 4. Where the plaintiff is in default of transferring (delivering) his shares, the Corporation transfers (delivers) these shares in his name against simultaneous payment by the persons acquiring these shares.
- 5. Where one or more defendants are in default of taking delivery of the shares against simultaneous payment of the fixed price, the other defendants must, within two weeks after such default has been established, take delivery of the involved shares against simultaneous payment of the price, all as much as possible in proportion to the number of shares determined for each of them in conformity with paragraph 1.
- 6. When a defendant is a shareholder for administrative purposes only, the holders of depository receipts are liable, next and in addition to that defendant, for what is indebted under the present Article, each of them as much as possible in proportion to the value of his holding of depository receipts. Where one or more of these holders of depository receipts are in default, the other holders of depository receipts are obliged to perform that missing part, each of them as much as possible in proportion to the value of his holding of depository receipts. The first and second sentence only applies to holders of depository receipts who have been called in time to the proceedings by the plaintiff. If necessary, the defendant shall provide the plaintiff with the information required to this end.
- 7. Upon the request of any involved party, the court that has awarded the legal claim in first instance or on appeal shall decide on any dispute relating to the implementation (performance) of the transfer or payment. No appeal or other remedy is available against such court decision.

Article 2:343b Legal effects then the judgement is declared void afterwards
In the event that the judgement is declared invalid (void) as meant in **Article** 2:343a, paragraph 1, **Article** 2:341a shall apply accordingly.

Article 2:343c Fixing a price by the court on the basis of a agreement between parties
- 1. When there is an agreement between a shareholder and one or more of his co-shareholders or the Corporation, indicating that the shareholder shall transfer his shares against simultaneous payment of a price which still has to be assessed, they may request the court meant in **Article** 2:336, paragraph 2, by means of a joint petition, to fix the price of the relevant shares. Such a request can be made also by one of the parties, provided that the other party in his counter-plea declares that he has no objections against the request.

- 2. Parties may request the court, when it appoints an expert or experts, to give certain instructions on the valuation method which is to be observed, the date relevant for the valuation and other circumstances that have to be taken into account at the valuation. As far as parties are not unanimous, the court shall decide in accordance with reasonableness and fairness.
- 3. The proceedings are pursued as application proceedings, to which Articles 2:343, paragraph 2, and 2:343a shall apply accordingly as much as possible.
- 4. If the parties have made clear in the petition or in conformity with paragraph 1, second sentence, that they would like to obtain a report of an expert which, between them, shall have the effect of a settlement agreement, then the statutory provisions for a preliminary expert report shall be applicable accordingly as much as possible. A party may only invoke **Article** 7:904, paragraph 2, during a period of four weeks as of the day on which the Registry of the court has sent the preliminary expert report on the basis of **Article** 205, paragraph 1, of the Code of Civil Procedure, to that party. In the application of **Article** 7:904, the court meant in **Article** 2:336, paragraph 3, shall have jurisdiction. That same court shall decide, upon the request of one of the parties, on any dispute relating to the implementation (performance) of the transfer or payment.
- 5. No appeal or other remedy is available against a decision of the court as meant in the present Article.

Section 2.8.2 The right of inquiry

Article 2:344 Application of the statutory provisions of the present Section
The provisions of the present Section (Section 2.8.2) shall apply to:
a. Cooperatives (*'coöperaties'*), Mutual Insurance Societies (*'onderlinge waarborgmaatschappijen'*), Open Corporations*) (*'naamloze vennootschappen'*) and Closed Corporations**) (*'besloten vennootschappen'*);
b. Foundations ('stichtingen') and Associations ('verenigingen') with full legal capacity that maintain an enterprise for which, under the law, a Works Council must be established.

) An Open Corporation ('naamloze vennootschap'*) is the equivalent of a public limited liability company under English law.
**) A Closed Corporation (*'besloten vennootschap'*) is the equivalent of a private company with limited liability under English law.

Article 2:345 Request for an investigation into the policy and affairs of a legal person
- 1. Upon a written request of those who are entitled to make such a request by virtue of Articles 2:346 and 2:347, the Enterprise Chamber (*'ondernemingskamer'*) of the Amsterdam Court of Appeal may appoint one or more persons to conduct an investigation into the policy and the state of affairs of a legal person, either in full or with respect to some part thereof or to a certain period. The policy and state of affairs of a legal person include the policy and state of affairs of a limited partnership (commanditaire vennootschap) or a general partnership (vennootschap onder firma) of which a legal person is a fully liable partner.

- 2. The Advocate-General at the Amsterdam Court of Appeal may, for reasons of public interest, make a request for the conduct of an investigation as meant in paragraph 1. He may, in preparation of such request, charge one or more experts to gather information on the policy and state of affairs of the legal person. The legal person is obliged to provide the requested information and to allow, upon request, the experts to inspect its books and records.

Article 2:346 Right to file a request for an investigation
The following persons are entitled to file a request as referred to in **Article** 2:345:
a. if it concerns an Association (*'vereniging'*), a Cooperative (*'coöperatie'*) or a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*): the members of the legal person, in number at least 300, or at least one tenth of the total number of members or at least representing one tenth of the votes that may be cast at the General Meeting;
b. if it concerns an Open Corporation (*'naamloze vennootschap'*) or a Closed Corporation (*'besloten vennootschap'*): one or more holders of shares or depository receipts of shares, who solely or jointly represent at least one tenth of the issued share capital or who are solely or jointly entitled to an amount of shares or depository receipts of shares to a nominal value of € 225,000 or of a lower sum specified for this purpose in the articles of incorporation;
c. those to whom such right has been granted in the articles of incorporation or in an agreement with the legal person.

Article 2:347 Right of a labor union to file a request for an investigation
Entitled to file a request as referred to in **Article** 2:345 is furthermore an association of employees (labor union) with members amongst those who are working in the enterprise of th legal person and which has had full legal capacity for at least two years, provided that its object (purpose) under its articles of incorporation is to look after the interests of its members as employees and that it is active in such capacity in the economic sector or in the enterprise.

Article 2:348 Informing a supervisory authority
If the legal person, due to the nature of the business that it conducts, is subject to the supervision of the Dutch Central Bank (*'De Nederlandsche Bank NV'*) or the Netherlands Authority for the Financial Markets *('Stichting Autoriteit Financiële Markten')*, then the clerk of the court shall send a copy of the request for an investigation to the supervisory authority.

Article 2:349 Inadmissibility of the request of the applicants or the Advocate-General
- 1. The request for an investigation made by the applicants or the Advocate-General is not admissible if they do not show that they have informed the Board of Directors and the Supervisory Board of the involved legal person in advance in writing of their objections against the policy or the state of affairs and they do not show that since that moment such a period of time has passed that the legal person reasonably has had the opportunity to examine these objections and to take the proper measures in respect thereof. The previous sentence does not apply when the request is made by a legal person. In that event the Supervisory Board or the Board of Directors, respectively, and the Works Council shall be informed as soon as possible

about the intention to lodge a request or about the lodging of the request, respectively. For the purpose of paragraph 1, a supervisory body instituted by or pursuant to the articles of incorporation of the legal person is equated with the Supervisory Board.
- 2. The request of an association of employees (labor union) is inadmissible as well when that association has not granted the Works Council related to an enterprise which is maintained by the legal person, either independently or as a fully liable partner, an earlier opportunity to express its views on the matter in writing. The Advocate-General shall report in his request whether he has given the Works Council the opportunity to express its views on the matter.

Article 2:349a Urgent matters and provisional measures
- 1. The Enterprise Chamber ('ondernemingskamer') shall take the request into consideration with the utmost urgency. The applicants and the legal person appear either by advocate (solicitor) or in person assisted by their advocates (solicitors). Before taking a decision, the Enterprise Chamber may of its own motion (ex officio) hear witnesses and experts.
- 2. If, in connection with the situation of the legal person or in the interest of the investigation, immediate measures are required, the Enterprise Chamber may, upon the request of the applicants who have filed the request meant in **Article** 2:345, order at any stage of the legal proceedings provisional measures effective for at the most the duration of the proceedings.

Article 2:350 Well-founded reasons; damages and costs of investigation
- 1. The Enterprise Chamber (*'ondernemingskamer''*) shall award the request only if there appear to be well-founded reasons to doubt that the policy or state of affairs is or has been correct.
- 2. When the Enterprise Chamber (*'ondernemingskamer'*) rejects the request and decides at the same time that, in its opinion, this request was not based on well-founded reasons, then the legal person may file a legal claim at the Enterprise Chamber (*'ondernemingskamer'*) against the applicant or applicants for a compensation of the damage suffered as a result of the request. The domicile that the applicant has chosen for lodging his request will be regarded as his domicile for the legal claim which is filed against him.
- 3. If the request is awarded, then the Enterprise Chamber ('ondernemingskamer') shall set the amount of the maximum costs of investigation. Pending the investigation, the Enterprise Chamber (*'ondernemingskamer'*) may, upon the request of the appointed persons, increase that amount, but only after the original applicants have been heard, that is to say, after they have been properly called to court to be heard. The Enterprise Chamber (*'ondernemingskamer'*) shall set the remuneration of the persons it has appointed. The legal person has to pay the costs of investigation and the reasonable costs for the defence of the persons charged with the investigation on the assessment of liability, as far as these are made in reason in the conduct of the investigation or for making the report on the results of the investigation; in the event of a dispute the Enterprise Chamber (*'ondernemingskamer'*) shall give a decision on it upon the request of one of the involved parties. The Enterprise Chamber (*'ondernemingskamer'*) may decide that the legal person provides security for the payment of costs.
- 4. The Enterprise Chamber (*'Ondernemingskamer'*) appoints, simultaneously with the persons charged with the investigation, a commissioner-judge. If a proper conduct of the investigations requires so, the commissioner-judge may, upon the request of the applicants of interested persons give directions on the way in which the investigation is to be conducted. The commissioner-

judge shall not decide on such request than after he has given the persons charged with the investigation the opportunity to give their point of view about the request. The commissioner-judge may also give directions to the persons charged with the investigation upon their own request. The commissioner-judge shall not decide on such request than after he has given the legal person who has appeared in the proceedings the opportunity to give its point of view about the request. The commissioner-judge may also grant others the opportunity to give their point of view. No appeal in cassation is available against a decision of the commissioner-judge as meant in the present paragraph.

Article 2:351 Powers of the investigators; obligation of secrecy

- 1. The persons appointed by the Enterprise Chamber (*'ondernemingskamer'*) shall be entitled to inspect the books, records and other data carriers of the legal person or partnership referred to in **Article** 2:345 paragraph 1, of which they become aware in the proper performance of their duties. The assets (property) of the legal person or partnership must be presented to them upon their request. The Directors and, if any, the Supervisory Directors and those who are employed by the legal person or partnership are obliged to provide, upon request, all information necessary for the investigation. The same obligation rests upon those who were Directors or Supervisory Directors of or employed by the legal person or partnership during the period under investigation.
- 2. If this is necessary for a proper fulfilment of their duties, the Enterprise Chamber (*'ondernemingskamer'*) may authorise the appointed persons, upon their request, to inspect the books, records and other data carriers and to cause the presentation of the assets (property) of another legal person which is closely affiliated with the legal person or partnership to which the investigation relates. The provisions of the third and fourth sentence of paragraph 1 shall apply accordingly.
- 3. It is prohibited for the persons charged with the investigation to disclose information of which they have become aware during their investigation as far as this exceeds their assignment.
- 4. The persons charged with the investigation shall draw up a report of their findings. They shall provide the persons mentioned in the report the opportunity to make remarks about the essential findings that relate to themselves. It is prohibited for everyone to provide information about the content of the concept report or of parts thereof that have been presented to him in order to comply with what is provided in the previous sentence.
- 5. The persons charged with the investigation are not liable for damages resulting from the report or the outcome of the investigation, unless they have acted, in regard of their findings as laid down in the report or in regard of the investigation, deliberately inappropriate or with gross misunderstanding of what a proper performance of duties entails.

Article 2:352 Additional orders of the presiding judge of the Enterprise Chamber

- 1. When a person charged with the investigation wants to inspect books, records and other data carriers or requests the presentation of assets (property) as regulated in the previous **Article** and this is refused, then the commissioner-judge meant in **Article** 2:250, paragraph 4, may, upon the request of this person, give such orders as required under the circumstances
- 2. Such orders may include an instruction to the police to provide, where necessary, assistance and to enter a house (dwelling) when the books, records and other data carriers or assets are

located there or where these items can be reached only through that house (dwelling). The house (dwelling) may be entered only against the will of the occupant after presentation of the order of the commissioner-judge of the Enterprise Chamber (*'ondernemingskamer'*).

Article 2:352a Hearing of witnesses
Persons charged with the investigation may request the Enterprise Chamber (*'ondernemingskamer'*) to hear one or more persons as witnesses. Such request mentions the names and addresses of the persons to be heard and the facts and circumstances in respect of which they are to be heard. The investigators are entitled to attend the hearing and to question the witnesses.

Article 2:353 Report of the investigation
- 1. The report of the outcome of the investigation is deposited at the clerks office of the Amsterdam Court of Appeal. From the report must appear whether the provisions of **Article** 2:351, paragraph 4, second sentence, are met.
- 2. The Advocate-General at the Amsterdam Court of Appeal, the legal person and the applicants and their advocates (solicitors registered at the Bar) shall receive a copy of this report. In the situation referred to in **Article** 2:348, the Dutch Central Bank (*'De Nederlandsche Bank NV'*) or the Netherlands Authority for the Financial Markets *('Stichting Autoriteit Financiële Markten')* shall also receive a copy of the report. The Enterprise Chamber (*'ondernemingskamer'*) may decide that the report is made available for inspection as well by other persons to be pointed out by the Enterprise Chamber (*'ondernemingskamer'*) or by anyone.
- 3. It is prohibited for others than the legal person to inform third persons of the content of the report as far as it is not available for inspection by anyone, unless they have been authorised to do so by the Enterprise Chamber (*'ondernemingskamer'*) upon their request. Yet, an association of employees (labor union) is entitled, without such authorisation, to provide information from the report to the Works Council related to the enterprise of the legal person.
- 4. As soon as possible after the report has been deposited at the Registry of the Amsterdam Court of Appeal, the clerk of that court shall notify the applicants and legal person thereof; where the Enterprise Chamber (*'ondernemingskamer'*) orders so, the clerk of that court shall also ensure publication in the Dutch Government Gazette (Staatscourant) of the fact that the report has been deposited and, where appropriate, of the authorisation of the Enterprise Chamber (*'ondernemingskamer'*) referred to in paragraph 2.

Article 2:354 Recovery of costs
After the Enterprise Chamber (*'ondernemingskamer'*) has taken knowledge of the report of the investigation, it may decide, upon the request of the legal person, that this legal person may recover the costs of investigation in full or in part from the applicants if the report shows that the request was not made on well-founded grounds, or from a Director, Supervisory Director or another person employed by the legal person if the report shows that he is responsible for a wrong policy or an unsatisfactory state of affairs of the of the legal person. The last sentence of paragraph 2 of **Article** 2:350 shall apply.

Article 2:355 Mismanagement of affairs; request for additional measures
- 1. If the report indicates that there has been a mismanagement of affairs, then the Enterprise Chamber (*'ondernemingskamer'*) may order that one or more of the measures meant in the following **Article** (**Article** 2:356) are to be taken, depending on the question which of these measures it regards appropriate in view of the outcome of the investigation; such order may be rendered upon the request of the original applicants and, if the report is available for inspection by others, upon the request of those others who meet the requirements of Articles 2:346 or 2:347, or upon a request of the Advocate-General lodged for reasons of public interest.
- 2. The request meant in the previous paragraph must be made within two months after the report of the investigation has been deposited at the Registry of the Amsterdam Court of Appeal.
- 3. Articles 2:348 and 2:349a shall apply accordingly.
- 4. In the case referred to in **Article** 2:348, the Enterprise Chamber (*'ondernemingskamer'*) shall only render the order after it has granted the Dutch Central Bank (*'De Nederlandsche Bank NV'*) or the Netherlands Authority for the Financial Markets *('Stichting Autoriteit Financiële Markten')* the opportunity to be heard on the request.
- 5. The Enterprise Chamber (*'ondernemingskamer'*) may stay its decision (order) for a period to be set by it if the legal person promises to take certain measures that will put an end to the mismanagement of affairs or that will undo or limit the consequences of that mismanagement as much as possible.

Article 2:356 Measures that may be ordered by the Enterprise Chamber
The measures mentioned in the previous **Article** (**Article** 2:355), are:
a. a suspension or annulment (nullification) of a resolution (decision) of the Directors, Supervisory Directors, the General Meeting of shareholders or any other body of the legal person;
b. a suspension or dismissal of one or more Directors or Supervisory Directors;
c. a temporary appointment of one or more Directors or Supervisory Directors;
d. a temporary derogation from those provisions in the articles of incorporation that are designated by the Enterprise Chamber (*'ondernemingskamer'*) for this purpose;
e. a temporary transfer of shares for administrative purposes only;
f. a dissolution of the legal person.

Article 2:357 Further specification of (provisional) measures
- 1. The Enterprise Chamber (*'ondernemingskamer'*) shall set the period during which the temporary measures it has ordered shall be effective; it may shorten or extend this period upon the request of the applicants referred to in **Article** 2:355, the legal person or the Advocate-General.
- 2. The Enterprise Chamber (*'ondernemingskamer'*) shall, if necessary, specify the effects of the measures it has ordered.
- 3. A measure ordered by the Enterprise Chamber (*'ondernemingskamer'*) cannot be made undone (reversed) by the legal person; a resolution passed to this end, is null and void.
- 4. Where the Enterprise Chamber (*'ondernemingskamer'*) has appointed a temporary Director, Supervisory Director or an administrator of shares, it may grant this person a remuneration to be

paid by the legal person.
- 5. The Enterprise Chamber (*'ondernemingskamer'*) may instruct such persons to report regularly to the Enterprise Chamber (*'ondernemingskamer'*).
- 6. The Enterprise Chamber (*'ondernemingskamer'*) may decide that the legal person pays the reasonable costs, made in reason, for the defence of the Director, Supervisory Director or administrator of shares in regard of the assessment of his liability for an improper performance of duties during his temporary appointment.
- 7. The Enterprise Chamber (*'ondernemingskamer'*) does not order the dissolution of the legal person when such dissolution is not in line with the interests of the members or shareholders of that legal person, the interests of those who are employed by that legal persons or the public interest.

Article 2:358 Publication of the orders of the Enterprise Chamber
- 1. The Enterprise Chamber (*'ondernemingskamer'*) may order the provisional (immediate) enforcement of the measures mentioned in **Article** 2:356 under (a) up to and including (e).
- 2. The clerk of the Enterprise Chamber (*'ondernemingskamer'*) ensures that a copy of the orders of the Enterprise Chamber (*'ondernemingskamer'*) shall be deposited at the commercial register where the legal person or partnership is registered. Orders of the Enterprise Chamber (*'ondernemingskamer'*) that are not made provisionally (immediately) enforceable, shall be deposited as soon as they have become final and binding.
- 3. In the situation referred to in **Article** 2:348 the Dutch Central Bank (*'De Nederlandsche Bank NV'*) or the Netherlands Authority for the Financial Markets *('Stichting Autoriteit Financiële Markten')*, respectively, shall receive a copy of the orders of the Enterprise Chamber (*'ondernemingskamer'*) from the clerk of that court.

Article 2:359 Appeal in cassation
- 1. Besides the persons referred to in **Article** 426, first paragraph, of the Code of Civil Procedure, the legal person is entitled to bring an appeal in cassation against the orders of the Enterprise Chamber (*'ondernemingskamer'*) rendered under the present Section (Section 2.8.2), irrespective of whether the legal person has appeared before the Enterprise Chamber (*'ondernemingskamer'*).
- 2. If an order of the Enterprise Chamber (*'ondernemingskamer'*) in which a person has been charged with an investigation or in which he is appointed as Director, Supervisory Director or administrator of shares, looses its legal validity because it is declared void, then the compensation or remuneration granted by the Enterprise Chamber (*'ondernemingskamer'*) to that person, is deemed to have never been indebted.

Section 2.8.3 The public bid

Article 2:359a Application of the statutory provisions of Section 2.8.3
- 1. The present Section (Section 2.8.4) applies to a Corporation*) (*'naamloze of beslote*

vennootschap') of which the shares are admitted to a regulated market as meant in **Article** 1:1 of the Financial Supervision Act, unless it concerns an Investment Company (*'beleggingsmaatschappij'*) as referred to in that **Article** and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of such Investment Company (*'beleggingsmaatschappij'*)
- 2. For the purpose of the present Section (Section 2.8.3) a depository receipt issued for a share in collaboration with the Corporation is equated with a share, and a holder of such depository receipt is equated with a shareholder.

*) The statutory provisions of Section 2.8.3 apply when the Corporation is a so called offeree company (target company)

Article 2:359b Protected or unprotected Corporation (target company)
- 1. The articles of incorporation of a Corporation (target company) may provide that a public notification of the announcement of a public offer, as defined in **Article** 5:70 or 5:74 of the Financial Supervision Act, on shares issued by the Corporation, has the effect that:
a. until the result (outcome) at the close of the bid has been made public or the bid has lapsed, the Corporation (target company) may not perform any acts which could frustrate the success of the public bid, unless its General Meeting has given its approval prior to such act or that act concerns the search for an alternative public bid (from a 'white knight'); the convening notice for such General Meeting shall be given no later than on the forty-second day prior to that meeting;
b. resolutions (decisions) of the Corporation (target company) adopted before the public notification of the announcement referred to in the preamble of the present paragraph, but not yet fully implemented then, need the approval of the General Meeting if that resolution (decisions) falls outside the normal course of business of the Corporation (target company) and the implementation of that resolution could frustrate the success of the public bid; the convening notice for such General Meeting shall be given no later than on the forty-second day prior to that meeting;
c. restrictions on transfer of shares, laid down in the articles of incorporation of the Corporation (target company) or agreed between the Corporation (target company) and its shareholders mutually or between shareholders mutually, have no effect against the offeror when shares are offered to him during the period prior to the acceptance of the public bid;
d. restrictions to exercise voting rights, laid down in the articles of incorporation of the Corporation (target company) or agreed between the Corporation (target company) and its shareholders mutually or between shareholders mutually, have no effect during or at the General Meeting where a resolution (decision) is taken on acts as meant under (a) or (b) of the present paragraph;
e. during or at the General Meeting each share shall represent one single vote as far as it concerns resolutions (decisions) regarding acts or other resolutions (decisions) meant under (a) or (b) of the present paragraph.
- 2. The articles of incorporation of the Corporation (target company) may provide that the holder of shares who, as a result of a public bid, represents at least 75% of the issued share capital of that Corporation, has the power to convene, at short notice after the period for the acceptance of the public bid has ended, a General Meeting at which any special rights granted under the articles of incorporation to shareholders in respect of resolutions (decisions) for the

appointment or dismissal of a Director or Supervisory Director shall have no effect. The convening notice for such General Meeting shall be given no later than on the forty-second day prior to that meeting. During or at that General Meeting each share shall represent one single vote as far as it concerns resolutions (decisions) regarding the appointment or dismissal of Directors or Supervisory Directors, whereas restrictions to exercise voting rights, laid down in the articles of incorporation or agreed between the Corporation (target company) and its shareholders mutually or between shareholders mutually, have no effect.
- 3. A shareholder is entitled to a fair compensation for damage suffered as a result of the application of paragraph 1, under (c), (d) or (e), or of paragraph 2.
- 4. If an announcement is made of a public bid on a Corporation (target company) which applies paragraph 1 or 2 above, which public bid is released by a corporation or legal person that does not apply the same or a similar provision or provisions itself in accordance with national rules of law for the implementation of **Article** 9, paragraph 2 and 3 or **Article** 11 of Directive No. 2004/25/EC of the European Parliament and the Council of 21 April 2004 on takeover bids (OJ L 142), or which public bid is released by a subsidiary of such corporation of legal person, then the offeree Corporation (target company) may decide that what is applicable pursuant to paragraph 1 or paragraph 2 shall not apply in this specific case. Such resolution (decision) is subject to the approval of the General Meeting, which approval may not have been granted earlier than 18 months before the bid was announced.
- 5. The application of paragraph 1 or, respectively, paragraph 2, shall be reported to the Dutch financial supervisory authority (Autoriteit Financiële Markten). A report shall be made as well to supervisory authorities of other Member States of the European Union where the shares are admitted to a regulated market or where such admission is sought.
- 6. The Enterprise Chamber (*'ondernemingskamer'*) of the Amsterdam Court of Appeal takes notice of all legal claims regarding the application of paragraphs 1 up to and including 4, filed by a shareholder, a holder of a depositary receipt issued for a share in collaboration with the Corporation (target company), a Director or a Supervisory Director.

Article 2:359c Forced transfer of shares (buy-out) after a public bid has been released
- 1. Someone who has released a public bid and who provides for its own account, as shareholder, at least 95% of the issued share capital of the offeree Corporation (target company) and represents at least 95% of the voting rights of the offeree Corporation (target company), may file a legal claim against the other shareholders for a forced transfer of their shares to him. The same applies if two or more group companies jointly provide this part of the issued share capital and jointly represent this part of the voting rights, and they jointly file a legal claim for a forces transfer of shares to the person who has made the public bid.
- 2. When there are different types (classes) of shares, then such legal claim can be filed only in respect of the type (class) of which the plaintiff or plaintiffs provide at least 95% of the issued share capital and represent at least 95% of the voting rights.
- 3. The legal claim must be filed within three months after the deadline set for acceptance of the bid.
- 4. The Enterprise Chamber (*'ondernemingskamer'*) of the Amsterdam Court of Appeal shall decide in first instance on such legal claim. It is only possible to lodge an appeal in cassation against its decision.
- 5. If one or more defendants are in default of appearance, the court must of its own motion (ex

officio) examine whether the plaintiff or plaintiffs meet the requirements of paragraph 1 or, respectively, paragraph 2.
- 6. If the court is of the opinion that paragraph 1 and 2 do not prevent the legal claim of being awarded, it will fix a fair price for the shares to be transferred on a day to be set by the court. If a public bid as referred to in **Article** 5:74 of the Financial Supervision Act has been released, the value of the counter performance offered in that bid is regarded as a fair price, provided that at least 90% of the shares to which that bid relates has been acquired. If a public bid as referred to in **Article** 5:70 of the Financial Supervision Act has been released, the value of the counter performance offered in that bid is regarded as a fair price. In derogation from the second or third sentence, the court may order that one or three experts shall report on the value of the shares to be transferred. The first three sentences of paragraph 3 of **Article** 2:350 and Articles 2:351 and 2:352 are applicable in such event. The price is fixed in money (in cash). As long and as far as the price has not been paid, it will be raised with an interest equal to the statutory interest, running from the day set by the court for fixing the price until the transfer of shares; distributions on shares declared payable in this period, are taken into account on the day of payment as a partial payment of the price.
- 7. When the court awards the legal claim, it shall order the transferee (acquiring party) to pay the fixed price plus interest to those to whom the shares belong or will belong against the simultaneous transfer (delivery) of the unencumbered entitlement to the shares. The court shall give a decision on the costs of proceedings as it regards appropriate. A defendant who has not defended himself cannot be ordered to pay the costs of proceedings.
- 8. When the court order for a forced transfer of shares has become final and binding, then the transferee (acquiring party) shall notify the holders of the shares to be transferred, of whom he knows the address in writing of the day and place of payment. He shall announce this information also in a national newspaper, unless he knows the addresses of all involved holders of the shares to be transferred.
- 9. The transferee (acquiring party) is always able to release himself from the obligations imposed on him pursuant to paragraph 7 and 8 by consigning to the court the fixed price plus interest for all shares not yet acquired by him, with mention of the rights of usufruct and pledges known to him and of seizures (attachments) known to him. As a result of such notification a seizure (attachment) shall pass over from the shares to the entitlement to payment. As a result of the consignation to the court the entitlement to the shares passes unencumbered to him, whereas the rights of usufruct and pledges on the shares pass over to the entitlement to payment. No right or claim against the Corporation can be derived from any share certificate or dividend warrant (dividend coupon) in respect of which distributions have been declared payable after the transfer. The transferee (acquiring party) shall at that moment give notice of the consignation and of the price for each share in the way described in paragraph 8.

Article 2:359d Forced take over (buy-up) of shares after a public bid has been released
- 1. Another shareholder may file a legal claim against someone who has released a public bid and who provides for its own account, as shareholder, at least 95% of the issued share capital of the offeree Corporation (target company) and represents at least 95% of the voting rights of the offeree Corporation (target company), in order to force him to take over the shares of that other shareholder. The same applies if two or more group companies jointly provide this part of the issued share capital and jointly represent this part of the voting rights, and one of them has

released the public bid.
- 2. When there are different types (classes) of shares, then such legal claim may be filed in respect of the type (class) of which the person who has released a public bid provides at least 95% of the issued share capital and represents at least 95% of the voting rights, either solely or jointly with one or more group companies.
- 3. The legal claim must be filed within three months after the deadline set for acceptance of the bid.
- 4. The Enterprise Chamber (*'ondernemingskamer'*) of the Amsterdam Court of Appeal shall decide in first instance on such legal claim. It is only possible to lodge an appeal in cassation against its decision.
- 5. If one or more defendants are in default of appearance, the court must of its own motion (ex officio) examine whether the defendant or defendants meet the requirements of paragraph 1 or, respectively, paragraph 2.
- 6. When the court order for a forced take over of the shares has become final and binding, then the transferee (acquiring party) shall notify the holders of the shares to be transferred in writing of the day and place of payment.
- 7. **Article** 2:359c, paragraph 6, 7 and 9 shall apply accordingly.

Title 2.9 Annual Accounts And Annual Report*)

*) The accounting standards of the Netherlands are based on the Fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies (78/660/EEC) (OJ L 222, 14.8.1978, p.11) The question which accounting standards have to be applied in the Netherlands depends on the size of the legal person. Three categories are distinguished in this respect: small sized legal persons (**Article** 2:396), medium sized legal persons (**Article** 2:397) and large legal persons.
Small entities have to choose between Title 9, Book 2 of the Dutch Civil Code combined with fiscal valuations, Dutch Accounting Standards for small legal entities, Dutch Accounting Standards for medium sized and large legal entities, and EU-IFRS combined with a part of the Dutch Accounting Standards for medium sized and large legal entities.
Medium sized and large entities have to choose between Dutch Accounting Standards for medium sized and large legal entities, and EU-IFRS combined with a part of the Dutch Accounting Standards for medium sized and large legal entities.
Listed entities (independent of size) have to use EU-IFRS combined with a part of the Dutch Accounting Standards for medium sized and large legal entities.

Section 2.9.1 General provision

Article 2:360 Application of Title 2.9
- 1. The present Title (Title 2.9) applies to Cooperatives (*'coöperaties'*), Mutual Insurance Societies (*'onderlinge waarborgmaatschappijen'*), Open Corporations (*'naamloze vennootschappen'*) and Closed Corporations (*'besloten vennootschappen'*). The present Title (Title 2.9) applies as well to banks as referred to in **Article** 2:415 and to electronic money institutions (payment institutions) as meant in **Article** 1:1 of the Financial Supervision Act.
- 2. The present Title (Title 2.9) applies also to limited partnerships (*'commanditaire*

vennootschappen') and general partnerships (*'vennootschappen onder firma'*) of which all partners are a company with shares formed under foreign law and fully liable for the debts of that partnership.
- 3. The present Title (Title 2.9) applies furthermore to Foundations (*'stichtingen'*) and Associations (*'verenigingen'*) that maintain one or more enterprises which, pursuant to law, must be registered in the commercial register, if the net turnover of these enterprises over two consecutive financial years, and thereafter without any interruption, over two subsequent financial years, amounts to one half or more of the amount referred to in **Article** 2:396, paragraph 1, under (b), as amended under **Article** 2:398, paragraph 4. The first sentence remains inapplicable if the Foundations (*'stichtingen'*) or Associations (*'verenigingen'*) are obliged, by or pursuant to law, to prepare financial statements which are equivalent to annual accounts as referred to in the present Title (Title 2.9) and which have been made public.

Section 2.9.2 General provisions regarding the annual accounts

Article 2:361 Financial statements falling within the scope of Title 2.9
- 1. 'Annual accounts' mean the singular annual accounts consisting of the balance sheet and profit and loss account with explanatory notes thereto, and the consolidated annual accounts if the legal person prepares consolidated annual accounts.
- 2. Cooperatives (*'coöperaties'*), and Foundations (*'stichtingen'*) and Associations (*'verenigingen'*) as meant in **Article** 2:360, paragraph 3, shall replace the profit and loss account by an operating account, if this is helpful to provide the insight meant in **Article** 2:362 paragraph 1; the statutory provisions regarding the profit and loss account shall apply to that operating account as much as possible. Statutory provisions regarding profit and loss shall apply accordingly to the operating account as much as possible.
- 3. The provisions of the present Title (Title 2.9) shall apply to annual accounts and their components, both in the form in which they are prepared by the Board of Directors and in the form in which they are adopted by the competent body of the legal person.
- 4. In the application of Articles 2:367, 2:370, paragraph 1, 2:375, 2:376, 2:377, paragraph 5, and 2:381, disclosures to be made with regard to group companies shall be made accordingly with regard to other companies:
a. which on the basis of paragraph 1, 3 and 4 of **Article** 2:24a may exercise rights in the legal person, regardless whether they have legal personality, or;
b. which are a subsidiary of the legal person, of a group company or of a company meant under (a).

Article 2:362 Insight in financial position; used accounting standards
- 1. The annual accounts shall provide, on the basis of generally accepted accounting principles, such an insight that an informed assessment can be made about the legal person's property (assets and liabilities) and result and, insofar as the nature of annual accounts permits so, about its solvency and liquidity. If this is justified by the international branching pattern of its group, the legal person may prepare the annual accounts on the basis of generally accepted accounting principles applicable in one of the other Member States of the European Communities that

provide the insight meant in the first sentence.
- 2. The balance sheet and explanatory notes thereto shall fairly, clearly and consistently show the size and composition of the property at the end of the financial year, expressed in assets and liabilities. The balance sheet may show the property (assets and liabilities) as it is composed with due observance of the appropriation of profit or treatment of loss or, as long as this is uncertain, with due observance of the proposal therefore. At the top of the balance sheet shall be stated whether an appropriation of profit has been processed in the balance sheet.
- 3. The profit and loss account and explanatory notes shall fairly, clearly and consistently show the profit amount for the financial year and how it is deduced from the income and expenditure items.
- 4. If necessary in order to provide the insight as meant in paragraph 1, the legal person shall disclose in the annual accounts data in supplementation of what is required under the specific statutory provisions of and pursuant to the present Title (Title 2.9). If necessary in order to provide such insight, the legal person shall depart from these statutory provisions; the reason for such depart is explained in the notes, where necessary with mention of the impact thereof on the property (assets and liabilities) and result.
- 5. The income and expenses over a financial year shall be included in the annual accounts, regardless whether they actually have lead to receipts (revenues) or expenditures in that year.
- 6. The annual accounts are adopted with due observance of what has appeared at the balance sheet date with regard to financial matters which have occurred between the preparation of the annual accounts and the General Meeting at which these accounts are discussed, as far as this is essential to provide the insight meant in paragraph 1. If it becomes clear afterwards that the annual accounts seriously fail to provide that insight, then the Board of Directors shall report this immediately to the members or shareholders and shall deposit a statement in respect thereof at the office of the commercial register; when the annual accounts have been audited in accordance with **Article** 2:393, an auditor's opinion is added to that statement.
- 7. If this is justified in view of the operations of the legal person or of the branch pattern of its group, the annual accounts or just the consolidated annual accounts may be prepared in a foreign currency. The items will be described in the Dutch language, unless the General Meeting has decided to use another language for this purpose.
- 8. A legal person may prepare its annual accounts in accordance with the standards adopted by the International Accounting Standards Board and approved by the European Commission, provided that the legal person, when making use of this possibility, applies all standards adopted and approved for it. Where a legal person prepares consolidated annual accounts in accordance with the present Title (Title 2.9), it cannot prepare its singular annual accounts in accordance with the adopted and approved standards. Where a legal person prepares consolidated annual accounts in accordance with the standards referred to in the first sentence, it may in its singular annual accounts use the same valuation methods as it had used in its consolidated annual accounts.
- 9. A legal person that prepares its annual accounts in accordance with the standards referred to in paragraph 8, shall apply of the present Title (Title 2.9) only Sections 2.9.7 up to and including 2.9.10 and Articles 2:365, paragraph 2, 2:373, 2:383, 2:383b up to and including 2:383rd, 2:389, paragraph 8 and 10, and 2:390. Banks shall also apply **Article** 2:421, paragraph 5.
- 10. The legal person shall disclose in the explanatory notes the standards in accordance with which the annual accounts are prepared.

Article 2:363 Arrangement of data in the annual accounts and notes
- 1. Concentrations, subdivisions and systems of ordering of data in the annual accounts and in the explanatory notes to such data must be arranged so as to obtain the insight which the annual accounts intend to provide pursuant to **Article** 2:362, paragraph 1. For this purpose the statutory provisions applicable by or pursuant to paragraph 6 or other Sections of the present Title (Title 2.9) have to be observed.
- 2. Where, pursuant to the present Title (Title 2.9), assets and liabilities or income and expenditures have to be included as separate items, it is not allowed to cancel them against each other in the annual accounts.
- 3. It is not necessary to disclose an item separately if that item, within the annual accounts as a whole, is of negligible importance for obtaining the legally required insight. Disclosures to be made pursuant to the present Title (Title 2.9) may be omitted if these, as well on their own as together with similar disclosures, would be of negligible importance for obtaining that insight. Disclosures to de made pursuant to Articles 2:378, 2:382 and 2:383 may not be omitted.
- 4. The layout of the balance sheet and profit and loss account may only for well-founded reasons differ from that of the previous year; the explanatory notes shall mention the differences as well as the reasons which have lead to making them.
- 5. The amount of the previous financial year shall be disclosed as much as possible with regard to each item of the annual accounts; where this is necessary for the sake of comparability, this amount shall be transformed, and the difference resulting from it shall be explained in the notes.
- 6. By Order in Council the Minister of Justice may issue standard forms and further rules for the layout of annual accounts of the legal persons pointed out in that Order in Council. In the application thereof the layout, names and description of the items therein shall be adapted to the nature of the legal person’s enterprise, to the extent permitted under the Order in Council.

Section 2.9.3 Requirements for the balance sheet and the explanatory notes thereto

Subsection 2.9.3.1 Main layout of the balance sheets

Article 2:364 Fixed and current assets; liabilities
- 1. The assets on the balance sheet are shown separately as fixed and current assets, depending on whether they are intended to be used sustainably in the performance of the operations of the legal person.
- 2. The fixed assets are identified separately as intangible, tangible and financial assets.
- 3. The current assets are identified separately as inventories (goods in stock), accounts receivables (debt-claims), marketable securities, cash, and, if they are not listed among the accounts receivables (debt-claims), accrued assets.
- 4. The liabilities are identified separately as equity capital, provisions, accounts payable (debts) and, if they are not listed among the accounts payable (debts), deferred liabilities.

Subsection 2.9.3.2 Assets

Article 2:365 Intangible fixed assets
- 1. The intangible fixed assets are identified separately as:
a. costs connected with the incorporation (formation of the legal person) and the issuance of shares;
b. costs of research and development;
c. costs of acquisition in respect of concessions, governmental permits (licenses) and intellectual property rights;
d. costs of goodwill acquired from a third party;
e. advanced payments on intangible fixed assets.
- 2. As far as the legal person has capitalized the costs (charges) mentioned under paragraph 1, point (a) and (b), it must explain these items and it must keep a reserve to the amount thereof.

Article 2:366 Tangible fixed assets
- 1. The tangible fixed assets are identified separately as:
a. land and buildings;
b. machinery and equipment;
c. other fixtures and fittings, tools and administrative equipment;
d. tangible fixed business assets in progress and advance payments on tangible fixed assets;
e. tangible fixed assets not to be used in the production process.
- 2. If the legal person only has a limited property right or a long-lasting personal right of use in or with respect to intangible fixed assets, this will be disclosed.

Article 2:367 Financial fixed assets
The financial fixed assets are identified separately as:
a. shares, depository receipts of shares and other forms of participating interests in group companies;
b. other participating interests;
c. accounts receivable from (debt-claims against) group companies;
d. accounts receivable from (debt-claims against) other legal persons and partnerships which have a participating interest in the legal person or in which the legal person holds a participating interest;
e. other marketable securities;
f. other receivables (debt-claims), with separate mention of debt-claims arising from loans and advance payments to members or holders of registered shares.

Article 2:368 Overview of value movements; conversion actual to historical value
- 1. Changes in value which have occurred over the year regarding each of the items which form a part of the fixed assets are shown in a balanced overview. It reveals for each item:
a. the carrying amount (book value) at the beginning of the year;
b. the total of accumulated values at which assets acquired during the financial year are booked, and the total of the carrying amounts (book values) of assets which are no longer at the disposal of the legal person at the end of the year;

c. revaluations over the financial year in conformity with **Article** 2:390, paragraph 1;
d. depreciations, decreases in value and the amounts thereof over the financial year;
e. the carrying amount (book value) at the end of the year.
- 2. Furthermore, for each of the items forming a part of the fixed assets, shall be mentioned:
a. the total of accumulated revaluations relating to the assets present at the balance sheet date;
b. the total of accumulated depreciations and decreases in value at the balance sheet date.

Article 2:369 Inventories (goods in stock)
Inventories (goods in stock) forming a part of the current assets are identified separately as:
a. raw materials and consumables;
b. work in progress for production of goods or services;
c. finished goods and commodities (goods purchased for resale);
d. advanced payments on inventories (on goods in stock).

Article 2:370 short-term receivables (debt-claims)
- 1. Receivables (debt-claims) forming a part of the current assets are identified separately as:
a. accounts receivable from (debt-claims against) trade debtors;
b. accounts receivable from (debt-claim against) group companies;
c. accounts receivable from (debt-claims against) other legal persons and partnerships with a participating interest in the legal person or in which the legal person holds a participating interest;
d. called-up contributions for issued (share) capital;
e. other receivables (debt-claims), except those to which Articles 2:371 and 2:372 are applicable, and with separate disclosure of debt-claims arising from loans and advanced payments to members or holders of registered shares.
- 2. For each of the groups of receivables (debt-claims) listed in paragraph 1 shall be indicated with regard to which amount the residual maturity is longer than one year.

Article 2:371 Marketable securities
- 1. Where shares and other forms of (equity) interests in companies as meant in **Article** 2:361, paragraph 4, which are not included in the consolidation, form a part of the current assets, these will be identified separately as marketable securities. Disclosed will be the total value of other marketable securities which form a part of the current assets that are admitted to be traded on a regulated market or multilateral trading facility as referred to in **Article** 1:1 of the Financial Supervision Act or to be traded through a system comparable with a regulated market or multilateral trading facility in a State which is not a Member State of the European Communities.
- 2. With regard to marketable securities will be disclosed to what extent these are not at the free disposal of the legal person.

Article 2:372 Liquid assets
- 1. Liquid assets (available funds) are identified as cash in hand and cash at a bank or giro-institution and as bills of exchange and cheques held in portfolio.

- 2. With regard to liquid assets will be disclosed to what extent these are not at the free disposal of the legal person.

Subsection 2.9.3.3 Equity capital and liabilities

Article 2:373 Equity capital and reserves
- 1. Equity capital is identified separately as:
a. issued (share) capital;
b. share premiums;
c. revaluation reserves;
d. other legal (statutory) reserves, distinguished by type;
e. reserves required by the articles of incorporation;
f. other reserves;
g. not distributed profits, with separate mention of the results after tax for the financial year, as far as the intended use thereof is not processed in the balance sheet.
- 2. When the issued (share) capital is not fully paid up, then, instead thereof, the paid up capital will be disclosed or, where contributions have been called up, the paid up and called up capital. In that case the issued capital shall be disclosed.
- 3. The capital will not be reduced by the amount of shares in the capital of the legal person or by the amount of depositary receipts of such shares that are held by the legal person itself or by its subsidiary.
- 4. Legal (statutory) reserves are those reserves which must be maintained under Articles 2:67a paragraph 2, 2:67a paragraph 3, 2:94a paragraph 3 under (f), 2:178a paragraph 2, 2:178a paragraph 3, 2:365 paragraph 2, 389 paragraph 6, and 2:390.
- 5. In annual accounts prepared in foreign currency, the item referred to in paragraph 1, under (a), will be included in that currency at the currency rate on the balance sheet date. Where the articles of incorporation define the issued share capital in another currency than the currency in which the annual accounts are adopted, the item meant in paragraph 1, under (a), shall be mentioned as well this currency rate and the amount of that other currancy.

Article 2:374 Provisions for liabilities and charges
- 1. The balance sheet shall include provisions for liabilities, identified to their nature and clearly described, which, from a prospective on the balance sheet date, may be seen as likely or certain, but with regard to which it is still unknown to what extent or when they will arise. Provisions may be included also for expenditures which are to be paid in the next financial year, as far as the payment of these expenditures originates from an event before the ending of the financial year and the provision seeks to ensure even distribution of costs and charges over a number of years.
- 2. A decrease in value of an asset shall not be expressed by creating a provision.
- 3. The provisions shall be subdivided according to the nature of liabilities, losses and expenses for which they are made; they are defined accurately according to that nature. The explanatory notes shall indicate as much as possible to which extent the provisions are to be seen as long-term provisions.

- 4. The following provisions will in any event be identified separately:
a. the provision for tax liabilities that may arise after the financial year, but that are to be allocated to the financial year or a prior financial year, including the provision for taxes that may result from a valuation above the acquisition or production price;
b. the provision for pension liabilities.

Article 2:375 Liabilities (debts)
- 1. Liabilities are identified separately as:
a. debenture loans, mortgage bonds (pledge bonds)) and other loans, with separate mention of convertible loans;
b. amounts owed to banks;
c. advanced payments received on contract orders as far as these are not already deducted from asset items;
d. debts to suppliers and trade credits and advances;
e. money orders, bills of exchange and checks to be paid;
f. amounts owed to group companies ;
g. debts to legal persons and partnerships that have a participating interest in the legal person or in which the legal person holds a participating interest, to the extent not already disclosed under (f);
h. amounts owed in respect of taxes, and contributions owed pursuant to social insurances;
i. amounts owed in respect of pensions;
j. other liabilities.
- 2. For each of the categories of liabilities (debts) listed in paragraph 1 shall be disclosed with regard to which amount the residual maturity is longer than one year, with mention of the interest rate applicable, and with separate mention of the amount for which the residual maturity is more than five years.
- 3. For each of the categories of liabilities (debts) listed in paragraph 1 shall be disclosed for which liabilities (debts) real security (collateral) has been provided and which type of real security (pledge, mortgage) it concerns. Disclosed shall be also with respect to which liabilities (debts) the legal person has committed itself, whether or not conditionally, to encumber or not to encumber assets, insofar as this is necessary to provide the insight meant in **Article** 2:362, paragraph 1.
- 4. Indicated shall be to which amount liabilities (debts) are ranked as subordinated (junior) debts in comparison to other debts; the nature of this subordination shall be explained in the notes.
- 5. Where the amount which must be repaid on a debt is more than the amount received from the creditor, the difference [which is seen as interest paid in advance] may be booked on the balance sheet as an asset item until, at the latest, the date of redemption, provided it is included separately.
- 6. Where the legal person has to repay loans which are included as liabilities (debts) with a residual maturity of more than one year, but which have to be repaid during the financial year following the one to which the annual accounts relate, the involved amount shall be disclosed.
- 7. With regard to convertible loans the conditions for conversion shall be disclosed.

Article 2:376 Conditional debts
When the legal person has made itself liable for debts of others or when it still runs the risk for discounted bills of exchange or checks, then the liabilities resulting therefrom, to the extent that no provision therefore has been included in the balance sheet, shall be disclosed and classified according to the type of security (collateral) provided. Liabilities entered into on behalf of group companies shall be disclosed separately.

Section 2.9.4 Requirements regarding the profit and loss account and the explanatory notes thereto

Article 2:377 Profit and loss account
- 1. The profit and loss account shall identify separately:
a. the income and expenses from normal business operations, taxation thereon, and the result from normal business operations after tax;
b. extraordinary income and expenses, taxation thereon and the extraordinary result after tax;
c. other taxes;
d. the result after tax.
- 2. The income and expenses from normal business operations are subdivided either in accordance with paragraph 3 or in accordance with paragraph 4.
- 3. Identified separately are:
a. the net turnover;
b. the increase or decrease in finished goods in stock and in work in progress compared to the previous balance sheet date;
c. the production for the enterprise of the legal person itself that has been booked as an asset item;
d. other operating income;
e. wages;
f. social security contributions, with separate mention of pension contributions;
g. the costs of raw materials and of consumables, and other external costs;
h. depreciations and decreases in value charged to the intangible and tangible fixed assets, subdivided into those categories of assets ;
i. decreases in value of current assets, to the extent that these surpass the decreases in value common for the legal person;
j. other operating expenses;
k. results from participating interests;
l. income from other marketable securities and claims forming a part of the fixed assets;
m. other interest receivable and similar income;
n. changes in value of financial fixed assets and of marketable securities forming a part of the current assets;
o. interest payable and similar costs.
- 4. Identified separately are:

a. the net turnover;
b. the cost price (production cost) of turnover, excluding interest costs integrated in the cost price, but including depreciations and decreases in value;
c. The gross turnover, being the balance of items (a) and (b);
d. selling expenses (distribution costs), including depreciations and extraordinary decreases in value;
e. general administrative costs, including depreciations and decreases in value;
f. other operating income;
g. results from participating interests;
h. income from other marketable securities and claims forming a part of the fixed assets;
i. other interest receivable and similar income;
j. changes in value of financial fixed assets and of marketable securities forming a part of the current assets;
k. interest payable and similar costs.
- 5. In respect of the items under (k) – (o) of paragraph 3 and of the items (g) - (k) of paragraph 4 shall be disclosed separately the income and expenses arising from a relationship with group companies.
- 6. 'Net turnover' is understood as the result from the supply of goods and services from the business of the legal person, with deduction of discounts and similar reductions and of taxes levied on turnover (turnover net of tax).
- 7. Income and expenses not resulting from the normal course of business of the legal person are regarded as extraordinary income and expenses. Unless such income and expenses are of minor significance for the assessment of the result, they shall be explained in the notes according to their nature and extent; the same applies to income and expenses that have to be allocated to another financial year, as far as these are not included as extraordinary income and expenses.

Section 2.9.5 Special rules regarding the explanatory notes

Article 2:378 Statement of movements of equity capital
- 1. Movements in equity capital during the financial year are displayed in a statement. It reveals :
a. the amount of each item at the beginning of the financial year;
b. additions to and reductions in each item over the financial year, distinguished by nature;
c. the amount of each item at the end of the financial year.
- 2. The list distinguishes the items for paid up and called up (share) capital by type (class) of shares. Separately identified are the final level and data with regard to movements of shares in the capital of the legal person and of depository receipts of such shares, which are held by the legal person itself or which are held or caused to be held by its subsidiary for its own account . Disclosed shall be which of the items for equity capital have been decreased with the acquisition price or book value.
- 3. Specified will be in which form payments (contributions) on shares have been made that became due and demandable during the financial year or that have been made voluntarily, with

mention of the businesslike content of the juridical acts to which **Article** 2:94, 2:94c, 2:204 or 2:204c applies, that are performed in the financial year. An Open Corporation (*'naamloze vennootschap'*) shall disclose every acquisition and disposal (alienation) of its own shares and depository receipts thereof that has been performed for its own account, with mention of the reasons for acquisition, the number, the nominal amount and the agreed price of the shares and depository receipts involved in each transaction and the part of the capital they represent.
- 4. An Open Corporation (*'naamloze vennootschap'*) shall disclose data regarding the number, type (class) and nominal amount of its own shares or depositary receipts thereof:
a. which the Open Corporation itself or others for its account have pledged at the balance sheet date;
b. which the Open Corporation itself or a subsidiary holds at the balance sheet date pursuant to an acquisition under application of **Article** 2:98 paragraph 5.

Article 2:379 Information on participating interests and group relations
- 1. The legal person shall disclose the name, domicile and the provided part in the issued (share) capital of each company:
a. of which it provides or causes to provide, solely or jointly with one or more subsidiaries, for its own account at least one fifth of the issued (share) capital, or;
b. in which it is a partner who, towards the creditors, is fully liable for the debts of the company.
- 2. For each company meant in paragraph 1, under (a), the legal person shall disclose as well the amount of equity capital and the result according to the last adopted annual accounts, unless:
a. the legal person consolidates the financial data of the company;
b. the legal person accounts for the company in its balance sheet or consolidated balance sheet in conformity with **Article** 2:389 paragraph 1 up to and including 7;
c. the legal person does not consolidate the financial data of the company because of the insignificant importance thereof or on the basis of **Article** 2:408, or;
d. less than one half of the (share) capital of the company is provided by the legal person for its own account, and the company lawfully makes use of the possibility not to publish its balance sheet.
- 3. Unless such company in general lawfully makes use of the possibility not to disclose its interest in the legal person, the legal person shall disclose:
a. the name and address of the company at the head of its group, and;
b. the name and address of each company which consolidates its financial data in its published consolidated annual accounts, and the place where copies of those consolidated annual accounts are available against payment of no more than cost price.
- 4. The Minister of Economic Affairs may, upon request, grant relief from the obligations referred to in paragraphs 1, 2 and 3, when there is a well-founded fear that disclosure of these financial data may cause serious damage. This relief may be granted each time for at the most five years. The explanatory notes shall disclose when such a relief is granted or requested for. Pending such a request a disclosure of the financial data is not required.
- 5. Disclosures to be made pursuant to the present **Article** and **Article** 2:414 may be disclosed jointly. The legal person may deposit the part of the explanation that contains these disclosures separately at the commercial register for inspection by everyone, on the condition that both parts of the explanation refer to each other.

Article 2:380 Turnover by economic sector and by country
- 1. If the organisation of the enterprise of the legal person is arranged as to perform activities in various sectors of industry, insight is provided, by means of figures (numeric characters), into the extent to which each of the types of these activities contribute to the net turnover.
- 2. The net turnover is split accordingly into various territorial areas (countries) where the legal person supplies goods and services.
- 3. **Article** 2:379, paragraph 4, applies accordingly.

Article 2:381 Important financial obligations in future
- 1. Disclosed shall be to which important financial obligations, not disclosed in the balance sheet, the legal person has committed itself for a number of future years, such as those arising from long-term contracts. Such obligations towards group companies shall be shown separately. **Article** 2:375, paragraph 3, applies accordingly.
- 2. The nature, business purpose and the financial consequences of non-balance sheet arrangements of the legal person will be disclosed as well, if the risks or advantages resulting from these arrangements are of importance and as far as publication of these risks or advantages is necessary for an assessment of the financial position of the legal person.
- 3. Disclosed shall be which transactions of importance have not been entered into by the legal person under normal market conditions with affiliated parties, the volume (extent) of such transactions, the nature of the relationship with the affiliated party and other information about those transactions necessary for providing insight into the financial position of the legal person. Information about individual transactions may, in accordance with its nature, be combined, unless separate information is necessary to provide insight into the effects of transactions with affiliated parties on the financial position of the legal person. Disclosure of transactions between two or more members of a group may be omitted, provided that subsidiaries which are party to the transaction are fully owned by one or more members of the group.

Article 2:381a Financial instruments
Where financial instruments are valued at current value, the legal person shall disclose:
a. if the current value has been determined by using valuation models and valuation techniques: the assumptions underlying them;
b. for each class of financial instruments: the current value, the changes in value included in the profit and loss account, the changes in value included in the revaluation reserve on the basis of **Article** 2:390, paragraph 1 , and the changes in value which have been deducted from the free reserves, and;
c. for each class of derivative financial instruments: information about the volume (extent) and nature of the instruments and the conditions which may affect the amount, date and certainty of future cash flows.

Article 2:381b Information on financial instruments
Where financial instruments are not valued at current value, the legal person shall disclose:
a. for each class of derivative financial instruments:

1°. the current value of the instruments, if that value can be determined by means of one of the methods prescribed under **Article** 2:384, paragraph 4;
2°. information about the volume (extent) and nature of the instruments, and;
b. for financial fixed assets valued at an amount higher than their current value and without implementation of the second sentence of **Article** 2:387, paragraph 4:
1°. the carrying amount (book value) and the current value of the individual assets or of appropriate groupings of individual assets;
2°. the reasons why the carrying amount (book value) has not decreased and the nature of the evidence underlying the conviction that the carrying amount (book value) will be realized.

Article 2:382 Manning level
Disclosed shall be the average number of employees employed by the legal person during the financial year, divided in a manner appropriated to the organization of the enterprise. The Corporation shall thereby state the number of employees employed outside the Netherlands. Where **Article** 2:377, paragraph 3, has not been applied to the profit and loss account, the data required pursuant to point (e) and (f) of that **Article** shall be disclosed.

Article 2:382a Remuneration of the external auditor
- 1. Disclosed shall be the total amount of remuneration (fees) charged to the legal person for auditing the annual accounts, for other audit engagements, for advisory services in the tax area and for other non-audit services performed by the external auditor and the accounting organisation mentioned in **Article** 1, first paragraph, under (a) and (e), of the Supervision Audit Organisations Act (*'Wet toezicht accountantsorganisaties'*).
- 2. If the legal person has subsidiaries or if it consolidates the financial data of other companies, the remuneration (fees) charged to them will be included in the disclosure meant in paragraph 1.
- 3. Remuneration (fees) do not have to be disclosed by a legal person of which the financial data are consolidated in consolidated annual accounts to which, under the applicable law, the Regulation of the European Parliament and the Council on the application of international accounting standards or the Seventh Council Directive of the European Communities on company applies.

Article 2:383 Payments, loans and guarantees to (former) Directors and Supervisory Directors
- 1. Disclosed shall be the total amount of remuneration, including pension contributions and other benefits, on behalf of the Directors and former Directors jointly and, separately, on behalf of the Supervisory Directors and former Supervisory Directors jointly. The last sentence refers to the amounts which are charged to the legal person in the financial year. If the legal person has subsidiaries or if it consolidates the financial data of other companies, then the amounts which are charged to them in the financial year are to be included in the before meant disclosure. A disclosure that may be traced back to one single natural person may be omitted.
- 2. With the exception of the last sentence, paragraph 1 also applies to the total amount of loans, advanced payments and guarantees granted to or on behalf of Directors and Supervisory Directors of the legal person by the legal person, its subsidiaries or companies of which it

consolidates data. Disclosed shall be the still outstanding amount, the interest rate, the most important other conditions and the repayments made during the financial year.

Article 2:383a Allocation of profit of Associations and Foundations conducting an enterprise
Associations (*'verenigingen'*) and Foundations (*'stichtingen'*) meant in **Article** 2:360, paragraph 3, shall disclose the allocation of profit according to their articles of incorporation as well as the way in which the profit after tax is allocated.

Article 2:383b Field of application of Articles 2:283c - 2:383e
Articles 2:283c up to and including 2:283e apply, in derogation from **Article** 2:383, to Open Corporations (*'naamloze vennootschappen'*), with the exception of Open Corporations (*'naamloze vennootschappen'*) whose articles of incorporation provide for registered shares only, contain a restriction on transfer of shares, and do not allow that depository receipts to bearer of their shares are issued in collaboration with the Open Corporation (*'naamloze vennootschap'*).

Article 2:383c Remuneration of (former) Directors and Supervisory Directors
- 1. The Corporation (*'naamloze vennootschap'* or *'besloten vennootschap'*) shall, for each Director, specify the amount of remuneration, divided into:
a. periodically paid remuneration;
b. remuneration that has to be paid in future;
c. payments upon termination of employment;
d. profit-sharing and bonus payments,
to the extent that these amounts are charged to the legal person in the financial year.
If the Corporation has paid a remuneration in the form of a salary bonus which is based, either in full or in part, on the achievement of targets set by or on account of the Corporation, it will mention this too. In doing so, it will mention whether these targets have been achieved in the involved year.
- 2. The Corporation shall specify, for each former Director, the amount of remuneration, divided into remunerations which have to be paid in future and payments upon termination of employment, all to the extent that these amounts are charged to the legal person in the financial year.
- 3. The Corporation shall specify, for each Supervisory Director, the amount of remuneration, to the extent that this amount has been charged to the legal person in the financial year. If the Corporation has granted a remuneration in the form of profit-sharing or bonus payments, it shall disclose these separately, with mention of the reasons underlying the decision to grant this form of remuneration to a Supervisory Director. The last two sentences of paragraph 1 shall apply accordingly.
- 4. The Corporation shall, for each former Supervisory Director, indicate the amount of remuneration to the extent that this amount has been charged to the legal person in the financial year.
- 5. If the Corporation has subsidiaries or if it consolidates financial data of other companies, the amounts charged to them will be included in the before meant disclosures, allocated to the category of remuneration referred to in paragraph 1 up to and including 4.

Article 2:383d Option rights granted to Directors, Supervisory Directors and employees
- 1. A Corporation (*'naamloze vennootschap'* or *'besloten vennootschap'*) that has granted rights (option rights) to Directors or employees to subscribe for or acquire shares in the (share) capital of the Corporation or a subsidiary, shall disclose, for each Director separately and for all employees jointly:
a. the exercise price of the rights and the price of the underlying shares in the (share) capital of the Corporation if that exercise price is lower than the price of those shares at the time on which the rights (option rights) were granted;
b. the number of the still remaining unexercised rights (option rights) at the beginning of the financial year;
c. the number of rights (option rights) granted by the Corporation in the financial year, with mention of the related conditions; if such conditions change during the financial year, these changes shall be disclosed separately;
d. the number of rights (option rights) exercised in the financial year, in any event with mention of the number of shares for which these rights (option rights) were exercised and at which exercise prices they were exercised;
e. the number of rights (option rights) not yet exercised at the end of the financial year, with mention of:
– the exercise price of the rights (option rights) granted;
– the remaining maturity period of the unexercised rights (option rights);
– the most important conditions for the exercise of rights (option rights);
– any financing arrangement which in connection with the granting of rights (option rights) has been made, and;
- other data of importance for assessing the value of the rights (option rights) concerned;
f. where relevant: the criteria used by the Corporation for granting or exercising rights (option rights).
- 2. A Corporation that has granted rights (option rights) to Supervisory Directors to subscribe for or acquire shares in the (share) capital of the Corporation or a subsidiary, shall furthermore disclose, for each Supervisory Director separately, these rights and the reasons underlying the decision to grant such rights to the Supervisory Director. Paragraph 1 shall apply accordingly.
- 3. The Corporation shall disclose how many shares in the (share) capital of the Corporation have been bought back at the balance sheet date or will be bought back after the balance sheet date and how many new shares are issued (subscribed) at the balance sheet date or will be issued (subscribed) after the balance sheet date for the purpose of exercising the rights (option rights) referred to in paragraph 1 and paragraph 2.
- 4. For the purposes of the present Article, shares also means depository receipts of shares issued in collaboration with the Corporation.

Article 2:383e Loans, advanced payments and guarantees to Directors and Supervisory Directors of Open Corporations
The Corporation (*'naamloze vennootschap'* or besloten venootschap) shall specify the amount of loans, advanced payments and guarantees granted to or on behalf of each Director and each Supervisory Director of the Corporation by the Corporation, its subsidiaries or companies of

which it consolidates data. Disclosed shall be the still outstanding amount, the interest rate, the most important other conditions and the repayments made during the financial year.

Section 2.9.6 Provisions regarding the principles for valuation and for the assessment of results

Article 2:384 Valuation principles

- 1. When the legal person chooses a principle for the valuation of an asset or liability and for the assessment of results, it shall be guided by the requirements of **Article** 2:362, paragraph 1 up to and including 4. The acquisition price and the production price qualify as such principle.
- 2. In applying such principles, prudence is observed. Profits are only included when they are realised on the balance sheet date. Liabilities that originate from an event prior to the end of the financial year, shall be taken into account if they became known prior to the preparation of the annual accounts. Foreseeable liabilities and potential losses that originate from an event prior to the end of the financial year may be taken into account if they became known prior to the preparation of the annual accounts.
- 3. The valuation of assets and liabilities shall be based on the assumption that all the activities of the legal person to which those assets and liabilities are helpful, are to be continued, unless that assumption is incorrect or its accuracy is subject to reasonable doubt; then this will be clarified, with mention of the impact thereof on capital and result.
- 4. Rules may be set by Order in Council concerning the content, limits and procedures for the application of a valuation at current value.
- 5. The principles for valuing assets and liabilities and for the assessment of the result will be clarified in respect of each of the items. The principles for the conversion of amounts denominated in foreign currency are clarified, with mention of how exchange differences in the rate of exchange are processed.
- 6. A valuation of assets and liabilities and an assessment of the result may only for well-founded reasons take place on the basis of other principles than those applied in the preceding financial year. The reasons for this change shall be clarified in the explanatory notes. Insight is provided as well into its significance for capital and result, according to restated figures for the financial year or the preceding financial year .
- 7. A change in value in:

a. financial instruments;
b. other investments, and;
c. agricultural stocks for which frequent market quotations are available and that may be valued at current value pursuant to paragraph 1,

may, in derogation from the second sentence of paragraph 2, be included immediately in the result, unless the present Section (Section 2.9.6) provides otherwise. Changes in value in derivative financial instruments, other than those referred to in paragraph 8, may, if necessary in derogation from paragraph 2, be credited or debited immediately to the result.

- 8. Changes in value in financial instruments that serve and are effective to cover risks relating to assets, assets on order and other obligations not processed in the balance sheet, or relating to intended transactions, will be immediately credited or charged to the revaluation reserve, as far

as this is necessary to ensure that these changes in value are processed in the result in the same period as the change in value which they seek to cover .

Article 2:385 Different valuation; valuation of interests in subsidiaries
- 1. Assets and liabilities shall be valued separately as far as their significance is different where it concerns the provision of insight as meant in **Article** 2:362, paragraph 1.
- 2. The valuation of similar components of inventories (goods in stock) and marketable securities may be made by applying weighted average prices according to the rules ‘first in, first out’ (FIFO), ‘last in, first out’ (LIFO), or similar rules.
- 3. Tangible fixed assets and inventories (goods in stock) consisting of raw materials and consumables that are being replaced regularly and of which the total value is of minor significance, may be included at a fixed quantity and fixed value, if their quantity, composition and value are subject only to minor changes.
- 4. The assets meant in **Article** 2:365, paragraph 1, under (d) and (e), are included to at the most the relevant expenditures made thereon, reduced with depreciation.
- 5. Shares in the (share) capital of the legal person or depositary receipts of such shares, held by the legal person itself or by others on instigation of the legal person, may not be capitalized. The value allocated to an interest in a subsidiary shall be reduced, whether or not proportionate to that interest, with the acquisition price of shares in the legal person and of depository receipts of such shares, that are held by this subsidiary for its own account or that are held by others on instigation of that subsidiary for account of that subsidiary; if that subsidiary has acquired those shares or depository receipts prior to the moment on which it became a subsidiary of the legal person, then their carrying value (book value) at that moment or a proportional part thereof shall be deducted.

Article 2:386 Depreciations
- 1. Depreciations (amortizations) are made regardless of the result over the financial year .
- 2. The methods according to which depreciations are calculated shall be clarified in the explanatory notes.
- 3. Costs made in relation to the formation (incorporation) of the legal person or the issuance of shares, that are capitalized, may be depreciated over a maximum period of five years. The costs of research and development, to the extent that they are capitalized, and the capitalized costs of goodwill are depreciated according to the expected useful economic life. The depreciation period may only exceed five years if the goodwill may be allocated to a considerably longer period of time; then this depreciation period must be mentioned and reasoned.
- 4. Fixed assets with a limited useful economic life are depreciated annually according to a system based on the expected future useful economic life.
- 5. The part of a debt (liability) that, in agreement with **Article** 2:375, paragraph 5, is capitalized, shall be depreciated annually for a reasonable part up until redemption.

Article 2:387 Other decreases in value of assets
- 1. Decreases in value (impairments) of assets are taken into account regardless of the result over the financial year.

- 2. Current assets are valued at current value if that value is lower on the balance sheet date than the acquisition or production price. The valuation is made at another lower value if this serves the insight to be provided under **Article** 2:362, paragraph 1.
- 3. If an extraordinary decrease in value of current assets reasonably may be expected in the short term, this must be taken into account in the valuation thereof.
- 4. In valuing fixed assets, a decrease of their value will be taken into account if it is to be expected that this decrease is sustainable. In valuing financial assets, decreases in value which have occurred at the balance sheet date may in any event be taken into account.
- 5. Any write-off made pursuant to the preceding paragraphs shall be charged to the profit and loss account, insofar as it has not been extracted from the revaluation reserve pursuant to **Article** 2:390, paragraph 3. Such a write-off shall be reversed (re-adjusted) as soon as the decrease in value has ceased to exist. Any write-off made pursuant to paragraph 3 or 4 as well as a reversal (re-adjustment) thereof shall be indicated separately in the profit and loss account or in the explanatory notes .

Article 2:388 Acquisition price and production price
- 1. The acquisition price at which an asset is valued, encloses the purchase price and the ancillary costs.
- 2. The production price at which an asset is valued, encloses the cost of acquiring the used raw materials and consumables and other costs that are attributable directly to manufacturing. The production price may also include a reasonable part of the indirect costs (overheads) and the interest on debts over the period that can be attributed to the production of the asset; in that event the explanatory notes shall mention that this interest has been capitalized.

Article 2:389 Valuation of participating interests
- 1. Participating interests in companies in which the legal person significantly uses its influence on business and financial policies, are accounted for in accordance with paragraph 2 and 3. If the legal person or one or more of its subsidiaries, solely or jointly, may to its own discretion exercise or cause the exercise of one fifth or more of the voting rights of the members, partners or shareholders, it shall be presumed that it significantly uses its influence.
- 2. The legal person assesses the net asset value of the participating interest by valuing the assets, provisions and liabilities of the company in which it participates and by calculating that company's result on the basis of the same valuation principles as applied for the valuation and calculation of its own assets, provisions and result. This valuation method must be mentioned.
- 3. When there are insufficient data available for the legal person to assess the net asset value in accordance with the previous paragraph, it may base that valuation on another value assessed in conformity with the present Title (Title 2.9) and it will adjust that value with the amount of its share in the result of the company in which it participates and with the amount of its share in the distributions made by that company. This valuation method must be mentioned.
- 4. The annual accounts of a legal person, not being a bank as defined in **Article** 2:415, may account for a participating interest in a bank in accordance with Section 2.9.14. The annual accounts of a bank meant in **Article** 2:415, accounts for a participating interest in a legal person, not being a bank, in accordance with the requirements for banks, with the exception of **Article** 2:424 and without prejudice to the first sentence of paragraph 5. It is not required to apply this

exception with regard to participating interests in which activities are performed that connect directly to that of a banking business.
- 5. The annual accounts of a legal person, not being an insurance company as defined in **Article** 2:427, may account for a participating interest in an insurance company in accordance with Section 2.9.15. The annual accounts of an insurance company meant in **Article** 2:427, accounts for a participating interest in a legal person, not being an insurance company, in accordance with the requirements for insurance companies, without prejudice to the first sentence of paragraph 4 of the present Article.
- 6. The legal person maintains a reserve to the amount of its share in the positive result from participating interests and of its share in direct increases in value since the first valuation was made in agreement with paragraph 2 or 3. Participating interests of which the cumulative result since that first valuation is not positive, are not taken into account in this respect. The reserve is reduced with distributions to which the legal person, since then until the moment of adoption of the annual accounts, has acquired an entitlement, and it is reduced with direct decreases in value of the participating interest; distributions which the legal person may effectuate without restrictions are deducted as well. This reserve may be converted into (share) capital. The distributions meant in this paragraph do not include distributions made in the form of shares.
- 7. If the value, made at the first valuation in agreement with paragraph 2 or 3, is less than the acquisition price or the previous carrying amount (book value) of the participating interest, then the difference will be charged visibly to the profit and loss account or to equity capital, or it will be capitalized as goodwill. In making this calculation, the acquisition price will be reduced in conformity with **Article** 2:385, paragraph 5.
- 8. Increases in value and decreases in value of participating interests, resulting from a conversion of the capital invested therein and of the result, which conversion is made from the currency of the participating interest into the currency in which the legal person prepares its annual accounts, are credited or debited, respectively, to a currency translation reserve. Exchange rate differences on loans entered into to cover exchange rate risks on foreign participating interests, are credited and debited as well to this reserve. The reserve can have a negative balance. When the relevant participating interest is disposed of (alienated), in full or in part, the part of the reserve that relates to the disposed (alienated) part of the participating interest shall be extracted from that reserve. If the currency translation reserve has a negative balance, no distributions can be made from the (other) reserves equivalent to the amount of that negative balance.
- 9. It is allowed to derogate from paragraph 1 for well-founded reasons to be mentioned in the explanatory notes.
- 10. Differences in equity capital and in the result according to the singular annual accounts and according to the consolidated annual accounts of the legal person are disclosed in the explanatory notes on the singular annual accounts.

Article 2:390 Revaluation reserve
- 1. Increases in value of tangible fixed assets, intangible fixed assets and goods in stock (inventories) which are not agricultural goods in stock (inventories), are added to the revaluation reserve. Increases in value of other assets which are valued at current value, are added to the revaluation reserve, unless they are added to the result pursuant to **Article** 2: 384. Moreover, the legal person shall create a revaluation reserve that is to be extracted from the free reserves or

from the profit over the financial year, insofar as increases in value of assets that occurred during the financial year and that are still present on the balance sheet date, have been added to the result over that financial year. No revaluation reserve shall be created for assets meant in the previous sentence for which frequent market quotations are available. No distributions can be made from the (other) reserves for an amount equivalent to the amount of deferred losses on financial instruments as meant in **Article** 2:384, paragraph 4, that have been charged to the revaluation reserve. The revaluation reserve may be reduced by deferred tax liabilities related to assets that are revaluated at a higher value.
- 2. The revaluation reserve may be converted into (share) capital.
- 3. The revaluation reserve shall not exceed the difference between the carrying amount (book value) based on the acquisition price or production price and the carrying amount (book value) based on the current value of the assets to which the revaluation reserve relates, as applied during the valuation. This reserve is reduced with the amount, which is included in the reserves for a particular asset, when that asset is disposed of (alienated). A decrease in value of an asset, which is valued at current value, is charged to the revaluation reserve as far as that asset previously had been upgraded in favour of the revaluation reserve.
- 4. The reductions of the revaluation reserve which are added in favour of the profit and loss account are shown in a separate item.
- 5. The explanatory notes shall clarify whether and in which way, in relation to the revaluation, account is taken of the impact of taxes on capital and profit .

Section 2.9.7 Annual Report

Article 2:391 Minimum requirements annual report
- 1. The annual report shall provide a true and fair view of the situation on the balance sheet date, of the development during the financial year and of the results of the legal person and of group companies of which the financial data are included in its annual accounts. The annual report shall contain, in accordance with the size and complexity of the legal person and group companies, a balanced and complete analysis of the situation on the balance sheet date, the development during the financial year and the results. If necessary for a good understanding of such development, of the results or of the situation of the legal person and group companies, the analysis comprises both, financial and non-financial performance indicators, including environmental and employee matters. The annual report shall provide also a description of the main risks and uncertainties with which the legal person is faced. The annual report shall be made in the Dutch language, unless the General Meeting has decided to use another language for this purpose.
- 2. The annual report shall make mention of the course of events to be expected; in doing is, attention shall be paid especially, insofar as important interests do not oppose to this, to investment, financing and staffing and to circumstances of which the development of turnover and profitability depends. Mention shall be made of the activities on research and development. Indicated shall be how special events, which do not have to be taken into account in the annual accounts, have affected the expectations. Open Corporations (*'naamloze vennootschappen'*) to

which **Article** 2:383b applies, shall moreover make mention of the policy of the Corporation with regard to the remuneration of its Directors and Supervisory Directors and how this policy has been brought to practice in the involved year.
- 3. Where it concerns the use of financial instruments by the legal person and to the extent that this is of significance for the assessment of its assets, liabilities, financial condition and results, the annual report shall mention the objectives of the legal person and its policy regarding risk control. In doing so, attention shall be paid to the policy of hedging risks related to each major type of transaction. Furthermore , attention shall be paid to the Corporation 's exposure to risks on price, credit, liquidity and cash flow.
- 4. The annual report may not be in conflict with the annual accounts. If this is required in order to provide a true and fair view as meant in paragraph 1, the annual report shall contain references to and additional explanations of items in the annual accounts.
- 5. Additional requirements may be set by Order in Council regarding the content of the annual report. These additional requirements may relate particularly to the compliance with a code of conduct which is pointed out for this purpose in that Order in Council and to the content, disclosure and audit of an opinion (certificate) on corporate governance.
- 6. The proposal of a bill regarding an Order in Council to be enacted pursuant paragraph 5, will not be made earlier than four weeks after the draft thereof has been submitted to both houses of parliament.

Section 2.9.8 Other data

Article 2:392 Additional data
- 1. The Board of Directors shall add the following information to the annual accounts and annual report:
a. the auditor’s opinion referred to in **Article** 2:393, paragraph 5, or a statement why it is missing;
b. a survey of the provisions in the article of incorporation regarding the appropriation of profits;
c. a statement regarding the appropriation of profit or treatment of loss or, as long as these have not been assessed, regarding the proposal with regard to such appropriation or treatment;
d. a survey of the provisions in the articles of incorporation regarding the contribution to a deficit of a Cooperative (*'coöperatie'*) or Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*), insofar as these provisions differ from the statutory provisions;
e. a list with the names of those to whom the articles of incorporation have granted a special right of control over the legal person, with a description of the nature of that right, unless the annual report already contains information with regard to these data on the basis of **Article** 2:391, paragraph 5;
f. a statement regarding the number of profit-sharing certificates and similar rights, with mention of the powers and entitlements they provide;
g. a statement regarding events that have occurred after the balance sheet date and that have significant financial consequences for the legal person and the companies included in its consolidated annual accounts, with mention of the extent of these consequences;
h. a list of existing branch establishments and of the countries where branches establishments are

existing, as well as their trade name if that is different from that of the legal person.
- 2. The data may not be in conflict with the annual accounts and annual report.
- 3. Where a right as referred to in paragraph 1, under (e), is embodied in a share, mention shall be made of the number of such shares held by each of the persons entitled to such shares. Where such a right belongs to a Corporation (*'naamloze vennootschap'* or *'besloten vennootschap'*), Association (*'' vereniging'*), Cooperative (*'coöperatie'*), Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*) or a Foundation (*'stichting'*), the names of the Directors thereof shall be mentioned as well.
- 4. The provisions of paragraph 1, under (e), and paragraph 3, do not apply as far as the Minister of Economic Affairs has granted, upon request, a relief in this respect to the legal person for important reasons; such relief may be granted each time for at the most five years. No relief may be granted from the provisions of paragraph 1, under (e), when mention of these data must be made in the annual report by virtue of **Article** 2:391, paragraph 5.
- 5. The Board of Directors of a Foundation (*'stichting'*) or an Association (*'vereniging'*) as referred to in **Article** 2:360, paragraph 3, is not required to add the information meant in paragraph 1, under (b) and (c), to the annual accounts and annual report.

Section 2.9.9 Audit

Article 2:393 Auditor's opinion
- 1. The legal person shall give an instruction for auditing the annual accounts to a chartered auditor or to an accounting consultant with regard to whose registration in the register meant in **Article** 36, paragraph 1, of the Accounting Consultants Act (*'Wet op de Accountants-Administratieconsulenten'*), a mark is made as referred to in **Article** 36, paragraph 3, of that Act. Such instruction may be given to an organisation (firm) in which auditors (chartered auditors or accounting consultants), who may be assigned for this purpose, work in cooperation.
- 2. The General Meeting of members or shareholders has the power to give an instruction as meant in the previous paragraph. When it does not give such an instruction, the Supervisory Board or, where a Supervisory Board is absent or fails to comply with this duty, the Board of Directors, is empowered to do so. The assignment of an auditor cannot be restricted by any nomination. The instruction (assignment) may be withdrawn at all times by the General Meeting and by those who have given it; an instruction (assignment) given by the Board of Directors may in addition be withdrawn by the Supervisory Board. The instruction (assignment) may be withdrawn only for well-founded reasons. A disagreement regarding the method of auditing (accounting) or regarding audit procedures is not such a reason. The General Meeting shall hear the auditor, upon his request, on a withdrawal of an instruction (assignment) given to him, or on a declared intention to proceed to such withdrawal. The Board of Directors and the auditor shall, without delay, inform the Netherlands Authority for Financial Markets ('AFM') of a withdrawal of an instruction (assignment) by the legal person or of a premature ending thereof by the auditor, and shall provide an adequate statement of reasons in this respect.
- 3. The auditor examines whether the annual accounts provide the insight required by **Article** 2:362, paragraph 1. He will also verify whether the annual accounts meet the requirements set by or pursuant to law, whether the annual report, to the extent that he is able to assess so, is made in

accordance with the present Title (Title 2.9), whether it is in line (compatible) with the annual accounts, and whether the data referred to in **Article** 2:392, paragraph 1, under (b) up to and including (g), have been added.
- 4. The auditor will inform the Supervisory Board and the Board of Directors of his audit. At least he shall make mention of his findings about the reliability and continuity of computerized data processing.
- 5. The auditor reports the outcome of his audit by means of an opinion whether the annual accounts present a true and fair view. The auditor may issue separate opinions for the singular annual accounts and for the consolidated annual accounts. The auditor's opinion shall include in any event:
a. a statement to which annual accounts the audit relates and which legal (statutory) requirements apply to these annual accounts;
b. a description of the extent of the audit, in which at least is mentioned which accounting standards are observed when performing the audit;
c. a statement whether the annual accounts provide the required insight and comply with the requirements set by or pursuant to law;
d. a reference to certain matters to which the auditor calls attention, without issuing an opinion as referred to in paragraph 6, under (b);
e. a statement about deficiencies found in connection with the audit referred to in paragraph 3, whether the annual report has been made in accordance with the present Title (Title 2.9), and whether the data required pursuant to **Article** 2:392, paragraph 1, under (b) up to and including (g), have been added;
f. a statement about the compatibility of the annual report with the annual accounts.
- 6. The auditor's opinion referred to in paragraph 5, shall be in the form of:
a. an unqualified opinion;
b. a qualified opinion;
c. an adverse opinion, or;
d. a disclaimer of opinion.
The auditor signs and dates the auditor's opinion.
- 7. The annual accounts may not be adopted if the competent body did not have the possibility to take knowledge of the auditor's opinion, which opinion must be added to the annual accounts unless a legally valid reason is mentioned among the other data why the auditor's opinion is missing.
- 8. Any interested party may demand from the legal person compliance with the obligation mentioned in paragraph 1.

Section 2.9.10 Publication

Article 2:394 Publication of financial statements in the commercial register
- 1. The legal person is obliged to publish the annual accounts within eight days after adoption. Publication is made by depositing a full copy of the annual accounts, drawn up in the Dutch language or, if such accounts have not been drawn up, in French, German or English, at the

office of the commercial register kept by the Chamber of Commerce and Industry which according to **Article** 18, sixth and seventh paragraph of the Commercial Register Act 2007 (*'Handelsregisterwet 2007'*), is responsible for registration. The date of adoption and approval are noted on the copy.
- 2. When the annual accounts have not been adopted in agreement with the legal requirements within two months after the required period for their preparation has ended, then the Board of Directors shall, without delay, publish the prepared annual accounts in the way as prescribed in paragraph 1; the annual accounts shall mention then that they have not yet been adopted. Within two months after a court annulment of the annual accounts, the legal person must deposit a copy of the instructions regarding the annual accounts, as ordered in the judicial decision, at the office of the commercial register, with mention of that judicial decision.
- 3. No later than thirteen months after the end of the financial year, the legal person must have published the annual accounts in the legally required way.
- 4. A copy of the annual report, drawn up in de same language as the annual accounts or in Dutch, and a copy of the other data meant in **Article** 2:392, shall be published simultaneously with and in the same manner as the annual accounts. The foregoing does not apply, except for the data mentioned in **Article** 2:392, paragraph 1, under (a), (c), (f) and (g), if the documents are held at the office of the legal person and may be inspected there by everyone, and a complete or partial copy thereof will be provided, upon request, against payment of at the most cost price; the legal person shall ensure that this possibility is registered in the commercial register.
- 5. The preceding paragraphs shall not apply if the Minister of Economic Affairs has granted a relief as mentioned in **Article** 2:58, 2:101 or 2:210; then a copy of this relief shall be deposited at the commercial register.
- 6. The documents meant in the preceding paragraphs are kept for seven years. The Chamber of Commerce and Industry is allowed to transcribe the data on these documents to other data carriers, which it shall keep in the commercial register instead, provided that such transcription takes place with accurate and complete representation of the data and that these data, during the entire storage period, are available and can be made readable within reasonable time.
- 7. Any interested party may demand from the legal person compliance with the obligations set out in paragraph 1 up to and including 5.
- 8. A Corporation (*'naamloze vennootschap'* or *'besloten vennootschap'*) whose own marketable securities are admitted to be traded on a regulated market as referred to in the Financial Supervision Act, is deemed to have met the requirements set out in:
a. paragraph 1, if it has sent its adopted annual accounts to the Netherlands Authority for Financial Markets (‘AFM’) pursuant to **Article** 5:25o, first paragraph, of the Financial Supervision Act;
b. paragraph 2, first sentence, if it has given notice under **Article** 5:25a, second paragraph, of the Financial Supervision Act to the Netherlands Authority for Financial Markets (‘AFM’);
c. paragraph 4, first sentence, if it has sent the annual report and the other data meant in **Article** 2:392, to the Netherlands Authority for Financial Markets (‘AFM’) pursuant to **Article** 5:25o, fourth paragraph, of the Financial Supervision Act.

Article 2:395 Other forms of publication of financial statements
- 1. When the annual accounts are published in another way than pursuant to the previous Article, then at least the auditor’s opinion meant in **Article** 2:393, paragraph 5, shall be added.

For the purpose of the preceding sentence, the annual accounts of a legal person to which **Article** 2:297 applies, shall include also the annual accounts in the form in which these are published pursuant to that Article. Where the auditor's opinion is not issued, the reason therefore shall be mentioned.
- 2. If only the balance sheet or the profit and loss account, with or without explanatory notes, are published, or when the annual accounts are only published in condensed form in another way than pursuant to the previous Article, then this will be mentioned clearly with reference to the publication made pursuant to statutory provisions or, where such publication has not been made, with mention of that fact. In that event it is not allowed to add the auditor's opinion meant in **Article** 2:393, paragraph 5. When making the publication, mentioned will be whether the auditor has issued an auditor's opinion. When an auditor's opinion has been issued, mentioned will be which form that opinion has as defined in **Article** 2:393, paragraph 6, and also whether the auditor has particularly drawn attention in the auditor's opinion to certain matters, without issuing an opinion as defined in **Article** 2:393, paragraph 6, under (b). When an auditor's opinion has not been issued, the reasons therefore will be mentioned.
- 3. Where the annual accounts have not yet been adopted, this will be mentioned in the documents referred to in paragraph 1 and 2. If a statement as referred to in **Article** 2:362, paragraph 6, last sentence, has been made, this will be mentioned as well.

Section 2.9.11 Exemptions based on the size of the legal person's business

Article 2:396 Small sized legal persons
- 1. Paragraph 3 up to and including 9 of the present **Article** shall apply to a legal person which, at two consecutive balance sheet dates, and without any interruption thereafter, at two successive balance sheet dates, has met two or three of the following requirements:
a. the value of the assets according to the balance sheet with explanatory notes amounts, based on the acquisition price and production price, not more than € 4,400,000;
b. the net turnover for the financial year does not exceed € 8,800,000;
c. the average number of employees for the financial year is less than 50.
- 2. Counted in for the purpose of paragraph 1 are the value of assets, the net turnover and the number of employees of group companies that should be involved in the consolidation if the legal person would have been required to draw up consolidated annual accounts. This does not apply where the legal person applies **Article** 2:408.
- 3. With regard to disclosures which have to be made pursuant to Section 2.9.3, no other disclosures have to be made than those required pursuant to Articles 2:364, 2:373, 2:375, paragraph 3, and 2:376, and, without a breakdown by type of debt or debt-claim, pursuant to Articles 2:370, paragraph 2, and 2:375, paragraph 2, and the disclosure of the retained portion of the result.
- 4. The profit and loss account shall mention the items listed in **Article** 2:377, paragraph 3, under (a) up to and including (d) and (g), respectively, paragraph 4, under (a) up to and including (c) and (f), pinched into an item 'gross operating profit'; the legal person shall mention in a leverage ratio to what extent the net turnover has been increased or decreased compared to the

previous year.
- 5. The statement mentioned in **Article** 2:378, paragraph 1, shall only relate to the revaluation reserve, except for the second sentence of **Article** 2:378, paragraph 3; disclosed shall be the number of issued shares and the nominal amount per type (class) of shares, the number and the nominal amount of shares issued in the financial year and the number and nominal amount of shares and depository receipts thereof that the legal person or its subsidiary holds for it own account. Articles 2:380, 2:381, paragraph 2 and 3, 2:381b, under (a), and 2:383, paragraph 1, do not apply.
- 6. For a valuation of assets and liabilities and for the assessment of the result shall qualify as well, in derogation from Section 2.9.6, the principles for the assessment of taxable profits under Chapter II of the Corporate Tax Act 1969, provided that the legal person, in doing so, applies all tax principles applicable to him. If the legal person applies these principles, it shall mention this in the explanatory notes. Further rules may be set by Order in Council regarding the use of these principles and the explanatory notes that have to made thereto.
- 7. Articles 2:383b up to and including 2:383e, 2:391 and 2:393, paragraph 1, do not apply.
- 8. **Article** 2:394 merely applies with regard to a balance sheet and to explanatory notes that have been restricted in accordance with paragraph 3. The further data regarding the profit and loss account and the data referred to in **Article** 2:378, paragraph 3, second sentence, remain omitted in the published explanatory notes.
- 9. If the legal person has not the objective to make profits, then it is not required to apply **Article** 2:394, provided that:
a. it shall sent the documents referred to in paragraph 8, upon request and free of charge, immediately to creditors, holders of shares in its capital or holders of depositary receipts of such shares, or it shall make these documents, upon request and free of charge, immediately available for the before mentioned persons at its office for inspection, and;
b. it has deposited at the office of the commercial register the auditor's opinion of a public auditor, indicating that the legal person has not performed any operations during the financial year outside the objective as defined in its articles of incorporation, and that the present **Article** applies to it.

Article 2:397 Medium sized legal persons
- 1. Paragraph 3 up to and including 7 of the present **Article** shall apply, next and in addition to **Article** 2:396, to a legal person which, at two consecutive balance sheet dates, and without any interruption thereafter, at two successive balance sheet dates, has met two or three of the following requirements
a. the value of the assets according to the balance sheet with explanatory notes amounts, based on the acquisition price and production price, not more than € 17,500,000;
b. the net turnover for the financial year does not exceed € 35,000,000;
c. the average number of employees for the financial year is less than 250.
- 2. Counted in for the purpose of paragraph 1 are the value of assets, the net turnover and the number of employees of group companies that should be involved in the consolidation if the legal person would have been required to draw up consolidated annual accounts. This does not apply where the legal person applies **Article** 2:408.
- 3. The profit and loss account shall mention the items listed in **Article** 2:377, paragraph 3, under (a) up to and including (d) and (g), respectively, paragraph 4, under (a) up to and including

(c) and (f), pinched into an item ‘gross operating profit’; the legal person shall mention in a leverage ratio to what extent the net turnover has been increased or decreased compared to the previous year.
- 4. **Article** 2:380 does not apply. **Article** 2:382a does not apply, provided that the data referred to in that **Article** have been sent to the Netherlands Authority for Financial Markets (‘AMF’) upon its request.
- 5. With regard to disclosures which have to be made pursuant to Section 2.9.3, no other disclosures have to be made than those required pursuant to Articles 2:364, 2:365, paragraph 1, under (d), 2:366, under (a), 2:367, under (a) up to and including (d), 2:370, paragraph 1, under (b) and (c), 2:373, 2:374, paragraph 3 and 4, 2:375, paragraph 1, under (a), (b), (f) and (g), and paragraph 3, and 2:376, and transit items. Articles 2:370, paragraph 2, and 2:375, paragraph 2, are applied to both, the total of the debt-claims and debts (liabilities) as well as the items meant in paragraph 1 of these Articles that need to be mentioned separately. The to be published profit and loss account and the explanatory notes thereto may be restricted in agreement with paragraph 3 and 4.
- 6. The information to be disclosed pursuant to **Article** 2:381, paragraph 2, is restricted to information about the nature and business purpose of the arrangements mentioned there. **Article** 2:381, paragraph 3, does not apply, unless the legal person is an Open Corporation (*'naamloze vennootschap'*), in which case the disclosure meant in **Article** 2:381, paragraph 3, is restricted to transactions which, directly or indirectly, are entered into between the Corporation and its major shareholders or between the Corporation and its members of the Board of Directors or of the Supervisory Board.
- 7. The data referred to in **Article** 2:392 paragraph 1, under (e) and (f), and paragraph 3, are not made public.
- 8. The annual report does not need to pay attention to non-financial performance indicators as referred to in **Article** 2:391, paragraph 1.

Article 2:398 Details about the application of Articles 2:396 and 2:397
- 1. **Article** 2:396 or 2:397 shall apply, where it concerns the first and second financial year, also to a legal person which at the balance sheet date of the first financial year has met the relevant requirements.
- 2. **Article** 2:396, paragraph 3 up to and including 8, and **Article** 2:397, paragraph 3 up to and including 7, shall apply insofar as the General Meeting, at the latest six months after the beginning of the financial year, has not decided otherwise.
- 3. Articles 2:396 and 2:397 shall not apply to:
a. a legal person which has outstanding marketable securities of it own admitted to be traded on a regulated market or multilateral trading facility as specified in **Article** 1:1 of the Financial Supervision Act or to be traded through a system comparable with such a regulated market or multilateral trading facility in any State not a Member State of the European Communities, or;
b. an Investment Company to which **Article** 2:401, paragraph 1, applies.
- 4. The amounts referred to in **Article** 2:396, paragraph 1, and **Article** 2:397, paragraph 1, shall be decreased by Order in Council if the law of the European Communities obliges to do so, and they may be increased by Order in Council to the extent permitted.
- 5. In the application of **Article** 2:396, paragraph 1, and 2:397, paragraph 1, with regard to a Foundation (*'stichting'*) or an Association (*'vereniging'*) as meant in **Article** 2:360, paragraph 3,

the basis shall be the total of the assets of the Foundation (*'stichting'*) or Association (*'vereniging'*) and, with due observance of **Article** 2:396, paragraph 2, of the net return and the average number of employees of the enterprise or enterprises maintained by that Foundation (*'stichting'*) or Association (*'vereniging'*).

Section 2.9.12 Provisions regarding legal persons of distinguished types

Article 2:399 [*repealed on 10-15-1993*]

Article 2:400 Financial institutions other than banks
Financial institutions, not being banks within the meaning of **Article** 2:415, may, upon their request, be allowed by the Minister of Finance, to apply Section 2.9.14, whether or not under conditions, all with the exception of **Article** 2:424.

Article 2:401 Investment Companies
- 1. The manager and the Investment Company to which Part 4 of the Financial Supervision Act ('Conduct of business supervision of financial undertakings') applies, also have to meet, in addition to the provisions of the present Title (Title 2.9), the requirements set with regard to that company's annual accounts by or pursuant to the Financial Supervision Act. With regard to this manager and Investment Company it is possible to derogate by or pursuant to the Financial Supervision Act from Articles 2:394, paragraph 2, 3 or 4, and 2:403.
- 2. The investments of an Investment Company as referred to in **Article** 1:1 of the Financial Supervision Act may be valued at market value. Exchange rate fluctuations which are unfavourable compared to the previous balance sheet date do not have to be charged to the profit and loss account, on the condition that they are counted (set off) against the reserves; favourable exchange rate fluctuations may be added (written up) to the reserves. The amounts are mentioned in the balance sheet or in the explanatory notes.
- 3. **Article** 2:378, paragraph 3, second sentence, is not applicable to an Investment Company with variable capital.

Article 2:402 Consolidating head company
If the financial data of a legal person have been processed in its consolidated annual accounts, then only the results of participating interests after tax thereon have to be disclosed as a separate item in that legal person's own profit and loss account. The application of the previous sentence is mentioned in the explanatory notes on the consolidated annual accounts.

Article 2:403 Group exemption (after liability has been accepted for group subsidiaries)
- 1. A legal person forming a part of a group is not required to arrange its annual accounts in agreement with the requirements of the present Title (Title 2.9), provided that:

a. its balance sheet in any event mentions the total amount of the current assets and the amount of equity capital, of provisions and of liabilities (debts), and that the profit and loss account in any event mentions the result from normal business operations and the balance of the other income and expenses, all after taxation;
b. the members or shareholders have stated in writing, after the start of the financial year and prior to the adoption of the annual accounts, to agree with a derogation from these requirements;
c. the financial data of the legal person are consolidated by another legal person or partnership into its consolidated annual accounts to which, pursuant to the applicable law, the Regulation of the European Parliament and the Council on the application of international accounting standards, the Seventh Council Directive of the European Communities on company law or one of the two Directives of the Council of the European Communities on annual and consolidated accounts of banks and other financial institutions or of insurance companies applies;
d. the consolidated annual accounts, as far as these are not drawn up or translated into Dutch, are drawn up or translated into French, German or English;
e. the auditor's opinion and annual report are drawn up or translated into the same language as the consolidated annual accounts;
f. the legal person or partnership referred to under (c) has stated in writing that it makes itself jointly and severally liable for debts arising from juridical acts of the legal person, and;
g. the statements referred to under (b) and (f) have been deposited at the office of the commercial register where the legal person is registered and, each time within six months after the balance sheet date or within one month after a lawfully made publication, the documents or translations listed under (d) and (e), or a reference to the office of the commercial register where they are deposited.
- 2. Where, in the group or the part of the group of which the data are included in the consolidated annual accounts, the legal person or partnership referred to in paragraph 1, under (f), and another legal person or partnership are co-ordinate [two group companies equally ranked], then paragraph 1 only applies if this other legal person or partnership also has made itself in writing jointly and severally liable for debts arising from juridical acts of the legal person; in that case paragraph 1, under (g), and **Article** 2:404 shall apply accordingly.
- 3. Articles 2:391 up to and including 2:394 do not apply to a legal person to which paragraph 1 is applicable.
- 4. If the legal person that forms a part of the group is a bank within the meaning of **Article** 2:415, then its balance sheet shall in any event mention, in derogation from paragraph 1, under (a), the total amount of assets and liabilities, and the amount of its equity capital, and its profit and loss account shall mention in any event the results from normal business operations, the amount of taxes and the balance of other income and expenses.
- 5. If the legal person that forms a part of the group is an insurance company within the meaning of **Article** 2:427, then its balance sheet shall in any event mention, in derogation from paragraph 1, under (a), the total amount of investments and of debt-claims, and the amount of its own equity capital, of the technical provisions and of the liabilities (debts), and its profit and loss account shall in any event consist of the non-technical account, mentioning at least the results before taxes from normal business operations regarding liability insurance and life insurance, the balance of other income and expenses, and the results from normal business operations after tax.

Article 2:404 Termination of liability

- 1. In addition to what is provided in Articles 2:204a, paragraph 4, and 2:204c, paragraph 7, the liability referred to in **Article** 2:403 may be withdrawn by depositing a declaration for this purpose at the office of the commercial register.
- 2. Nevertheless, liability remains existent for debts resulting from juridical acts which are performed prior to the moment as of which an appeal to the withdrawal can be made towards the creditor.
- 3. The remaining liability shall end with regard to the creditor if the following conditions are met:
a. the legal person no longer forms a part of the group;
b. a notice of the intention to terminate liability has been available for inspection for at least two months at the office of the commercial register where the legal person is registered;
c. at least two months have passed since an announcement in a nationally distributed daily newspaper was made, indicating that a notice as meant under (b) is available for inspection, with mention of the place where it is available for inspection;
d. the creditor has not made an objection against this intention in time or his objection has been revoked or it has been dismissed by a final and binding judicial decision.
- 4. If the creditor so requests, security (collateral) or another guarantee must be provided on his behalf in order to assure that his debt-claims, with regard to which liability exists, will be satisfied, on the penalty that the objections of the creditor meant in paragraph 5 shall be acknowledged as valid. This, however, does not apply if the creditor, even after termination of liability, shall have sufficient assurance that the involved debt-claims will be satisfied, for instance in view of the financial situation of the legal person or on account of other reasons.
- 5. Up until two months after the announcement referred to in paragraph 3, under (c), the creditor, with regard to whose claims liability exists, may object against the intention to terminate liability by lodging a petition with the District Court of the domicile of the legal person that is his principal debtor.
- 6. The District Court shall only declare the creditor’s objections valid after it has set a period in which a guarantee, specified by the court, may be provided still, and such guarantee has not been provided within that period.

Article 2:404a [*repealed on 25-11-1988*]