

EXAMPLE PROVISIONS FOR ARTICLES OF ASSOCIATION OF AN SPE

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PART 1 – EXAMPLES OF PROVISIONS THAT MUST BE INCLUDED.

1. FORMATION

1.1 The name of the company is [_____] SPE. [The company is a European private company with limited liability.]¹

1.2 The initial share capital of the company is [e.g. one share[s] of Euro [1]]².

1.3 The founding shareholder[s] of the company [is/are] [name, address/names and addresses]. The shares held by [him/her/it/them] on incorporation are:

Name of shareholder	Shares of [€_____] ³
[_____]	[Number]

1.4 The founding shareholders must contribute [Euro]⁴ [amount] for each share on [subscription/[date]]⁵

2. SHARES

2.1 The pecuniary and non-pecuniary rights and the obligations attached to the shares are as follows:⁶

¹ This wording is not required.

² The initial share capital must be stated. The shares can be of any type, including non-voting shares, preference shares and redeemable shares. The company may have different classes of shares. In Member States in which the third phase of the economic and monetary union does not apply, companies may be required to express their shares in the national currency instead. In this case, insert the name of the national currency e.g. pounds sterling, instead of Euro. Shares may be accountable par shares rather than having a nominal value.

³ The nominal value of the shares may be in the national currency if the Member State where the SPE is incorporated has not adopted the Euro. Shares may also be accountable par shares.

⁴ Insert the name of the national currency e.g. pounds sterling, if applicable instead of Euro.

⁵ Contributions for shares can be made in kind or can be made partly in cash and partly in kind. If one of these approaches is adopted different wording should be used e.g. The founding shareholders must contribute [describe contribution in kind] on [subscription/[date]]. **OR** The founding shareholders must contribute [Euro] [amount] for each share on [subscription/[date]] and [describe contribution in kind] on [subscription/[date]]. The value of the consideration in kind to be provided, in the opinion of the founding shareholders, is [Euro] [amount].

<u>Shares</u>	<u>Votes (if any)</u>	<u>Participation in the assets and profits, if any</u>
Ordinary	one vote per share	the right to share equally in any distribution by the company and, on liquidation of the company, equally in any surplus assets.

2.2 Each shareholder shall have the right to receive notice of any meeting or decision to be taken by shareholders and to attend, speak and vote at any meeting of shareholders.⁷

2.3 The rights attaching to a class of shares may only be varied by a shareholder decision of at least [two-thirds]⁸ of the Eligible Votes⁹ of the class of shares whose rights are to be varied (as determined in accordance with 2.5).

2.4 The company's share capital may¹⁰ be increased at any time by a shareholder decision of more than [50%]¹¹ of the Eligible Votes. The resolution must state the number of shares and their description (including their nominal value¹²) by which the share capital is to be increased.

2.5 For the purposes of these articles, where a shareholder decision is made by written resolution, the shareholders entitled to vote on that resolution are to be determined by reference to the shareholders on the list of shareholders [immediately before the written resolution is circulated] and the Eligible Votes are to be determined by the votes attached to the shares held by those shareholders. Where a shareholder decision is taken at a general meeting, the Eligible Votes are to be determined by reference to the shareholders on the list of shareholders [immediately before the meeting].

2.6 Any shares in the company may¹³ be sub-divided into shares of a smaller nominal value or consolidated into shares of a larger nominal value by a shareholder

⁶ The company may have more than one class of shares. The rights and obligations attached to each class of shares must be stated. The wording for Ordinary Shares is only an example and different wording may be used.

⁷ This is only an example and different wording may be used.

⁸ The majority decision can be a higher percentage.

⁹ There is no requirement for shareholder decisions to be made by reference to Eligible Votes, as defined in 2.5. But shareholder decisions which must be taken by a qualified majority cannot be taken by less than two-thirds of the total voting rights attached to the company's issued shares.

¹⁰ If shareholders do not want to allow any increase in the share capital substitute "may not" for "may" and delete the words "by a shareholder decision of more than [50%] of the Eligible Votes."

¹¹ The majority decision can be a higher percentage.

¹² If the company has accountable par shares, substitute "accountable par" for "nominal value".

¹³ If shareholders do not want to allow any sub-division or consolidation of shares substitute "may not" for "may" and delete the words "by a shareholder decision of more than [50%] of the Eligible Votes."

decision of more than [50%]¹⁴ of the Eligible Votes. [The nominal value of any class of shares may¹⁵ be redenominated into [Euro/[the national currency of the Member State]¹⁶ by a shareholder decision of more than [50%]¹⁷ of the Eligible Votes].¹⁸

2.7 Shareholders have no rights to require any shareholder to sell their shares in addition to the rights in Article [17] of Regulation [_____] (the Regulation).¹⁹

2.8 Shareholders have no rights to sell their shares to any shareholder or the company, who are obliged to buy those shares, in addition to the rights in Article [18] of the Regulation.²⁰

3. CAPITAL

3.1 When the company issues shares other than shares issued to the founding shareholders the administrative board²¹ may decide whether the shares may be paid for in cash or by contribution in kind or a combination of both, when the payment or contribution is to be made and the value to be attributed to any contribution in kind²². Any contribution in kind for shares need not be valued by an independent expert.²³

3.2 The company may²⁴ provide financial assistance, including advancing funds, making loans or providing security, with a view to the acquisition of its shares by a third party.

3.3 The company may²⁵ pay interim dividends.²⁶

¹⁴ The majority decision can be a different percentage.

¹⁵ If the shares are denominated in Euro in a Member State which has adopted the Euro, they cannot be redenominated to another currency and “may not” must be substituted for “may”. In Member States that have not adopted the Euro, shares may be redenominated from the national currency to the Euro or vice versa if the articles allow this. If the shareholders do not want to allow any redenomination of shares substitute “may not” for “may” and delete the words “by a shareholder decision of more than [50%] of the Eligible Votes.”

¹⁶ Insert the name of the national currency – e.g. pounds sterling

¹⁷ The majority decision can be a different percentage.

¹⁸ If the company has accountable par shares instead of shares with a nominal value, amendments must be made to these provisions.

¹⁹ If there are such rights, any applicable requirements must be stated.

²⁰ If there are such rights, any applicable requirements must be stated.

²¹ If the Company has a management board, substitute “management board” for “administrative board”.

²² Any conditions relating to payment or provision of the consideration must be stated.

²³ If shareholders want any contribution in kind to be valued by an independent expert substitute “must” for “need not”. Any formalities which must be complied with must be stated in the articles.

²⁴ If the shareholders do not want the company to be able to provide financial assistance substitute “may not” for “may”. Alternatively, different wording should be used if the shareholders want to impose some restrictions (but not a total prohibition).

²⁵ If the shareholders do not want the company to pay interim dividends substitute “may not” for “may”.

3.4 The administrative board²⁷ is not²⁸ required to sign a solvency certificate before any distribution is made.

3.5 The procedure the company must follow to recover any unlawful distribution is to give written notice to any shareholder who has received the distribution where the shareholder knew or in view of the circumstances should have been aware of the irregularities requiring the distribution to be returned to the company within 30 days.

3.6 The procedure for reducing the company's share capital is by a shareholder decision of at least [two-thirds]²⁹ of the Eligible Votes.³⁰

3.7 The company may³¹ acquire its own shares. The company may acquire its own shares out of moneys which would be available to pay distributions³² if the shareholders have made a shareholder decision of at least []% of the Eligible Votes. Any shareholder decision must state (i) the [maximum] number of shares to be acquired, (ii) the [maximum][and minimum] amount to be paid per share, (iii) the time period within which the shares must be purchased, (iv) whether the shares must be acquired pro rata from each shareholder or may be acquired on some other basis that is either set out in the decision or to be decided by the administrative board,³³ (v) whether the shares are to be cancelled on acquisition or may be held in the company's name, (vi) if shares may be held in the company's name, any requirements that apply to the subsequent sale, transfer or cancellation of the shares held in the company's name and any amount paid to the company on sale or transfer. While the company holds any shares it has acquired in its name, any exercise of rights attaching to those shares is void and no distribution shall be made to the company in respect of

²⁶ Any applicable requirements must be stated.

²⁷ If the company has a management board, substitute "management board" for "administrative board".

²⁸ If the shareholders want the administrative board to sign a solvency certificate before any distribution is made substitute "is" for "is not". If a solvency certificate is required, the applicable requirements must be stated. E.g. Before any decision is taken by the administrative board or the shareholders to make any distribution to shareholders all the members of the administrative board must sign a solvency certificate. This must state the distribution proposed to be made and that, having made reasonable enquiries, the administrative board has no reason to believe that the company will not be able to pay its debts as they fall due for at least [12 months] after the distribution is made. A copy of the solvency certificate must be sent to every shareholder, if the decision is to be taken by shareholders with the notice asking shareholders to decide on the distribution or, if the decision is taken by the administrative board, with the details of the decision taken by the administrative board.

²⁹ The majority decision may be a higher percentage.

³⁰ This is only an example and, subject to the requirement for a shareholder decision to be taken by at least two-thirds of the votes, different wording can be used.

³¹ If the shareholders do not want the company to be able to acquire its own shares substitute "may not" for "may". If the company can acquire its own shares certain information must be given: the procedure to be followed, including the conditions under which the share may be held, transferred or cancelled. The wording in 3.7 is only an example and different wording may be used.

³² Any acquisition of own shares must be out of moneys available to pay distributions – see Article 23.2 of the Regulation which refers to Articles 21 and 22 of the Regulation.

³³ If the Company has a management board, substitute "management board" for "administrative board".

those shares except any issue of bonus shares or the payment of any amount on redemption of any such share.

3.8 The company is not required to establish reserves.³⁴

4. MANAGEMENT AND REPRESENTATION

4.1 The company's management body is composed of an administrative board.³⁵

4.2 The composition of the administrative board³⁶ is at least one and no more than [] directors.

4.3 The administrative board³⁷ is organised as follows:³⁸

- (a) a meeting may be called by any director;
- (b) a meeting must be called by at least [] days notice provided that any director may waive their right to notice before or after the meeting;
- (c) decisions may be taken by a majority of the directors present at any meeting or may be taken in writing by a majority of the directors;
- (d) otherwise, the directors may determine the procedures for their organisation.

4.4 The procedure for appointing directors is that any director may be appointed by a shareholder decision of more than [50%] of the Eligible Votes.³⁹

4.5 Each director may be removed (i) by a shareholder decision of more than [50%] of the Eligible Votes; or (ii) on being required to resign by [the administrative board⁴⁰]. A director shall be removed automatically (i) on insolvency proceedings being initiated against that director and not being dismissed within [] days; (ii) on

³⁴ If the shareholders want the company to establish reserves substitute "is" for "is not". If the company is required to established reserves, the circumstances in which the reserve is to be established must be stated and whether the reserve is distributable.

³⁵ The company's management body can instead be composed of e.g. a managing director/[two] joint managing directors/the manager or managers who are appointed by the shareholders from time to time/the board of directors. If one of these alternatives is chosen, consequential changes to the articles will be needed.

³⁶ If the company has a management board substitute "management board" for "administrative board". The composition and organisation must be stated and consequential changes to the articles may be needed. This is only an example and different wording may be used.

³⁷ If the company has a management board substitute "management board" for "administrative board". If the company has a management board or one or more managing directors, the articles must state whether or not the company has a supervisory body e.g. The company [does/does not] have a supervisory body. If the company has a supervisory body, certain details must be given – see Part 2 paragraph 5.

³⁸ This is only an example and different wording may be used.

³⁹ This is only an example and different wording may be used.

⁴⁰ If the company has a management board, substitute "management board" for "administrative board".

being prohibited by the law of any Member State from holding office as a director or manager of the company; or (iii) on a doctor certifying that the director is suffering from mental incapacity and should not continue to act as a director.⁴¹

4.6 Any situation involving an actual or potential conflict of interest by a director may⁴² be authorised by the management body or by a shareholder decision of more than 50% of the Eligible Votes. The procedures for authorisation of any actual or potential conflict of interest are that the director concerned shall not count for any quorum requirement for any administrative board meeting and their votes shall not be counted at any administrative board meeting for determining if any authorisation is given.

4.7 Related party transactions as referred to in Article [32] of the Regulation must⁴³ be authorised by a shareholder decision of more than [50%] of the Eligible Votes.

4.8 The company may be represented by any director. A director may delegate the right to represent the company to any person.⁴⁴

4.9 The management powers of the administrative board may be delegated to another person.⁴⁵ The administrative board may delegate any of its management functions in writing (except those that are required to be performed by the management body as a whole either by the Regulation or by these articles) to such person or persons as it chooses.

⁴¹ This is only an example and different wording may be used, provided that the shareholders can remove the directors.

⁴² If the shareholders do not want directors' conflicts of interest to be authorised substitute "may not" for "may" and delete the words beginning "by the management body" to the end. If authorisation is allowed, there are certain requirements which apply – see Part 2 paragraph 7. The wording in 4.6 is only an example and different wording may be used. If the company has a "management board" rather than an administrative board, substitute "management board" for "administrative board".

⁴³ If the shareholders do not want related party transactions to be authorised, substitute "need not" for "must" and delete "by a shareholder decision of more than [50%] of the Eligible Votes". If related party transactions must be authorised, the applicable requirements must be stated – see Part 2 paragraph 8.

⁴⁴ If the shareholders want the company to be represented by someone else e.g. the management body or two or more directors acting jointly, different wording may be used. If the shareholders do not want a director to be able to delegate the right to represent the company to any person or wish to impose limits on this wording, different wording may be used.

⁴⁵ If the shareholders do not want the management powers to be delegated substitute "may not" for "may". If the company has a management board rather than an administrative board substitute "management board" for "administrative board". If delegation is allowed, the rules on delegation must be specified – see Part 2 paragraph 9. The wording in 4.9 is only an example and different wording may be used.

5. SHAREHOLDER DECISIONS⁴⁶

5.1 The method of adopting shareholder resolutions is either by written resolution or by passing a resolution at a meeting.⁴⁷

5.2 Subject to Articles 21, 27 and 29 of the Regulation, the rules on proposing resolutions are as follows:⁴⁸

5.2.1 if a shareholder decision is to be taken by written resolution, the administrative board⁴⁹ must send the wording of the proposed resolution to all shareholders and state any deadline by which a reply must be received by the company in order to be valid which, subject to 5.2.3, must be at least [7] days after the date the proposed resolution is sent and must state the ways in which to notify the company of their decision. Shareholders must notify the company in writing whether they are voting in favour of or against the proposed resolution; or

5.2.2 if a shareholder decision is to be taken at a meeting, the administrative board⁵⁰ must send a notice of the meeting to all shareholders subject to 5.2.3, at least [7] days before the meeting. The notice must state the time, date and place of the meeting and the resolutions proposed to be passed or the agenda items; and

5.2.3 a shareholder may, at any time, waive the requirement for a reply to be received at least [7] days after the date the proposed resolution is sent and the requirement for notice of the meeting to be sent at least [7] days before the meeting.

5.3 The company may send any communication to shareholders by post to the address they have notified to the company or, if they have provided an email address, by email. Shareholders may send any communication to the company (including the appointment of a proxy) by post to the company at its registered office addressed to the administrative board⁵¹ or, if the company has provided an email address to be used for any particular communication or communications generally, to that email address.⁵²

5.4 A shareholder may obtain the text of any proposed shareholder resolution and any other preparatory documents in relation to the adoption of a shareholder

⁴⁶ Although the Annex to the Regulation requires the articles to state various information, it mostly does not require a particular approach. The following provisions are therefore mostly examples and different wording may be used.

⁴⁷ There is no requirement for shareholder resolutions to be adopted in a particular way. This is only an example and different wording may be used.

⁴⁸ This is only an example and different wording may be used.

⁴⁹ If the company has a management board, substitute “management board” for “administrative board”.

⁵⁰ If the company has a management board, substitute “management board” for “administrative board”.

⁵¹ If the company has a management board substitute “management board” for “administrative board”.

⁵² This is only an example and different wording may be used

resolution by written notice to the company's registered office stating the information required or by a request made in person at the company's registered office.⁵³

5.5 Where the company has received a request from a shareholder for information, unless the administrative board⁵⁴ has refused to give access to the information in accordance with Article 28 of the Regulation (in which case the company must notify the shareholder of that refusal within [] days of receipt of the request) the administrative board⁵⁵ must respond to that request within [] days of receipt of the request by sending a copy of the information duly requested to the shareholder by post or, if the shareholder has provided an email address, by email.⁵⁶

5.6 If a shareholder decision is to be taken at a meeting:

5.6.1 shareholders may vote at any meeting either in person or by proxy. Shareholders may appoint any person to act as their proxy. A proxy may exercise the same rights as the shareholder could exercise if he or she attended the meeting;⁵⁷

5.6.2 if a shareholder appoints a proxy the appointment must be made in writing, stating the shareholder's name, the proxy's name and the number of shares to which the proxy relates. The appointment must be sent to the company at least [24 hours] before the time of the meeting;

5.6.3 a shareholder may attend a meeting even if they have appointed a proxy but in that case the appointment of the proxy is revoked;

5.6.4 the quorum for any shareholder meeting is [] shareholder[s] present in person or by proxy;

5.6.5 the shareholders must decide who is to be the chairman of the meeting. If there is no agreement, [] will act as chairman.

5.7 A shareholder decision must be taken by a decision of more than 50% of the Eligible Votes (simple majority) unless these articles or the Regulation provides otherwise.

5.8 The shareholder decisions listed below shall be taken by a decision of more than [50%]⁵⁸ of the Eligible Votes:

⁵³ This is only an example and different wording may be used

⁵⁴ If the company has a management board, substitute "management board" for "administrative board".

⁵⁵ If the company has a management board, substitute "management board" for "administrative board".

⁵⁶ This is only an example and different wording may be used.

⁵⁷ This is only an example and different wording may be used e.g. so that a shareholder may only appoint another shareholder or their spouse or any member of the management body as their proxy. The rights that a proxy can exercise may also be different.

⁵⁸ The percentage required may be higher. Different percentages may be agreed for different decisions. Other decisions may also be included except those decisions for which a qualified majority is required.

- (a) approval of the annual accounts;
- (b) distribution to the shareholders;
- (c) acquisition of own shares;
- (d) redemption of shares;
- (e) share capital increase;
- (f) appointment or removal of directors and their terms of office;
- (g) if the company has an auditor, appointment or removal of that auditor.

5.9 The shareholder decisions listed below shall be taken by a decision of at least [two-thirds]⁵⁹ of the Eligible Votes:

- (a) any amendment to these articles;
- (b) any variation of rights attaching to shares;
- (c) expulsion of a shareholder;
- (d) withdrawal of a shareholder;
- (e) share capital reduction;
- (f) transfer of the registered office of the company to another Member State;
- (g) transformation of the company to any form other than SPE;
- (h) any merger or division of the company;
- (i) winding up of the company;
- (j) amendments to the articles of association not covering matters mentioned in (a) to (i) of this Article or (a) to (g) of Article 5.8.

5.10 Where a shareholder has requested access to the company's documents, unless the administrative board⁶⁰ has refused to give access to the information in accordance with Article 28 of the Regulation (in which case the administrative board must notify the shareholder of that refusal within [] days of receipt of the request) the administrative board shall grant access to any written minutes of shareholder meetings or administrative board meetings and any record of shareholder decisions or

⁵⁹ The percentage required may be higher (but not lower). Different higher percentages may be agreed for different decisions. Other decisions may be included in addition to the decisions in (a) to (j), for which a qualified majority of at least two-thirds of the total voting rights attached to the company's issued shares is mandatory.

⁶⁰ If the company has a management board, substitute "management board" for "administrative board", where it occurs in this article.

administrative board decisions at the company's registered office during normal business hours.⁶¹

5.11 Any shareholder resolution that is adopted must be made available to all shareholders either by the company sending a copy of the resolution to those shareholders or by placing a copy of the resolution on the company's website, in either case within [] days of the resolution being adopted.⁶²

6. FINANCIAL INFORMATION AND AUDITORS

6.1 The financial year of the company ends on [date] in each year. This may be changed by a shareholders' decision of more than 50% of the Eligible Votes.

6.2 The company does not have an auditor. When the company is required to have an auditor, the procedures for the appointment, removal and resignation of the auditor shall be those required or permitted by the applicable national law (as defined in Article 4 of the Regulation) applicable to [state appropriate type of company]].⁶³

⁶¹ This is only an example and different wording may be used.

⁶² This is only an example and different wording may be used.

⁶³ If the company has an auditor substitute "has" for "does not have". Under Article 25 of the Regulation, the company must have an auditor if required to do so by its applicable national law. If the company has an auditor, certain further requirements apply – see Part 2 paragraph 10.

PART 2 – EXAMPLES OF PERMITTED PROVISIONS¹

- * 1. Any restriction or prohibition on transfer of shares. Provisions must state:
- (i) the details of the restriction or prohibition, in particular the form, time limit, applicable procedure;
 - (ii) the rules applicable in the event of the death or dissolution of a shareholder.

*E.g. The administrative board² may refuse to register a transfer [for good cause] **OR** [to a person of whom it does not approve] [or if it is to more than [four] joint shareholders] [or if the transfer form has not been duly stamped].] If the company refuses to register a transfer, it must notify the shareholder within [7 days] of the decision [with an explanation of the reasons for the refusal] and return the relevant documents to the shareholder.]³*

On the death or insolvency of a shareholder and on any corporate shareholder becoming subject to a procedure to be wound up or dissolved which is not dismissed within [30] days, [unless the shareholders holding [75%] of the remaining shares decide otherwise] the personal representatives of the shareholder who has died or the person entitled to deal with the insolvent shareholder's shares or the person entitled to deal with the corporate shareholder's shares shall not be entitled to exercise any voting rights or other rights attaching to that shareholder's shares and shall sell all that shareholder's shares to the company at a price agreed by such person and the company or, if a price is not agreed within [] days of the company giving notice that such price must be determined, by an independent expert either appointed by agreement by the company and such person or, if agreement is not reached within []⁴ days of the company giving notice that such price must be determined, appointed by [].⁵ The price determined by the independent expert shall be [the fair market price of the shares between a willing seller and willing buyer]. The costs of the independent expert shall be paid [equally by the company and the relevant selling shareholder.]⁶

- * 2. The deadline by which a transferor of shares is to be notified of a decision, where the approval of the share transfer by the company or by the shareholders is

¹ Provisions marked with an asterisk must be stated in the articles if they exist and there are requirements if they are included.

² If the company has a management board, substitute “management board” for “administrative board”.

³ See paragraph 2 below for the requirement to notify decisions.

⁴ This period should be longer than the period for agreeing the price.

⁵ This could, for example, be the President of an Institute of Accountants in the relevant Member State.

⁶ This is only an example and different wording may be used.

required or other rights are provided for shareholders or for the company on the transfer of shares (for example, right of first refusal)

[E.g. The transferor must be notified by the company within [] days of the decision whether or not to approve the share transfer, where [the share transfer must be approved by [the company/the shareholders] [describe the rights provided for shareholders or for the company on transfer of the shares.]]

- * 3. Any rights to squeeze out any shareholder beyond the rights in Article [16] of the Regulation.

E.g. [The continuation of a shareholder as a member of the company shall be considered detrimental to the company's proper operation, among other things, in the following cases:

- (i) if the shareholder is in serious breach of any obligation under these articles;*
- (ii) if the shareholder is a company and there is any change of control of it (being an acquisition of more than [50%] of its shares) other than to the spouses or descendants of the previous shareholders;*
- (iii) if the shareholder becomes insolvent.]⁷*

- * 4. If the acquisition of own shares is permitted, the procedure to be followed, including the conditions under which the share may be held, transferred or cancelled.

E.g. The company may acquire its own shares out of moneys which would be available to pay distributions⁸ if the shareholders have made a shareholder decision of at least []% of the Eligible Votes. Any shareholder decision must state (i) the [maximum] number of shares to be acquired, (ii) the [maximum][and minimum] amount to be paid per share, (iii) the time period within which the shares must be purchased, (iv) whether the shares must be acquired pro rata from each shareholder or may be acquired on some other basis that is either set out in the decision or to be decided by the administrative board,⁹ (v) whether the shares are to be cancelled on acquisition or may be held in treasury, (vi) if shares may be held in treasury, any requirements that apply to the subsequent sale, transfer or cancellation of the shares held in treasury and any amount paid to the company on sale or transfer. While the company holds any shares in treasury, any exercise of rights attaching to those shares is void and no distribution shall be made to

⁷ This is only an example and different wording may be used.

⁸ Any acquisition of shares must be out of moneys available to pay distributions – Article 23.2 which refers to Articles 21 and 22.

⁹ If the company has a management board, substitute “management board” for “administrative board”.

the company except any issue of bonus shares or the payment of any amount on redemption of a share.

- * 5. If the company has a management board or one or more managing directors and has a supervisory body, details of the composition and organisation of the supervisory body must be stated, together with its relationship to the management body.

*E.g. The composition of the supervisory body is [e.g. [number] member[s] **OR** at least [] member [and no more than [] members]. The supervisory board is organised as follows:[]. The relationship of the supervisory body to the management body is [].*

- * 6. If there are resolutions to be adopted by the shareholders in addition to those listed in Article 27(1) of the Regulation, these must be stated, with the quorum and the required majority of voting rights.

E.g. The following resolutions, in addition to those listed in Article 27(1) of the Regulation, must be adopted by the shareholders:

<u>Description of resolution</u>	<u>Quorum</u>	<u>Required majority of voting rights</u>
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- * 7. If situations involving an actual or potential conflict of interest by a director may be authorised the articles must indicate who can authorise the conflict, and the applicable requirements and procedures for the authorisation of the conflict of interest.

[E.g. by the administrative board¹⁰ or by a shareholder decision of more than 50% of the Eligible Votes. The procedures for authorisation of any actual or potential conflict of interest are that the director concerned shall not count for any quorum requirement for any [administrative] board meeting and their votes shall not be counted at any [administrative] board meeting for determining if any authorisation is given.]

- * 8. If related party transactions may be authorised, the applicable requirements must be stated:

E.g. by a shareholder decision of more than [50]% of the Eligible Votes.

- * 9. If any management power can be delegated to another person, the rules on delegation must be stated.

¹⁰ If the company has a management board, substitute “management board” for “administrative board” throughout.

[E.g. The administrative board¹¹ may delegate any of its management functions [in writing] (except those that are required to be performed by the administrative board as a whole either by the Regulation or by these articles) to such person or persons as it chooses.]

- * 10. Where the articles of association provide that the company should have an auditor, the procedure for his appointment, removal and resignation.

[E.g. The procedure for the appointment, removal and resignation shall be the procedure required or permitted by the applicable national law (as defined in Article 4 of the Regulation) applicable to [state appropriate type of company.]¹²

11. Any pre-emption rights on issue of shares, and any applicable requirements.

E.g. If the company wishes to issue shares [for cash], unless otherwise agreed by a shareholder decision of more than [75%] of the Eligible Votes, the shares must first be offered to existing shareholders pro rata as nearly as possible to their existing shareholding (with any fractions of shares being rounded down). The offer must be made in writing, state the number of shares offered, the price to be paid for each share and must be open for acceptance for at least [21] days from the date the offer is made. Any shares not accepted by any shareholder shall be offered to those shareholders who have accepted all the shares offered to them on a similar pro rata basis or otherwise on such basis as those shareholders agree. [Any shares not accepted after this process may be issued to such person as the administrative board¹³ decides.]

12. Any pre-emption rights on transfer of shares, and any applicable requirements.

*E.g. If a shareholder wishes to transfer any share or any interest in any share [other than to an existing shareholder] he must notify the company of the number of shares he wishes to transfer, the price per share in cash and the proposed transferee. The company must notify all the shareholders as soon as reasonably practicable and ask whether they approve the transfer. If [all shareholders] **OR** [shareholders representing [75%] of the shares not subject to the proposed transfer] approve the proposed transfer in writing, the shareholder may transfer the relevant shares to the proposed transferee at the stated price within [30] days of being notified of the approval. If the shareholders refuse to approve the proposed transfer, they are entitled to take a transfer of the shares proposed to be transferred at the price proposed. If more than one shareholder wishes to take the shares to be transferred, they*

¹¹ If the company has a management board, substitute “management board” for “administrative board” throughout.

¹² The applicable national law may have different procedures depending on whether the company is a private or public company, in which case it will be necessary to state the appropriate type of company.

¹³ If the company has a management board, substitute “management board” for “administrative board”.

are entitled to take them either in such proportions as those shareholders agree or, if there is no such agreement, pro rata as nearly as possible to the shareholdings of the shareholders concerned provided that (i) no shareholder is required to take more shares than that shareholder wants and (ii) any shares not taken must be offered to shareholders who want to take more than their pro rata entitlement in such proportions as they agree or pro rata as nearly as possible to their shareholdings. This shall be repeated until all the shares proposed to be transferred have been taken. If not all the shares proposed to be transferred will be taken, the proposing transferor is entitled either to transfer all the shares for which there are transferees or not to transfer any shares. Any transfer must take place within [30 days] of the proposing transferor being notified that the shareholders do not approve the transfer to the proposed transferee at the company's registered office.

13. Any rights to require any shareholder to sell their shares in addition to the rights in Article [17] of the Regulation.
14. Any shareholder right to sell their shares to other shareholders or to the company, who are obliged to buy those shares, and the applicable requirements.
15. Any eligibility criterion of directors.
16. Any specific duties of directors other than those mentioned in the Regulation.