

Übersetzung und laufende Aktualisierung durch Samson-Übersetzungen GmbH, Dr. Carmen von Schöning

Translation provided and regularly updated by Samson-Übersetzungen GmbH, Dr. Carmen von Schöning

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 17 des Gesetzes vom 23. Oktober 2024 (BGBl. 2024 I Nr. 323)

Version information: The translation includes the amendment(s) to the Act by Article 17 of the Act of 23 October 2024 (Federal Law Gazette 2024 I no. 323)

Zur Nutzung dieser Übersetzung lesen Sie bitte den Hinweis auf www.gesetze-im-internet.de unter "[Translations](#)".

For conditions governing use of this translation, please see the information provided at www.gesetze-im-internet.de under "[Translations](#)".

Transformation Act (Umwandlungsgesetz – UmwG)

Transformation Act of 28 October 1994 (Federal Law Gazette I p. 3210; 1995 I p. 428), last amended by Article 17 of the Act of 23 October 2024 (Federal Law Gazette 2024 I no. 323)

Book 1 Eligibility for transformation

Section 1

Types of transformation; statutory restrictions

(1) Legal entities having their seat in Germany may be transformed

1. by way of a merger;
2. by way of a division (full division, partial division, division by separation);
3. by way of an asset transfer;
4. by way of a change of legal form.

(2) A transformation in the sense of subsection (1) will be possible, in cases besides those governed by the present Act, only if it has been expressly provided for by a different federal law or *Land* law.

(3) Any deviations from the stipulations of the present Act must have been expressly declared permissible herein. Supplementary determinations made in contracts, by-laws, or declarations of intent are permissible unless the present Act has provided conclusively for the matter.

Book 2 Merger

Part 1 General provisions

Division 1 Eligibility for a merger

Section 2 Types of mergers

Legal entities may be merged, whereby they are dissolved without being wound up

1. by way of absorption through the transfer of the assets of one legal entity or several legal entities (legal entities being acquired), as a whole, to some other existing legal entity (acquiring legal entity), or
2. by way of newly forming a legal entity through the transfer of the assets of two or more legal entities (legal entities being acquired), in each case as a whole, to a new legal entity that they have formed in this way,
whereby shares in the acquiring legal entity or new legal entity are allotted, or memberships in same are granted, to the holders of shares (shareholders, partners, stockholders, or members) of the legal entities being acquired.

Section 3

Legal entities eligible for merger

- (1) The following legal entities may be involved in mergers as legal entities being acquired, acquiring legal entities, or new legal entities:
 1. registered civil law partnerships, commercial partnerships (general partnerships, partly limited partnerships) and professional partnerships;
 2. share capital companies (limited liability companies, stock corporations, public partly limited partnerships);
 3. registered cooperative societies;
 4. registered associations (section 21 of the Civil Code (*Bürgerliches Gesetzbuch – BGB*));
 5. confederations responsible for auditing cooperative societies;
 6. mutual insurance companies.
- (2) Furthermore, the following also may be involved in mergers:
 1. commercial associations (section 22 of the Civil Code), insofar as they are the legal entity being acquired;
 2. natural persons who, as the sole shareholders of a share capital company, assume its assets.

(3) Legal entities that have been dissolved may also be involved in the merger as the legal entity being acquired if the option is available of adopting a resolution to continue said legal entities.

(4) Unless stipulated otherwise, the merger may entail both the concurrent involvement of legal entities having the same legal form and the concurrent involvement of legal entities having different legal forms.

Division 2

Merger by absorption

Section 4

Merger agreement

- (1) The representative bodies of the legal entities involved in the merger conclude a merger agreement. Section 311b (2) of the Civil Code does not apply to said merger agreement.
- (2) If said agreement is to be concluded pursuant to one of the resolutions required in accordance with section 13, then a written draft of the agreement is to be drawn up prior to this resolution.

Section 5

Substance of the merger agreement

- (1) The agreement, or its draft, at a minimum must set out the following information:

1. the names or the business names and the seats of the legal entities involved in the merger;
2. the agreement as to the transfer of the entire assets of each legal entity being acquired, in return for shares in the acquiring legal entity being allotted, or memberships in same being granted;
3. the share exchange ratio and, if applicable, the amount of the additional cash payment, or information on the membership in the acquiring legal entity;
4. the details regarding the transfer of the shares in the acquiring legal entity, or concerning the acquisition of membership in the acquiring legal entity;
5. the point in time from which said shares or memberships will grant an entitlement to a portion of the net income for the year, as well as all special conditions affecting that entitlement;
6. the point in time from which the actions taken by the legal entity being acquired will be deemed to have been taken for the account of the acquiring legal entity (merger cut-off date);
7. the rights conferred by the acquiring legal entity upon individual holders of shares as well as upon the holders of special privileges, such as shares without voting rights, preferred stock, multiple voting stock, debt securities, and participatory rights, or the measures intended for these persons;
8. each special advantage granted to a member of a representative body, or of a supervisory body, of the legal entities involved in the merger, to a managing shareholder, a partner, an auditor, or a merger auditor;
9. the implications of the merger for the employees and the bodies representing them, as well as the measures intended to be taken in that regard.

(2) If all shares in a legal entity being acquired are held by the acquiring legal entity, then the information regarding the exchange of the shares (subsection (1) nos. 2 to 5) will not be required insofar as such information concerns the absorption of this legal entity.

(3) The agreement, or its draft, is to be forwarded to the competent works councils of the legal entities involved in the merger no later than one month prior to the day on which the respective assembly of the holders of shares in each legal entity involved convenes that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement.

Section 6 **Form of the merger agreement**

The merger agreement must be recorded by a notary.

Section 7 **Termination of the merger agreement**

If the merger agreement has been concluded subject to a condition and this condition has not been met within five years following the conclusion of the agreement, then each party may terminate the agreement after five years, observing a period of notice of half a year; the merger agreement may provide for a period shorter than five years. In all cases, the termination may be declared only as per the end of the fiscal year of the legal entity to which such notice is given.

Section 8 **Merger report**

(1) The representative bodies of each of the legal entities involved in the merger are to submit a detailed written report (merger report) in which the following is explained and justified in legal and economic terms:

1. the merger;
2. the details of the merger agreement, or its draft, and in particular
 - a) the share exchange ratio including the valuation methods used to determine it, or the information as to the membership in the acquiring legal entity, as well as
 - b) the amount of the cash settlement to be offered, including the valuation methods used to determine it.

The representative bodies may also jointly submit a merger report. The report is to note any particular difficulties encountered in valuing the legal entities and the consequences the merger will have for the ownership interest held by the holders of shares. Where a legal entity involved in the merger is an affiliated enterprise in the sense of section 15 of the Stock Corporation Act (*Aktiengesetz* – AktG), the report also is to include information on all matters of the other affiliated enterprises that are relevant for the merger. The disclosure obligations of the representative bodies extend to include these matters as well.

(2) The report need not address facts that, were they to become known, would be suited to cause a greater than insignificant disadvantage to one of the legal entities involved or to an affiliated enterprise. In such event, the reasons are to be set out for which the facts were not included in the report.

(3) The report is not required if all holders of shares in the legal entity involved waive its being drawn up. The declarations of waiver are to be recorded by a notary. The report is not required, furthermore:

1. for the legal entity being acquired and for the acquiring legal entity if
 - a) all shares in the legal entity being acquired are held by the acquiring legal entity, or if
 - b) all shares in the legal entity being acquired and in the acquiring legal entity are held by one and the same legal entity, as well as
2. for that legal entity involved in the merger that has only a single holder of shares.

Section 9

Audit of the merger

(1) Insofar as this is stipulated by the present Act, the merger agreement, or its draft, is to be audited by one or several expert auditors (merger auditors).

(2) Section 8 (3) is to be applied accordingly.

Section 10

Appointment of the merger auditors

(1) The court will select and appoint the merger auditors upon a corresponding petition having been filed by the representative body. Upon a corresponding common petition being filed by the representative bodies, the merger auditors may be appointed for several of the legal entities involved or for all of them together. Section 318 (5) of the Commercial Code (*Handelsgesetzbuch* – HGB) applies to the reimbursement of expenses incurred by the court-appointed auditors and to their remuneration.

(2) Any regional court in the judicial district of which a legal entity being acquired has its seat has jurisdiction. Where a division for commercial matters has been instituted at the regional court, the presiding judge of that division takes decisions instead of the civil division.

(3) Unless stipulated otherwise in the subsections hereinbelow, the Law on the Proceedings regarding Family Matters and Voluntary Jurisdiction is to be applied to the proceedings.

(4) An appeal is an available remedy against the decision taken. It may be so lodged only by submitting a brief on appeal signed by a lawyer.

(5) Where this serves to ensure uniform adjudication, the *Land* government may transfer the decision regarding the complaint by statutory instrument, with effect for the judicial districts of a plurality of higher regional courts (*Oberlandesgerichte*), to one of the higher regional courts or to the supreme court for the territory of a *Land* (*Oberstes Landesgericht*). The *Land* government may transfer the corresponding authorisation to the *Land* department of justice.

Section 11

Position and responsibilities of the merger auditors

(1) Section 319 (1) to (4), section 319b (1), section 320 subsection (1) sentence 2 and subsection (2) sentences 1 and 2 of the Commercial Code apply accordingly to the selection of the merger auditors and their right to demand information. Insofar as legal entities are concerned that are public-interest entities in accordance with section 316a sentence 2 of the Commercial Code, Article 5 (1) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158 of 27 May 2014, p. 77, L 170 of 11 June 2014, p. 66) will apply accordingly, besides sentence 1 of this provision, to the selection of the merger auditors, with the proviso that instead of the periods set out in Article 5 (1), first subparagraph, letters (a) and (b) of Regulation (EU) No 537/2014, that period is to apply that lies between the beginning of the fiscal year preceding the fiscal year in which the merger agreement was agreed and the point in time at which the merger auditor has submitted the audit report defined in section 12. Inasmuch as legal entities are concerned that are not under obligation to have their annual financial statements audited, sentence 1 applies accordingly. In this context, section 267 (1) to (3) of the Commercial Code applies accordingly to any allocations of the legal entities to size categories. The right to demand information exists vis-à-vis all of the legal entities involved in the merger and vis-à-vis an affiliate company in the group, as well as vis-à-vis a controlled and a controlling enterprise.

(2) Section 323 of the Commercial Code applies accordingly to the responsibilities of the merger auditors, their agents and the legal representatives of an auditing firm cooperating and assisting with the audit. Such responsibilities exist vis-à-vis the legal entities involved in the merger and the owners of their shares.

Section 12

Audit report

(1) The merger auditors are to report in writing on the results of their audit. They may also submit a common audit report.

(2) The audit report is to be concluded by a declaration as to whether the proposed share exchange ratio and, if applicable, the amount of the additional cash payment or the membership in the acquiring legal entity is a fair equivalent. In this context, the following information is to be provided:

1. the methods using which the proposed ratio that is to apply to the exchange has been determined;
2. the reasons for which the application of these methods is appropriate;
3. in the event of several methods having been used: the exchange ratio or the equivalent that would result in each instance of different methods being applied; concurrently, the report is to present how the various methods have been weighted in determining the proposed exchange ratio, or the equivalent, and the values on which they are based, as well as, should different methods have been applied in the legal entities involved in the merger, whether the application of different methods was justified;

4. which particular difficulties were encountered in valuing the legal entities.
(3) Section 8 (2) and (3) is to be applied accordingly.

Section 13

Resolutions adopted as to the merger agreement

(1) The merger agreement will take effect only if the holders of shares in the legal entities involved consent to same by a resolution (merger resolution). Said resolution may only be adopted at an assembly of the holders of shares.
(2) Where the assignment of the shares in a legal entity being acquired is contingent on certain individual holders of shares approving it, their consent is pre-requisite for the validity of any merger resolution adopted by this legal entity.
(3) The merger resolution and the declarations of consent to be made by individual holders of shares as required by the present Act, including the required declarations of consent to be made by holders of shares who did not appear at the assembly, must be recorded by a notary. The agreement, or its draft, is to be attached to the resolution as an annex. Upon a corresponding demand being made, the legal entity is to issue to each holder of shares, at the latter's costs and without undue delay, a copy of the agreement, or of its draft, as well as a copy of the record of the resolution.

Section 14

Time limit for bringing actions against the merger resolution; actions that are not an available remedy against the merger resolution

(1) An action against a merger resolution taking effect must be brought within one month following the adoption of said resolution.
(2) An action brought against the merger resolution taking effect cannot be based on the fact of the share exchange ratio having been inadequately set, or that the membership in the acquiring legal entity is not a fair equivalent of the shares in the legal entity being acquired, or of the membership in same.

Section 15

Improvement of the exchange ratio

(1) Where the share exchange ratio has been inadequately set, or where the membership in the acquiring legal entity is not a fair equivalent of the share of a legal entity being acquired, or the membership in same, each of the holders of shares who is prohibited by section 14 (2) from exercising their right to file an action against the merger resolution taking effect may demand that the acquiring legal entity provide a compensatory additional cash payment; such additional payments may exceed one tenth of the amount of the capital stock or nominal capital allocable to the shares allotted. Upon a corresponding petition having been made, the court will determine which additional payment is appropriate pursuant to the stipulations of the Act on Valuation Proceedings under Corporate Law (*Spruchverfahrensgesetz* – SpruchG).
(2) The additional cash payment is to accrue interest from midnight of that day onwards on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3), such interest amounting to five percentage points above the respective basic rate of interest per annum pursuant to section 247 of the Civil Code. The assertion of further-reaching damages is not ruled out.

Section 16

Application for entry of the merger in the register

(1) The representative bodies of each of the legal entities involved in the merger are to file an application for entry of the merger in the register (Commercial Register, register of cooperative societies, company register, register of partnerships or register of associations) kept at the seat of their respective legal entity. The representative body of the acquiring legal entity is entitled to apply for entry in the register of the merger also with the register maintained at the seat of each of the legal entities being acquired.

(2) In filing the application for entry in the register, the representative bodies are to declare that no action has been brought against a merger resolution taking effect, or that any action brought was not brought in due time or was dismissed by a ruling that has become final and binding, or that such action has been retracted; the representative bodies are to notify the court maintaining the register of these circumstances also after they have filed the application for entry. Where no such declaration is available, the merger may not be entered in the register unless the holders of shares who are entitled to bring an action declare, by a notarised declaration of waiver, that they waive bringing an action against the merger resolution taking effect.

(3) It is equivalent to the declaration as stipulated by subsection (2) sentence 1 if, once an action has been brought against a merger resolution taking effect, the court has established by a court order, upon the petition filed by that legal entity against whose merger resolution the action is directed, that the fact of the action having been brought does not contravene the merger's entry in the register. Unless stipulated otherwise, section 247 of the Stock Corporation Act, sections 82, 83 (1) and section 84 of the Code of Civil Procedure (*Zivilprozessordnung – ZPO*) as well as the stipulations of the Code of Civil Procedure applicable to proceedings of first instance before the regional courts are to be applied accordingly to the proceedings. A court order as defined in sentence 1 will be delivered if

1. the action is impermissible or manifestly unfounded, or
2. the plaintiff has failed to provide evidence by submitting the corresponding deeds, within one week of the petition having been served, that the plaintiff has been holding a pro-rated amount of at least EUR 1,000 since the notice convening the assembly was published, or
3. the prompt taking effect of the merger appears to take precedence because the court holds, at its discretion and conviction, that the significant disadvantages for the legal entities involved in the merger and the owners of their shares as presented by the petitioner outweigh the disadvantages the respondent stands to suffer; this does not apply if the violation of the law is particularly grave.

In urgent cases, the court order may be delivered without a hearing for oral argument being held. In general, the court order is to be delivered not later than three months after the petition has been filed; the reasons for any delays to the decision are to be provided in a court order that is not contestable. The facts and circumstances brought before the court, by reason of which the court order defined in sentence 3 may be delivered, are to be demonstrated to the satisfaction of the court. A division of the higher regional court in the judicial district of which the company has its seat decides on the petition. Transferring the matter to a judge sitting alone is ruled out; no conciliation hearing is required. The court order is contestable. Should good cause have been shown for the action, then that legal entity that has obtained the court order will be under obligation to provide compensation to the respondent for the damages that the latter has suffered as a result of the merger having been entered in the register based on the court order; no demand may be made for compensation of the damages being provided by way of removing the effects of entering the merger in the register maintained at the seat of the acquiring legal entity.

Section 17

Annexes to the application for entry in the register

(1) The following are to be attached to the application for entry in the register, as executed copies or publicly certified copies or, insofar as they need not be recorded by a notary, as the original or a copy thereof: the merger agreement; the records of the merger resolutions; the declarations of consent required by the present Act to be given by individual holders of shares, including the declarations of consent by those holders of shares who did not appear at the assembly; the merger report; the audit report; or the declarations of waiver in accordance with section 8 (3), section 9 (2), section 12 (3), section 54 (1) sentence 3 or

section 68 (1) sentence 3; as well as proof of the merger agreement, or its draft, having been forwarded in due time to the competent works council.

(2) Furthermore, a balance sheet of each of the legal entities being acquired (closing balance sheet) is to be attached to the application for entry in the register maintained at the seat of each of said legal entities. The provisions governing the annual balance sheet and its audit apply accordingly to this balance sheet. No notice by publication is required. The court maintaining the register may enter the merger in the register solely if the balance sheet has been drawn up as per a cut-off date preceding the application for entry in the register by no more than eight months.

Section 18

Firm name or name of the acquiring legal entity

(1) The acquiring legal entity may continue to use the business name of one of the legal entities being acquired, the commercial enterprise of which it is acquiring by way of the merger, either with or without attaching an addendum indicating this succession.

(2) Where a natural person holds an ownership interest in a legal entity being acquired, and such natural person will not hold any ownership interest in the acquiring legal entity, the acquiring legal entity may use the name of this holder of shares in the business name that it continues to use pursuant to subsection (1), or that it has newly created, solely if the affected holder of shares or his or her heirs have expressly agreed to such use.

(3) Where a professional partnership is involved in the merger, subsections (1) and (2) apply accordingly to the continued use of the business name or name. A business name may continue to be used as the name of a professional partnership solely subject to the prerequisites set out in section 2 (1) of the Partnership Companies Act. Section 1 (3) and section 11 of the Partnership Companies Act are to be applied accordingly.

Section 19

Entry in the register of the merger and notice by publication of same

(1) The merger may be entered in the register maintained at the seat of the acquiring legal entity only once it has been entered in the register maintained at the seat of each of the legal entities being acquired. The entry in the register maintained at the seat of each of the legal entities being acquired is to include the note that the merger will take effect only upon its being entered in the register maintained at the seat of the acquiring legal entity; this will not apply if the entries are made on the same day in the registers of all legal entities involved.

(2) The court having jurisdiction at the seat of the acquiring legal entity is to notify of its own motion the court having jurisdiction at the seat of each of the legal entities being acquired of the date on which the merger is entered in the register. Following receipt of such notification, the court having jurisdiction at the seat of each of the legal entities being acquired is to note of its own motion in the register maintained at the seat of the respective legal entity being acquired, the date on which the merger has been entered in the register maintained at the seat of the acquiring legal entity and is to forward the documents on file with it to the court having jurisdiction at the seat of the acquiring legal entity for the latter to keep safe.

(3) The court having jurisdiction at the seat of each of the legal entities involved in the merger is to publish, of its own motion and in accordance with section 10 of the Commercial Code, the entry it has made of the merger.

Section 20

Effects of the entry in the register

(1) The entry of the merger in the register maintained at the seat of the acquiring legal entity will have the following effects:

1. the assets of the legal entity being acquired including its liabilities devolve to the acquiring legal entity;
2. the legal entities being acquired cease to exist. This does not require any separate cancellation to be made;

3. the holders of shares in the legal entities being acquired become holders of shares in the acquiring legal entity; this does not apply insofar as the acquiring legal entity or a third party acting in its own name, but for the account of this legal entity, owns shares in the legal entity being acquired or insofar as the legal entity being acquired holds treasury shares or insofar as a third party acting in its own name, but for the account of said legal entity, owns shares in that legal entity. Rights of third parties to the shares in the legal entity being acquired, or to memberships in same, continue in existence, then having as their object the shares in the acquiring legal entity, or the memberships in same, instead of the shares in the legal entity being acquired, or the memberships in same.

4. It remedies the circumstances that the merger agreement has not been recorded by a notary and, as the case may be, that no declarations of consent or declarations of waiver have been made by individual holders of shares.

(2) Defects of the merger will not have repercussions on the effects of its entry in the register pursuant to subsection (1).

Section 21

Effect on contracts imposing reciprocal obligations

Where a merger results in purchase / delivery obligations, or similar obligations under contracts imposing reciprocal obligations, coinciding that, at the time of the merger, had not been completely performed by either of the parties and that are irreconcilable with each other, or the performance of each of which would impose an inequitable hardship on the acquiring legal entity, the scope of the obligations will be determined in an equitable manner, following an evaluation of the contractual rights of all parties involved.

Section 22

Protection of creditors

(1) Inasmuch as the creditors of the legal entities involved in the merger cannot demand satisfaction of their claims, security is to be provided to them, provided they file their claim in text form, citing the merits and the amount of such claim, within six months of the day on which the entry of the merger in the register maintained at the seat of that legal entity of which they are creditors has been published in accordance with section 19 (3). However, the creditors will be entitled to this right only if they demonstrate satisfactorily that the satisfaction of their receivable is jeopardised due to the merger. This right is to be indicated to the creditors in a notice published regarding the respective entry.

(2) Those creditors who are entitled to preferred satisfaction of their claims, in the event of insolvency, are not entitled to demand the provision of security out of cover funds that were created for their protection pursuant to the stipulations of the law and that are monitored by the state.

Section 23

Protection of holders of special privileges

The holders of rights in a legal entity being acquired that do not confer any voting rights, in particular the holders of shares without voting rights, of convertible bonds, of profit participating bonds, and of participatory rights, are to be granted equivalent rights in the acquiring legal entity.

Section 24

Valuation procedures used by the acquiring legal entity

The acquiring legal entity may carry in its annual balance sheets, as acquisition costs in the sense of section 253 (1) of the Commercial Code, also the values itemised in the closing balance sheet of a legal entity being acquired.

Section 25

Obligation of the administrative bodies of the legal entities being acquired to provide compensation for damages

(1) The members of the representative body and, where a supervisory body exists, the members of such supervisory body of a legal entity being acquired are under obligation, jointly and severally, to provide compensation for the damages suffered by said legal entity, the owners of its shares, or its creditors as a result of the merger. Those members of said bodies who complied with their duty to exercise skill and care in reviewing the legal entities' financial position and in concluding the merger agreement are exempted from this obligation to provide compensation.

(2) Where these claims are concerned, as well as further claims that may result from the merger, pursuant to the general provisions, for and against the legal entity being acquired, said legal entity will be considered as continuing in existence. Inasmuch, the merger does not have the effect of amalgamating the receivables and liabilities.

(3) The claims set out in subsection (1) will become statute-barred after five years following the day on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3).

Section 26

Assertion of the claim to compensation of damages

(1) The claims pursuant to section 25 (1) and (2) may be asserted only by a special representative. The court having jurisdiction at the seat of a legal entity being acquired is to appoint such a representative upon a corresponding petition having been filed by a holder of shares or by a creditor of said legal entity. Creditors will be entitled to file such a petition only if they are unable to obtain satisfaction of their claims from the acquiring legal entity. The appeal is an available remedy against the decision taken.

(2) The representative, while making reference to the purpose of his or her appointment, is to demand that the holders of shares in the affected legal entity being acquired and the creditors of same file their claims pursuant to section 25 (1) and (2) within a reasonable time limit amounting, in general, to no less than one month. Notice of such demand is to be given by publication in the Official Gazette (*Bundesanzeiger*) and, if the articles of association, the partnership agreement, or the by-laws have stipulated that the public notices of the legal entity being acquired are to be made in other publications, notice of the demand is to be published therein as well.

(3) The representative is to use the amount obtained from the assertion of the claims of a legal entity being acquired to satisfy the claims of the creditors of this legal entity, unless the claims of the creditors have been satisfied by the acquiring legal entity or unless the acquiring legal entity has provided security to said creditors. The provisions on distribution that are to be applied in the event of a legal entity being wound up that has the legal structure of the legal entity being acquired apply accordingly to the distribution. Creditors and holders of shares who have failed to file their claims in due time will not be considered in the distribution.

(4) The representative is entitled to reimbursement of his or her reasonable cash expenditures and to remuneration for his or her activities. The court determines the expenditures and the remuneration. At its sole discretion and based on the overall circumstances of the individual case concerned, the court determines the scope in which the expenditures and the remuneration are to be borne by the holders of shares and the creditors respectively involved. The appeal is an available remedy against the decision taken; the appeal on points of law is ruled out. Compulsory enforcement in accordance with the Code of Civil Procedure may be pursued upon the decision having become final and binding.

Section 27

Obligation of the administrative bodies of the acquiring legal entity to provide compensation of damages

Where claims to compensation of damages arise as a result of the merger against a member of the representative body of the acquiring legal entity or, if a supervisory body exists, against a member of the supervisory body of same, they will become statute-barred after five years from the date on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3).

Section 28

Ineffectiveness of the merger resolution adopted by a legal entity being acquired

Once the merger has been entered in the register maintained at the seat of the acquiring legal entity, any action to be brought against the merger resolution taking effect adopted by a legal entity being acquired is to be brought against the acquiring legal entity.

Section 29

Offer of compensation in the merger agreement

(1) Where a legal entity merges by way of absorption by a legal entity having a different legal form, or where a stock corporation listed on the stock exchange merges onto an unlisted stock corporation, the legal entity being acquired is to offer, in the merger agreement or in the draft of same, to each of the holders of shares who records an objection against the merger resolution adopted by the legal entity being acquired, to acquire that owner's shares or memberships in return for an adequate cash settlement; section 71 (4) sentence 2 of the Stock Corporation Act and section 33 (2) sentence 3 second half-sentence, first alternative of the Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung* – GmbHG) are not to be applied in this regard. The same applies if, in the case of a merger of legal entities having the same legal form, restrictions govern the disposition over the shares in the acquiring legal entity or memberships in same. Where the acquiring legal entity is unable, due to its legal form, to acquire its own shares or memberships in itself, the cash settlement is to be offered for the case that the holder of shares declares withdrawal from the legal entity. Any required notice by publication of the merger agreement or its draft, as the subject matter of the resolution to be adopted, must set out the wording of this offer. The acquiring legal entity is to bear the costs of a transfer.

(2) It is equivalent to the objection recorded in the sense of subsection (1) if a holder of shares who has not appeared at the assembly of the holders of shares was not admitted to said assembly, without this refusal to admit them being justified, or if the assembly has not been properly convened, or if no proper notice has been published of the subject matter of the resolution to be adopted.

Section 30

Substance of the claim to cash settlement and review of the cash settlement

(1) The cash settlement must be in keeping with the circumstances of the legal entity being acquired as given at the time the merger resolution is adopted. Section 15 (2) is to be applied accordingly to the cash settlement.

(2) In all cases, merger auditors are to review whether the cash settlement intended to be offered is adequate. Sections 10 to 12 are to be applied accordingly. The parties entitled to the compensation may waive having the review performed or the audit report drawn up; such declarations of waiver are to be recorded by a notary.

Section 31

Acceptance of the offer

The offer pursuant to section 29 may be accepted only within two months following the day on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3). Where a petition has been filed in accordance with section 34 to have the court determine the cash settlement, the offer may be accepted within two months following the day on which notice of the decision has been given by publication in the Official Gazette (*Bundesanzeiger*).

Section 32

Actions that are not an available remedy against the merger resolution

An action brought against the merger resolution taking effect adopted by a legal entity being acquired cannot be based on the offer pursuant to section 29 being inadequate, or a cash settlement not having been offered, or not in a proper manner, in the merger agreement.

Section 33

Disposal in other ways

Any restrictions in place with the legal entities involved concerning dispositions do not prevent a holder of shares, to whom the offer of compensation under section 29 is addressed, from disposing of the shares in any other way once the merger resolution has been adopted until the time limit stipulated in section 31 sentence 1 has lapsed.

Section 34

Court review of the compensation

If a holder of shares asserts that the cash settlement specified in the merger agreement, or in its draft, that was to be offered to them pursuant to section 29 has been inadequately set, then the court is to determine the adequate cash settlement, upon that owner's petition, in accordance with the provisions of the Act on Valuation Proceedings under Corporate Law. The same will apply if the cash settlement was not offered, or not offered in a proper manner.

Section 35

Designation of unknown stockholders; suspension of voting right

Inasmuch as the law stipulates that the acquiring legal entity must identify the owners of its shares, those of the stockholders of a stock corporation being acquired, or of a public partly limited partnership being acquired, who are unknown are to be designated in the merger agreement in applications for entry in a register, or when they are entered in a list of holders of shares, by setting out the aggregate portion of the company's capital stock allocable to them and the shares allocable to them following the merger; designating them in this form is permissible only for holders of shares whose shares, taken together, do not exceed one twentieth of the capital stock of the company being acquired. Where such holders of shares become known at a later time, the register entries or lists are to be corrected *ex officio*. Until such point in time, the voting right attaching to the corresponding shares in the acquiring legal entity may not be exercised.

Section 35a

Reconciliation of interests; transfer of a business

- (1) Where arrangements are made as to the reconciliation of interests in accordance with section 112 of the Works Constitution Act, whereby those employees are listed by name who, following the merger, are to be assigned to a certain business or part of a business, this assignment of employees may be reviewed by the labour court only for serious flaws.
- (2) Section 613a (1) and (4) to (6) of the Civil Code remains unaffected by the effects of a merger having been entered in the register.

Division 3

Merger by new formation

Section 36

Applicable provisions

- (1) The provisions of Division 2, to the exception of section 16 (1) and of section 27, are to be applied accordingly to the merger by new formation. The new legal entity takes the stead of the acquiring legal entity and the entry of the new legal entity in the register takes the stead of the entry of the merger in the register maintained at the seat of the acquiring legal entity.

(2) Unless the stipulations of the present Book lead to a different conclusion, the company formation rules as applying to the legal structure of the legal entity concerned apply to the formation of the new legal entity. The legal entities being acquired are equivalent to the founders. Provisions stipulating a minimum number of founders for the formation are not to be applied.

Section 37

Substance of the merger agreement

The merger agreement must include the articles of association, the partnership agreement, or the by-laws of the new legal entity or must establish them.

Section 38

Application for entry in the register of the merger and of the new legal entity

(1) The representative bodies of each of the legal entities being acquired are to file an application for the merger to be entered in the register maintained at the seat of their legal entity.

(2) The representative bodies of all legal entities being acquired are to file an application with the court, within the jurisdiction of which the new legal entity is intended to have its seat, for entry of said legal entity in the register.

Part 2 **Special provisions**

Division 1 **Merger involving partnerships**

Subdivision 1 **Merger involving civil law partnerships**

Section 39

Ineligibility for merger

A civil law partnership that has been dissolved may not be involved in a merger as the legal entity being acquired if the shareholders have agreed that a different manner of distributing the assets is to be pursued than winding up by liquidation or merging the partnership.

Section 39a **Merger report**

No merger report will be required for a civil law partnership involved in the merger if all shareholders of this company are entitled to manage its affairs.

Section 39b **Information provided to the shareholders**

The merger agreement, or its draft, and the merger report are to be forwarded to the shareholders who are excluded from the authority to manage the company's affairs; this is to be done at the latest together with the invitation convening the meeting of shareholders that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement.

Section 39c **Resolution adopted by the meeting of shareholders**

(1) The merger resolution to be adopted by the meeting of shareholders requires the consent of all shareholders in attendance; those shareholders who did not appear likewise must consent to this resolution.

(2) The articles of association may stipulate that the decision is to be taken by the majority of the shareholders. At a minimum, the majority must consist of three quarters of the votes cast.

Section 39d

Objection against the resolution adopted by the meeting of shareholders

If a shareholder of an acquiring civil law partnerships objects to the merger, then the merger is not to be effected. The same applies if the holder of shares in a legal entity being acquired objects to the merger onto a civil law partnership.

Section 39e

Audit of the merger

In the case governed by section 39c (2), the merger agreement for a civil law partnership, or the draft of such merger agreement, is to be audited pursuant to sections 9 to 12 should one of the commercial partnership's shareholders so demand within a time limit of one week after having received the documents set out in section 39b. The company will bear the costs of the audit.

Section 39f

Limitation in time of the liability of general partners

- (1) If a civil law partnership transfers its assets, by way of a merger, to a legal entity having a different legal form, whose holders of shares are not liable, without limitation, for the liabilities of this latter legal entity, then a shareholder of the civil law partnership will be liable for its obligations if they are due prior to five years lapsing after the merger and, on their basis, claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code have been established against said shareholder, or if a court enforcement action or an enforcement action by the authorities has been taken or applied for; where public-law liabilities are concerned, it suffices for an administrative decision to be issued.
- (2) The time limit commences running on the day on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3). Sections 204, 206, 210, 211 and 212 (2) and (3) of the Civil Code are to be applied accordingly.
- (3) The establishment of claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code will not be required if the shareholder has acknowledged the claim in writing.
- (4) Subsections (1) to (3) apply also if the shareholder takes up management activities in the legal entity having a different legal form.

Subdivision 2

Merger involving commercial partnerships

Section 40

Substance of the merger agreement

- (1) The merger agreement, or its draft, additionally is to determine, for each holder of shares in a legal entity being acquired, whether the position of general partner or limited partner is to be granted to said shareholder in the acquiring commercial partnership or in the new commercial partnership. In this context, the amount of the capital contribution to be made by each shareholder is to be specified.
- (2) Holders of shares in a legal entity being acquired who are not personally liable without limitation, as joint and several debtors, for that legal entity's liabilities, are to be granted the position of a limited partner. Any determinations deviating herefrom will be valid only if the holders of shares affected consent to the merger resolution that has been adopted by the legal entity being acquired.

Section 41

Objection against the resolution adopted by the meeting of shareholders

If a holder of shares in a legal entity being acquired, who is personally liable, without limitation, for that legal entity's liabilities, objects to the merger, the position of limited partner is to be granted to said owner in the acquiring commercial partnership or in the new commercial partnership; the same applies to a holder of shares in the acquiring commercial

partnership who is personally liable, without limitation, for that legal entity's liabilities, should said holder of shares object to the merger.

Section 42

Provisions to be applied accordingly

Sections 39, 39a, 39b, 39c, 39e and 39f are to be applied accordingly.

Section 43
(repealed)

Section 44
(repealed)

Section 45
(repealed)

Subdivision 3
Merger involving professional partnerships

Section 45a
Eligibility for a merger

A merger onto a professional partnership is possible only if, at the point in time at which it takes effect, all holders of shares in the legal entities being acquired are natural persons engaged in a liberal profession (section 1 (1) and (2) of the Partnership Companies Act). Section 1 (3) of the Partnership Companies Act remains unaffected.

Section 45b

Substance of the merger agreement

- (1) Additionally, the merger agreement, or its draft, is to set out the family name and first name of each holder of shares in a legal entity being acquired, as well as the profession pursued in the acquiring professional partnership and the residential address of each partner.
- (2) Section 35 is not to be applied.

Section 45c

Merger report and information provided to the partners

A merger report will be required for a professional partnership involved in the merger only if a partner is prohibited by section 6 (2) of the Partnership Companies Act from managing the affairs of the partnership. Partners prohibited from managing the affairs of the partnership are to be informed in accordance with section 39b.

Section 45d

Resolution adopted by the meeting of shareholders

- (1) The merger resolution adopted by the meeting of shareholders requires the consent of all partners in attendance; all of the partners who did not appear likewise must consent to this resolution.
- (2) The partnership agreement may stipulate that the decision be taken by the majority of the partners. At a minimum, the majority must consist of three quarters of the votes cast.

Section 45e

Applicable provisions

Sections 39 and 39f are to be applied accordingly. In the cases governed by section 45d (2), section 39e likewise is to be applied accordingly.

Division 2
Merger involving limited liability companies

Subdivision 1 Merger by absorption

Section 46

Substance of the merger agreement

(1) The merger agreement, or its draft, additionally is to determine, for each holder of shares in a legal entity being acquired, the nominal amount of the business shares that the acquiring limited liability company is to allot to that holder of shares. The nominal amount may be specified as an amount deviating from that amount that is allocable to the shares of stock in a stock corporation being acquired, or public partly limited partnership being acquired, as a pro-rated amount of its capital stock. The nominal amount must be denominated in full euros.

(2) If the business shares to be allotted are to be created by way of a capital increase and are to be endowed with other rights and obligations than the other business shares in the acquiring limited liability company, then these deviations likewise are to be established in the merger agreement or in its draft.

(3) Where it is intended to allot pre-existing business shares in the acquiring company to holders of shares in a legal entity being acquired, the holders of shares and the nominal amounts of the business shares that it is intended to allot to them must be separately specified in the merger agreement or in its draft.

Section 47

Information provided to the shareholders

The merger agreement, or its draft, and the merger report are to be sent to the shareholders at the latest together with the invitation convening the meeting of shareholders that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement.

Section 48

Audit of the merger

The merger agreement for a limited liability company, or its draft, is to be audited pursuant to sections 9 to 12 should one of the limited liability company's shareholders so demand within a time limit of one week of having received the documents set out in section 47. If a demand according to sentence 1 has been made in due time, then the audit report is to be sent to the shareholders within the time limit applying to the invitation convening the meeting of shareholders. The company is to bear the costs of the audit.

Section 49

Preparations for the meeting of shareholders

(1) In the invitation convening the meeting of shareholders that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, the managing directors are to give notice that the merger will be the subject matter of a resolution to be adopted.

(2) From the time onwards at which the meeting is convened, the annual financial statements and the management reports for the last three fiscal years of the legal entities involved in the merger are to be kept on display for inspection by the shareholders at the company's business premises.

(3) The managing directors are to inform each shareholder, upon the latter's corresponding demand and at any time, also about all of the matters of the other legal entities involved that are relevant to the merger.

Section 50

Resolution adopted by the meeting of shareholders

(1) At a minimum, the merger resolution adopted by the meeting of shareholders requires a majority of three quarters of the votes cast. The articles of association may stipulate a greater majority ratio and may impose further requirements.

(2) Where the merger impairs the minority rights protected by the articles of association that an individual shareholder of a company being acquired enjoys, or the special privileges to which individual shareholders of such a company are entitled under the articles of association as regards the management of the company, the appointment of managing directors, or as regards the right to nominate candidates for the management, the merger resolution to be adopted by this company being acquired will require the consent of these shareholders.

Section 51

Requirements of consent in special circumstances

(1) Where a limited liability company, regarding the business shares of which not all capital contributions to be paid in have been so paid in in the full amount, is involved in the merger as the acquiring legal entity, the merger resolution adopted by a legal entity being acquired requires the consent of all of the holders of shares in this legal entity in attendance at the time the resolution is adopted. Where the legal entity being acquired is a partnership having legal capacity or a limited liability company, the merger resolution requires the consent also of the shareholders who did not appear. Where a limited liability company, regarding the business shares of which not all capital contributions to be paid in have been so paid in in the full amount, is absorbed by way of a merger by a limited liability company, the merger resolution requires the consent of all shareholders of the acquiring company.

(2) Where the nominal amount of the business shares is specified, pursuant to section 46 (1) sentence 2, as an amount deviating from the amount allocable to the shares of stock, each stockholder must consent to this specification who is unable to participate with their full share.

Section 52

Application for entry in the register of the merger

In filing an application for entry in the register of the merger, the representative bodies of the legal entities involved in the merger additionally are to declare, in the case governed by section 51 (1), that the merger resolution adopted by each of the legal entities being acquired was consented to by all of the holders of shares in the respective legal entity who were in attendance when the merger resolution was adopted, and that, insofar as the legal entity being acquired is a partnership having legal capacity or a limited liability company, those of the shareholders of this company who did not appear likewise consented to said resolution. Where a limited liability company, regarding the business shares of which not all capital contributions to be paid in have been so paid in in the full amount, is absorbed by a limited liability company by way of a merger, this requires the additional declaration that all shareholders of this company have consented to the merger resolution being adopted.

Section 53

Entry in the register in the event of an increase of the nominal capital

Where the acquiring company increases its nominal capital in order to implement the merger, the merger may be entered in the register only once the increase of the nominal capital has been entered in the register.

Section 54

Merger without an increase of capital

(1) The acquiring company may not increase its nominal capital in order to implement the merger in any of the following cases:

1. it holds shares in a legal entity being acquired;
2. a legal entity being acquired holds treasury shares; or
3. a legal entity being acquired holds business shares in this company, regarding which not all capital contributions to be paid in have been so paid in in the full amount.

The acquiring company need not increase its nominal capital in either of the following cases:

1. it holds business shares of its own as treasury shares; or
2. a legal entity being acquired holds business shares in this company, regarding which the capital contributions have already been paid in in the full amount.

The acquiring company may refrain from allotting business shares if all holders of shares in a legal entity being acquired waive this being done; the declarations of waiver are to be recorded by a notary.

(2) Subsection (1) applies accordingly if the owner of the shares designated therein is a third party acting on their own behalf, but who is acting, in a case governed by subsection (1) sentence 1 no. 1 or by subsection (1) sentence 2 no. 1, for the account of the acquiring company, or who is acting, in any one of the other cases governed by subsection (1), for the account of the legal entity being acquired.

(3) Insofar as, in order to implement the merger, business shares in the acquiring company must be partitioned, which shares are held by the acquiring company itself or by a legal entity being acquired, so as to allow them to be allotted to the holders of shares in a legal entity being acquired, the stipulations of the articles of association ruling out or impeding the partitioning of the acquiring company's business shares are not to be applied; however, the nominal amount of each fraction of the business shares must be denominated in full euros. Sentence 1 applies accordingly if a third party holds the business shares who is acting in their own name, but for the account of the acquiring company or of a legal entity being acquired.

(4) Additional cash payments specified in the merger agreement may not exceed one tenth of the aggregate nominal amount of the business shares in the acquiring company that have been allotted.

Section 55

Merger with an increase of capital

(1) If, in order to implement the merger, the acquiring company increases its nominal capital, then section 55 (1), section 56a, and section 57 (2), (3) no. 1 of the Act on Limited Liability Companies are not to be applied.

(2) Besides the documents designated in section 57 (3) nos. 2 and 3 of the Act on Limited Liability Companies, the merger agreement and the records of the merger resolutions are to be attached, as executed copies or as publicly certified copies, to the application for entry of the capital increase in the register.

(3) Section 14 (2) applies accordingly to the resolution as to the capital increase under subsection (1).

Subdivision 2

Merger by new formation

Section 56

Applicable provisions

The stipulations of Subdivision 1 of this Act, to the exception of sections 51 to 53, section 54 (1) to (3), and section 55, are to be applied accordingly to the merger by new formation.

Section 57

Substance of the articles of association

The articles of association are to include any stipulations as to special benefits, formation expenses, contributions in kind, and acquisitions of assets, as have been made in the articles of association, partnership agreements, or by-laws of the legal entities being acquired.

Section 58

Report on company formation on the basis of contributions in kind

(1) The report on company formation on the basis of contributions in kind (section 5 (4) of the Act on Limited Liability Companies) also is to present the development taken by the business of the legal entities being acquired and their economic status.

(2) No report on company formation on the basis of contributions in kind need be drawn up insofar as the legal entity being acquired is a share capital company or a registered cooperative society.

Section 59
Merger resolutions

The articles of association of the new company will take effect only if the holders of shares in each of the legal entities being acquired consent to such articles by adopting the merger resolution. This applies accordingly to the appointment of the managing directors and the members of the supervisory board of the new company, inasmuch as they are to be elected by the holders of shares in the legal entities being acquired.

Division 3
Merger involving stock corporations

Subdivision 1
Merger by absorption

Section 60

Audit of the merger; appointment of the merger auditors

The merger agreement, or its draft, is to be audited for each stock corporation as provided for by sections 9 to 12. Section 9 (2) and section 12 (3) read in conjunction with section 8 (3) sentences 1 and 2 apply with the proviso that the waiver by all holders of shares in all legal entities involved is required.

Section 61
Publication of the merger agreement

The merger agreement, or its draft, is to be filed with the register prior to the general meeting that is to adopt a resolution as to the consent in accordance with section 13 (1). In the publication in accordance with section 10 of the Commercial Code, the court is to give notice that the agreement, or its draft, has been filed with the Commercial Register. The general meeting may adopt a resolution in accordance with section 13 regarding the consent to the merger agreement only after one month has lapsed since publication.

Section 62
Group mergers

(1) Where at least nine tenths of the nominal capital or of the capital stock of a share capital company being acquired are held by an acquiring stock corporation, no merger resolution need be adopted by the acquiring stock corporation where the absorption of this company being acquired is concerned. Treasury shares in the company being acquired and shares belonging to another party for the account of this company are to be set off from the nominal capital or the capital stock.

(2) Subsection (1) does not apply if stockholders of the acquiring company, the aggregate of whose shares makes up one twentieth of the capital stock of this company, demand that a general meeting be convened in which to adopt a resolution regarding the consent to the merger. The by-laws may tie the right to demand that a general meeting be convened to possession of a smaller portion of the capital stock of the acquiring company.

(3) One month prior to the day of the meeting of shareholders, or of the general meeting, of the company being acquired that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, the documents designated in section 63 (1) are to be kept on display for inspection by the stockholders at the business premises of the acquiring company. Concurrently, the management board of the acquiring company is to give notice of the impending merger in the publications of record designated by the acquiring

company and is to file the merger agreement, or its draft, with the acquiring company's register; section 61 sentence 2 is to be applied accordingly. In the notice published in accordance with the first half-sentence of sentence 2, stockholders are to be notified of their right under subsection (2). Proof of the notice having been published is to be attached to the application for entry in the Commercial Register of the merger. In filing the application for entry in the register, the management board is to declare whether an application pursuant to subsection (2) has been filed. Upon a corresponding demand being made, each stockholder of the acquiring company is to be provided, without undue delay and at no charge, with a copy of the documents designated in sentence 1. Subject to the stockholder's consent, the documents may be transmitted to the stockholder by means of electronic communication. The obligations pursuant to sentences 1 and 6 will lapse if the documents designated in sentence 1 are accessible, for the same period of time, on the company website.

(4) Where the entire nominal capital, or capital stock, of a share capital company being acquired is held by an acquiring stock corporation, no merger resolution is required to be adopted by the owner of the shares in the share capital company being acquired. Likewise, no such resolution is required in cases in which, as stipulated in subsection (5) sentence 1, a resolution as to a transfer has been adopted and entered in the Commercial Register with a note pursuant to subsection (5) sentence 7. Sections 47, 49, 61 and 63 (1) nos. 1 to 3 are not to be applied to the share capital company being acquired. Subsection (3) applies with the proviso that the obligations set out therein are to be fulfilled no later than one months prior to the day on which the merger is entered in the register of the acquiring legal entity. At the latest by this time, the obligation to forward documents set out in section 5 (3) likewise is to be fulfilled.

(5) In the cases governed by subsection (1), the general meeting of a stock corporation being acquired may adopt a resolution pursuant to section 327a (1) sentence 1 of the Stock Corporation Act within three months following the conclusion of the merger agreement if the acquiring company (principal stockholder) owns stock amounting to nine tenths of the capital stock. The merger agreement, or its draft, must include the information that it is intended to exclude the minority stockholders of the company being acquired in the context of the merger. Subsection (3) applies with the proviso that the obligations set out therein are to be fulfilled for the duration of one month following the conclusion of the merger agreement. At the latest when this time limit commences running, the obligation to forward documents set out in section 5 (3) is to be fulfilled. The merger agreement, or its draft, is to be kept on display for inspection by the stockholders as stipulated in section 327c (3) of the Stock Corporation Act. The merger agreement, or its draft, is to be included as an executed copy or as a publicly certified copy with the application for entry in the register of the resolution as to the transfer (section 327e (1) of the Stock Corporation Act). The entry in the register of the resolution as to the transfer is to include the note that it will take effect only concurrently with the entry of the merger in the register maintained at the seat of the acquiring stock corporation. In all other cases, sections 327a to 327f of the Stock Corporation Act remain unaffected.

Section 63

Preparations for the general meeting

(1) From the time onwards at which the general meeting is convened that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, but no later than from the day that is one month prior to the day of the general meeting, the following documents are to be kept on display for inspection by the stockholders at the company's business premises:

1. the merger agreement, or its draft;
2. the annual financial statements and the management reports for the last three fiscal years of the legal entities involved in the merger;

3. in the event that the last annual financial statement refers to a fiscal year that elapsed more than six months prior to the conclusion of the merger agreement, or the preparation of its draft, a balance sheet as per a cut-off date that is not earlier than the first day of the third month preceding the conclusion of the merger agreement or the preparation of its draft (interim statement of accounts);
4. the merger reports provided in accordance with section 8;
5. the audit reports provided in accordance with section 60 read in conjunction with section 12.

(2) The interim statement of accounts (subsection (1) no. 3) is to be drawn up in accordance with the principles applied in preparing the last annual balance sheet of the legal entity. No physical inventory need be taken. The valuation procedures used in the last annual balance sheet may be applied. However, depreciations, value adjustments, and reserves as given up until the cut-off date of the interim statement of accounts are to be taken into account, as well as any changes to the actual value of the assets that cannot be ascertained from the books but may have occurred by said cut-off date. Section 8 (3) sentences 1 and 2 is to be applied accordingly. An interim statement of accounts need not be drawn up either if the company has published a mid-year interim financial report pursuant to section 115 of the Securities Trading Act (WpHG) since the last annual financial statement. For the purposes of preparing for the general meeting, the mid-year interim financial report takes the stead of the interim statement of accounts.

(3) Upon a corresponding demand being made, copies of the documents designated in subsection (1) are to be provided to each stockholder without undue delay and at no charge. Subject to the stockholder's consent, the documents may be transmitted to the stockholder by means of electronic communication.

(4) The obligations pursuant to subsections (1) and (3) will lapse if the documents designated in subsection (1) are accessible, for the same period of time, on the company website.

Section 64 **Conduct of the general meeting**

(1) The documents designated in section 63 (1) are to be made accessible at the general meeting. At the outset of the meeting, the management board is to give an oral presentation of the merger agreement, or its draft, and is to inform of any significant change undergone by the company's assets since the merger agreement was concluded or its draft was drawn up. The management board likewise is to inform the representative bodies of the other legal entities involved of such changes; they in turn are to inform the holders of shares in the legal entity they represent prior to the resolution being adopted. Section 8 (3) sentences 1 and 2 is to be applied accordingly.

(2) Should any stockholder so demand at the general meeting, they are to be provided with information also about any and all matters of the other legal entities involved that are relevant to the merger.

Section 65 **Resolution by the general meeting**

(1) The merger resolution adopted by the general meeting requires a majority comprising at least three quarters of the capital stock represented at the time the resolution is adopted. The by-laws may stipulate a greater capital majority and may impose further requirements.

(2) Where several classes of stock exist, the stockholders of each class of stock who have voting rights must consent to the resolution to be adopted by the general meeting in order for it to be effective. The stockholders of each class of stock are to adopt a special resolution as to this consent. Subsection (1) applies to this special resolution.

Section 66 **Entry in the register in the event of an increase of the capital stock**

Where the acquiring company increases its capital stock in order to implement the merger, the merger may be entered in the register only after the implementation of the increase of the capital stock has been entered in the register.

Section 67

Application of the rules concerning post-formation agreements

Where the merger agreement is concluded in the first two years since entry in the register of the acquiring company, section 52 (3), (4), (6) to (9) of the Stock Corporation Act concerning post-formation agreements is to be applied accordingly. These stipulations are to have no application if the stock to be allotted makes up no more than one tenth of the capital stock of this company, or if this company has obtained its current legal form by changing its prior legal form, which was that of a limited liability company, and has been entered in the Commercial Register with that legal form for at least two years. Where the capital stock is increased in order to implement the merger, the increased capital stock is to be used as a basis for the calculations.

Section 68

Merger without an increase of capital

(1) The acquiring company may not increase its capital stock in order to implement the merger in any of the following cases:

1. it holds shares in a legal entity being acquired;
2. a legal entity being acquired holds treasury shares; or
3. a legal entity being acquired holds stock in this company, regarding which the issue price has not been paid in the full amount.

The acquiring company need not increase its capital stock in either of the following cases:

1. it holds treasury stock; or
2. a legal entity being acquired holds stock in this company, regarding which the issue price has already been paid in the full amount.

The acquiring company may refrain from allotting shares of stock if all holders of shares in a legal entity being acquired waive having this done; the declarations of waiver are to be recorded by a notary.

(2) Subsection (1) applies accordingly if the holder of the shares designated therein is a third party who is acting on their own behalf, but who is acting, in a case governed by subsection (1) sentence 1 no. 1 or by subsection (1) sentence 2 no. 1, for the account of the acquiring company, or who is acting, in any one of the other cases governed by subsection (1), for the account of the legal entity being acquired.

(3) Additional cash payments specified in the merger agreement may not exceed one tenth of the pro-rated amount of its capital stock allocable to the shares of stock in the acquiring company that have been allotted.

Section 69

Merger with capital increase

(1) If the acquiring company increases its capital stock in order to implement the merger, then section 182 (4), section 184 (1) sentence 2 sections 185, 186, 187 (1), and section 188 (2) and (3) no. 1 of the Stock Corporation Act are not to be applied; the contribution in kind is to be audited pursuant to section 183 (3) of the Stock Corporation Act only – where the legal entities being acquired have the legal form of a partnership having legal capacity or of an association having legal capacity – if assets were itemised in the closing balance sheet of a legal entity being acquired at a higher value than in its last annual balance sheet, if the values carried in a closing balance sheet are not itemised as acquisition costs in the annual balance sheets of the acquiring company, or if the court harbours doubts as to whether the

value of the contribution in kind in fact will amount to the lowest issue price of the shares of stock to be allotted in return for said contribution in kind. This will apply also in those cases in which the capital stock is increased by the issuance of new shares of stock on the basis of the authorisation pursuant to section 202 of the Stock Corporation Act. In such event, moreover, section 203 (3) of the Stock Corporation Act is not to be applied. The merger auditor may be appointed as auditor.

(2) Besides the documents designated in section 188 (3) nos. 2 and 3 of the Stock Corporation Act, the merger agreement and the records of the merger resolutions are to be attached, as executed copies or as publicly certified copies, to the application for entry in the register of the capital increase.

(3) Section 14 (2) applies accordingly to the resolution as to the capital increase under subsection (1).

Section 70

Assertion of a claim to compensation of damages

Solely those stockholders of a company being acquired who have already exchanged their shares of stock for shares in the acquiring legal entity may apply to have a special representative appointed pursuant to section 26 (1) sentence 2.

Section 71

Appointment of a trustee

(1) Each legal entity being acquired is to appoint a trustee responsible for receiving the shares of stock to be allotted and the additional cash payments to be made. The merger may be entered in the register only once the trustee has given notice to the court that the trustee has possession of the shares of stock and the additional cash payments specified in the merger agreement.

(2) Section 26 (4) is to be applied accordingly.

Section 72

Exchange of stock

(1) Section 73 (1) and (2) of the Stock Corporation Act applies accordingly to the exchange of the shares of stock in a company being acquired; in the event of shares of stock in this company being merged, section 226 (1) and (2) of the Stock Corporation Act governing the cancellation of stock applies accordingly. No approval by the court is required.

(2) Where the acquiring legal entity likewise is a stock corporation, section 73 (3) of the Stock Corporation Act furthermore applies accordingly, as does, in the case of shares of stock being merged, section 73 (4) and section 226 (3) of the Stock Corporation Act.

Section 72a

Allotment of additional shares of stock

(1) The legal entities involved may declare in the merger agreement that, instead of an additional cash payment (section 15), additional shares of stock in the acquiring company will be allotted. The claim to an allotment of additional shares of stock is not ruled out by the acquiring company having taken either of the following actions following the entry of the merger in the register:

1. transfer, as a whole or in part, of its entire assets or parts thereof, by way of a merger or a division to a stock corporation or to a public partly limited partnership or
2. obtainment of the legal form of a public partly limited partnership by way of a change of legal form.

(2) New shares of stock that were not allotted following the entry of the merger in the register in the context of a capital increase using company funds due to an inadequate share exchange ratio, as well as capital reductions effected after the entry of the merger in the register without repayment of parts of the capital stock, are to be taken into account where the claim to allotment of additional shares of stock is concerned. Pre-emptive rights to newly

issued shares of stock, for which the stockholders entitled to the allotment were not eligible in the context of an increase of the capital in return for contributions that was effected after the entry of the merger in the register due to an inadequate share exchange ratio, are to be granted to said stockholders subsequently. The stockholders entitled to the allotment must exercise their pre-emptive right to newly issued shares of stock under sentence 2 in relation to the company within one month of the decision of the court having become final and binding (section 11 (1) of the Act on Valuation Proceedings under Corporate Law).

(3) Instead of additional shares of stock, the stockholders entitled to the allotment are to be granted a compensatory additional cash payment in accordance with section 15 (1) sentence 1

1. insofar as it is impossible to arrive at an adequate share exchange ratio, despite additional shares of stock having been allotted, or
2. if the allotment of additional shares of stock has become impossible.

(4) Instead of additional shares of stock, those stockholders who have left the company, on the occasion of a measure altering its structure that was effected after entry of the merger in the register, are to be granted indemnification in money, taking account of the compensation to be granted by the company.

(5) In addition to the allotment of additional shares of stock, the stockholders entitled to the allotment are to be granted indemnification in money for profits or for an appropriate compensation as defined in section 304 of the Stock Corporation Act, insofar as these were not distributed or paid because of an inadequate share exchange ratio.

(6) The following claims of the stockholders entitled to the allotment are to bear annual interest at five percentage points above the basic rate of interest defined in section 247 of the Civil Code:

1. the claim to an allotment of additional shares of stock in accordance with subsections (1) and (2), based on the amount owed in the event of an additional cash payment under section 15 (1) and (2) sentence 1 once three months have lapsed after the decision handed down by the court (section 11 (1) of the Act on Valuation Proceedings under Corporate Law),
2. the claim to an additional cash payment being granted in accordance with subsection (3) from the date of entry of the merger in the register,
3. the claims to indemnification in money in accordance with subsections (4) and (5) from that point in time onwards at which the compensation or the claim to distribution of profits or the recurrent performance would have become due.

In the cases governed by section 72b, interest ceases to accrue as soon as the trustee has taken receipt, as set out in section 72b (3), of the shares of stock, the additional cash payment or the indemnification in money.

(7) Subsections (1) to (6) do not rule out the assertion of a further damage. The company bears the risk of procuring the shares of stock to be allotted additionally.

Section 72b

Increase of the capital for purposes of allotting additional shares of stock

(1) The shares of stock to be allotted additionally in accordance with section 72a (1) sentence 1 and (2) sentence 1 may be created, under the terms of subsections (1) to (4), by an increase of the capital in return for contributions in kind. The subject matter of the contribution in kind is the claim held by the entitled stockholders to the allotment of additional shares of stock that has been established by a court decision (section 11 (1) of the Act on Valuation Proceedings under Corporate Law) or a court settlement (section 11 (2) to (4) of the Act on Valuation Proceedings under Corporate Law); the claim expires upon the implementation of the increase of the capital having been entered in the register (section 189 of the Stock Corporation Act). Where the claim is established by a court decision (section 11

(1) of the Act on Valuation Proceedings under Corporate Law), the contribution in kind cannot be made prior to the court decision having become final and binding.

(2) Instead of the specifications set out in section 183 (1) sentence 1 and section 205 (2) sentence 1 of the Stock Corporation Act, the following suffices:

1. the determination that what is being contributed are the claims to the allotment of additional shares of stock enjoyed by the entitled stockholders, which claims have been established on the basis of the court decision, which is to be designated, or on the basis of the settlement recorded by a court, which is to be designated, as well as
2. the specification of the nominal amount to be allotted on the basis of the court decision or of the court settlement, and in the case of no-par-value shares of stock, the number of shares of stock to be allotted.

Section 182 (4) as well as sections 186, 187 and 203 (3) of the Stock Corporation Act are not to be applied.

(3) The acquiring company is to appoint a trustee. The trustee is authorised to take the following measures in their own name:

1. to assign the claims to allotment of additional shares of stock to the acquiring company,
2. to subscribe to the shares of stock to be additionally allotted,
3. to take receipt of the shares of stock, additional cash payments and indemnifications in money to be additionally allotted or granted under section 72a, as well as
4. to make all declarations that are to be made by the stockholders entitled to the allotment insofar as they are required for the acquisition of the shares of stock.

Section 26 (4) is to be applied accordingly.

(4) The applications for entry in the register in accordance with sections 184 and 188 of the Stock Corporation Act are to be accompanied by executed copies or publicly certified copies of the court decision or the settlement recorded by the court showing the nominal amount to be granted additionally or, in the case of no-par-value shares of stock, the number of shares of stock to be allotted additionally. Section 188 (3) no. 2 of the Stock Corporation Act is not to be applied.

(5) Section 182 (4) as well as sections 186, 187 and 203 (3) of the Stock Corporation Act are not to be applied to increases of the capital that are implemented in order to allot additional shares of stock on the basis of pre-emptive rights to newly issued shares of stock exercised in accordance with section 72a (2) sentence 3.

(6) Section 14 (2) applies accordingly to the resolution as to the capital increase under subsection (1).

Subdivision 2 **Merger by new formation**

Section 73 **Applicable provisions**

The stipulations of Subdivision 1, to the exception of sections 66, 68 (1) and (2), and section 69, are to be applied accordingly to mergers by new formation.

Section 74 **Substance of the by-laws**

The by-laws are to be established such that they include any stipulations as to special benefits, formation expenses, contributions in kind, and acquisitions of assets, as may have been made in the various articles of association, partnership agreements, or by-laws of the

legal entities being acquired. Section 26 (4) and (5) of the Stock Corporation Act remains unaffected.

Section 75

Formation report and audit of the formation

(1) The formation report (section 32 of the Stock Corporation Act) also is to present the development taken by the business of the legal entities being acquired and their economic status. The merger auditor may be appointed as formation auditor (section 33 (2) of the Stock Corporation Act).

(2) Should the legal entity being acquired be a share capital company or a registered cooperative society, no formation report is required, nor any audit of same.

Section 76

Merger resolutions

The by-laws of the new company will take effect only if the holders of shares in each of the legal entities being acquired consent to such by-laws by adopting the merger resolution. This applies accordingly to the appointment of the members of the supervisory board of the new company, inasmuch as they are to be elected pursuant to section 31 of the Stock Corporation Act. Section 124 subsection (2) sentence 3 and subsection (3) sentences 1 and 3 of the Stock Corporation Act is to be applied accordingly to a stock corporation being acquired.

Section 77 (repealed)

Division 4

Merger involving public partly limited partnerships

Section 78

Applicable provisions

The provisions of Division 3 are to be applied accordingly to mergers involving public partly limited partnerships. The public partly limited partnership and the general partners authorised to represent it take the stead of the stock corporation and its management board. The merger resolution requires the consent also of the general partners; the by-laws of the public partly limited partnership may stipulate that the decision must be taken by the majority of these shareholders. In their relationship to each other, stock corporations and public partly limited partnerships are not deemed legal entities having a different legal form in the sense of sections 29 and 34.

Division 5

Merger involving registered cooperative societies

Subdivision 1 **Merger by absorption**

Section 79

Eligibility for a merger

A legal entity having a different legal form may be merged with a registered cooperative society by way of absorption only if any modification of the acquiring cooperative society's by-laws that may be required is resolved upon concurrently with the merger.

Section 80

Substance of the merger agreement in the case of absorption by a cooperative society

(1) The merger agreement for mergers by way of absorption by a registered cooperative society, or its draft, is to set out the following in specifying the share exchange ratio (section 5 (1) no. 3):

1. that each member of a cooperative society being acquired will obtain an ownership interest of one business share in the acquiring cooperative society, provided that the by-laws of said cooperative society do not allow ownership interests to comprise more than one business share; or
2. that each member of a cooperative society being acquired will obtain an ownership interest of at least one business share in the acquiring cooperative society and in all other cases will obtain an ownership interest comprising as many business shares in the acquiring cooperative society as are to be regarded as having been fully paid in when the amount of the member's capital contribution to the cooperative society being acquired is credited, provided that the by-laws of the acquiring cooperative society allow a member to obtain an ownership interest comprising several business shares or obligate the members to assume several business shares; the merger agreement, or its draft, may provide for a different calculation of the number of the business shares to be allotted.

In the case of mergers by way of a legal entity having a different legal form being absorbed by a registered cooperative society, the merger agreement, or its draft, additionally is to cite, for each holder of shares in such legal entity, the amount of the respective business share and the number of business shares comprising their ownership interest in the cooperative society.

(2) The merger agreement, or its draft, is to cite the cut-off date of the closing balance sheet for each cooperative society being acquired.

Section 81

Expert report of the confederation responsible for auditing cooperative societies

- (1) Prior to the general assembly being convened that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, an expert opinion is to be obtained from the confederation responsible for auditing cooperative societies regarding each of the cooperative societies involved, said expert opinion determining whether the merger is reconcilable with the interests of the respective cooperative society's members and creditors (audit opinion). The audit opinion may be drawn up also as a common audit opinion for several cooperative societies involved.
- (2) Where the pre-requisites set out in Article 25 (1) of the Introductory Act of the Commercial Code in the version of Article 21 section 5 (2) of the Act of 25 July 1988 (published in the Federal Law Gazette I, p. 1093) are met, the audit of the merger (sections 9 to 12) regarding the legal entities set out therein also may be performed by the confederation responsible for auditing cooperative societies that has jurisdiction.

Section 82

Preparations for the general assembly

- (1) From the time onwards at which the general assembly is convened that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, the documents designated in section 63 (1) nos. 1 to 4 as well as the audit opinions drawn up pursuant to section 81 are to be kept on display for inspection by the members also at the business premises of each cooperative society involved. Any interim statements of accounts required for this purpose are to be drawn up pursuant to section 63 (2) sentences 1 to 4.
- (2) Upon a corresponding demand being made, each member is to be provided with a copy of the documents designated in subsection (1) without undue delay and at no charge.
- (3) The obligations under subsection (1) sentence 1 and under subsection (2) will lapse if the documents designated in subsection (1) sentence 1 are accessible, for the same period of time, on the website of the cooperative society.

Section 83

Conduct of the general assembly

- (1) At the general assembly, the documents designated in section 63 (1) nos. 1 to 4 as well as the audit opinions drawn up pursuant to section 81 are to be kept on display for

inspection. At the outset of the meeting, the management board is to give an oral presentation of the merger agreement, or its draft. Section 64 (2) is to be applied accordingly.

(2) The audit opinion drawn up regarding the cooperative society that is to adopt the resolution is to be read out to the general assembly. The confederation responsible for auditing cooperative societies is entitled to participate in the general assembly in an advisory capacity.

Section 84

Resolution adopted by the general assembly

The merger resolution adopted by the general assembly requires a majority of three quarters of the votes cast. The by-laws may stipulate a greater majority ratio and may impose further requirements.

Section 85

Improvement of the exchange ratio

(1) Section 14 (2) and section 15 are not to be applied to members of an acquiring cooperative society.

(2) Where cooperative societies merge with one another, section 15 is to be applied only if and insofar as the amount of a member's capital contribution to the acquiring cooperative society is lower than the amount of the member's capital contribution to the cooperative society being acquired.

(3) The claim pursuant to section 15 may also be fulfilled by correspondingly crediting the amount of the member's capital contribution, insofar as the aggregate amount of the member's business shares in the acquiring cooperative society is not exceeded.

Section 86

Annexes to the application for entry in the register

(1) Besides the documents usually required for this purpose, the original or a publicly certified copy of the audit opinion drawn up for the cooperative society filing the application is to be attached to the application for entry in the register of the merger.

(2) Furthermore, the original or a publicly certified copy of any other audit opinion drawn up for a cooperative society being acquired is to be attached to the application for entry in the register maintained at the seat of the acquiring legal entity.

Section 87

Exchange of shares

(1) As a result of the merger, each member of a cooperative society being acquired will hold an ownership interest in the acquiring legal entity in accordance with the merger agreement. Any obligation to assume further business shares in an acquiring cooperative society remains unaffected. Any rights third parties may have to the amounts of the members' capital contributions to a cooperative society being acquired continue in force and have as their object the shares in the acquiring legal entity having a different legal form, or the memberships in same, instead of the business shares in the cooperative society being acquired. Any rights third parties may have to the shares in the legal entity being acquired, or to memberships in same, continue in force and have as their object the amounts of the members' capital contributions obtained in the acquiring cooperative society.

(2) Where the amount of the capital contribution that a given member held in a cooperative society being acquired exceeds the aggregate amount of business shares comprising that member's ownership interest in an acquiring cooperative society pursuant to subsection (1), the surplus is to be disbursed to the member after six months have lapsed since the day on which the entry of the merger in the register maintained at the seat of the acquiring cooperative society has been published in accordance with section 19 (3); however, no such disbursement may be effected before the creditors who have filed their claims pursuant to section 22 have been satisfied or have had security provided to them. Additional cash

payments specified in the merger agreement may not exceed one tenth of the aggregate nominal amount of the business shares in the acquiring cooperative society that have been allotted.

(3) The closing balance sheet of the cooperative society being acquired governs in calculating the amount of the capital contribution to which a given member of said cooperative society being acquired was entitled.

Section 88

Amounts of the members' capital contributions where share capital companies or associations having legal capacity are absorbed

(1) Where a share capital company is involved in the merger as the legal entity being acquired, each of the holders of shares in this company is to be credited with the value of the business shares, or shares of stock, comprising their ownership share in the company being acquired as the amount of their capital contribution to the acquiring cooperative society. The closing balance sheet of the company being acquired governs in determining the value of this ownership interest. Where the amount of the capital contribution that a given member has obtained as a result of the merger exceeds the aggregate amount of the business shares comprising that member's ownership interest in the acquiring cooperative society, the surplus is to be disbursed to the member after six months have lapsed since the day on which the entry of the merger in the register maintained at the seat of the acquiring cooperative society has been published in accordance with section 19 (3); however, no such disbursement may be effected before the creditors who have filed their claims pursuant to section 22 have been satisfied or have had security provided to them.

(2) Where an association having legal capacity is involved in the merger as a legal entity being acquired, the maximum amount that may be credited to each member of said association as the amount of their capital contribution to the acquiring cooperative society is the nominal amount of the business shares comprising that member's ownership interest in the acquiring cooperative society.

Section 89

Entry in the list of members of the cooperative society's members; notification

(1) Following entry of the merger in the register maintained at the seat of the acquiring cooperative society, the acquiring cooperative society is to register each new member in the list of members without undue delay and is to notify said members of this fact without undue delay. Furthermore, the acquiring cooperative society is to enter in said list the number of business shares held by the respective member wherever a member holds an ownership interest comprising more than one business share.

(2) The acquiring cooperative society is to notify each holder of shares in a legal entity being acquired, and in the case of unknown stockholders the trustee of the company being acquired, of the following, doing so without undue delay and in text form:

1. the amount of the respective member's capital contribution to the acquiring cooperative society;
2. the amount of the respective member's business share in the acquiring cooperative society;
3. the number of business shares comprising the ownership interest held by the holder of shares in the acquiring cooperative society;
4. the amount that, after the amount of the member's capital contribution has been credited, the member is to pay in, or the amount that is to be disbursed to the member pursuant to section 87 (2) or pursuant to section 88 (1); as well as
5. the liability amount of the acquiring cooperative society, should its members have to provide additional funding up to a liability amount.

Section 90

Rejection of shares or memberships by individual holders of shares

(1) Sections 29 to 34 are not to be applied to members of a cooperative society being acquired.

(2) Shares of the acquiring legal entity, and memberships therein, resulting from the effects of the merger will be deemed to not have been acquired if a given member rejects them.

(3) Each member of a cooperative society being acquired will have the right to reject shares or memberships at the general assembly or, if they are a representative, at the assembly of representatives that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, if:

1. they appear at such assembly and state for the record that they object to the merger resolution; or if
2. they do not appear because they have not been admitted to the assembly, without this refusal to admit them being justified, or because the assembly has not been properly convened, or because no proper notice has been published regarding the subject matter of the resolution to be adopted.

Where the merger resolution of a cooperative society being acquired is adopted by an assembly of representatives, any other member of said cooperative society that is not a representative at the time the resolution is adopted likewise is entitled to the right of rejection.

Section 91

Formal requirements and deadlines applying to the rejection

(1) The rejection is to be declared in writing to the acquiring legal entity.

(2) The rejection may be declared only within six months following the day on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3).

(3) The rejection may not be declared subject to a condition being met or subject to a period of time elapsing.

Section 92

Entry of the rejection in the list of members

(1) The acquiring cooperative society is to enter each instance in which shares or memberships are rejected in the list of members without undue delay and is to notify the member of such entry without undue delay.

(2) The rejection will take effect at that point in time at which the declaration of rejection is received by the acquiring legal entity.

Section 93

Distribution of assets

(1) The acquiring legal entity is to distribute the assets between itself and any former member whose participation in the acquiring legal entity is deemed to not have been acquired under section 90 (2). The closing balance sheet of the cooperative society being acquired governs.

(2) This member may demand that the capital contribution thus far comprising their ownership interest in the cooperative society being acquired be disbursed to them; subject to the stipulations of section 73 (3) of the Trade & Industrial Cooperative Societies Act (*Genossenschaftsgesetz* – GenG), such member will not participate in the reserves and the other assets of the cooperative society being acquired even if, in the course of the merger, such reserves and other assets are attributed to the amounts of the capital contributions of other members who have not exercised their right of rejection.

(3) Where the amounts of the members' capital contributions and the reserves itemised in the closing balance sheet of a cooperative society being acquired are not sufficient to cover a loss reported in said balance sheet, the acquiring legal entity may demand of the former

member, whose participation is deemed to not have been acquired, that such member pay a pro-rated portion of the deficiency, if and insofar as this member were obligated to provide additional funding to the cooperative society being acquired were this cooperative society to become insolvent. Unless the by-laws of the cooperative society being acquired stipulate otherwise, the pro-rated portion of the deficiency is calculated based on the number of members that the cooperative society being acquired has.

(4) (repealed)

Section 94

Disbursement of the credit balance resulting from the distribution of assets

Claims to disbursement of the amount of a capital contribution pursuant to section 93 (2) are to be satisfied within six months of the rejection; however, no such disbursement may be effected before the creditors who have filed their claims pursuant to section 22 have been satisfied or have had security provided to them, nor may it be effected before six months have lapsed since the day on which the entry of the merger in the register maintained at the seat of the acquiring legal entity has been published in accordance with section 19 (3).

Section 95

Continuance of the obligation to provide additional funding

(1) Where the liability amount of an acquiring cooperative society is lower than it was for a cooperative society being acquired, or where the holders of shares in the acquiring legal entity are not all liable, without limitation, to the creditors of said acquiring legal entity, those of the holders of shares who were members of the cooperative society being acquired are to provide, in order to satisfy the creditors of the cooperative society being acquired, further additional funding up to the liability amount of the cooperative society being acquired, if the creditors who have filed their claims pursuant to section 22 cannot obtain satisfaction or security for the receivable from the additional funding called from the members and thus must rely on the further additional funding to be so provided. Sections 105 to 115a of the Trade & Industrial Cooperative Societies Act apply accordingly to the calls for additional funding.

(2) Subsection (1) applies only if insolvency proceedings are opened against the assets of the acquiring legal entity within two years of the day on which the entry of the merger in the register maintained at the seat of this legal entity has been published in accordance with section 19 (3).

Subdivision 2

Merger by new formation

Section 96

Applicable provisions

The stipulations of Subdivision 1 are to be applied accordingly to the merger by new formation.

Section 97

Obligations of the representative bodies of the legal entity being acquired

- (1) The by-laws of the new cooperative society are to be established by the entirety of the members of the representative body of each of the legal entities being acquired, who all are to sign it.
- (2) The representative bodies of all legal entities being acquired are to appoint the initial supervisory board of the new cooperative society. The same applies to the appointment of the initial management board, unless the by-laws of the new cooperative society stipulate a different form of appointing the board of directors than the election by the general assembly.

Section 98

Merger resolutions

The by-laws of the new cooperative society will take effect only if the holders of shares in each of the legal entities being acquired consent to it by adopting the merger resolution. This applies accordingly to the appointment of the members of the management board and of the supervisory board of the new cooperative society; however, it will apply to the appointment of the management board only if said management board has been appointed by the representative bodies of all legal entities being acquired.

Division 6 **Merger involving associations having legal capacity**

Section 99 **Eligibility for a merger**

(1) An association having legal capacity may be involved in a merger only if this is not contravened by the by-laws of the association or by the stipulations of *Land* law.
(2) A registered association may not absorb any legal entities having a different legal form by way of a merger, nor may a registered association be established by way of such legal entities merging.

Section 100 **Audit of the merger**

The merger agreement for a commercial association, or its draft, is to be audited as stipulated in sections 9 to 12. For a registered association, this audit will be required only if a minimum of ten percent of the members demands in text form that such an audit be performed.

Section 101 **Preparations for the meeting of members**

(1) From the time onwards at which the meeting of members is convened that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, the documents designated in section 63 (1) nos. 1 to 4, as well as any audit report that may be required pursuant to section 100, are to be kept on display for inspection by the members at the business premises of the association. Any interim statements of accounts required for this purpose are to be drawn up in accordance with section 63 (2) sentences 1 to 4.
(2) Upon a corresponding demand being made, each member is to be provided with a copy of the documents designated in subsection (1) without undue delay and at no charge.

Section 102 **Conduct of the meeting of members**

At the meeting of members, the documents designated in section 63 (1) nos. 1 to 4 as well as the audit report that may be required pursuant to section 100 are to be kept on display. Section 64 subsection (1) sentence 2 and subsection (2) is to be applied accordingly.

Section 103 **Resolution adopted by the meeting of members**

The merger resolution adopted by the meeting of members requires a majority of three quarters of the votes cast. The by-laws may stipulate a greater majority ratio and may impose further requirements.

Section 104 **Notice by publication of the merger**

(1) Where a commercial association being acquired has not been entered in a Commercial Register, its management board is to give notice of the impending merger by publication in the Official Gazette (*Bundesanzeiger*). The notice by publication in the Official Gazette takes the stead of an entry being made in the register. It is to include the note that the merger will take effect only upon its being entered in the register maintained at the seat of the acquiring legal entity. Sections 16 and 17 (1) as well as section 19 subsection (1) sentence 2 and

subsections (2) and (3) are not to be applied inasmuch as these provisions concern the application for entry in the register of an association being acquired and its entry in same. (2) The closing balance sheet of such association being acquired is to be attached to the application for entry in the register maintained at the seat of the acquiring legal entity.

Section 104a

Ineligibility for cash settlement in certain cases

Sections 29 to 34 are not to be applied to the merger of a registered association that is released, pursuant to section 5 (1) no. 9 of the Corporation Tax Act (*Körperschaftsteuergesetz* – KöStG), from the obligation to pay corporation income tax.

Division 7

Merger of confederations responsible for auditing cooperative societies

Section 105

Eligibility for a merger

Confederations responsible for auditing cooperative societies may merge only with one another. Furthermore, a confederation responsible for auditing cooperative societies may absorb, as an acquiring confederation, an association having legal capacity, provided that the latter meets the pre-requisites set out in section 63b (2) of the Trade & Industrial Cooperative Societies Act and furthermore provided that the authority named in section 107 (2) has consented to the merger agreement.

Section 106

Preparations for the meeting of members, conduct of same, and adoption of resolutions by same

Sections 101 to 103 are to be applied accordingly to the preparations for the meeting of members, the conduct of said meeting of members, and the adoption of resolutions by same.

Section 107

Obligations of the management boards

- (1) The management boards of both confederations are to apply jointly and without undue delay, insofar as their respective confederation has been entered in a register, for the merger to be entered in the register maintained at the seat of each confederation. Where the confederation being acquired has not been entered in a register, section 104 is to be applied accordingly.
- (2) Furthermore, the management boards are to jointly notify the supreme authorities at the *Land* level competent for conferring the right to perform audits that the merger has been entered in the register, and are to do so without undue delay.
- (3) The management board of the acquiring confederation is to notify the members of the entry in the register without undue delay.

Section 108

Resignation by members of the confederation being acquired

Where a former member of the confederation being acquired resigns from the acquiring confederation in accordance with section 39 of the Civil Code, any stipulations of the acquiring confederation's by-laws requiring, as per section 39 (2) of the Civil Code, a period of notice that is longer than until the end of the fiscal year are not to be applied.

Division 8

Merger of mutual insurance companies

Subdivision 1

Eligibility for a merger

Section 109

Legal entities eligible for merger

Mutual insurance companies may merge only with one another. Furthermore, they may be absorbed by way of a merger by a stock corporation that has at its business purpose the implementation of insurance transactions (insurance stock corporation).

Subdivision 2
Merger by absorption

Section 110
Substance of the merger agreement

Where solely mutual insurance companies are involved in the merger, the merger agreement, or its draft, need not set out the information required by section 5 (1) nos. 3 to 5 and 7.

Section 111
Notice by publication of the merger agreement

The merger agreement, or its draft, is to be filed with the register prior to the most senior representative committee being convened that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement. In its publication in accordance with section 10 of the Commercial Code, the court is to give notice of the fact that the agreement, or its draft, has been filed with the Commercial Register.

Section 112
Preparations for the assembly of the most senior representative committee, conduct of same, and adoption of resolutions by same

- (1) From the time onwards at which the assembly of the most senior representative committee is convened that is to adopt a resolution in accordance with section 13 (1) regarding the consent to the merger agreement, the documents designated in section 63 (1) are to be kept on display for inspection by the members at the business premises of the mutual insurance company. Any interim statements of accounts required for this purpose are to be drawn up in accordance with section 63 (2) sentences 1 to 4.
- (2) At the assembly of the most senior representative committee, the documents designated in section 63 (1) are to be kept on display. Section 64 (1) sentence 2 and subsection (2) is to be applied accordingly.
- (3) The merger resolution adopted by the most senior representative committee requires a majority of three quarters of the votes cast. The by-laws may stipulate a greater majority ratio and may impose further requirements.

Section 113
No court review

Where solely mutual insurance companies are involved in the merger, no court review is performed of the exchange ratio applicable to the memberships.

Subdivision 3
Merger by new formation

Section 114
Applicable provisions

Unless the following provisions lead to a different conclusion, the stipulations of Subdivision 2 are to be applied accordingly to mergers by new formation.

Section 115

Appointment of the representative bodies of the mutual insurance companies

The management boards of the mutual insurance companies being acquired are to appoint the initial supervisory board of the new legal entity and the auditor for the first fiscal year, be this a complete or incomplete fiscal year. The appointment must be recorded by a notary. The supervisory board appoints the initial management board.

Section 116

Resolutions adopted by the most senior representative committees

(1) The by-laws of the new legal entity and the appointment of the members of its supervisory board require the mutual insurance companies being acquired to consent to them by merger resolution. Sections 76 and 112 (3) are to be applied accordingly.

(2) The publication giving notice of the agenda of a mutual insurance company is to include a notice outlining the substance of the merger agreement. In said notice, the management board and the supervisory board are to submit their proposals for resolutions to be adopted; where members of the supervisory board and auditors are to be elected, the supervisory board alone will submit such proposals. Where the supervisory board is to include members delegated by the employees, any resolutions adopted by the supervisory board concerning nominations for the election of members of the supervisory board require solely the majority of the votes cast by the members of the supervisory board delegated by the members of the mutual insurance company.

Section 117

Inception of the new mutual insurance company; notice by publication

Prior to entry in the register, a mutual insurance company does not exist as such. Anyone acting in the name of the mutual insurance company prior to its having been entered in the register will be personally liable; where several individuals act in this way, they will be jointly and severally liable.

Subdivision 4

Merger of smaller mutual insurance companies

Section 118

Applicable provisions

The stipulations of Subdivisions 2 and 3 are to be applied accordingly to the merger of smaller mutual insurance companies as defined in section 210 of the Act on the Supervision of Insurance Companies (*Versicherungsaufsichtsgesetz* – VAG). Where smaller mutual insurance companies are concerned, the application filed with the supervisory authority for approval takes the stead of the application for entry in the register, while the notice by publication in the Official Gazette (*Bundesanzeiger*) in accordance with section 119 takes the stead of the entry in the register and its publication.

Section 119

Notice by publication of the merger

As soon as the merger has been approved by all of the supervisory authorities involved, the supervisory authority competent for the acquiring smaller mutual insurance company will publish the merger and its approval by a corresponding notice in the Official Gazette (*Bundesanzeiger*); where the merger took place by way of new formation of a smaller mutual insurance company, the supervisory authority competent for the new mutual insurance company will so publish the merger and its approval by a corresponding notice in the Official Gazette.

Division 9

Merger of share capital companies with the assets of a sole shareholder

Section 120

Eligibility for a merger

(1) Where it is not possible to implement a merger pursuant to the provisions set out in Divisions 1 to 8, a share capital company may be merged, by way of absorption, with the assets of a shareholder or of a stockholder, provided that all business shares or all shares of stock in the company are held by the shareholder or stockholder.

(2) Where the share capital company holds treasury shares, they are attributed to the shareholder or stockholder in establishing whether the pre-requisites for the merger are met.

Section 121

Applicable provisions

The provisions of Part 1 and Part 2 governing companies having the legal form of a share capital company are to be applied to same.

Section 122

Entry in the Commercial Register

(1) A sole shareholder or sole stockholder not yet entered in the Commercial Register is to be entered in the Commercial Register pursuant to the stipulations of the Commercial Code; section 18 (1) remains unaffected.

(2) Where an entry in the register is not an available measure, the effects set out in section 20 are achieved by the merger being entered in the register maintained at the seat of the share capital company being acquired.

Book 3

Division

Part 1

General provisions

Division 1

Eligibility for division

Section 123

Types of divisions

(1) A legal entity (legal entity being acquired) may fully divide up its assets, whereby it is dissolved without being wound up,

1. for purposes of absorption, by simultaneously transferring the parts of the assets, in each case as a whole, to other legal entities already in existence (acquiring legal entities) or
2. for purposes of new formation, by simultaneously transferring the parts of the assets, in each case as a whole, to other legal entities that have been new in this way by said legal entity,

in return for shares in this legal entity being allotted, or memberships in same being granted, to the holders of shares in the legal entity being acquired (full division).

(2) A legal entity (legal entity being acquired) may separate out a part, or several parts, from its assets

1. for purposes of absorption, by transferring this part or these parts, in each case as a whole, to one or several legal entities already in existence (acquiring legal entities) or
2. for purposes of new formation by transferring this part or these parts, in each case as a whole, to one or several legal entities that have been new in this way by said legal entity

in return for shares in this legal entity or these legal entities being allotted, or memberships in same being granted, to the holders of shares in the legal entity being acquired (partial division).

(3) A legal entity (legal entity being acquired) may divide a part, or several parts, of its assets by separation

1. for purposes of absorption, by transferring this part or these parts, in each case as a whole, to one or several legal entities already in existence (acquiring legal entities) or

2. for purposes of new formation by transferring this part or these parts, in each case as a whole, to one or several legal entities that have been new in this way by the legal entity being acquired

in return for shares in this legal entity or these legal entities being allotted, or memberships in same being granted, to the legal entity being acquired (division by separation).

(4) The division may also be effected by a simultaneous transfer to existing and new legal entities.

Section 124

Legal entities eligible for division

(1) The legal entities set out in section 3 (1) may be involved in a full division or a partial division as legal entities being acquired, as acquiring legal entities, or as new legal entities, while commercial associations may be involved in a full division or a partial division as legal entities being acquired; the legal entities set out in section 3 (1) may be involved in a division by separation as legal entities being acquired, as acquiring legal entities, or as new legal entities, while commercial associations, sole traders, foundations, as well as local government bodies or networks of local government bodies that are not local government bodies may be involved as legal entities being acquired.

(2) Section 3 (3) and (4) is to be applied accordingly to the division.

Section 125

Applicable provisions

Unless the stipulations of the present Book lead to a different conclusion, the provisions of Book 2 are to be applied to the division with the following exceptions:

1. to the exception of section 62 (5),
2. in the case of full divisions, to the exception of sections 9 (2) and 12 (3), in each case read in conjunction with section 8 (3) sentence 3 no. 1 letter (a),
3. in the case of partial divisions and divisions by separation, to the exception of section 18,
4. in the case of divisions by separation, to the exception of sections 29 to 34, of section 54 (1) sentence 1, section 68 (1) sentence 1 and section 71, and for the holders of shares in the legal entity being acquired, to the exception of section 14 (2) and of section 15.

In the case of divisions by separation, no audit in the sense of sections 9 to 12 is performed. In the case of partial divisions, section 133 is to be applied for the liability provided for in section 29.

(2) The legal entity being acquired takes the stead of the legal entities being acquired, while the acquiring legal entities or new legal entities will, if appropriate, take the stead of the acquiring legal entity or new legal entity.

Division 2

Division for purposes of absorption

Section 126

Substance of the division and takeover agreement

(1) The division and takeover agreement or its draft at a minimum must set out the following information:

1. the names or the business names and the seats of the legal entities involved in the division;

2. the agreement as to the transfer of the parts of the assets of the legal entity transferring said assets, in each case as a whole, in return for shares in the acquiring legal entities being allotted, or memberships in same being granted;
3. in the case of full divisions and partial divisions: the share exchange ratio and, if applicable, the amount of the additional cash payment, or information regarding the membership in the acquiring legal entities;
4. in the case of full divisions and partial divisions: the details regarding the allotment of the shares in the acquiring legal entities, or details concerning the acquisition of membership in the acquiring legal entities;
5. the point in time from which said shares or memberships will grant an entitlement to a portion of the net income for the year, as well as any special conditions affecting that entitlement;
6. the point in time from which the actions taken by the legal entity being acquired will be deemed to have been taken for the account of each of the acquiring legal entities (cut-off date for the division);
7. the rights conferred by the acquiring legal entities upon individual holders of shares as well as upon the holders of special privileges, such as shares without voting rights, preferred stock, multiple voting stock, debt securities, and participatory rights, or the measures intended for these persons;
8. any special advantage granted to a member of a representative body or of a supervisory body of the legal entities involved in the division, to a managing shareholder, a partner, an auditor, or an auditor responsible for auditing the division;
9. the exact designation and distribution of the items making up the assets and liabilities that are transferred to each of the acquiring legal entities, as well as the exact designation and allocation of the businesses or parts of businesses that will devolve upon the acquiring legal entities, assigning such items in each case to the respective acquiring legal entities;
10. in the case of full divisions and partial divisions: the distribution of the shares or memberships in each of the legal entities involved among the holders of shares in the legal entity being acquired, as well as the measure applying to such distribution;
11. the implications of the division for the employees and the bodies representing them, as well as the measures intended to be taken in that regard.

(2) Insofar as, in the case of singular succession, the general provisions have determined a particular manner of designating the items to be transferred, these provisions will also apply to the designation of the items making up the assets and liabilities (subsection (1) no. 9). Section 28 of the Land Register Ordinance (*Grundbuchordnung* – GBO) is to be complied with. In all other cases, reference may be made to deeds such as balance sheets and inventory lists, the content of which allows the individual item to be properly assigned; said deeds are to be attached as annexes to the division and takeover agreement.

(3) At the latest one month prior to the date of the assembly of the holders of shares in each legal entity involved, such assembly to adopt a resolution regarding the consent to the division and takeover agreement as set out in section 125 read in conjunction with section 13 (1), the agreement, or its draft, is to be forwarded to the works council respectively competent within this legal entity.

Section 127
Division report

The representative bodies of each of the legal entities involved in the division are to submit a detailed written report explaining and justifying in legal and economic terms the division, the details of the agreement or of its draft and, in the case of full divisions and partial divisions, in particular the share exchange ratio and the valuation methods used to determine it or the information regarding the memberships in the acquiring legal entities, the measure applying to their distribution as well as the amount of any cash settlement to be offered and the valuation methods used to determine it (division report); the representative bodies may also submit a common report. Section 8 (1), sentences 3 to 5, as well as subsections (2) and (3) are to be applied accordingly; in the case of a full division, section 8 (3) sentence 3 no. 1 letter (a) is not to be applied.

Section 128

Consent to the division in special circumstances

Where, in the case of full divisions or partial divisions, the shares in the acquiring legal entities are not allotted or the memberships in same are not granted to the holders of shares in the legal entity being acquired in that ratio that corresponds to their ownership interest in the legal entity being acquired, the division and takeover agreement will take effect only if all holders of shares in the legal entity being acquired consent to said agreement. In the case of a division for purposes of absorption, the calculation of the proportionate ownership interest is to be based on that part of the assets that is to be transferred in each case.

Section 129

Application for entry in the register of the division

The representative body of each of the acquiring legal entities also is authorised to file an application for entry in the register of the division.

Section 130

Entry in the register of the division

(1) The division may be entered in the register maintained at the seat of the legal entity being acquired only after it has been entered in the register maintained at the seat of each of the acquiring legal entities. The entry in the register maintained at the seat of each of the acquiring legal entities is to include the note that the division will take effect only upon its being entered in the register maintained at the seat of the legal entity being acquired, unless the entries are made on the same day in the registers of all legal entities involved.

(2) The court having jurisdiction at the seat of the legal entity being acquired is to inform, of its own motion, the respective court having jurisdiction at the seat of each of the acquiring legal entities of the date on which the division was entered in the register, and is to transmit an excerpt from the register and the articles of association, the partnership agreement, or the by-laws of the legal entity being acquired as a copy, a hard copy, or electronically. Following receipt of such notice, the respective court having jurisdiction at the seat of each of the acquiring legal entities is to record of its own motion the date in its entries on which the division was entered in the register maintained at the seat of the legal entity being acquired.

Section 131

Effects of the entry in the register

(1) The entry of the division in the register maintained at the seat of the legal entity being acquired will have the following effects:

1. The assets including the liabilities of the legal entity being acquired devolve to the acquiring legal entity in accordance with the distribution provided for in the division and takeover agreement, in each case as a whole; in the cases of partial divisions and divisions by separation, the part or parts of the assets including the liabilities that has or have been separated out devolve to the acquiring legal entity in accordance with the distribution provided for in the division and takeover agreement, in each case as a whole.

2. In the case of a full division, the legal entity being acquired ceases to exist. No separate cancellation is required.

3. In the case of full divisions and partial divisions, the holders of shares in the legal entity being acquired become holders of shares in the legal entities involved in accordance with the distribution provided for in the division and takeover agreement; this does not apply insofar as the acquiring legal entity or a third party acting in its own name, but for the account of this legal entity, owns shares in the legal entity being acquired, or insofar as the legal entity being acquired holds shares of its own, or insofar as a third party acting in its own name, but for the account of this legal entity, is a holder of shares in same. Rights of third parties to the shares in the legal entity being acquired, or to the memberships in same, continue in existence, then having as their object the shares or memberships in the acquiring legal entity instead of the shares or memberships in the legal entity being acquired. In the case of divisions by separation, the legal entity being acquired becomes the owner of the shares in the acquiring legal entity according to the division by separation and takeover agreement.

4. It remedies the circumstance that the division and takeover agreement has not been recorded by a notary and that individual holders of shares have failed to make declarations of consent or declarations of waiver that may be required.

(2) Defects of the division will not prejudice the effects of its entry in the register as set out in subsection (1).

(3) If in the course of a full division an item provided for in the agreement has not been allotted to any of the acquiring legal entities and such allotment cannot be established by construing the agreement, the item will devolve to all acquiring legal entities in the ratio resulting from the agreement as concerns the distribution of the surplus itemised under assets in the closing balance sheet over the liabilities itemised in same; should it be impossible to allot the item to several legal entities, its equivalent is to be distributed in the ratio designated.

Section 132 **Laws protecting against dismissal**

(1) Where legal entities involved in a division jointly manage a business after said division has taken effect, this common business will be deemed to be a business in the sense of the term as used in the laws governing the protection against dismissal.

(2) Where an employee is in a work relationship with the legal entity being acquired prior to a division taking effect, the status of such employee under the laws governing the protection against dismissal will not deteriorate as a result of the division; this applies for the duration of two years from the point in time at which the division takes effect.

Section 132a **Retention of co-determination rights**

(1) Where, as a result of a partial division or division by separation, the statutory prerequisites for the involvement of the employees in the supervisory board cease to exist in a legal entity being acquired, the provisions applying prior to the division are to continue to be applied for a period of five years after the partial division or division by separation has taken effect. This does not apply if the provisions concerned are premised on a minimum number of employees comprising the workforce and if the number of employees of the legal entity being acquired that is calculated in accordance with said provisions falls to a number lower than, as a general rule, one quarter of this minimum number.

(2) Where the consequence of a division of a legal entity is that a business is divided, and where the rights of the works council, or its right to participation, cease to exist for the businesses that have resulted from the division, it may be agreed in a works agreement or a collective agreement that these rights or rights to participation are to continue in force.

Sections 9 and 27 of the Works Constitution Act (*Betriebsverfassungsgesetz* – BetrVerfG) remain unaffected.

Section 133

Protection of creditors and of holders of special rights

(1) For those of the liabilities of the legal entity being acquired that were in existence since before its division taken effect, the legal entities involved in such division are liable as joint and several debtors. Sections 25, 26, and 28 of the Commercial Code as well as section 125 read in conjunction with section 22 remain unaffected; solely that legal entity involved in the division is under obligation to provide security that is being laid claim to.

(2) For the performance of the obligation pursuant to section 125 read in conjunction with section 23, the legal entities involved in the division are liable as joint and several debtors. In the case of partial divisions and of divisions by separation, the equivalent rights in the legal entity being acquired may also be conferred in the sense of section 125 read in conjunction with section 23.

(3) Those of the legal entities to whom the liabilities pursuant to subsection (1) sentence 1 were not allotted in the division and takeover agreement will be liable for these obligations if they are due before five years have lapsed after the division and, on their basis, claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code have been established against them, or if a court enforcement action or an enforcement action by the authorities has been taken or applied for; where public-law liabilities are concerned, it will suffice for an administrative decision to be issued. The liability of the legal entities designated in sentence 1 is limited to the value of the net assets allotted to them on the date on which the decision taken effect. As regards any benefit obligations that were created based on the Company Pension Act (*Betriebsrentengesetz* – BetrAVG) prior to the division having taken effect, the time limit set out in sentence 1 amounts to ten years.

(4) The time limit commences running on the day on which notice of the entry of the division in the register maintained at the seat of the legal entity being acquired has been given by publication in accordance with section 125 read in conjunction with section 19 (3). Sections 204, 206, 210, 211, and section 212 (2) and (3) of the Civil Code applying to prescription are to be applied accordingly.

(5) The establishment of claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code will not be required should the legal entities designated in subsection (3) have acknowledged the claim in writing.

(6) The claims pursuant to subsection (2) become statute-barred after five years. Subsection (4) sentence 1 applies accordingly as regards the commencement of the prescription period.

Section 134

Protection of creditors in special cases

(1) If a legal entity divides its assets such that those parts of the assets necessary for managing a business essentially are transferred to one or several acquiring legal entities, or to one or several new legal entities, and the activities pursued by this legal entity or these legal entities essentially are limited to the management of these parts of the assets (investment vehicle), while the legal entity being acquired is allowed to use said parts of the assets to manage its business (operating company), and where essentially the same persons hold ownership interests in the legal entities involved in the division, then the investment vehicle will be liable, as a joint and several debtor, for the receivables to which the operating company's employees are entitled, such receivables coming into existence, by reason of sections 111 to 113 of the Works Constitution Act (*Betriebsverfassungsgesetz* – BetrVerfG) in the course of five years following the date on which the division has taken effect. This will apply also in those cases in which the parts of the assets remain with the legal entity being acquired and the acquiring legal entity or new legal entity, or the acquiring legal entities or new legal entities, are allowed to use them.

(2) The liability as a joint and several debtor pursuant to subsection (1) applies also to any benefit obligations that were created based on the Company Pension Act (*Betriebsrentengesetz* – BetrAVG) prior to the division having taken effect.

(3) Section 133 subsection (3) sentence 1 and subsections (4) and (5) apply accordingly to the claims against the investment vehicle pursuant to subsections (1) and (2), with the proviso that the time limit commences running five years following the date designated in section 133 (4) sentence 1.

Division 3 Division for purposes of new formation

Section 135 Applicable provisions

(1) The provisions of Division 2 are to be applied accordingly to the division of a legal entity for purposes of new formation, to the exception, however, of sections 129 and 130 (2) as well as to the exception of sections 4, 7 and 16 (1) and of section 27, which are to be applied accordingly as stipulated in section 125. The new legal entities take the stead of the acquiring legal entities, the entry of each of the new legal entities in the register takes the stead of the entry of the division in the register maintained at the seat of each of the acquiring legal entities.

(2) Unless the stipulations of the present Book lead to a different conclusion, the company formation rules applying to the respective legal form of the new legal entity apply to the formation of the new legal entities. The legal entity being acquired is equivalent to the founders. Provisions stipulating a minimum number of founders for the formation are not to be applied.

(3) In the event of a division by separation for purposes of new formation, no division report need be drawn up.

Section 136 Draft terms of the division

The representative body of the legal entity being acquired is to draw up draft terms of the division. The draft terms of the division take the stead of the division and takeover agreement.

Section 137 Application for entry in the register and entry in same of the new legal entities and of the division

(1) The representative body of the legal entity being acquired is to file an application for entry in the register for each new legal entity and is to do so with the court in the judicial district of which said legal entity is intended to have its seat.

(2) The representative body of the legal entity being acquired is to file an application for entry of the division in the register maintained at the seat of the legal entity being acquired.

(3) The court having jurisdiction at the seat of each of the new legal entities is to inform of its own motion the court having jurisdiction at the seat of the legal entity being acquired of the date on which the new legal entity was entered in the register. Following receipt of the notices for all new legal entities, the court having jurisdiction at the seat of the legal entity being acquired is to record in its respective entries the division and is to notify of its own motion the courts having jurisdiction at the seat of each of the new legal entities of the date on which said division was entered in the register, and is to transmit an excerpt from the register and the articles of association, the partnership agreement, or the by-laws of the legal entity being acquired as a copy, a hard copy, or electronically. The date of the entry in the register of the division is to be entered, *ex officio*, in the registers maintained at the seat of each of the new legal entities.

Part 2 Special provisions

Division 1
Division involving limited liability companies

Section 138

Report on company formation on the basis of contributions in kind

A report on company formation on the basis of contributions in kind (section 5 (4) of the Act on Limited Liability Companies) is required in all cases.

Section 139

Reduction of the nominal capital

Where it is required, in order to implement the partial division or the division by separation, to reduce the nominal capital of a limited liability company being acquired, this may be done also in simplified form. Where the nominal capital is reduced, the partial division or the division by separation may be entered in the register only after the reduction of the nominal capital has been entered in the register.

Section 140

Application for entry in the register of the partial division or the division by separation

In filing an application for entry in the register of the partial division or the division by separation with the register maintained at the seat of a limited liability company being acquired, its managing directors also are to file the declaration that, as per the time of the application for entry in the register, the pre-requisites for the formation of this company stipulated by the law and by the articles of association have been met, taking account of the partial division or the division by separation.

Division 2

Division involving stock corporations and public partly limited partnerships

Section 141

Ineligibility for a division

A stock corporation or a public partly limited partnership that has not yet been entered in the register for two years cannot be divided in any other way than by way of a division by separation for purposes of new formation.

Section 142

Division with capital increase; division report

- (1) Section 69 is to be applied with the proviso that in all cases, an audit of the contribution in kind is to be performed in accordance with section 183 (3) of the Stock Corporation Act; section 183a of the Stock Corporation Act is to be applied.
- (2) If appropriate, the division report is to refer to the report on the audit of the contributions in kind made to an acquiring stock corporation in accordance with section 183 (3) of the Stock Corporation Act while also naming the register with which this report is to be lodged.

Section 142a

Obligations under section 72a

- (1) Obligations that the legal entity being acquired is under to allot additional shares of stock in accordance with section 72a (1) sentence 1 and (2) sentence 1 will devolve, regardless of their allocation in the division and takeover agreement or in the draft terms of the division, and in keeping with the distribution under section 136 (1) no. 10 of the shares of the stockholders entitled to the allotment, also read in conjunction with section 135 (1) and section 136 sentence 2, as a whole or in part to the acquiring or new stock corporation or public partly limited partnership.

Section 143

Division for purposes of new formation while maintaining the ratio of ownership interests

Where the shares of stock in the new stock corporation or in the new stock corporations (section 123 (1) no. 2, subsection (2) no. 2) are allotted in the same ratio as the ownership interest held by the stockholders in the stock corporation being acquired, sections 8 to 12 as well as section 63 (1) nos. 3 to 5 are not to be applied.

Section 144 **Formation report and audit of the formation**

In all cases, a formation report (section 32 of the Stock Corporation Act) and an audit of the formation (section 33 (2) of the Stock Corporation Act) are required.

Section 145 **Reduction of the capital stock**

Where it is required, in order to implement the partial division or the division by separation, to reduce the capital stock of a stock corporation being acquired or a public partly limited partnership being acquired, this may be done also in simplified form. Where the capital stock is reduced, the partial division or the division by separation may be entered in the register only after the implementation of the reduction of the capital stock has been entered in the register.

Section 146

Application for entry in the register of the partial division or the division by separation

(1) In filing an application for entry in the register of the partial division or of the division by separation with the register maintained at the seat of a stock corporation being acquired, its management board – or, in the case of a public partly limited partnership, the general partners authorised to represent it – also are to file the declaration that, as per the time of the application for entry in the register, the pre-requisites for the formation of this company stipulated by the law and by the by-laws have been met, taking account of the partial division or the division by separation.

(2) Besides the documents otherwise required, the following are to be attached to the application for entry in the register of the partial division or of the division by separation:

1. the division report pursuant to section 127;
2. in the case of a partial division, the audit report pursuant to section 125 read in conjunction with section 12.

Division 3 **Division involving registered cooperative societies**

Section 147 **Eligibility for a division**

The division of a legal entity having a different legal form for purposes of the absorption of parts of its assets by a registered cooperative society may be implemented only if, concurrently with the division, a necessary amendment of the by-laws of the acquiring cooperative society is resolved upon.

Section 148

Application for entry in the register of the partial division or the division by separation

(1) In filing an application for entry in the register of the partial division or of the division by separation with the register maintained at the seat of a cooperative society being acquired, the management board of same also is to file the declaration that as per the time of the application for entry in the register, the pre-requisites for the formation of this cooperative society stipulated by the law and by the by-laws have been met, taking account of the partial division or the division by separation.

(2) Besides the documents otherwise required, the following are to be attached to the application for entry in the register of the partial division or of the division by separation:

1. the division report pursuant to section 127;
2. the audit opinion pursuant to section 125 read in conjunction with section 81.

Division 4
Division involving associations having legal personality

Section 149

Eligibility for a division

(1) An association having legal capacity may be involved in a division only if this is not contravened by the by-laws of the association or the stipulations of *Land* law.

(2) A registered association may only be involved in a division as an acquiring legal entity in order to absorb other registered associations or in order to form a registered association together with them.

Division 5

Division with the involvement of confederations responsible for auditing cooperative societies

Section 150

Eligibility for a division

The full division of confederations responsible for auditing cooperative societies or the partial division or division by separation of parts of such a confederation may only be implemented for purposes of one confederation (acquiring confederation) absorbing the parts of another confederation (confederation being acquired), while a division by separation may be implemented also for the purpose of a share capital company absorbing parts of the confederation, or for the purpose of newly forming such a share capital company.

Division 6

Division involving mutual insurance companies

Section 151

Eligibility for a division

The division involving mutual insurance companies may be implemented only by full division or partial division and only in such manner that the parts of an association being acquired devolve to other mutual insurance companies already in existence or to new mutual insurance companies or to insurance stock corporations. Furthermore, a mutual insurance company may transfer a part of its assets, by way of a division by separation, to a limited liability company already in existence or to a new limited liability company, or to an existing or new stock corporation, provided that this does not entail any transfer of insurance contracts.

Division 7

Division by separation out of the assets of a sole trader

Subdivision 1

Eligibility for a division by separation

Section 152

Acquiring legal entities or new legal entities

A division by separation of an enterprise operated by a sole trader, the business name of which has been entered in the Commercial Register, or of parts of said enterprise out of the assets of this trader may be implemented only for the purpose of this enterprise, or parts of this enterprise, being absorbed by commercial partnerships, share capital companies, or registered cooperative societies, or for purposes of the new formation of share capital companies. No division by separation may be implemented if the liabilities of the sole trader exceed his or her assets.

Subdivision 2
Division by separation for purposes of absorption

Section 153

Division report by separation

Where sole traders are involved, a division report by separation is not required.

Section 154

Entry in the register of the division by separation

The court having jurisdiction at the seat of the sole trader is to refuse to enter the division by separation in the register also in those cases in which it is manifest that the liabilities of the sole trader exceed his or her assets.

Section 155

Effects of the division by separation

Where the division by separation concerns the entire enterprise of the sole trader, the entry in the register of the division by separation pursuant to section 131 will have the effect of extinguishing the business name that the sole trader has been using. Such extinction of the business name is to be entered in the register *ex officio*.

Section 156

Liability of the sole trader

The devolution of liabilities to the acquiring legal entities or new companies will not release the sole trader from his or her liability concerning same. Section 418 of the Civil Code is not to be applied.

Section 157

Limitation in time of the liability for transferred liabilities

- (1) The sole trader will be liable for the liabilities set out in the division by separation and takeover agreement if they are due before five years have lapsed after the division by separation and, on their basis, claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code have been established against him or her, or if a court enforcement action or an enforcement action by the authorities has been taken or applied for; where public-law liabilities are concerned, it suffices for an administrative decision to be issued. The liability of the sole trader as shareholder of the acquiring legal entity pursuant to section 126 of the Commercial Code remains unaffected hereby.
- (2) The time limit commences running on the day on which notice of the entry of the division by separation in the register maintained at the seat of the sole trader has been given by publication in accordance with section 125 read in conjunction with section 19 (3). Sections 204, 206, 210, 211 and section 212 (2) and (3) of the Civil Code applying to prescription are to be applied accordingly.
- (3) The establishment of claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code will not be required should the sole trader have acknowledged the claim in writing.
- (4) Subsections (1) to (3) are to be applied also if the sole trader takes up management activities in the legal entity having a different legal form.

Subdivision 3
Division by separation for purposes of new formation

Section 158

Applicable provisions

Unless the stipulations of the present Subdivision lead to a different conclusion, the stipulations of Subdivision 2 are to be applied accordingly to the division by separation for purposes of new formation.

Section 159

Report on company formation on the basis of contributions in kind, formation report, and audit of the formation

(1) Section 58 (1) is to be applied accordingly to the report on company formation on the basis of contributions in kind (section 5 (4) of the Act on Limited Liability Companies), while Section 75 (1) is to be applied accordingly to the formation report (section 32 of the Stock Corporation Act).

(2) In the case of a stock corporation or a public partly limited partnership having been newly formed, the audit by the members of the management board and of the supervisory board (section 33 (1) of the Stock Corporation Act) as well as the audit by one or several auditors (section 33 (2) of the Stock Corporation Act) also is to extend to the matter of whether the liabilities of the sole trader exceed his or her assets.

(3) In order to allow the auditors to establish whether the liabilities of the sole trader exceed his or her assets, the sole trader is to provide the auditors with an inventory balancing his or her assets against his or her liabilities. Insofar as this is required for the audit, the inventory is to be broken down into parts. Section 320 subsection (1) sentence 2 and subsection (2) sentence 1 of the Commercial Code applies accordingly if there is cause to assume that assets listed in the inventory have been overstated, or that liabilities have not been included therein, or not fully and completely.

Section 160

Application for entry in the register and entry in the register

(1) The application for entry in the register pursuant to section 137 (1) is to be filed by the sole trader and the managing directors of a new company, or the members of the management board and of the supervisory board of same.

(2) The entry in the register of the company is to be refused if the liabilities of the sole trader exceed his or her assets.

Division 8

Division by separation out of the assets of foundations having legal personality

Section 161

Eligibility for a division by separation

The division by separation of an enterprise operated by a foundation having legal capacity (section 80 of the Civil Code), or of parts of such enterprise, out of the assets of said foundation may only be implemented for purposes of the absorption of this enterprise, or parts of this enterprise, by commercial partnerships or share capital companies or for purposes of the new formation of share capital companies.

Section 162

Division report by separation

(1) A division report by separation will be required only if, according to section 164 (1), the division by separation requires government approval or if it is contingent, within the lifetime of the founder, on the founder's consent.

(2) Inasmuch as the division by separation requires government approval or is contingent on the consent of the founder under section 164 (1), the division report by separation is to be transmitted to the competent government authority and to the founder.

Section 163

Resolution on the agreement

(1) The stipulations of the laws governing foundations as regards the adoption of resolutions on the amendment of the by-laws are to be applied accordingly to the resolution as to a division by separation.

(2) Unless otherwise determined by the laws governing foundations that are applicable as per subsection (1), the resolution as to a division by separation must be adopted unanimously by the body designated by the by-laws as the body competent for adopting

resolutions on amendments of the by-laws or, if such a body has not been determined, by the management board of the foundation.

(3) The resolution and the consent pursuant to subsections (1) and (2) must be recorded by a notary.

Section 164

Approval of the division by separation

(1) The division by separation will require government approval if this is stipulated by the laws governing foundations.

(2) Inasmuch as the division by separation pursuant to subsection (1) does not require government approval, the court having jurisdiction at the seat of the foundation is to refuse to enter the division by separation in the register also in those cases in which it is manifest that the liabilities of the foundation exceed its assets.

Section 165

Report on company formation on the basis of contributions in kind and formation report

Section 58 (1) is to be applied accordingly to the report on company formation on the basis of contributions in kind (section 5 (4) of the Act on Limited Liability Companies), while Section 75 (1) is to be applied accordingly to the formation report (section 32 of the Stock Corporation Act).

Section 166

Liability of the foundation

The devolution of liabilities to the acquiring companies or new companies will not release the foundation from its liability concerning same. Section 418 of the Civil Code is not to be applied.

Section 167

Limitation in time of the liability for transferred liabilities

Section 157 is to be applied accordingly to the limitation in time of the liability of the foundation for the liabilities set out in the division by separation and takeover agreement.

Division 9

Division by separation out of the assets of local government bodies or networks of local government bodies

Section 168

Eligibility for a division by separation

An enterprise operated by a local government body, or by a network of local government bodies that is not a local government body, may be separated out of the assets of this authority or this network only for purposes of the absorption of this enterprise by a commercial partnership, a share capital company or a registered cooperative society, or for purposes of new formation of a share capital company or a registered cooperative society; furthermore, it will be eligible for a division by separation only in those cases in which this is not contravened by the laws of the Federation or the laws of a federal *Land* that govern for the authority or the network.

Section 169

Division report by separation; resolution as to a division by separation

A division report by separation is not required for the authority or the network. The laws concerning organisations that are relevant for the authority or the network determine whether and subject to which pre-requisites a resolution as to a division by separation will be required.

Section 170

Report on company formation on the basis of contributions in kind; formation report

Section 58 (1) is to be applied accordingly to the report on company formation on the basis of contributions in kind (section 5 (4) of the Act on Limited Liability Companies), while Section 75 (1) is to be applied accordingly to the formation report (section 32 of the Stock Corporation Act).

Section 171 **Effectiveness of the division by separation**

The effects of the division by separation in accordance with section 131 occur upon its being entered in the register maintained at the seat of the acquiring legal entity or upon the entry in the register of the new legal entity.

Section 172 **Liability of the authority or the network**

The devolution of liabilities to the acquiring legal entity or new legal entity will not release the authority or network from its liability concerning same. Section 418 of the Civil Code is not to be applied.

Section 173 **Limitation in time of the liability for transferred liabilities**

Section 157 is to be applied accordingly to the limitation in time of the liability for the liabilities set out in the division by separation and takeover agreement.

Book 4 **Asset transfer**

Part 1 **Eligibility for an asset transfer**

Section 174 **Types of asset transfer**

(1) A legal entity (legal entity being acquired) may transfer its assets, as a whole, whereby it is dissolved without being wound up, to some other legal entity that is already in existence (acquiring legal entity) in return for granting compensation to the holders of shares in the legal entity being acquired, such compensation not consisting of shares or memberships (full transfer).

(2) A legal entity (legal entity being acquired) may

1. fully divide up its assets, whereby it is dissolved without being wound up, by way of the simultaneous transfer of the parts of the assets, in each case as a whole, to other legal entities already in existence,
2. separate out one or several parts from its assets by transferring this part or these parts, in each case as a whole, to one or several legal entities already in existence, or
3. division by separation one or several parts of its assets by transferring this part or these parts, in each case as a whole, to one or several legal entities already in existence,

in return for the compensation designated in subsection (1), in the cases set out under nos. 1 or 2, to the holders of shares in the legal entity being acquired, and in the case set out under no. 3, to the legal entity being acquired (partial transfer).

Section 175 **Legal entities involved**

A full transfer or a partial transfer will be possible in each case only if it is implemented

1. by a share capital company, to the federal government, a *Land*, a local government body, or a network of local government bodies;

2.

- a) by an insurance stock corporation, to mutual insurance companies or to public-law insurers;
- b) by a mutual insurance company, to insurance stock corporations or to public-law insurers;
- c) by a public-law insurer, to insurance stock corporations or to mutual insurance companies.

Part 2

Transfer of the assets, or parts of the assets, of a share capital company to public bodies

Division 1 Full transfer

Section 176

Application of the rules governing mergers

- (1) In the case of a full transfer in accordance with section 175 no. 1, and unless the following provisions lead to a different conclusion, the provisions of Book 2 respectively applicable to mergers by way of absorption of such a company being acquired are to be applied accordingly to the share capital company being acquired.
- (2) The information to be provided in the transfer agreement under section 5 (1) nos. 4, 5 and 7 need not be provided. The register maintained at the seat of the company being acquired takes the stead of the register maintained at the seat of the acquiring legal entity. The nature and amount of the compensation take the stead of the share exchange ratio. A claim to cash settlement takes the stead of the claim pursuant to section 23; section 29 (1), section 30 and section 34 are to be applied accordingly to said claim.
- (3) Upon the asset transfer having been entered in the Commercial Register maintained at the seat of the company being acquired, that company's assets including its liabilities will devolve to the acquiring legal entity. The company being acquired will cease to exist; this does not require any separate cancellation to be made.
- (4) The involvement of the acquiring legal entity in the asset transfer is governed by the provisions applicable to it.

Division 2 Partial transfer

Section 177

Application of the rules governing divisions

- (1) In the case of a partial transfer in accordance section 175 no. 1, and unless the following provisions lead to a different conclusion, the provisions of Book 3 applying to full divisions, partial divisions, or divisions by separation for purposes of absorbing parts of such a share capital company being acquired are to be applied accordingly to the share capital company being acquired, as are the provisions of Book 2 that are declared in Book 3 to be accordingly applicable to comparable procedures.
- (2) Section 176 (2) to (4) is to be applied accordingly. Section 126 (1) nos. 4, 5, 7, and 10 takes the stead of section 5 (1) nos. 4, 5, and 7.

Part 3 Asset transfers among insurers

Division 1

Transfer of the assets of a stock corporation to mutual insurance companies or to public-law insurers

Subdivision 1
Full transfer

Section 178

Application of the rules governing mergers

(1) In the case of a full transfer in accordance section 175 no. 2 letter (a), and unless the following provisions lead to a different conclusion, the provisions of Book 2 respectively applying to the merger by absorption of a stock corporation and the provisions of Book 2 respectively applying to an acquiring mutual insurance company in the case of a merger are to be applied accordingly to the legal entities involved.

(2) Section 176 (2) to (4) is to be applied accordingly.

(3) The laws of the Federation or the laws of a federal *Land* governing an acquiring public-law insurer determine whether the asset transfer agreement, in order to take effect, must also be consented to by some other body of the public-law insurer than that authorised to represent same, or by any other authority, and what requirements must be met in order for such consent to be granted.

Subdivision 2
Partial transfer

Section 179

Application of the rules governing divisions

(1) In the case of a partial transfer in accordance with section 175 no. 2 letter (a), and unless the following provisions lead to a different conclusion, the provisions of Book 3 applying to full divisions, partial divisions, or divisions by separation for purposes of absorption of parts of a stock corporation, and the provisions of Book 3 applying to acquiring mutual insurance companies in the event of the full division, partial division, or division by separation of parts of their assets are to be applied accordingly to the legal entities involved, as are the provisions of Book 2 that are declared in Book 3 to be accordingly applicable to comparable procedures.

(2) Section 176 (2) to (4) as well as section 178 (3) are to be applied accordingly.

Division 2

Transfer of the assets of a mutual insurance company to stock corporations or public-law insurers

Subdivision 1
Full transfer

Section 180

Application of the rules governing mergers

(1) In the case of a full transfer in accordance section 175 no. 2 letter (b), and unless the following provisions lead to a different conclusion, the provisions of Book 2 applying to the merger by absorption of a mutual insurance company and the provisions of Book 2 applying to an acquiring stock corporation in the case of a merger are to be applied accordingly to the legal entities involved.

(2) Section 176 (2) to (4) as well as section 178 (3) are to be applied accordingly.

(3) Where, pursuant to the by-laws of the mutual insurance company, a member or a third party is entitled to an irrevocable right to the surplus on winding-up, or a part thereof, the resolution adopted on the asset transfer will require the consent of the member or the third party; such consent must be recorded by a notary.

Section 181

Provision of compensation

(1) The acquiring legal entity is under obligation to provide appropriate compensation if this is justified in light of the financial position and revenue situation of the mutual insurance

company being acquired as given at the time the most senior representative committee adopts the resolution.

(2) It is to be stipulated in the resolution by which the transfer agreement is approved that, in distributing the compensation, each member is to be considered that has been a member of the mutual insurance company for a minimum of three months prior to the resolution being adopted. Furthermore, the resolution is to specify the measures according to which the compensation is to be distributed to the members.

(3) Each member entitled is to obtain compensation in an amount equal to that provided to the other members. Any other distribution may be stipulated only based on one or several of the following measures:

1. the amount insured,
2. the amount of the contributions,
3. the amount of the premium reserve made in the life insurance policy,
4. the measure determined in the by-laws of the mutual insurance company for the distribution of the surplus,
5. the measure determined in the by-laws of the mutual insurance company for the distribution of the assets,
6. the duration of the membership.

(4) Where, contrary to subsection (1), no compensation has been agreed, it is to be determined by the court upon a corresponding petition having been made; section 30 (1) and section 34 are to be applied accordingly.

Section 182 Information provided to the members

As soon as the asset transfer has taken effect, the representative body of the acquiring legal entity is to apprise all those members who have been members of the mutual insurance company for a minimum of three months prior to the resolution as to the asset transfer having been adopted by the most senior representative committee, of the wording of the agreement, and is to do so in text form. The corresponding notice is to indicate the option to demand that a court determine the appropriate compensation.

Section 183 Appointment of a trustee

(1) Where compensation has been agreed for the asset transfer, the mutual insurance company being acquired is to appoint a trustee responsible for taking receipt of same. The asset transfer may be entered in the register only once the trustee has apprised the court of the fact that he or she is in possession of the compensation.

(2) Where the court determines the compensation as set out in section 181 (4), it is to appoint of its own motion a trustee responsible for taking receipt of same. Those members are entitled to the compensation, in equal shares, who have been members of the mutual insurance company for a minimum of three months prior to the resolution as to the asset transfer having been adopted by the most senior representative committee. Section 26 (4) is to be applied accordingly.

Subdivision 2 Partial transfer

Section 184 Application of the rules governing divisions

(1) In the case of a partial transfer under section 175 no. 2 letter (b), and unless the following provisions lead to a different conclusion, the provisions of Book 3 applying to full divisions,

partial divisions, or divisions by separation for purposes of absorption of parts of a mutual insurance company and the provisions of Book 3 applying to acquiring stock corporations in the case of a full division, partial division, or division by separation are to be applied accordingly to the legal entities involved, as are the provisions of Book 2 that are declared in Book 3 to be accordingly applicable to comparable procedures.

(2) Section 176 (2) to (4) as well as section 178 (3) are to be applied accordingly.

Division 3

Transfer of the assets of a smaller mutual insurance company to a stock corporation or to a public-law insurer

Section 185

Eligibility for an asset transfer

A smaller mutual insurance company may transfer its assets only by way of a full transfer to an insurance stock corporation or to a public-law insurer.

Section 186

Applicable provisions

The provisions of Division 2 are to be applied accordingly to the asset transfer. In this context, the application filed with the supervisory authority for approval takes the stead of the application for entry in the register where smaller mutual insurance companies are concerned, while the publication in the Official Gazette (*Bundesanzeiger*) pursuant to section 187 takes the stead of the entry in the register and its publication.

Section 187

Notice by publication of the asset transfer

As soon as the asset transfer has been approved by all supervisory authorities involved, the supervisory authority competent for the smaller mutual insurance company being acquired is to publish the asset transfer and its approval by notice in the Official Gazette (*Bundesanzeiger*) in cases in which assets have been transferred to a public-law insurer.

Division 4

Transfer of the assets of a public-law insurer to stock corporations or mutual insurance companies

Subdivision 1 **Full transfer**

Section 188

Application of the rules governing mergers

(1) In the case of a full transfer in accordance with section 175 no. 2 letter (c), and unless the following provisions lead to a different conclusion, the provisions of Book 2 applying to mergers by absorption are to be applied accordingly to the acquiring legal entities, while section 176 (3) is to be applied accordingly to the insurance company being acquired.
(2) Section 176 (2) and (4) as well as section 178 (3) are to be applied accordingly.
(3) Where public-law insurers are concerned, the application for approval filed with the supervisory authority takes the stead of the application for entry in the register, while the notice by publication in accordance with sentence 2 takes the stead of the entry in the register and its publication. As soon as the asset transfer has been approved by all supervisory authorities involved, the supervisory body responsible for the public-law insurer will publish the asset transfer and its approval by publishing a notice in the Official Gazette (*Bundesanzeiger*).

Subdivision 2 **Partial transfer**

Section 189

Application of the rules governing divisions

(1) In the case of a partial transfer in accordance with section 175 no. 2 letter (c), and unless the following provisions lead to a different conclusion, the provisions of Book 3 applying to full divisions, partial divisions, or divisions by separation for purposes of absorption are to be applied accordingly to the acquiring legal entities, as are the provisions of Book 2 that are declared in Book 3 to be accordingly applicable to the comparable procedure, while section 176 (3) is to be applied accordingly to the insurance company being acquired.

(2) Section 176 (2) and (4), section 178 (3) as well as section 188 (3) are to be applied accordingly.

Book 5

Change of the legal form

Part 1

General provisions

Section 190

General scope of application

(1) The legal structure of a legal entity may be modified by way of a change of legal form.

(2) Unless the stipulations of the present Book lead to a different conclusion, the provisions concerning the change of legal form do not apply to modifications of the legal structure that have been provided for in other Acts or have been declared permissible in same.

Section 191

Eligible legal entities

(1) The following legal entities may change their legal form:

1. registered civil law partnerships, commercial partnerships (general partnership, partly limited partnership) and professional partnerships;
2. share capital companies (section 3 (1) no. 2);
3. registered cooperative societies;
4. associations having legal personality;
5. mutual insurance companies;
6. corporations under public law and public-law institutions.

(2) Legal entities having a new legal form may be the following:

1. registered civil law partnerships, commercial partnerships (general partnership, partly limited partnership) and professional partnerships;
2. share capital companies;
3. registered cooperative societies.

(3) It is also possible for dissolved legal entities to change their legal form if it were possible to adopt a resolution to continue these legal entities in the legal form they had thus far.

Section 192

Report on the change of legal form

(1) The representative body of the legal entity changing its legal form is to submit a detailed written report explaining and justifying in legal and economic terms the change of legal form and in particular the ownership interest to be held by the holders of shares in the legal entity, as well as the amount of a cash settlement to be offered and the valuation methods used to determine it (report on the change of legal form). Section 8 (1) sentences 3 to 5 and

subsection (2) is to be applied accordingly. The report on the change of legal form must include a draft of the resolution on change of legal form.

(2) A report on the change of legal form will not be required if only one holder of shares holds an ownership interest in the legal entity changing its legal form or if all holders of shares waive having this report submitted. The declarations of waiver are to be recorded by a notary.

Section 193

Resolution on change of legal form

(1) The change of legal form requires a resolution to be adopted by the holders of shares in the legal entity changing its legal form (resolution on change of legal form). The resolution may only be adopted at an assembly of the holders of shares.

(2) Where the assignment of the shares in the legal entity changing its legal form is contingent on the approval of individual holders of shares, the resolution on change of legal form requires their consent in order to take effect.

(3) The resolution on change of legal form and the declarations of consent by individual holders of shares required by the present Act, including the required declarations of consent to be made by holders of shares who did not appear, must be recorded by a notary. Upon a corresponding demand being made, each of the holders of shares is to be issued, at their cost, a copy of the record of the resolution, such issuance being effected without undue delay.

Section 194

Substance of the resolution on change of legal form

(1) The resolution on change of legal form at a minimum must determine the following:

1. the legal structure that the legal entity is to obtain by the change of its legal form;
2. the name or the business name of the legal entity in its new legal form;
3. an ownership interest that the owners thus far holding shares in the legal entity will have in accordance with the provisions applying to the new legal form, unless their ownership interest ceases to exist in accordance with the stipulations of the present Book;
4. the number, type and scope of the shares or the memberships that the holders of shares are to obtain by the change of legal form or that it is intended to confer upon an acceding general partner;
5. the rights in the legal entity that are intended to be conferred upon individual holders of shares and upon the holders of special rights such as shares without voting rights, preferred stock, multiple voting stock, debt securities and participatory rights, or the measures intended for these persons;
6. an offer of compensation in accordance with section 207; this will not apply if the resolution on change of legal form requires the consent of all holders of shares in order to take effect, or if only one holder of shares holds an ownership interest in the legal entity changing its legal form;
7. the implications of the change of legal form for the employees and the bodies representing them as well as the measures intended to be taken in that regard.

(2) The draft of the resolution on change of legal form is to be forwarded to the works council respectively responsible at the legal entity changing its legal form not less than one month prior to the date of the assembly of the holders of shares that is to adopt a resolution on change of legal form.

Section 195

Time limit for bringing actions against the resolution on change of legal form; actions that are not an available remedy against the resolution on change of legal form

(1) An action against the resolution on change of legal form taking effect must be brought within one month following the adoption of the resolution.

(2) An action brought against the resolution on change of legal form taking effect cannot be based on the shares in the legal entity in its new legal form as specified in the resolution being inadequate, or on the membership not being a fair equivalent of the shares or of the membership in the legal entity changing its legal form.

Section 196

Improvement of the ownership interest held

Where the shares in the legal entity in its new legal form specified in the resolution on change of legal form are inadequate, or where the membership in same is not a fair equivalent of the shares or the membership in the legal entity changing its legal form, each of the holders of shares who is prohibited by section 195 (2) from exercising their right to file an action against the resolution on change of legal form taking effect may demand that the legal entity provide a compensatory additional cash payment. Upon a corresponding petition having been made, the court will determine which additional payment is appropriate pursuant to the stipulations of the Act on Valuation Proceedings under Corporate Law. Section 15 (2) is to be applied accordingly.

Section 197

Applicable company formation rules

Unless the stipulations of the present Book lead to a different conclusion, the company formation rules applicable to the new legal form apply to the change of legal form. Provisions requiring a minimum number of founders for the formation, as well as the provisions as to the appointments to the first supervisory board and the composition of same, are not to be applied. In the event the legal structure of a legal entity is changed to become a stock corporation, section 31 of the Stock Corporation Act is applicable.

Section 198

Application for entry in the register of the change of legal form

(1) An application for entry in the register of the new legal form of the legal entity is to be filed with the register in which the legal entity changing its legal form is entered.

(2) Where the legal entity changing its legal form has not been entered in a register, the legal entity in its new legal form is to file an application, with the court having jurisdiction, for entry in the register responsible for the new legal form. The same will apply if, as a result of the change of legal form, a different type of register is responsible for the legal entity or if a relocation of the legal entity's seat connected to the change of legal form means that some other court maintaining the register has jurisdiction. In the case set out in sentence 2, an application for entry in the register of the transformation is to be filed also with the register in which the legal entity changing its legal form is entered. This entry is to include the note that the transformation will take effect only upon the legal entity in its new legal form having been entered in the register responsible for the new legal form, unless the entries are made on the same day in the registers of all legal entities involved. The legal entity in its new legal form may be entered in the register only after the transformation has been entered pursuant to sentences 3 and 4.

(3) Section 16 (2) and (3) is to be applied accordingly.

Section 199

Annexes to the application for entry in the register

Besides the documents usually required for this purpose, the following likewise are to be attached to the application for entry in the register of the new legal form, or of the legal entity in its new legal form, as an executed copy or a publicly certified copy or, insofar as they need

not be recorded by a notary, the original or a copy thereof: the record of the resolution on change of legal form, the declarations of consent by individual holders of shares required by the present Act including the declarations of consent by holders of shares who did not appear, the report on the change of legal form or the declarations waiving the preparation of same, proof of the draft of the resolution on change of legal form having been forwarded pursuant to section 194 (2).

Section 200

Firm name or name of the legal entity

(1) Unless the stipulations of the present Book lead to a different conclusion, the legal entity in its new legal form may continue to use the business name it has used thus far. Additional designations indicating the legal form of the company that is changing its legal form may not be used, also not if the legal entity continues to use the business name it has used thus far.

(2) Section 19 of the Commercial Code, section 4 of the Act on Limited Liability Companies, sections 4, 279 of the Stock Corporation Act, or section 3 of the Trade & Industrial Cooperative Societies Act are to be applied accordingly to any business name that continues in use following the change of legal form.

(3) Where a natural person held an ownership interest in the legal entity changing its legal form, whose ownership interest will cease to exist in the legal entity in its new legal form, the name of this holder of shares may be used in the business name that is continued to be used or that has been newly created solely if the affected holder of shares or their heirs expressly have agreed to such use.

(4) Where the legal entity changing its form or the legal entity in its new legal form is a professional partnership, subsections (1) and (3) apply accordingly to the continued use of the business name or name, or the formation of same. A business name may continue to be used as the name of a professional partnership solely subject to the pre-requisites set out in section 2 (1) of the Partnership Companies Act. Section 1 (3) and section 11 of the Partnership Companies Act are to be applied accordingly.

(5) As a result of the change of legal form into a partnership under the Civil Code, the business name of the company changing its legal form will be extinguished.

Section 201

Notice by publication of the change of legal form

The court having jurisdiction for the application for entry in the register of the new legal form, or of the legal entity in its new legal form, is to publish the entry in the register of the new legal form, or of the legal entity in its new legal form, in accordance with section 10 of the Commercial Code.

Section 202

Effects of the entry in the register

(1) The entry in the register of the new legal form will have the following effects:

1. the legal entity changing its legal form continues in existence in the legal form determined in the resolution on change of legal form.
2. the holders of shares in the legal entity changing its legal form hold an ownership interest in the legal entity in accordance with the provisions applicable to the new legal form, unless their ownership interest ceases to exist in accordance with the stipulations of the present Book. Any rights of third parties to the shares in the legal entity changing its legal form, or to the memberships in same, continue in existence, then having as their object the shares or memberships in the legal entity in its new legal form.
3. it remedies the facts that the resolution on change of legal form has not been recorded by a notary and, as the case may be, that the declarations of consent or declarations of waiver that may be required under certain circumstances have not been made by individual holders of shares.

(2) The effects determined in subsection (1) will come about in the cases governed by section 198 (2) upon entry in the register of the legal entity in its new legal form.

(3) Defects of the change of legal form will not prejudice the effects of the entry in the register of the new legal form, or of the legal entity in its new legal form.

Section 203

Term of office the members of the supervisory board

If, in the case of a change of legal form, the manner in which the supervisory board is appointed and its composition correspond, where the legal entity in its new legal form is concerned, to the manner of the supervisory board's appointment and its composition given at the legal entity changing its legal form, then the members of the supervisory board will remain in office for the remainder of their terms as members of the supervisory board of the legal entity in its new legal form. The holders of shares in the legal entity changing its legal form may determine, in the resolution on change of legal form, that the appointment of the members of the supervisory board they have delegated is to come to an end.

Section 204

Protection of the creditors and of the holders of special rights

Section 22 is to be applied accordingly to the protection of the creditors, while section 23 is to be applied accordingly to the protection of the holders of special rights.

Section 205

Obligation to provide compensation for damages of the administrative bodies of the legal entity changing its legal form

(1) The members of the representative body and, where a supervisory body exists, the members of such supervisory body of the legal entity changing its legal form, are under obligation, as joint and several debtors, to provide compensation for those damages suffered by this legal entity, by the owners of its shares, or by its creditors as a result of the legal form having been changed. Section 25 (1) sentence 2 is to be applied accordingly.

(2) The claims set out in subsection (1) will become statute-barred five years following the day on which notice of the entry to be applied for with the register of the new legal form, or of the legal entity in its new legal form, has been given by publication.

Section 206

Assertion of the claim to compensation of damages

The claims pursuant to section 205 (1) may only be asserted by a special representative. The court having jurisdiction at the seat of the legal entity in its new legal form is to appoint such a representative upon a corresponding petition having been filed by a holder of shares or by a creditor of the legal entity changing its legal form. Section 26 subsection (1) sentences 3 and 4, subsection (2), subsection (3) sentences 2 and 3 and subsection (4) is to be applied accordingly; the corresponding publications of record of the legal entity in its new legal form take the stead of the publications of record that served the legal entity being acquired for its public notices.

Section 207

Offer of cash settlement

(1) The legal entity changing its legal form is to offer to each of the holders of shares who records an objection against the resolution on change of legal form, to acquire that owner's shares or memberships that have been transformed in return for adequate cash settlement; section 71 (4) sentence 2 of the Stock Corporation Act and the order as to a legal obligation in respect of a prohibited acquisition being null and void according to section 33 (2) sentence 3 of the Act on Limited Liability Companies are not to be applied in this regard. Where the legal entity is unable, due to its new legal form, to acquire its own shares, or memberships in itself, the cash settlement is to be offered for the case that the holder of shares declares withdrawal from the legal entity. The legal entity is to bear the costs of a transfer.

(2) Section 29 (2) is to be applied accordingly.

Section 208

Substance of the claim to cash settlement and review of the cash settlement

Section 30 is to be applied accordingly to the claim to cash settlement.

Section 209

Acceptance of the offer

The offer pursuant to section 207 may be accepted only within two months following the day on which notice of the entry in the register of the new legal form, or of the legal entity in its new legal form, has been given by publication. Where a petition has been filed pursuant to section 212 to have the court determine the cash settlement, the offer may be accepted within two months following the day on which notice of the decision has been given by publication in the Official Gazette (*Bundesanzeiger*).

Section 210

Actions that are not an available remedy against the resolution on change of legal form

An action brought against the resolution on change of legal form taking effect cannot be based on the offer pursuant to section 207 being inadequate or cash settlement not having been offered in the resolution on change of legal form, or not in a proper manner.

Section 211

Disposal in other ways

Any restrictions governing dispositions do not prevent a holder of shares, to whom the offer of compensation under section 207 is addressed, from disposing of the shares in any other way once the resolution on change of legal form has been adopted until the time limit stipulated in section 209 sentence 1 has lapsed.

Section 212

Court review of the compensation

If a holder of shares asserts that the cash settlement that was to be offered to them pursuant to section 207 (1) has been inadequately set, then the court is to determine the adequate cash settlement, upon that owner's petition, in accordance with the stipulations of the Act on Valuation Proceedings under Corporate Law. The same will apply if cash settlement was not offered, or not in a proper manner.

Section 213

Unknown stockholders

Section 35 is to be applied accordingly to unknown stockholders.

Part 2

Special provisions

Division 1

Change of the legal form of partnerships

Subdivision 1

Change of the legal form of civil law partnerships and commercial partnerships

Section 214

Eligibility for a change of legal form

- (1) A civil law partnership or a commercial partnership may obtain, based on a resolution on change of legal form pursuant to this Act, solely the legal form of a share capital company or that of a registered cooperative society.
- (2) A civil law partnership or a commercial partnership may not, upon having been dissolved, change its legal form if the shareholders have agreed that a different manner of distributing the assets is to be pursued than winding up the partnership by liquidation or changing its legal form.

Section 215

Report on the change of legal form

A report on the change of legal form will not be required if all shareholders of the company changing its legal form are entitled to manage its affairs.

Section 216

Information provided to the shareholders

The representative body of the company changing its legal form is to give advance notice in text form to all of the shareholders not entitled to manage the affairs of the company, doing so at the latest together with the invitation convening the meeting of shareholders that is to adopt a resolution on change of legal form, apprising them that a change of legal form will be the subject matter of a resolution to be adopted; the representative body is to transmit a report on the change of legal form required by the stipulations of the present Book as well as an offer of compensation in accordance with section 207.

Section 217

Resolution adopted by the meeting of shareholders

- (1) The resolution on change of legal form adopted by the meeting of shareholders requires the consent of all shareholders in attendance; those shareholders who did not appear likewise must consent to this resolution. The articles of association of the company changing its legal form may stipulate that the decision be taken by the majority of the shareholders. At a minimum, the majority must consist of three quarters of the votes cast.
- (2) Those of the shareholders who, in the case of a decision being taken by the majority of the votes cast, have voted for the change of legal form are to be listed by name in the record of the resolution on change of legal form.
- (3) All those shareholders must consent to a change of legal form to a public partly limited partnership who are to have the position of a general partner of this company.

Section 218

Substance of the resolution on change of legal form

- (1) The resolution on change of legal form also must include the articles of association of the limited liability company or the by-laws of the cooperative society, or it must establish the by-laws of the stock corporation or of the public partly limited partnership. It is not required that the by-laws be signed by the members.
- (2) The resolution on change of legal form to a public partly limited partnership must stipulate that, at a minimum, one shareholder of the company changing its legal form is to have an ownership interest in this company as a general partner or that, at a minimum, one general partner is to accede to the company.
- (3) The resolution on change of legal form to that of a cooperative society must stipulate that each member is to hold a minimum of one business share. The resolution may also determine that each member of the cooperative society is to be allotted an ownership interest consisting of a minimum of one business share, and in all other cases an ownership interest consisting of as many business shares as are to be regarded as having been fully paid in when the amount of the member's capital contribution to this cooperative society is credited.

Section 219

Legal status as a founder

In applying the company formation rules, the shareholders of the company changing its legal form are equivalent to the founders. In the event of the decision being taken by the majority of the votes cast, the shareholders who have voted for the change of legal form take the stead of the founders, and where the legal entity changes its legal form to that of a public partly limited partnership, any acceding general partners likewise take the stead of the founders.

Section 220 **Capital protection**

(1) The nominal amount of a limited liability company's nominal capital, or of the capital stock of a stock corporation or that of a public partly limited partnership, may not exceed the assets of the company changing its legal form that remain after deduction of its debts.

(2) The report on company formation on the basis of contributions in kind, in the event of the legal form being changed to that of a limited liability company, or the formation report, in the event of the legal form being changed to that of a stock corporation or of a public partly limited partnership, also is to present the development taken by the business of the company changing its legal form and the company's economic status.

(3) In the event of the legal form being changed to that of a stock corporation or of a public partly limited partnership, the formation is to be audited in any case, with the audit being performed by one or several auditors (section 33 (2) of the Stock Corporation Act). The time limit of two years determined for post-formation agreements in section 52 (1) of the Stock Corporation Act commences running on the date on which the change of legal form takes effect.

Section 221 **Accession of general partners**

Where a resolution for a change of the legal form to that of a public partly limited partnership stipulates the accession by a shareholder, who previously had not been a member of the company changing its legal form, this must be recorded by a notary. The by-laws of the public partly limited partnership are to be approved by each general partner so acceding.

Section 222 **Application for entry in the register of the change of legal form**

(1) The application for entry in the register in accordance with section 198, including the application for entry in the register of the by-laws of the cooperative society, is to be filed by all members of the future representative body as well as, in cases in which the legal entity must have a supervisory board in accordance with the provisions applicable to the new legal form, also by all members of this supervisory board. Concurrently with the application for entry in the register of the cooperative society, an application is to be filed for entry in the register of the members of its management board.

(2) Where the legal entity in its new legal form is a stock corporation or a public partly limited partnership, all those shareholders also are to file the application for entry in the register under subsection (1) who, as defined in section 219, are equivalent to the founders of this company.

(3) The application for entry in the register of the change of legal form in accordance with section 198 (2) sentence 3 may also be filed by the shareholders authorised to represent the company changing its legal form.

Section 223 **Annexes to the application for entry in the register**

Besides the documents usually required for this purpose, an executed copy or a publicly certified copy of the deeds recording the accession of all acceding general partners are likewise to be attached to the application for entry in the register of the new legal form, or of the legal entity in its new legal form.

Section 224 **Continuance and limitation in time of personal liability**

(1) The change of legal form does not affect the claims resulting from liabilities of the company changing its legal form that the creditors of the company may have against one of the company's shareholders, who is personally liable for such obligations in accordance with section 721 of the Civil Code or with section 126 of the Commercial Code at the time the legal form is changed.

(2) The shareholder will be liable for these obligations if they are due before five years have lapsed after the change of legal form and, on their basis, claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code have been established against the shareholder, or if a court enforcement action or an enforcement action by the authorities has been taken or applied for; where public-law liabilities are concerned, it suffices for an administrative decision to be issued.

(3) The time limit commences running on the day on which notice of the entry in the register of the new legal form, or of the legal entity in its new legal form, has been given by publication. Sections 204, 206, 210, 211, and 212 (2) and (3) of the Civil Code applying to prescription are to be applied accordingly.

(4) The establishment of claims of the type designated in section 197 (1) nos. 3 to 5 of the Civil Code will not be required should the shareholder have acknowledged the claim in writing.

(5) Subsections (1) to (4) are to be applied also if the shareholder takes up management activities in the legal entity having a different legal form.

Section 225 Review of the offer of compensation

In the case governed by section 217 (1) sentence 2, the question of whether the cash settlement offered is adequate in accordance with section 208 read in conjunction with section 30 (2) is to be reviewed only upon a shareholder making a corresponding demand. The company bears the costs.

Subdivision 2 Change of the legal form of professional partnerships

Section 225a Eligibility for a change of legal form

A professional partnership may obtain, based on a resolution on change of legal form pursuant to this Act, solely the legal form of a share capital company or that of a registered cooperative society.

Section 225b

Report on the change of legal form and information provided to the partners

A report on the change of legal form will be required only if a partner of the partnership changing its legal form is prohibited by section 6 (2) of the Partnership Companies Act from managing the affairs of the partnership. Partners prohibited from managing the affairs of the partnership are to be informed as stipulated in section 216.

Section 225c Applicable provisions

Section 214 (2) and sections 217 to 225 are to be applied accordingly to the change of legal form by a professional partnership.

Division 2 Change of the legal form by share capital companies

Subdivision 1 General provisions

Section 226 Eligibility for a change of legal form

A share capital company may obtain, based on a resolution on change of legal form pursuant to the present Act, solely the legal form of a partnership under the Civil Code, or that of a commercial partnership, a professional partnership, that of some other share capital company, or that of a registered cooperative society.

Section 227

Provisions having no application

In cases in which a public partly limited partnership changes its legal form, sections 207 to 212 are not to be applied to its general partners.

Subdivision 2

Change of the legal form by partnerships

Section 228

Eligibility for a change of legal form

- (1) A share capital company may obtain the legal form of a commercial partnership by way of changing its legal form only if the purpose of the company is compliant, as per the time the change of legal form takes effect, with the stipulations governing the formation of a general partnership (section 105 (1) and section 107 (1) of the Commercial Code).
- (2) A change of the legal form to that of a professional partnership is possible only if, as per the point in time at which the change of legal form takes effect, all holders of shares in the legal entity changing its legal form are natural persons pursuing a liberal profession (section 1 (1) and (2) of the Partnership Companies Act). Section 1 (3) of the Partnership Companies Act remains unaffected.
- (3) A change of the legal form to that of a civil law partnership is possible only if the company is not carrying on a commercial business as defined in section 1 (2) of the Commercial Code.

Section 229 (repealed)

Section 230

Preparations for the assembly of the holders of shares

- (1) The managing directors of a limited liability company changing its legal form are to give advance notice in text form to all of the shareholders, at the latest together with the invitation convening the meeting of shareholders that is to adopt a resolution on change of legal form, apprising them that a change of legal form will be the subject matter of a resolution to be adopted, and are to transmit the report on the change of legal form.
- (2) From the time onwards at which the general meeting of a stock corporation or of a public partly limited partnership is convened that is to adopt a resolution on change of legal form, the report on the change of legal form is to be kept on display for inspection by the stockholders at the business premises of the company. Upon a corresponding demand being made, each stockholder as well as each general partner who is prohibited from managing the affairs of the company is to be provided with a copy of the report on the change of legal form without undue delay and at no charge. Subject to their consent, the report on the change of legal form may be transmitted to the stockholder and to the general partner who is prohibited from managing the affairs of the company by means of electronic communication. The obligations pursuant to sentences 1 and 2 will lapse if the report on the change of legal form is accessible, for the same period of time, on the company website.

Section 231

Notice of the offer of compensation

The representative body of the company changing its legal form is to transmit to the shareholders or stockholders the offer of compensation defined in section 207, at the latest together with the invitation convening the meeting of shareholders, or the general meeting, that is to adopt a resolution on change of legal form. The publication of the offer of compensation by notice in the Official Gazette (*Bundesanzeiger*) and in the publications of record otherwise determined is equivalent to this transmission.

Section 232

Conduct of the assembly of the holders of shares

(1) At the meeting of shareholders, or at the general meeting, that is to adopt a resolution on change of legal form, the report on the change of legal form is to be kept on display. At general meetings, the report on the change of legal form may also be made accessible by other means.

(2) At the outset of the meeting of a stock corporation or of a public partly limited partnership, its representative body is to give an oral presentation of the draft resolution on change of legal form, or of its draft.

Section 233

Resolution adopted by the assembly of the holders of shares

(1) The resolution on change of legal form adopted by the meeting of shareholders, or the general meeting, requires the consent of all shareholders or stockholders in attendance if the company changing its legal form is to obtain the legal form of a partnership under the Civil Code, or that of a general partnership or of a professional partnership; those holders of shares who did not appear likewise must consent to this resolution.

(2) Where it is intended to transform the company changing its legal form into a partly limited partnership, the resolution on change of legal form requires a majority of at least three quarters of the votes cast at the meeting of shareholders of a limited liability company, or of the capital stock represented at the time the resolution is adopted by a stock corporation or a public partly limited partnership; section 50 (2) and section 65 (2) are to be applied accordingly. The articles of association or the by-laws of the company changing its legal form may stipulate a greater majority ratio and may impose further requirements. All those shareholders or stockholders must consent to a change of the legal form who are to have the position of a general partner in the partly limited partnership.

(3) Furthermore, the general partners of a public partly limited partnership must consent to its changing its legal form. The by-laws of the company changing its legal form may stipulate, for the case that the legal form is to be changed to that of a partly limited partnership, that this resolution requires a decision to be taken by a majority of these shareholders. Each of these shareholders may declare their withdrawal from the legal entity as per the point in time at which the change of legal form takes effect.

Section 234

Substance of the resolution on change of legal form

The resolution on change of legal form must also include:

1. the determination of the partnership's seat;
2. in cases in which the legal form is changed to that of a partly limited partnership: the limited partners as well as the amount that each of them has paid in as a capital contribution;
3. the partnership's articles of association.

Section 235

Application for entry in the register of the change of legal form

The application for entry in the register in accordance with section 198 is to be filed by the representative body of the company changing its legal form.

Section 236

Effects of the change of legal form

Upon the change of legal form by a public partly limited partnership taking effect, those general partners who have declared their withdrawal from the legal entity under section 233 (3) sentence 3 will leave the company.

Section 237

Continuance and limitation in time of personal liability

If a general partner of a public partly limited partnership changing its legal form obtains, by the change of the legal form to that of a partly limited partnership, the legal status of a limited partner, then section 224 is to be applied accordingly to the general partner's liability for the obligations that were in existence as per the point in time at which the company changing its legal form so changed its legal form.

Subdivision 3

Change of the legal form to that of a share capital company having a different legal form

Section 238

Preparations for the assembly of the holders of shares

Sections 230 and 231 are to be applied accordingly to the preparations for the meeting of shareholders, or for the general meeting, that is to adopt a resolution on change of legal form. Section 192 (2) remains unaffected.

Section 239

Conduct of the assembly of the holders of shares

- (1) The report on the change of legal form is to be kept on display at the meeting of shareholders or at the general meeting that is to adopt a resolution on change of legal form. At a general meeting, the report on the change of legal form may also be made accessible by other means.
- (2) At the outset of the meeting of a stock corporation or of a public partly limited partnership, its respective representative body is to give an oral presentation of the draft resolution on change of legal form, or of its draft.

Section 240

Resolution adopted by the assembly of the holders of shares

- (1) The resolution on change of legal form requires a majority of at least three quarters of the votes cast at the meeting of shareholders of a limited liability company, or at least three quarters of the capital stock of a stock corporation or of a public partly limited partnership that is represented at the time the resolution is adopted; section 65 (2) is to be applied accordingly. The articles of association or the by-laws of the company changing its legal form may stipulate a greater majority ratio and may impose further requirements; in the case of a public partly limited partnership changing its legal form to that of a stock corporation, they may also stipulate a majority with a lower ratio.
- (2) All those shareholders or stockholders must consent to a change of legal form by a limited liability company, or a stock corporation, to that of a public partly limited partnership who are to have the position of a general partner in the company in its new legal form. Section 221 is to be applied accordingly to the accession of general partners.
- (3) Furthermore, the general partners of a public partly limited partnership must consent to its changing its legal form. The by-laws of the company changing its legal form may stipulate that this resolution requires a decision to be taken by the majority of these shareholders.

Section 241

Consents required for the change of legal form by a limited liability company

- (1) Where, by the resolution on change of legal form adopted by a limited liability company changing its legal form, the shares of stock are quoted, by the by-laws of the stock corporation or of the public partly limited partnership, at an amount that is higher than the minimum amount pursuant to section 8 (2) or (3) of the Stock Corporation Act and at an amount deviating from the nominal amount of the business shares in the company changing its legal form, each shareholder must grant their consent who is unable to participate in an amount corresponding to the aggregate nominal amount of their business shares.
- (2) Furthermore, section 50 (2) is to be applied accordingly to the requirement of consent being granted by individual shareholders.

(3) Where individual shareholders are subject to other obligations they must additionally fulfil vis-à-vis the company, besides paying in their capital contributions, and where these obligations cannot be upheld, due to the restrictive determination made by section 55 of the Stock Corporation Act, in the context of the change of legal form, the change of legal form will also require the consent of these shareholders.

Section 242

Consent required for the change of legal form by a stock corporation or by a public partly limited partnership

Where, by the resolution on change of legal form adopted by a stock corporation changing its legal form or by a public partly limited partnership changing its legal form, the nominal amount of the business shares is specified in the articles of association of the limited liability company as an amount deviating from the amount allocable to the shares of stock, each stockholder must consent to this specification who is unable to participate with their full share.

Section 243

Substance of the resolution on change of legal form

- (1) Section 218 is to be applied accordingly to the resolution on change of legal form. Stipulations regarding special benefits, formation expenses, contributions in kind, and acquisitions of assets that are set out in the articles of association or in the by-laws of the company changing its legal form are to be included in the articles of association or in the by-laws of the company in its new legal form. Section 26 (4) and (5) of the Stock Corporation Act remains unaffected.
- (2) The provisions of other acts concerning the modification of the nominal capital or of the capital stock remain unaffected.
- (3) The articles of association or the by-laws of the company in its new legal form may specify the amount of the nominal capital or capital stock allocable to the shares in a different amount than that of the shares in the company changing its legal form. In the case of a limited liability company, it must be denominated in full euros.

Section 244

Record of the resolution on change of legal form; articles of association

- (1) The record of the resolution on change of legal form is to list the persons by name who, pursuant to section 245 (1) to (3), are equivalent to the founders of the company.
- (2) Where a stock corporation or a public partly limited partnership changes its legal form to that of a limited liability company, the articles of association need not be signed by the shareholders.

Section 245

Legal status as a founder; capital protection

- (1) Where a limited liability company changes its legal form to that of a stock corporation or of a public partly limited partnership, those shareholders who have voted for the change of legal form take the stead of the founders wherever the company formation rules of the Stock Corporation Act are applied; where a limited liability company changes its legal form to that of a public partly limited partnership, this will also apply to any general partners acceding to same. Section 220 is to be applied accordingly. Section 52 of the Stock Corporation Act is not to be applied if the limited liability company already has been entered in the register for more than two years prior to the change of legal form taking effect.
- (2) Where a stock corporation changes its legal form to that of a public partly limited partnership, the general partners of the company in its new legal form take the stead of the founders wherever the company formation rules of the Stock Corporation Act are applied. Section 220 is to be applied accordingly. Section 52 of the Stock Corporation Act is not to be applied.

(3) Where a public partly limited partnership changes its legal form to that of a stock corporation, the general partners of the company changing its legal form take the stead of the founders wherever the company formation rules of the Stock Corporation Act are applied. Section 220 is to be applied accordingly. Section 52 of the Stock Corporation Act is not to be applied.

(4) Where a stock corporation or a public partly limited partnership changes its legal form to that of a limited liability company, a report on company formation on the basis of contributions in kind is not required.

Section 246

Application for entry in the register of the change of legal form

(1) The application for entry in the register pursuant to section 198 is to be filed by the representative body of the company changing its legal form.

(2) Concurrently with the application for entry in the register of the new legal form, or of the legal entity in its new legal form, an application is to be filed for entry in the register of the managing directors of the limited liability company, the members of the management board of the stock corporation, or the general partners of the public partly limited partnership.

(3) Section 8 (2) of the Act on Limited Liability Companies and section 37 (1) of the Stock Corporation Act are not to be applied to the application for entry in the register pursuant to section 198.

Section 247

Effects of the change of legal form

(1) By the change of legal form, the nominal capital that a limited liability company changing its legal form had until the change of legal form will become the capital stock of the company in its new legal form, or the capital stock that a stock corporation changing its legal form or public partly limited partnership changing its legal form had until the change of legal form will become the nominal capital of the company in its new legal form.

(2) Upon a public partly limited partnership changing its legal form, its general partners leave the company in that capacity.

Section 248

Exchange of the shares

(1) Section 73 of the Stock Corporation Act is to be applied accordingly to the exchange of the business shares in a limited liability company changing its legal form in return for shares of stock, while section 226 of the Stock Corporation Act is to be applied accordingly, where business shares are merged, to the cancellation of stock.

(2) Section 73 (1) and (2) of the Stock Corporation Act is to be applied accordingly to the exchange of the shares of stock in a stock corporation changing its legal form, or in a public partly limited partnership changing its legal form, in return for business shares in a limited liability company, while section 226 (1) and (2) of the Stock Corporation Act is to be applied accordingly, where shares of stock are merged, to the cancellation of stock.

(3) No approval by the court is required.

Section 248a

Allocation of additional shares

Sections 72a and 72b apply accordingly to the change of legal form to become a stock corporation or a public partly limited partnership. The resolution on change of legal form is to include the declaration stipulated in section 72a (1) sentence 1.

Section 249

Protection of creditors

Section 224 also applies accordingly to the change of legal form by a public partly limited partnership to that of a limited liability company or to that of a stock corporation.

Section 250

Provisions having no application

Sections 207 to 212 are not to be applied to the change of legal form by a stock corporation to that of a public partly limited partnership or to the change of legal form by a public partly limited partnership to that of a stock corporation.

Subdivision 4

Change of the legal form to that of a registered cooperative society

Section 251

Preparations for and conduct of the assembly of the holders of shares

- (1) Sections 229 to 231 are to be applied accordingly to the preparations for the meeting of shareholders, or for the general meeting, that is to adopt a resolution on change of legal form. Section 192 (2) remains unaffected.
- (2) Section 239 (1) sentence 1 is to be applied accordingly to the meeting of shareholders, or the general meeting, that is to adopt a resolution on change of legal form, with section 239 (1) sentence 2 and subsection (2) also to be applied accordingly to the general meeting.

Section 252

Resolution adopted by the assembly of the holders of shares

- (1) The resolution on change of legal form adopted by the meeting of shareholders or the general meeting requires the consent of all shareholders or stockholders in attendance if the by-laws of the cooperative society stipulate an obligation of the members to provide additional funding; those holders of shares who did not appear likewise must consent to this resolution.
- (2) Where the members are not to be obligated to provide additional funding, the resolution on change of legal form requires a majority of at least three quarters of the votes cast at the meeting of shareholders of a limited liability company, or at least three quarters of the capital stock of a stock corporation or of a public partly limited partnership represented at the time the resolution is adopted; section 50 (2) and section 65 (2) are to be applied accordingly. The articles of association or the by-laws of the company changing its legal form may stipulate a greater majority ratio and may impose further requirements.
- (3) Section 240 (3) is to be applied accordingly to the change of legal form by a public partly limited partnership.

Section 253

Substance of the resolution on change of legal form

- (1) The resolution on change of legal form also must include the by-laws of the cooperative society. It is not required that the by-laws be signed by the members.
- (2) The resolution on change of legal form must provide for each member to have an ownership interest of at least one business share. The resolution may also determine that each member will obtain an ownership interest of at least one business share in the acquiring cooperative society and in all other cases will obtain an ownership interest comprising as many business shares as are to be regarded as having been fully paid in when the amount of the member's capital contribution to the cooperative society being acquired is credited.

Section 254

Application for entry in the register of the change of legal form

- (1) The representative body of the company changing its legal form is to file the application for entry in the register pursuant to section 198, including the application for entry in the register of the by-laws of the cooperative society.
- (2) Concurrently with the application for entry in the register of the cooperative society, an application is to be filed for entry in the register of the members of its management board.

Section 255

Effects of the change of legal form

(1) Each holder of shares obtaining the legal status of a member will hold an ownership interest in the cooperative society in accordance with the stipulations of the resolution on change of legal form. An obligation to assume further business shares remains unaffected. Section 202 (1) no. 2 sentence 2 applies, with the proviso that the rights of third parties to the shares thus far comprising the ownership interest will continue in existence, then having as their object the amount of capital contribution obtained by the change of legal form.

(2) The court may not mandate of its own motion that the cooperative society be wound up in accordance with section 80 of the Trade & Industrial Cooperative Societies Act before one year has lapsed after the change of legal form has taken effect.

(3) By the change of legal form by a public partly limited partnership, its general partners will leave the legal entity in that capacity.

Section 256

Amounts of the members' capital contributions; notification of members

(1) Each member is to be credited with the value of the business shares, or shares of stock, forming their ownership interest in the company changing its legal form as the amount of their capital contribution to the cooperative society.

(2) Where the amount of the capital contribution that a member obtains by the change of legal form exceeds the aggregate amount of business shares comprising their ownership interest in the cooperative society, the surplus is to be disbursed to the member after six months have lapsed since the day on which notice of the entry in the register of the cooperative society was given by publication. However, no such disbursement may be effected before the creditors who have filed their claims pursuant to section 204 read in conjunction with section 22 have been satisfied or have had security provided to them.

(3) The cooperative society is to inform each member of the following, in text form and without undue delay, after the entry in the register of the cooperative society has been published:

1. the amount of their capital contribution;
2. the amount and the number of business shares comprising their ownership interest in the cooperative society;
3. the amount that the member is to pay in after the amount of their capital contribution has been credited, or the amount that is to be disbursed to the member pursuant to subsection (2);
4. the liability amount of the cooperative society, should its members have to provide additional funding up to a liability amount.

Section 257

Protection of creditors

Section 224 as well is to be applied accordingly to the change of legal form by a public partly limited partnership.

Division 3

Change of the legal form of registered cooperative societies

Section 258

Eligibility for a change of legal form

(1) A registered cooperative society may obtain, based on a resolution on change of legal form pursuant to this Act, solely the legal form of a share capital company.

(2) The change of legal form is possible only if each member that obtains an ownership interest in the company in its new legal form is allotted, where the member is a shareholder

with limited liability, a business share, the nominal amount of which is denominated in full euros, or, where the member is a stockholder, at a minimum one full share of stock.

Section 259

Expert report of the confederation responsible for auditing cooperative societies

Prior to the general assembly being convened that is to adopt a resolution on change of legal form, an expert opinion is to be obtained from the confederation responsible for auditing cooperative societies as to whether the change of legal form is reconcilable with the interests of the respective cooperative society's members and creditors, and in particular, whether section 263 (2) sentence 2 and section 264 (1) are being observed in establishing the nominal capital or the capital stock (audit opinion).

Section 260

Preparations for the general assembly

- (1) The management board of the cooperative society changing its legal form is to give advance notice in text form to all of the members, at the latest together with the invitation convening the general assembly that is to adopt a resolution on change of legal form, apprising them that a change of legal form will be the subject matter of a resolution to be adopted. The advance notice is to set out the majority ratios required by section 262 (1) for the resolution to be adopted, while also indicating the option to raise an objection and the rights resulting therefrom.
- (2) Section 230 (2) and section 231 sentence 1 are to be applied accordingly to the preparations for the general assembly. Section 192 (2) remains unaffected.
- (3) Besides the documents usually required for this purpose, the audit opinion submitted pursuant to section 259 is to be kept on display for inspection by the members at the business premises of the cooperative society changing its legal form from the time of the general assembly having been convened that is to adopt a resolution on change of legal form. Upon a corresponding demand being made, each member is to be provided with a copy of said audit opinion without undue delay and at no charge. The obligations pursuant to sentences 1 and 2 lapse if the audit opinion is accessible, for the same period of time, on the website of the cooperative society.

Section 261

Conduct of the general assembly

- (1) At the general assembly that is to adopt a resolution on change of legal form, the report on the change of legal form, where it is required by the stipulations of the present Book, and the audit opinion submitted pursuant to section 259 are to be kept on display. At the outset of the meeting, the management body is to give an oral presentation of the resolution on change of legal form.
- (2) The audit opinion is to be read out to the general assembly. The confederation responsible for auditing cooperative societies is entitled to participate in the general assembly in an advisory capacity.

Section 262

Resolution adopted by the general assembly

- (1) The resolution on change of legal form adopted by the general assembly requires a majority of at least three quarters of the votes cast. It requires a majority of nine tenths of the votes cast if, at the latest by midnight of the third day prior to the general assembly, a minimum of 100 members, and in the case of cooperative societies having fewer than 1,000 members, one tenth of the members, have raised an objection to the change of legal form, submitting it by registered letter. The by-laws may stipulate greater majority ratios and may impose further requirements.
- (2) Section 240 (2) is to be applied accordingly to the change of the legal form to that of a public partly limited partnership.

Section 263

Substance of the resolution on change of legal form

(1) Sections 218, 243 (3) and section 244 (2) also are to be applied accordingly to the resolution on change of legal form.

(2) In establishing the number, type and scope of the shares (section 194 (1) no. 4), the resolution is to stipulate that each member obtaining the legal status of a shareholder having limited liability, or that of a stockholder, is to obtain an ownership interest in the nominal capital, or in the capital stock, of the company in its new legal form in that ratio that existed, at the end of the fiscal year last ended prior to the resolution on change of legal form being adopted, between the amount of their capital contribution and the total of the amounts of the capital contributions of all members who, by the change of legal form, have become shareholders or stockholders. The nominal amount of the capital stock is to be specified such that, wherever possible, full shares of stock are allotted to each member.

(3) The business shares in a limited liability company in general are to be quoted at a nominal amount higher than one hundred (100) euros only inasmuch as full business shares with the higher nominal amount are allotted to the members of the cooperative society changing its legal form. Shares of stock may be quoted at an amount that is higher than the minimum amount stipulated in section 8 (2) and (3) of the Stock Corporation Act only inasmuch as full shares of stock are allotted to the members at the higher amount. Where the representative body of the stock corporation or of the public partly limited partnership is authorised by the by-laws to increase the capital stock up to a determined nominal amount by issuing new stock in return for capital contributions, such authorisation may not provide for the representative body to decide on the preclusion of the pre-emptive right for newly issued shares.

Section 264

Capital protection

(1) The nominal amount of a limited liability company's nominal capital, or of the capital stock of a stock corporation or that of a public partly limited partnership, may not exceed the assets of the cooperative society changing its legal form that remain after the deduction of its debts.

(2) Where the legal form is changed to that of a limited liability company, the members of the cooperative society changing its legal form will not be obligated to submit a report on company formation on the basis of contributions in kind.

(3) In the event of the legal form being changed to that of a stock corporation, or that of a public partly limited partnership, the formation is to be audited in any case, with the audit being performed by one or several auditors (section 33 (2) of the Stock Corporation Act). However, the members of the cooperative society changing its legal form will not be under obligation to submit a formation report; section 32, section 35 (1) and (2) and section 46 of the Stock Corporation Act are not to be applied. The time limit of two years determined for post-formation agreements in section 52 (1) of the Stock Corporation Act commences running on the date on which the change of legal form takes effect.

Section 265

Application for entry in the register of the change of legal form

Section 222 (1) sentence 1 and subsection (3) are to be applied accordingly to the application for entry in the register pursuant to section 198. The audit opinion submitted pursuant to section 259 is to be attached, as the original or as a publicly certified copy, to the application for entry in the register.

Section 266

Effects of the change of legal form

(1) By the change of legal form, the shares thus far comprising the ownership interest will become shares in the company in its new legal form and fractional shares. Section 202 (1) no. 2 sentence 2 is to be applied with the proviso that the rights of third parties existing in the

capital contributions thus far comprising the members' ownership interest will continue to exist, then having as their object the shares and fractional shares obtained by the change of legal form.

(2) Fractional shares occasioned by the change of legal form may be disposed of independently and are transferable by inheritance.

(3) The rights arising from a share of stock, including the claim to having a stock certificate issued, may be exercised only if fractional shares of stock that together make up a full share of stock are held by a single holder, or if several parties entitled to certain rights, whose fractional shares of stock together make up a full share of stock, join together for purposes of exercising the rights. In general, the legal entity is to make arrangements enabling the fractional shares to be consolidated to form a full share of stock.

Section 267

Notification of the holders of shares

(1) The representative body of the company in its new legal form is to inform each holder of shares, in text form and without undue delay after the entry of the company in the register has been published, of the content of same and of the number and, unless the shares are no-par-value shares of stock, of the nominal amount of the shares and the fractional share that have been allotted to him. In this context, the provisions applying to fractional shares set out in section 266 in general are to be indicated.

(2) Concurrently with the notification, notice of an outline of its substance is to be given in the publications of record. The indication stipulated in subsection (1) sentence 2 need not be included in the publication.

Section 268

Instructions to stockholders; disposal of stock

(1) The notice defined in section 267 is to instruct stockholders to collect the shares of stock to which they are entitled. In this context, it is to be indicated that the company is entitled to dispose of, for the account of the parties involved, any shares of stock that have not been collected, in spite of three reminders warning of the consequences having been sent, within six months of notice of the instructions has been given in the publications of record. This indication need not be included in the notice of the instructions published in the publications of record.

(2) Once six months have lapsed since notice of the instructions has been given in the publications of record, the company in its new legal form is to issue a reminder warning that it will dispose of any shares of stock that have not been collected. Notice of this reminder warning of the consequences is to be given in the publications of record three times at intervals of at least one month. The last such notice must be published before one year has lapsed since notice of the instructions was given by publication.

(3) Once six months have lapsed since the last notice by publication of the reminder warning of the consequences, the company is to dispose of the shares of stock that have not been collected, doing so for the account of the parties involved, at the stock exchange price officially quoted and by arrangement of an official stockbroker; should no stock exchange price exist, the shares of stock will be sold at public auction. Section 226 (3) sentences 2 to 6 of the Stock Corporation Act is to be applied accordingly.

Section 269

Resolutions adopted by the general meeting; authorised capital

For as long as the shares of stock collected, or disposed of under section 268 (3), do not attain a minimum of six tenths of the capital stock, in those instances in which the change of legal form was made to that of a stock corporation or that of a public partly limited partnership, the general meeting of the company in its new legal form cannot adopt any resolutions that, by law or by the stipulations of the by-laws, require a capital majority. During this period, the representative body of the company may not exercise an authorisation to increase the capital stock.

Section 270

Offer of compensation

(1) The offer of compensation in accordance with section 207 (1) sentence 1 applies also for each member that has lodged an objection to the change of legal form, by registered letter, by midnight of the third day prior to the day on which the resolution on change of legal form was adopted.

(2) An expert opinion regarding the offer of compensation is to be obtained from the confederation responsible for auditing cooperative societies. Section 30 (2) sentences 2 and 3 is not to be applied.

Section 271

Continuance of the obligation to provide additional funding

Where insolvency proceedings are opened against the assets of the company in its new legal form within two years of the date on which notice of its entry in the register has been given by publication, each member having obtained the legal status of a shareholder with limited liability, or of a stockholder, as a result of the change of legal form will be under obligation to provide additional funding, insofar as this is stipulated by the by-laws of the cooperative society changing its legal form (section 6 no. 3 of the Trade & Industrial Cooperative Societies Act), also in those cases in which the member has disposed of his or her business share or his or her shares of stock. Sections 105 to 115a of the Trade & Industrial Cooperative Societies Act are to be applied accordingly with the proviso that only such liabilities of the company are to be taken into account that were in existence already at the time the legal form was changed.

Division 4

Change of legal form by associations having legal personality

Subdivision 1 General provisions

Section 272

Eligibility for a change of legal form

(1) An association having legal capacity may obtain, based on a resolution on change of legal form, solely the legal form of a share capital company or of a registered cooperative society.

(2) An association may change its legal form only if this is not contravened by its by-laws or by the stipulations of *Land* law.

Subdivision 2

Change of legal form to that of a share capital company

Section 273

Eligibility for a change of legal form

The change of legal form is possible only if each member obtaining an ownership interest in the company in its new legal form is allotted, where the member is a shareholder with limited liability, a business share, the nominal amount of which is denominated in full euros, or, where the member is a stockholder, at a minimum one full share of stock.

Section 274

Preparations for and conduct of the meeting of members

(1) Section 229, section 230 (2) sentences 1 and 2, section 231 sentence 1 and section 260 (1) are to be applied accordingly to the preparations for the meeting of members that is to adopt a resolution on change of legal form. Section 192 (2) remains unaffected.

(2) Section 239 subsection (1) sentence 1 and subsection (2) is to be applied accordingly to the meeting of members that is to adopt a resolution on change of legal form.

Section 275

Resolution adopted by the meeting of members

(1) If it is intended to change the purpose pursued by the legal entity (section 33 (1) sentence 2 of the Civil Code), then the resolution on change of legal form adopted by the meeting of members will require the consent of all members present; those members who did not appear likewise must consent to this resolution.

(2) In other cases, the resolution on change of legal form requires a majority of at least three quarters of the votes cast. It requires a majority of, at a minimum, nine tenths of the votes cast if, at the latest by midnight of the third day prior to the meeting of members, a minimum of 100 members, and in the case of associations having fewer than 1,000 members, of one tenth of the members, have raised an objection to the change of legal form, submitting it by registered letter. The by-laws may stipulate greater majority ratios and may impose further requirements.

(3) Section 240 (2) is to be applied accordingly to the change of legal form to that of a public partly limited partnership.

Section 276

Substance of the resolution on change of legal form

(1) Sections 218, 243 (3), section 244 (2) and section 263 subsection (2) sentence 2 and subsection (3) as well are to be applied accordingly to the resolution on change of legal form.

(2) The ownership interest of the members in the nominal capital or in the capital stock of the company in its new legal form only may be stipulated based on one or several of the following measures if it is intended to not allot shares having equal value to all members:

1. in the case of associations whose assets are divided into transferable shares: the nominal amount or the value of such shares;
2. the amount of the contributions;
3. in the case of associations maintaining contractual business relations with their members or with a part of their membership, the scope in which the members avail themselves of the services provided by the association or the scope in which the association avails itself of the services provided by the members;
4. a measure determined in the by-laws for the distribution of the surplus;
5. a measure determined in the by-laws for the distribution of the assets;
6. the duration of the membership.

Section 277

Capital protection

Section 264 likewise is to be applied accordingly in applying the company formation rules governing the new legal form.

Section 278

Application for entry in the register of the change of legal form

(1) Section 222 (1) and (3) is to be applied accordingly to the application for entry in the register pursuant to section 198.

(2) Where the association changing its legal form has not been entered in a Commercial Register, its management board is to give notice of the impending change of legal form in the publication determined in the by-laws of the association as the publication of record for such notices, and where no such publication has been determined, it is to give the notice in the publication serving the local court in the judicial district of which the association changing its legal form has its seat. The notice by publication takes the stead of the entry in the register of the transformation in accordance with section 198 (2) sentence 3. Section 50 (1) sentence 4 of the Civil Code is to be applied accordingly.

**Section 279
(repealed)**

Section 280

Effects of the change of legal form

By the change of legal form, the memberships thus far in place will become shares in the company in its new legal form and fractional shares. Section 266 subsection (1) sentence 2 and subsections (2) and (3) is to be applied accordingly.

Section 281

Notification of the holders of shares, disposal of shares of stock, resolutions adopted by the general meeting

(1) Sections 267 and 268 are to be applied accordingly to the notification of the holders of shares by the company, to the instructions issued to stockholders to collect the stock to which they are entitled, and to the disposal of shares of stock that are not so collected.
(2) Section 269 is to be applied accordingly to resolutions adopted by the general meeting of the company in its new legal form as well as to an authorisation of the representative body to increase the capital stock.

Section 282

Offer of compensation

(1) Section 270 (1) is to be applied accordingly to the offer of compensation pursuant to section 207 (1) sentence 1.
(2) Subsection (1) and sections 207 to 212 are not to be applied to the change of legal form by a registered association that is released, under section 5 (1) no. 9 of the Corporation Tax Act, from the obligation to pay corporation income tax.

Subdivision 3

Change of the legal form to that of a registered cooperative society

Section 283

Preparations for and conduct of the meeting of members

(1) Section 229 and section 230 (2) sentences 1 and 2, section 231 sentence 1 and section 260 (1) are to be applied accordingly to the preparations for the meeting of members that is to adopt a resolution on change of legal form. Section 192 (2) remains unaffected.
(2) Section 239 subsection (1) sentence 1 and subsection (2) is to be applied accordingly to the meeting of members that is to adopt a resolution on change of legal form.

Section 284

Resolution adopted by the meeting of members

If it is intended to change the purpose pursued by the legal entity (section 33 (1) sentence 2 of the Civil Code), or if the by-laws of the cooperative society provide for an obligation of its members to provide additional funding, then the resolution on change of legal form adopted by the meeting of members will require the consent of all members in attendance; those members who did not appear likewise must consent to this resolution. In all other cases, section 275 (2) is to be applied accordingly.

Section 285

Substance of the resolution on change of legal form

(1) Section 253 subsection (1) and subsection (2) sentence 1 likewise is to be applied accordingly to the resolution on change of legal form.
(2) Where it is intended to not have all members obtain an ownership interest comprising the same number of business shares, such an ownership interest in different amounts may only be stipulated in accordance with one or several of the measures designated in section 276 (2) sentence 1.

Section 286

Application for entry in the register of the change of legal form

Sections 254 and 278 (2) are to be applied accordingly to the application for entry in the register in accordance with section 198.

Section 287 (repealed)

Section 288

Effects of the change of legal form

- (1) Each member obtaining the legal status of a member of the cooperative society will hold an ownership interest in the cooperative society in accordance with the stipulations of the resolution on change of legal form. An obligation to assume further business shares remains unaffected. Section 255 (1) sentence 3 is to be applied accordingly.
- (2) The court may not mandate of its own motion that the cooperative society be wound up in accordance with section 80 of the Trade & Industrial Cooperative Societies Act before one year has lapsed after the change of legal form has taken effect.

Section 289

Amounts of capital contributions; notification of the members

- (1) The maximum amount that may be credited, based on the change of legal form, to each member of the cooperative society as the amount of their capital contribution to the cooperative society is the nominal amount of the business shares comprising that member's ownership interest in the cooperative society.
- (2) Section 256 (3) is to be applied accordingly.

Section 290

Offer of compensation

Section 270 (1) as well as section 282 (2) are to be applied accordingly to the offer of compensation in accordance with section 207 (1) sentence 2.

Division 5

Change of the legal form of mutual insurance companies

Section 291

Eligibility for a change of legal form

- (1) A mutual insurance company that is not a smaller mutual insurance company in the sense of section 210 of the Act on the Supervision of Insurance Companies may obtain, based on a resolution on change of legal form, solely the legal form of a stock corporation.
- (2) The change of legal form is possible only if each member of the mutual insurance company that obtains an ownership interest in the stock corporation is allotted, at a minimum, one full share of stock.

Section 292

Preparations for and conduct of the assembly of the most senior representative committee

- (1) Sections 229 and 230 (2) sentences 1 and 2, section 231 sentence 1 and section 260 (1) are to be applied accordingly to the preparations for the assembly of the most senior representative committee that is to adopt a resolution on change of legal form.
- (2) Section 239 subsection (1) sentence 1 and subsection (2) is to be applied accordingly to the conduct of the assembly of the most senior representative committee that is to adopt a resolution on change of legal form.

Section 293

Resolution adopted by the most senior representative committee

The resolution on change of legal form adopted by the most senior representative committee requires a majority of at least three quarters of the votes cast. It requires a majority of nine

tenths of the votes cast if, at the latest by midnight of the third day prior to the assembly of the most senior representative committee, a minimum of 100 members of the mutual insurance company have raised an objection to the change of legal form, submitting it by registered letter. The by-laws may stipulate greater majority ratios and may impose further requirements.

Section 294

Substance of the resolution on change of legal form

(1) Section 218 (1) and section 263 (3) sentences 2 and 3 likewise are to be applied accordingly to the resolution on change of legal form. The resolution on change of legal form may determine that members who have been members of the mutual insurance company changing its legal form for less than three years prior to the change of legal form will be prohibited from obtaining an ownership interest in the stock corporation.

(2) The capital stock of the stock corporation is to be specified in the amount of the capital stock of comparable insurers having the legal form of the stock corporation. Where the supervisory authority would grant permission to an insurance stock corporation that is to be newly formed only if a higher capital stock were to be set, then the capital stock is to be set in that amount inasmuch as this is feasible for the mutual insurance company changing its legal form, based on its assets and financial circumstances. Where no such specification is possible in light of the mutual insurance company's assets and financial circumstances, the nominal amount of the capital stock is to be specified such that, wherever possible, full shares of stock are allotted to each member obtaining the legal status of a stockholder.

(3) The ownership interest of the members in the capital stock of the stock corporation may only be stipulated based on one or several of the following measures if it is intended to not allot ownership interests having equal value to all members:

1. the amount insured,
2. the amount of the contributions,
3. the amount of the premium reserve made in the life insurance policy,
4. the measure determined in the by-laws for the distribution of the surplus,
5. a measure determined in the by-laws for the distribution of the assets,
6. the duration of the membership.

Section 295

Capital protection

Section 264 (1) and (3) likewise are to be applied accordingly in applying the company formation rules of the Stock Corporation Act.

Section 296

Application for entry in the register of the change of legal form

Sections 246 (1) and (2) is to be applied accordingly to the application for entry in the register in accordance with section 198.

Section 297 (repealed)

Section 298

Effects of the change of legal form

By the change of legal form, the memberships thus far in place will become shares of stock and fractional shares. Section 266 subsection (1) sentence 2 and subsections (2) and (3) is to be applied accordingly.

Section 299

Notification of the stockholders, disposal of shares of stock, resolutions adopted by the general meeting

(1) Section 267 is to be applied accordingly to the notification of the stockholders by the company, while section 268 is to be applied accordingly to the instructions issued to stockholders to collect the stock to which they are entitled and to the disposal of shares of stock that are not so collected.

(2) Section 269 is to be applied accordingly to resolutions adopted by the general meeting of the stock corporation as well as to an authorisation of the management board to increase the capital stock. The supervisory authority may permit exceptions to the corresponding application of section 269 sentence 1 if this is required in order to prevent the stock corporation from suffering significant disadvantages.

Section 300

Offer of compensation

Section 270 (1) is to be applied accordingly to the offer of compensation in accordance with section 207 (1) sentence 1.

Division 6

Change of the legal form of corporations under public law and public-law institutions

Section 301

Eligibility for a change of legal form

(1) Unless otherwise provided for by law, a corporation under public law or a public-law institution may only obtain the legal form of a share capital company by a change of legal form.

(2) The change of legal form is possible only if the corporation or institution has legal personality and the laws of the Federation or *Land* law governing it provide for a change of legal form or permit it.

Section 302

Applicable provisions

The provisions of Part 1 apply to the change of legal form only insofar as the laws of the Federation or *Land* law governing the corporation or institution changing its legal form do not lead to a different conclusion. Said laws govern in particular the manner in which the articles of association or the by-laws of the company in its new legal form are concluded or established, who will obtain an ownership interest in this company as a holder of shares and which person, or which persons, is or are equivalent to the founders of the company; sections 28 and 29 of the Stock Corporation Act are not to be applied.

Section 303

Capital protection; consents required

(1) In addition to the company formation rules governing the new legal form, section 220 likewise is to be applied accordingly.

(2) A change of legal form to that of a public partly limited partnership requires the consent of all holders of shares who are to have the position of a general partner in this company. Section 221 is to be applied accordingly to the accession of general partners.

Section 304

Effectiveness of the change of legal form

The change of legal form will take effect upon the entry of the share capital company in the Commercial Register. Defects of the change of legal form do not prejudice the effects of the entry in the register.

Book 6

Cross-border transformation

Part 1
Cross-border merger

Section 305
Cross-border merger

(1) A cross-border merger is a merger in which at least one of the companies involved is subject to the laws of another Member State of the European Union or of another Contracting Party of the Agreement creating the European Economic Area.

(2) Unless the stipulations of the present Part lead to a different conclusion, the provisions of Part 1 and those of Divisions 2, 3, and 4 of Part 2 of Book 2 are to be applied accordingly to the involvement of a share capital company (section 3 (1) no. 2) in a cross-border merger. Unless the stipulations of the present Part lead to a different conclusion, the provisions of Part 1 and those of Subdivision 2 of Division 1 of Part 2 of Book 2 are to be applied accordingly to the involvement of a commercial partnership (section 3 (1) no. 1) in a cross-border merger.

Section 306
Companies eligible for merger

(1) The following may be involved in a cross-border merger:

1. share capital companies in the sense of Article 119 no. 1 of the Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169 of 30 June 2017, p. 46) as last amended by Directive (EU) 2021/23 (OJ L 22 of 22 January 2021, p.1) as companies being acquired, acquiring companies, or new companies
 - a) that have been established in accordance with the laws of a Member State of the European Union or of some other Contracting Party of the Agreement creating the European Economic Area and
 - b) that have their seat as recorded in the by-laws, their central administration, or their principal place of business in a Member State of the European Union or some other Contracting Party of the Agreement creating the European Economic Area, as well as
2. commercial partnerships within the meaning of section 3 (1) no. 1, as acquiring companies or new companies, who as a rule have no more than 500 employees.

(2) The following may not be involved in a cross-border merger:

1. cooperative societies, even in those cases in which they would be covered by the definition laid down in Article 2 no. 1 of the Directive in accordance with the laws of another Member State of the European Union or some other Contracting Party to the Agreement on the European Economic Area, as well as
2. companies
 - a) the object of which is the collective investment, in keeping with the principle of risk diversification, of capital provided to them by the public, and
 - b) the shares of which companies may be repurchased or redeemed, at the request of the holders of shares, directly or indirectly out of the assets of that company.

Actions taken by such a company to ensure that the stock exchange value of its shares does not vary significantly from its net asset value are equivalent to the repurchases or redemptions within the meaning of sentence 1 no. 2 letter (b).

Section 307
Draft terms of merger

(1) The representative body of a company involved draws up, together with the representative bodies of the other companies involved, common draft terms of merger.
(2) The draft terms of merger, or their initial outline, at a minimum must provide the following information:

1. the legal form, business name and seat, respectively, of the company being acquired and of the acquiring company or new company,
2. the share exchange ratio in the company and, if applicable, the amount of the additional cash payments,
3. the details regarding the allotment of the shares in the acquiring company or new company,
4. the likely implications of the merger for employment,
5. the point in time from which the shares in the company will entitle their owners to participate in the profits, as well as any special conditions affecting that entitlement,
6. the point in time from which the actions taken by the companies being acquired will be deemed, for accounting purposes, as having been taken for the account of the acquiring company or new company (merger cut-off date),
7. the rights conferred by the acquiring company or new company on the shareholders enjoying special privileges and on holders of securities other than shares in the company, or the measures proposed concerning such persons,
8. any special advantages granted to the members of the administrative, management, supervisory, or controlling bodies of the companies involved in the merger,
9. if relevant, the act by which the company resulting from the cross-border merger was formed and, if they are the subject of a separate act, the by-laws,
10. as the case may be, information on the procedure by which arrangements are determined for the involvement of employees in the definition of their co-determination rights in the company resulting from the cross-border merger,
11. information on the valuation of the assets and liabilities that are to be transferred to the acquiring company or new company,
12. the cut-off date of those balance sheets of the companies involved in the cross-border merger, based on which the terms of the cross-border merger are determined,
13. the details of the offer of cash settlement in accordance with section 313,
14. information on security offered to the creditors,
15. in the event of a company being merged onto a commercial partnership in accordance with section 306 (1) no. 2:
 - a) for each holder of shares in a legal entity being acquired, the determination as to whether the position of general partner or limited partner is to be granted to said owner in the acquiring commercial partnership or in the new commercial partnership;
 - b) the amount specified as the capital contribution to be made by each shareholder,
16. information on the effects of the cross-border merger on company pensions and accrued company pension rights.

(3) The information on the exchange of shares (subsection (2) nos. 2, 3 and 5) and the details of the offer of cash settlement (subsection (2) no. 13) need not be provided if

1. all shares in the company being acquired are held by the acquiring company or
2. no shares are allotted to the holders of shares in the company being acquired and if one and the same person
 - a) holds all shares in the company being acquired and in the acquiring company,
 - b) holds all shares in such companies that jointly hold all shares in the company being acquired or in the acquiring company, or
 - c) holds all shares in such companies in which the ownership of shares is continued up to the company being acquired or the acquiring company.

(4) The draft terms of merger must be recorded by a notary.

Section 308 **Publication of the draft terms of merger**

(1) The draft terms of merger, or their initial outline, are to be filed with the register. The court is to provide, without undue delay, the following information in the publication pursuant to section 10 of the Commercial Code:

1. an indication as to the draft terms of merger, or their initial outline, having been filed with the Commercial Register,
2. the legal form, business name and seat, respectively, of the companies involved in the cross-border merger,
3. the registers in which the companies involved in the cross-border merger have been entered, as well as the number under which they respectively have been entered,
4. a notice to the following persons that they may transmit to the company concerned, by no later than five working days prior to the meeting of shareholders, comments on the draft terms of merger addressed to:
 - a) the holders of shares and creditors of the companies involved in the cross-border merger, as well as to the
 - b) competent works councils of the companies involved in the cross-border merger, or, in the event no works council exists, to the employees of the companies involved in the cross-border merger.

The information of which notice is to be given by publication is to be provided to the register when filing the draft terms of merger or their initial outline. The assembly of the holders of shares may adopt a resolution in accordance with section 13 regarding the consent to the draft terms of merger only once one month has lapsed following publication of the notice.

(2) If a merger resolution by the holders of shares in the company being acquired is not required as set out in section 312 (2) read in conjunction with section 307 (3), then the company being acquired is to file the draft terms of merger with the register no later than one month prior to the day on which the draft terms of merger are recorded by a notary.

(3) If a merger resolution by the holders of shares in the company being acquired is required, while a merger resolution by the holders of shares in the acquiring company is not required as set out in section 62 (1), then the acquiring company is to file the draft terms of merger with the register one month prior to the assembly of the holders of shares in the company being acquired that is to adopt a resolution in accordance with section 13 regarding the consent.

(4) Where, according to section 312 (2) and section 62 (1), neither a merger resolution by the holders of shares in the company being acquired nor a merger resolution by the holders of shares in the acquiring company is required, the acquiring company is to file the draft terms of merger with the register no later than one month prior to the day on which the draft terms of merger are recorded by a notary.

Section 309

Report on the merger

(1) The representative bodies of the companies involved draw up a merger report. This is to explain and justify in legal and economic terms, for the holders of shares in the company involved in the merger and for its employees, the cross-border merger and the implications of the cross-border merger for the employees.

(2) A general section explains and justifies, at a minimum, the implications of the cross-border merger for the future business of the company and its subsidiaries, if any, are explained and justified. In addition, the report includes a section geared specifically to the holders of shares in accordance with subsection (4) and a section geared specifically to the employees in accordance with subsection (5).

(3) The company may decide whether to draw up separate reports for holders of shares and for employees instead of one uniform report. The report for holders of shares consists of the general section and of the section geared specifically to the holders of shares. The report for employees consists of the general section and of the section geared specifically to the employees.

(4) In the section geared specifically to the holders of shares, at a minimum the following is explained and justified above and beyond the contents set out in section 8 (1):

1. the effects of the cross-border merger on the holders of shares as well as
2. the rights and remedies available to holders of shares in accordance with section 305 (2) read in conjunction with section 15 and, as the case may be, read in conjunction with section 72a, as well as according to section 313 of the present Act and section 1 no. 4 of the Act on Valuation Proceedings under Corporate Law.

(5) In the section geared specifically to the employees, at a minimum the following is explained and justified:

1. the effects of the cross-border merger on the employment relationships as well as, if applicable, the measures serving to safeguard said employment relationships,
2. significant modifications of the applicable employment terms or significant changes to the sites at which the branches of the company are located, as well as
3. the implications of the factors set out under nos. 1 and 2 for the subsidiaries, if any, of the company involved in the cross-border merger.

(6) In the cases governed by section 8 (3), the report for the holders of shares is not required. Furthermore, the report for the holders of shares in the company being acquired is not required in the cases governed by section 307 (3) no. 2 letters (b) and (c). The report for the employees is not required if the company involved in the merger and its subsidiaries, if any, have no other employees than those who are members of the representative body. No merger report will be required overall if the pre-requisites set out in sentences 1 or 2 and those of sentence 3 have been met.

Section 310

Accessibility of the merger report

(1) The uniform report is to be made accessible electronically to the holders of shares and to the competent works councils of the companies involved in the cross-border merger or, in the event no works council exists at the company concerned, to its employees no later than six weeks prior to the assembly of the holders of shares that is to adopt a resolution in

accordance with section 13 regarding the consent to the draft terms of merger. If the company draws up separate reports, then, within the time limit set out above, the report for the holders of shares is to be made accessible to the holders of shares and the report for the employees is to be made accessible to the works council or, insofar as there is no works council in the company concerned, to its employees. If the draft terms of merger, or their initial outline, already are available at the point in time defined in sentence 1, then they are to be made accessible together with the merger report.

(2) Where a merger resolution by the acquiring company is not required as set out in section 62 (1), the report must be made accessible no later than six weeks prior to the day of the assembly of the holders of shares in the company being acquired. If, in the cases governed by section 308 (2) and (4), the separate report for the employees is required, then this is to be made accessible electronically at the points in time determined in section 308 (2) and (4).

(3) If the representative body of the company involved in the cross-border merger receives, no later than one week prior to the assembly of the holders of shares that is to adopt a resolution in accordance with section 13 regarding the consent to the draft terms of merger, a statement of position in text form from the competent works council or, in the event no works council exists at the company, from its employees, then the company will inform the owners of its shares thereof immediately after the time limit has lapsed by making available electronically the uniform report or the report for the employees, in each case attaching a copy of the statement of position.

Section 311 Audit of the merger

(1) The draft terms of merger, or their initial outline, are to be audited in accordance with sections 9 to 12; sections 39e and 48 are not to be applied. The audit report must be made accessible to the holders of shares no later than one month prior to the date of the assembly of holders of shares that is to adopt a resolution in accordance with section 13 regarding the consent to the draft terms of merger.

(2) Section 9 (2) and section 12 (3), in each case read in conjunction with section 8 (3), apply with the proviso that a waiver by all holders of shares in all legal entities involved is required. The audit of the merger and the audit report furthermore are not required in the cases governed by section 307 (3) no. 2 letters (b) and (c).

Section 312 Consent by the holders of shares

(1) The holders of shares may make their consent under section 13 contingent on the express ratification by the employees of the acquiring company or new company of the arrangements made for their co-determination rights.

(2) In the cases governed by section 307 (3), a merger resolution by the holders of shares in the company being acquired is not required.

(3) The assembly of the holders of shares takes note of the merger report, the audit report and of any statements of position under section 308 (1) sentence 2 no. 4 prior to adopting a resolution regarding the consent to the draft terms of merger.

Section 313 Cash settlement

(1) If the acquiring company or new company is not governed by German law, then the company being acquired is to offer, in the draft terms of merger or their initial outline, to each holder of shares who records an objection against the merger resolution adopted by the company, to acquire that owner's shares in return for adequate cash settlement; inasmuch, section 71 (4) sentence 2 of the Stock Corporation Act and the order as to a legal obligation in respect of a prohibited acquisition being null and void according to section 33 (2) sentence 3 of the Act on Limited Liability Companies are not to be applied.

The offer of compensation is subject to the condition precedent of the cross-border merger taking effect. The draft terms of merger, or their initial outline, are to provide a mailing

address and an electronic address to which the notification under subsection (2) and the declaration of acceptance under subsection (3) sentence 1 can be transmitted. Section 29 subsection (1) sentences 4 and 5 as well as subsection (2), section 30 (1) and sections 32 to 34 apply accordingly.

(2) A holder of shares who intends to accept the offer of compensation under subsection (1) sentence 1 is to notify the company of this intention no later than one month following the day on which the assembly of the holders of shares in the company being acquired has adopted a resolution consenting to the draft terms of merger.

(3) The offer may be accepted by no later than two months following the day on which the assembly of the holders of shares in the company being acquired has adopted a resolution consenting to the draft terms of merger. The acceptance is ruled out if the notification under subsection (2) has not been effected in due time. If the acceptance is effected prior to the time limit for the notification defined in subsection (2) having lapsed, then no notification will be required. Section 15 (4) of the Act on Limited Liability Companies remains unaffected.

(4) Owners of shares who have accepted the offer under the terms of subsection (3) will not become owners, in derogation from section 20 (1) no. 3 sentence 1, of shares in the acquiring company or new company upon the merger taking effect.

(5) The acquiring company or new company is to pay out the cash settlement to the holders of shares who have accepted the offer under the terms of subsection (3) no later than two weeks after the merger having taken effect. Section 314 is to be applied accordingly to the claim to cash settlement to which these holders of shares are entitled.

(6) It is to be reviewed in all cases whether the cash settlement to be offered under subsection (1) is adequate. Section 311 is to be applied accordingly.

Section 314

Protection afforded to the creditors of the company being acquired

(1) The creditors of the company being acquired may demand that they be provided security for a receivable in cases in which

1. the receivable antedates the publication of the draft terms of merger, or their initial outline, but has not yet fallen due at the time of such publication and

2. its satisfaction is jeopardised due to the merger.

(2) The pre-requisites for the claim under subsection (1) are to be demonstrated to the satisfaction of the competent court.

(3) The claim to provision of security expires unless it is asserted in court within three months of the draft terms of merger having been published.

(4) Securities provided are to be released if the merger proceedings have failed. This is the case in particular if

1. the decision of the court to refuse the entry defined in section 316 (1) has become final and binding,

2. it no longer is possible to contest the decision refusing entry of the merger in the register of the acquiring company or new company or

3. the procedure for entry in accordance with section 316 (1) or, following said entry, the procedure for entry of the merger in the register of the acquiring company or new company has been brought to a final and conclusive end in some other manner.

(5) That court has exclusive competence for disputes regarding the claim to provision of security under subsection (1) as well as regarding the release under subsection (4) to the district of which the court maintaining the register belongs that is competent for the issuance of the pre-merger certificate.

Section 315

Entry in the register of the cross-border merger

(1) The representative body of a company being acquired is to file an application with the register maintained at the seat of the company for entry in same of the fact that the pre-requisites for the cross-border merger relevant to said company have been met.

(2) Section 16 (2) and (3) and section 17 apply accordingly with the proviso that copies of the following are to be attached in addition to

1. the application for entry in the register: any comments as defined in section 308 (1) sentence 2 no. 4 and

2. the uniform report or the report for the employees: any statement of position as defined in section 310 (3).

(3) The members of the representative body are to give an assurance that

1. the security offered under section 307 (2) no. 14 was provided to the creditors,

2. the rights of the employees under section 308 (1) sentence 2 no. 4 letter (b) as well as under section 310 (1) and (3) have been respected,

3. proceedings to be implemented for purposes of negotiating the future co-determination in accordance with the provisions implementing Article 133 (3) and (4) of Directive (EU) 2017/1132 already have been initiated or that the management of each of the companies involved have decided to be directly subject to the standard rules of said Directive without any prior negotiation,

4. the company being acquired is not insolvent, its insolvency is not imminent and it is not insolvent as defined in section 17 (2), section 18 (2) or section 19 (2) of the Insolvency Code (*Insolvenzordnung* – InsO).

If it is impossible to give the assurance under sentence 1 no. 4, then the representative body is to inform which of the constituent elements set out therein apply and whether a request to open insolvency proceedings has been filed or insolvency proceedings have been opened. Once insolvency proceedings have been opened, this duty is incumbent on the insolvency administrator; if a provisional insolvency administrator has been appointed and a general prohibition of disposal has been imposed on the debtor, then this duty is incumbent on the provisional insolvency administrator.

(4) The representative body informs the court maintaining the register of the following:

1. the number of employees as at the time the draft terms of merger were completed,

2. the number of subsidiaries and their respective geographic locations

3. the existence of liabilities owed to public bodies.

(5) The court competent under section 314 (5) notifies the court maintaining the register, upon request, whether a claim to provision of security was asserted in court within the time limit stipulated in section 314 (3).

Section 316 **Merger certificate**

(1) The court reviews within three months of the application for entry in the register in accordance with section 315 (1) and (2) whether the company being acquired meets the pre-requisites for the cross-border merger. The entry includes the designation of the merger proceedings and of the companies involved in it, as well as the attestation of compliance with all relevant conditions and completion of all procedures and formalities required. The entry is to include the note that the cross-border merger will take effect subject to the pre-requisites under the laws of the state by which the acquiring company or new company is governed. As regards the entry in the register, the court issues a merger certificate of its own motion.

(2) The entry in accordance with subsection (1) may not be made prior to the time limits stipulated in section 313 (3) sentence 1 and section 314 (3) having lapsed. If all holders of shares in the company being acquired have consented to the merger, then the entry may be made already prior to the time limit stipulated in section 313 (3) sentence 1 having lapsed. Where a claim to provision of security in accordance with section 314 (1) has been asserted in court, the entry in accordance with subsection (1) may not be effected

1. before the decision refusing the application has become final and binding,
2. the security established by the decision has been provided or
3. the decision refusing a part of the application has become final and binding and the security established by the decision has been provided.

Evidence is to be submitted to the satisfaction of the court that the security has been provided. Upon demand by the court, the members of the representative body are to give an assurance that the security established by the decision has been provided.

(3) In the proceedings defined in subsection (1), the court must review, should indicative factors be given, whether the cross-border merger is intended to be effected for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law or for criminal purposes. If such purposes are given, then the court will refuse to make the entry in accordance with subsection (1). If it is necessary, in performing the review, to take account of further information or to pursue additional investigations, the time limit set out in subsection (1) sentence 1 may be extended by a maximum of three months. Indicative factors within the meaning of sentence 1 are given in particular if

1. a negotiation procedure to be implemented in accordance with Article 133 (2) to (4) of Directive (EU) 2017/1132 was initiated only upon this having been instructed by the court;
2. the number of employees corresponds, at a minimum, to four fifths of the threshold relevant for corporate co-determination; no value is created in the country of destination; and the seat of the administrative office remains in Germany;
3. as a consequence of the cross-border merger, a foreign company becomes the debtor of company pensions or accrued company pension rights and this company has no operative business otherwise.

(4) If, as an exception, the complexity of the proceedings means that it is impossible to perform the review within the time limits set out in subsection (1) sentence 1 or subsection (3) sentence 3, then the court is to inform the party filing the application for entry in the register of the reasons for the delay prior to such time limit ending.

(5) Upon the court receiving a notification from the register in which the acquiring company or new company has been entered, as to the cross-border merger having taken effect, the court having jurisdiction at the seat of the company being acquired is to note the date on which the cross-border merger has taken effect and is to transmit to said register the electronic documents it has kept on file.

Section 317 **Information of the court maintaining the register**

Insofar as this is required to perform the review in accordance with section 316, the court may

1. demand that the company provide information and documents,
2. demand that public domestic bodies provide information and documents and may request the necessary information and documents from public bodies of another Member State of the European Union or of some other Contracting Party to the

Agreement on the European Economic Area having competence in the fields concerned by the cross-border merger,

3. demand that a special negotiating body that has been instituted provide information and documents,
4. involve an independent expert, and
5. hear, in the context of the review performed in accordance with section 316 (3), a union represented in the merging enterprise.

If a domestic public body is competent in a field concerned by the cross-border merger, then it may transmit, upon request, the necessary information and documents to the body of another Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area that is competent for the issuance of a merger certificate.

Section 318

Entry of the cross-border merger with Germany being the country of destination

(1) In the case of a merger by acquisition, the representative body of the acquiring company is to file an application for entry of the merger in the acquiring company's register, and in the case of a merger by new formation, the representative bodies of the companies being acquired are to file an application for entry of the new company in the register of the seat of the acquiring company or new company. The common draft terms of merger and, if applicable, the agreement on employee co-determination rights, in the form stipulated in section 17 (1), are to be attached to the application for entry. Section 315 subsection (2), subsection (3) sentence 1 nos. 2 and 3 as well as subsection (4), section 316 (1) sentence 1, subsections (3) and (4) and section 317 sentence 1 are to be applied accordingly to the acquiring company and the review of the pre-requisites for entry in the register pertaining to it. Section 16 (2) and (3) and section 17 are not to be applied to the companies being acquired.

(2) The merger certificate transmitted via the European system of interconnection of registers is recognised as proof of the proper completion of the pre-merger procedures and formalities applying under the laws of the state by which the company being acquired is governed. If a commercial partnership as defined in section 306 (1) no. 2 is involved in the merger, then by way of supplementing the documents required under subsection (1), proof of the entry of the merger in the register of the company being acquired is to be provided. Without this merger certificate, it is not permissible for the cross-border merger to be entered in the register.

(3) The court maintaining the register reviews in particular whether

1. the pre-requisites for entry in the register pertaining to the acquiring company have been met,
2. the companies involved in the cross-border merger have consented to identically worded common draft terms of merger,
3. an agreement on employee co-determination rights has been concluded, if applicable, as well as whether,
4. in the case of a merger by new formation, the provisions governing the formation of the new company have been complied with.

(4) The court having jurisdiction at the seat of the acquiring company or of the new company is to notify of its own motion, via the European system of interconnection of registers, each register with which one of the companies being acquired is obliged to lodge its documents, of the day on which the merger takes effect. If a commercial partnership defined in section 306 (1) no. 2 is involved in the merger, the court having jurisdiction at the seat of the acquiring

company is to notify each register in accordance with sentence 1, of its own motion, of the day on which the merger takes effect using some other means.

Section 319

Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

If the acquiring company or the new company is subject to German law, then a merger will be considered a cross-border merger as defined in this Part also if a company being acquired is involved in it that is subject to the laws of the United Kingdom of Great Britain and Northern Ireland, provided that

1. the draft terms of merger have been recorded by a notary in accordance with section 307 (4) prior to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union or prior to a transition period lapsing during which the United Kingdom of Great Britain and Northern Ireland continues to be considered a Member State of the European Union, and
2. an application is filed along with the required documents without undue delay, but no later than two years following that point in time, for entry of the merger in the register.

Part 2

Cross-border division

Section 320

Cross-border division

(1) Divisions in which, at a minimum, one of the companies involved is subject to the laws of another Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area (cross-border divisions), are, within the meaning of the present Act, exclusively the following:

1. divisions for purposes of new formation within the meaning of section 123 (1) no. 2, (2) no. 2 or (3) no. 2 as well as,
2. subject to the stipulations of section 332, divisions for purposes of absorption within the meaning of section 123 (1) no. 1, subsection (2) no. 1 or subsection (3) no. 1.

(2) Unless the stipulations of the present Part lead to a different conclusion, the provisions of Part 1 of Book 3 and those of Divisions 2 and 3 of Part 2 of Book 3 are to be applied accordingly to the involvement of a share capital company (section 3 (1) no. 2) in a cross-border division.

(3) Section 143 is not to be applied to cross-border divisions.

Section 321

Companies eligible for division

Share capital companies may be involved in a cross-border division as companies being acquired or new companies in accordance with Annex II of Directive (EU) 2017/1132 if

1. they have been formed in accordance with the laws of a Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area and
2. they have their seat as recorded in the by-laws, their central administration, or their principal place of business in a Member State of the European Union or in some other Contracting Party to the Agreement on the European Economic Area.

Section 306 (2) sentence 1 no. 2 applies accordingly.

Section 322

Draft terms of the division

(1) The representative body of the company being acquired draws up draft terms of the division.

(2) The draft terms of the division, or their initial outline, include the following information, at a minimum, besides the information stipulated in section 307 (2) nos. 1 to 14 and 16:

1. the indicative schedule planned for the division,
2. in the case of a partial division and of a division by separation, any amendments of the by-laws of the company being acquired,
3. an exact description of the items making up the assets and liabilities of the company being acquired as well as a declaration as to how these items making up the assets and liabilities are to be allocated to the new companies or whether, in the event of a partial division or division by separation, they are to remain with the company being acquired, including provisions on how items making up the assets and liabilities are to be treated that are not being expressly allocated in the draft terms of the division, for example items making up the assets or liabilities that were unknown at the time the draft terms were drawn up,
4. information on the valuation of the assets and liabilities that are to remain with the company being acquired, as well as
5. in the case of a full division or partial division, the distribution of the shares in the company being acquired and the new companies to the holders of shares in the company being acquired as well as the measure applying to such distribution.

(3) In the case of a division by separation, the information stipulated in section 307 (2) no. 2, 3, 5, 7 and 13 need not be provided.

(4) The draft terms of the division must be recorded by a notary.

Section 323 Publication of the draft terms of the divisions

Section 308 (1) applies accordingly to the publication of the draft terms of the divisions or of their initial outline.

Section 324 Division report

(1) The representative body of the company being acquired draws up a division report. Section 309 (1) to (5) and section 310 (1) and (3) apply accordingly to the division report.

(2) In the cases governed by section 8 (3) sentences 1, 2 and 3 no. 2 and by section 135 (3), the report for the holders of shares is not required. The report for the employees is not required if the company being acquired and, if applicable, its subsidiaries have no other employees than those who are members of the representative body.

No division report will be required overall if the pre-requisites set out in sentences 1 and 2 have been met.

Section 325 Audit of the division

The draft terms of the division, or their initial outline, are to be audited in accordance with sections 9 to 12; section 48 is not to be applied. The audit report must be made accessible to the holders of shares no later than one month prior to the day of the assembly of the holders of shares that is to adopt a resolution in accordance with section 13 regarding the consent to the draft terms of the division.

Section 326 Consent by the holders of shares

- (1) The holders of shares may make their consent under section 13 contingent on the express ratification by the employees of the new company of the arrangements made for their co-determination rights.
- (2) The assembly of the holders of shares takes note of the division report, the audit report and of any statements of position under section 323 read in conjunction with section 308 (1) sentence 2 no. 4 prior to adopting a resolution regarding the consent to the draft terms of division.
- (3) If, in the case of a full division or partial division, the shares in the new company are not allocated to the holders of shares in the company being acquired in that ratio that corresponds to their ownership interest in the company being acquired, then the draft terms of the division will take effect only if those holders of shares consent to it who are placed at a disadvantage by the allocation.

**Section 327
Cash settlement**

Section 313 applies accordingly to the company being acquired. In the case of a division by separation, an offer of compensation is not required.

Section 328

Protection afforded to the creditors of the company being acquired

Section 314 applies accordingly to the company being acquired and its creditors.

Section 329

Application for entry in the register; division certificate

Sections 315 to 317 are to be applied accordingly, to the exception of section 315 (3) sentence 1 no. 3 second alternative and of section 316 (1) sentences 2, 3 and 4. The entry is to include the note that the cross-border division will take effect only upon its being entered in the register as set out in section 330. As regards the entry in the register, the court issues a division certificate of its own motion.

Section 330

Entry in the register of the cross-border division with another country being the country of destination

- (1) The application for entry in the register in accordance with section 329 read in conjunction with section 315 is considered an application for entry in the register of the cross-border division in accordance with section 137 (2). The cross-border division may be entered in the register maintained at the seat of the company being acquired only once each of the new companies has been entered in the register competent for it.
- (2) The court having jurisdiction at the seat of the company being acquired is to notify, via the European system of interconnection of registers, the register of the seat of each of the new companies of the fact that the cross-border division has taken effect.

Section 331

Entry in the register of the new company

- (1) The representative body of the company being acquired is to file an application for entry of the new company in the register of the seat of the new company. The draft terms of the division and, if applicable, the agreement on employee co-determination rights, in the form stipulated in section 17 (1), are to be attached to the application for entry. Section 16 (2) and (3) and section 17 are not to be applied to the company being acquired.
- (2) The division certificate transmitted via the European system of interconnection of registers is recognised as proof of the proper completion of the pre-division procedures and formalities applying under the laws of the state by which the company being acquired is governed. Without this division certificate, it is not permissible for the cross-border division to be entered in the register
- (3) The review of whether the pre-requisites for entry in the register have been met extends in particular to the matter of whether an agreement regarding employee co-determination

rights has been concluded, where applicable, and whether the provisions governing the formation of the new company have been complied with.

(4) The entry of the new company is to include the note that it will take effect subject to the pre-requisites relevant to the cross-border division's taking effect under the laws of the state by which the company being acquired is governed. The court having jurisdiction at the seat of the new company is to notify, of its own motion, the court having jurisdiction at the seat of the company being acquired that the new company has been entered in the register.

(5) Upon receipt of the notification from the register in which the company being acquired is entered as to the cross-border division having taken effect, the day on which the division took effect is to be entered in the register of the seat of the new company.

Section 332 **Division for purposes of absorption**

The provisions of this Part are to be applied accordingly to a cross-border division for purposes of absorption within the meaning of section 320 (1) no. 2 if the company being acquired and the acquiring companies

1. employ, in the case of a division of a domestic company, in each case during the six months prior to publication of the draft terms of the division, on average fewer than 400 employees,
2. employ, in the case of an absorption by a domestic company, in each case during the six months prior to publication of the draft terms of the division, on average fewer employees than four fifths of the number relevant for co-determination under the laws of the state by which the company being acquired is governed.

If particular aspects result from the circumstance that several companies are involved, then the stipulations of Part 1 on the cross border are to be applied accordingly as a subsidiary source of law.

Part 2 **Cross-border change of legal form**

Section 333

Cross-border change of legal form

(1) A cross-border change of legal form is the change, by a company formed under the laws of a Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area, into a legal form under the laws of another Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area, while relocating its seat as recorded in the by-laws to this state.

(2) Unless the stipulations of the present Part lead to a different conclusion, the provisions set out below are to be applied accordingly, subject to subsections (3) and (4), to the cross-border change of legal form of a share capital company (section 3 (1) no. 2):

1. the stipulations of Part 1 as well as
2. the stipulations of Subdivisions 1 and 3 of Division 2 of Part 2.

(3) Section 245 subsection (1) sentence 3, subsection (2) sentence 3 and subsection (3) sentence 3 is not to be applied. Section 245 (4) is to be applied only if the company changing its legal form has a legal form set out in Annex I of Directive (EU) 2017/1132 relating to certain aspects of company law. In the case governed by sentence 2, section 52 of the Stock Corporation Act is to be applied with the proviso that the time at which the company changing its legal form is entered in the register competent for it takes the stead of the time at which the company in its new legal form is entered in the register.

(4) Section 195 (2) and section 196 are not to be applied.

Section 334

Companies eligible for a cross-border change of legal form

In the context of a cross-border change of legal form, companies changing their legal form and companies in their new legal form may be share capital companies of the type set out in Annex II of Directive (EU) 2017/1132 if

1. they have been formed in accordance with the laws of a Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area and
2. they have their seat as recorded in the by-laws, their central administration, or their principal place of business in a Member State of the European Union or in some other Contracting Party to the Agreement on the European Economic Area.

Section 306 (2) sentence 1 no. 2 applies accordingly.

Section 335

Draft terms of the change of legal form

(1) The representative body of the company undergoing a cross-border change of legal form draws up the draft terms of the change of legal form.
(2) The draft terms of the change of legal form, or their initial outline, at a minimum must provide the following information:

1. the legal form, business name and seat of the company changing its legal form,
2. the legal form the company is to obtain by means of the change of legal form,
3. the business name and seat of the company in its new legal form
4. if relevant, the act by which the company in its new legal form was formed and, if they are the subject of a separate act, the by-laws,
5. the indicative schedule planned for the cross-border change of legal form,
6. the ownership interest that the owners thus far holding shares in the legal entity will have in accordance with the provisions applying to the new legal form, as well as the number, type and scope of the shares that the holders of shares are to obtain by the change of legal form,
7. the rights that the company in its new legal form confers upon the holders of shares to which special rights are attached and the holders of securities other than shares in the company, or the measures proposed concerning such persons,
8. the security offered to creditors,
9. any special advantages that may be granted to the members of the administrative, management, supervisory, or controlling bodies of the company,
10. a description of the incentives or subsidies the company has received in the course of the past five years,
11. the details of the offer of cash settlement in accordance with section 340,
12. the likely implications of the change of legal form for the employment of the employees,
13. as the case may be, information on the procedure by which arrangements are determined for the involvement of employees in the definition of their co-determination rights in the company in its new legal form, as well as

14. information on the implications of the cross-border change of legal form for company pensions and accrued company pension rights.

(3) The draft terms of the change of legal form must be recorded by a notary.

Section 336

Publication of the draft terms of the change of legal form

Section 308 (1) applies accordingly to the publication of the draft terms of the change of legal form and their initial outline.

Section 337

Report on the change of legal form

(1) Section 309 (1), (2), (3) and (5) as well section 310 (1), (2) and (3) apply accordingly to the report on the change of legal form.

(2) In the section geared specifically to the holders of shares, at a minimum the following is explained and justified above and beyond the contents set out in section 192 (1):

1. the implications of the cross-border change of legal form for the holders of shares as well as

2. the rights and remedies available to holders of shares under section 340 of the present Act and under section 1 no. 4 of the Act on Valuation Proceedings under Corporate Law.

(3) In the cases governed by section 192 (2), the report for the holders of shares is not required. The report for the employees is not required if the company and its subsidiaries, if any, have no other employees than those who are members of the representative body. No report on the change of legal form will be required overall if the pre-requisites set out in sentences 1 and 2 have been met.

Section 338

Audit of the change of legal form

(1) The draft terms of the change of legal form, or their initial outline, are to be audited in accordance with sections 9 to 11 and 12 (1). Section 48 is not to be applied. The audit report must be made accessible to the holders of shares no later than one month prior to the day of the assembly of the holders of shares that is to adopt a resolution regarding the consent to the draft terms of the change of legal form.

(2) Section 9 (2) and section 12 (3), in each case read in conjunction with section 8 (3) sentence 1, 2 and 3 no. 2, are to be applied accordingly.

Section 339

Consent by the holders of shares

(1) The holders of shares may make their consent under section 193 (1) contingent on the express ratification by the employees of the company in its new legal form of the arrangements made for their co-determination rights.

(2) The assembly of the holders of shares takes note of the report on the change of legal form, the audit report and of any statements of position that may be made in accordance with section 336 read in conjunction with section 308 (1) sentence 2 no. 4 prior to adopting a resolution regarding the consent to the draft terms of the change of legal form.

Section 340

Cash settlement

(1) The company changing its legal form is to offer, in the draft terms of the change of legal form or their initial outline, to each of the holders of shares who records an objection against the consenting resolution adopted by the holders of shares, to acquire that owner's shares or memberships in return for adequate cash settlement; section 71 (4) sentence 2 of the Stock Corporation Act and the order as to a legal obligation in respect of a prohibited acquisition being null and void according to section 33 (2) sentence 3 of the Act on Limited Liability

Companies are not to be applied in this regard. The offer of compensation is subject to the condition precedent of the cross-border change of legal form taking effect. The draft terms of the change of legal form, or their initial outline, are to provide a mailing address and an electronic address to which the notification under subsection (2) sentence 1 and the declaration of acceptance under subsection (3) sentence 1 can be transmitted. Section 207 subsection (1) sentences 2 and 3, subsection (2) as well as section 208 read in conjunction with section 30 (1) and sections 210 to 212 apply accordingly.

(2) A holder of shares who intends to accept the offer of compensation under subsection (1) sentence 1 is to notify the company of this intention no later than one month following the day on which the assembly of the holders of shares in the company being acquired has adopted a resolution consenting to the draft terms of the change of legal form.

(3) The offer of compensation may be accepted by no later than two months following the day on which the assembly of the holders of shares in the company changing its legal form has adopted a resolution consenting to the draft terms of the change of legal form. The acceptance is ruled out if the notification under subsection (2) has not been effected in due time. If the acceptance is effected prior to the time limit for the notification defined in subsection (2) having lapsed, then a notification no longer will be required. Section 15 (4) of the Act on Limited Liability Companies remains unaffected.

(4) Owners of shares who have accepted the offer of compensation in accordance with the stipulations of subsection (3) will not become owners, in derogation from section 202 (1) no. 2, of shares in the company in its new legal form upon the change of legal form taking effect.

(5) The company in its new legal form is to pay out the cash settlement to the holders of shares who have accepted the offer in accordance with the stipulations of subsection (3) no later than two weeks after the change of legal form having taken effect. Section 341 is to be applied accordingly to the claim to a cash settlement of these holders of shares.

(6) It is to be reviewed in all cases whether the cash settlement to be offered under subsection (1) is adequate. Section 12 (2) and section 338 are to be applied accordingly

Section 341 Protection afforded to creditors

(1) Section 314 applies accordingly to the company changing its legal form and its creditors.

(2) For actions brought for a receivable by creditors against the company changing its legal form, German courts likewise have international jurisdiction, without regard to the stipulations of Union law, insofar as the receivable antedates the publication of the draft terms of the change of legal form, or of their initial outline, and the action is brought within two years of the cross-border change of legal form having taken effect. The place of jurisdiction within Germany is determined by the last seat of the legal entity changing its legal form.

Section 342 Application for entry in the register of the change of legal form

(1) The representative body of the company is to file an application for entry, in that register in which the legal entity changing its legal form is entered, of the fact that the pre-requisites for the cross-border change of legal form have been met.

(2) Section 198 (3) read in conjunction with section 16 (2) and (3) as well as section 199 apply accordingly with the proviso that the following are to be attached in addition to

1. the application for entry in the register:
 - a) the draft terms of the change of legal form, as an executed copy or as a publicly certified copy, as well as
 - b) any comments in accordance with section 336 read in conjunction with section 308 (1) sentence 2 no. 4, as a copy
2. the uniform report or the report for the employees: any statement of position that may be made in accordance with section 310 (3).

(3) The members of the representative body are to give an assurance that

1. the security offered under section 335 (2) no. 8 was provided to all creditors,
2. the rights of the employees under section 336 read in conjunction with section 308 (1) sentence 2 no. 4 letter (b) as well as under section 337 (1) read in conjunction with section 310 (1) and (3) have been respected,
3. proceedings to be implemented for purposes of negotiating the future co-determination in accordance with the provisions implementing Article 86I (3) and (4) of Directive (EU) 2017/1132 have been initiated
4. the company is not insolvent, its insolvency is not imminent and it is not insolvent as defined in section 17 (2), section 18 (2) or section 19 (2) of the Insolvency Code.

If it is impossible to give the assurance under sentence 1 no. 4, then the representative body is to inform which of the constituent elements set out therein apply and whether a request to open insolvency proceedings has been filed or insolvency proceedings have been opened. Once insolvency proceedings have been opened, this duty is incumbent on the insolvency administrator; if a provisional insolvency administrator has been appointed and a general prohibition of disposal has been imposed on the debtor, then this duty is incumbent on the provisional insolvency administrator.

(4) The representative body informs the court maintaining the register of the following:

1. the number of employees as at the time the draft terms of the change of legal form were drawn up,
2. the number of subsidiaries and their respective geographic locations as well as
3. the existence of liabilities owed to public bodies.

(5) The court competent under 341 (1) read in conjunction with section 314 (5) notifies the court maintaining the register, upon request, whether a claim to provision of security was asserted in court within the time limit stipulated in section 341 (1) read in conjunction with section 314 (3).

Section 343

Certificate as to the change of legal form

(1) The court reviews within three months of the application for entry in the register in accordance with section 341 (1) and (2) whether the company meets the pre-requisites for the cross-border change of legal form. The entry includes the designation of the proceedings for the change of legal form and of the company changing its legal form, as well as the attestation of compliance with all relevant conditions and completion of all procedures and formalities required. The entry is to include the note that the cross-border change of legal form will take effect subject to the pre-requisites under the laws of the state to which the company is relocating its seat. As regards the entry in the register, the court issues a certificate as to the change of legal form of its own motion.

(2) The entry in accordance with subsection (1) may not be made prior to the time limits stipulated in section 340 (3) sentence 1 and in section 341 (1) read in conjunction with section 314 (3) having lapsed. If all holders of shares in the company have consented to the merger, then the entry may be made already prior to the time limit stipulated in section 340 (3) sentence 1 having lapsed. Where a claim to provision of security in accordance with section 341 (1) read in conjunction with section 314 (1) has been asserted in court, the entry in accordance with subsection (1) may not be effected

1. before the decision refusing the application has become final and binding,
2. the security established by the decision has been provided or

3. the decision refusing a part of the application has become final and binding and the security established by the decision has been provided.

Evidence of the security having been provided is to be submitted to the court in suitable form. Upon demand by the court, the members of the representative body are to give an assurance that the security established by the decision has been provided.

(3) In the proceedings defined in subsection (1), the court must review, should indicative factors be given, whether the cross-border change of legal form is intended to be effected for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law or for criminal purposes. If such purposes are given, then the court will refuse to make the entry in accordance with subsection (1). If it is necessary, in performing the review, to take account of further information or to pursue additional investigations, the time limit set out in subsection (1) sentence 1 may be extended by a maximum of three months. Indicative factors within the meaning of sentence 1 are given in particular if

1. a negotiation procedure to be implemented in accordance with Article 86l (2) to (4) of Directive (EU) 2017/1132 was initiated only upon this having been instructed by the court;

2. the number of employees corresponds, at a minimum, to four fifths of the threshold relevant for corporate co-determination; no value is created in the country of destination; and the seat of the administrative office remains in Germany;

3. as a consequence of the cross-border change of legal form, the company is the debtor of company pensions or accrued company pension rights and has no operative business otherwise.

(4) If, as an exception, the complexity of the proceedings means that it is impossible to perform the review within the time limits set out in subsection (1) sentence 1 or subsection (3) sentence 3, then the court is to inform the party filing the application for entry in the register of the reasons for the delay prior to such time limit ending.

(5) Upon the court receiving a notification from the register in which the company in its new legal form has been entered, as to the cross-border change of legal form having taken effect, the court having jurisdiction at the seat of the company changing its legal form is to note the date on which the cross-border change of legal form has taken effect.

Section 344 Information of the court maintaining the register

Insofar as this is required to perform the review under section 343, the court may

1. demand that the company provide information and documents,

2. demand that public domestic bodies provide information and documents and may request the necessary information and documents from public bodies of another Member State of the European Union or of some other Contracting Party to the Agreement on the European Economic Area having competence in the various fields concerned by the cross-border change of legal form,

3. demand that a special negotiating body that has been instituted provide information and documents,

4. involve an independent expert, and

5. hear, in the context of the review performed in accordance with section 343 (3), a union represented in the company changing its legal form.

If a domestic public body is competent in a field concerned by the cross-border change of legal form, then it may transmit, upon request, the necessary information and documents to the body of another Member State of the European Union or of some other Contracting Party

to the Agreement on the European Economic Area that is competent for the issuance of a certificate as to a change of legal form.

Section 345

Entry in the register of the cross-border change of legal form with Germany being the country of destination

(1) The representative body of the company changing its legal form is to file an application for entry of the company in its new legal form in the register relevant for the legal form. The draft terms of the change of legal form and, if applicable, the agreement on employee co-determination rights, in the form stipulated in section 17 (1), are to be attached to the application for entry. Section 198 (3) and section 199 are not to be applied to the company changing its legal form.

(2) The certificate as to a change of legal form transmitted via the European system of interconnection of registers is recognised as proof of the proper completion of the preceding procedures and formalities applying under the laws of the state by which the company changing its legal form is governed. Without the certificate as to the change of legal form, it is not permissible for the cross-border change of legal form to be entered in the register.

(3) The review of whether the pre-requisites for entry in the register have been met extends in particular to the matter of whether an agreement regarding employee co-determination rights has been concluded, where applicable, and whether the provisions governing the formation of the company in its new legal form have been complied with.

(4) The court having jurisdiction at the seat of the company in its new legal form is to give notice, of its own motion, of the cross-border change of legal form having taken effect to the register with which the company changing its legal form had to lodge its records.

Book 7

Penal provisions and coercive fines

Section 346

False representations of facts

(1) Anyone will be liable to a term of imprisonment not exceeding three years or to payment of a fine who, as a member of the representative body of a legal entity involved in the transformation, as a shareholder or partner authorised to represent said legal entity, as a member of a supervisory board, or as the liquidator of a legal entity involved in the transformation, commits any of the acts set out below in the course of said transformation:

1. incorrectly represents the circumstances of the legal entity or conceals them, including its relations with affiliated enterprises, in a report provided for by this Act (merger report, division report, transfer report, report on the change of legal form), in presentations or summaries of the legal entity's net asset position, in presentations to the assembly of the holders of shares, or in informational statements made to same, unless the deed is liable to punishment under section 331 no. 1 or no. 1a of the Commercial Code; or who
2. provides incorrect information, or incorrectly represents the circumstances of the legal entity or conceals them, including its relations with affiliated enterprises, in any clarification statement or documentary proof that is to be provided, according to the provisions of the present Act, to a merger auditor, an auditor responsible for reviewing the division, or an auditor responsible for reviewing the transfer.

(2) Likewise, anyone will be liable to punishment who, in the capacity of managing director of a limited liability company, member of the management board of a stock corporation, general partner authorised to represent a public partly limited partnership, or liquidator of such a company, provides incorrect information in a declaration under section 52 as to the consent by the holders of shares in this legal entity, or in a declaration under section 140 or section

146 (1) regarding the funds maintaining the nominal capital or the capital stock of the company being acquired, or who bases his or her declaration on such incorrect information.

Section 347

Violation of reporting obligations

(1) Anyone who, as the merger auditor, auditor responsible for reviewing the division, or auditor responsible for reviewing the transfer, or as the agent of such an auditor, provides an incorrect report of the results obtained in an audit required on the occasion of a transformation, or who fails to disclose significant circumstances in the audit report, will be liable to a term of imprisonment not exceeding three years or to payment of a fine.

(2) Where the perpetrator has acted in return for remuneration or with the intention of enriching themselves or some other party, or of causing damage to some other party, the punishment will consist of a term of imprisonment not exceeding five years or of the payment of a fine.

Section 348

Incorrect information

Anyone who

1. makes an incorrect affirmation in violation of the stipulations of section 315 (3) sentence 1 no. 1 or 4 or of section 316 (2) sentence 5, in each case also read in conjunction with section 329 sentence 1, in violation of section 342 (3) sentence 1 no. 1 or 4 of section 343 (2) sentence 5, or who
2. issues an incorrect notification in violation of the stipulations of section 315 (3) sentence 2, also read in conjunction with section 329 sentence 1, or in violation of section 342 (3) sentence 2

will be liable to a term of imprisonment not exceeding three years or to payment of a fine.

Section 349

Violation of the obligation to maintain confidentiality

(1) Anyone disclosing a secret of any legal entity involved in a transformation without having been authorised to do so, namely a trade or business secret, of which they have become aware in their capacity as

1. member of the representative body, shareholder or partner authorised to represent the enterprise, member of a supervisory board, or liquidator of this or some other legal entity involved in the transformation,
2. merger auditor, auditor reviewing the division, or auditor responsible for reviewing the transfer, or the agent of such auditor,

will be liable to a term of imprisonment not exceeding one year or to payment of a fine provided that the offence, in the case of no. 1, is not punishable under section 85 of the Act on Limited Liability Companies, section 404 of the Stock Corporation Act, or section 151 of the Trade & Industrial Cooperative Societies Act, and in the case governed by no. 2, is not punishable under section 333 of the Commercial Code.

(2) Where the perpetrator is acting in return for remuneration or with the intention of enriching himself or some other party, or of causing damage to some other party, the perpetrator will be liable to a term of imprisonment not exceeding two years or to payment of a fine. Likewise, anyone will be liable to punishment who, without having been authorised to do so, exploits a secret of the type designated in subsection (1), namely a trade or business secret, of which they have become aware subject to the pre-requisites set out in subsection (1).

(3) The offence will be prosecuted only upon an application having been filed by one of the legal entities involved in the transformation. Where a member of a representative body, a shareholder or partner authorised to represent the enterprise or a liquidator has committed

the offence, a supervisory board member or a shareholder or partner not authorised to represent the enterprise will be entitled to file the corresponding petition. Where a member of a supervisory board has committed the offence, the members of the management board, the shareholders or partners authorised to represent the enterprise, or the liquidators will be entitled to file the corresponding petition.

Section 350 Coercive penalty payments

(1) Where the members of a representative body, the shareholders or partners authorised to represent the company, or its liquidators, fail to observe the stipulations of section 13 (3) sentence 3 as well as section 125 sentence 1 section 176 (1), section 177 (1), section 178 (1), section 179 (1), section 180 (1), section 184 (1), section 186 sentence 1, section 188 (1), and section 189 (1), in each case read in conjunction with section 13 (3) sentence 3 as well as section 193 (3) sentence 2, the competent court maintaining the register is to induce them to comply with said stipulations by levying a coercive fine against them; section 14 of the Commercial Code remains unaffected. The individual coercive fine may not be levied in an amount in excess of 5,000 euros.

(2) No coercive fine is levied in order to force applications to be made for entry of a transformation in the competent register pursuant to section 16 (1), section 38, section 129, section 137 (1) and (2), section 176 (1), section 177 (1), section 178 (1), section 179 (1), section 180 (1), section 184 (1), sections 186 and 188 (1), section 189 (1), sections 198, 222, 235, 246, 254, 265 and 278 (1), sections 286, 296 and 315, also read in conjunction with section 329 sentence 1, section 318 (1), also read in conjunction with section 329 sentence 1, section 331 (1), section 342 as well as section 345 (1).

Book 8 Transitional provisions and final provisions

Section 351

Transformation of pre-existing legal persons

A legal person in the sense of Article 163 of the Introductory Act of the Civil Code may be transformed in accordance with the stipulations of the present Act applying to commercial associations. Where such a legal person has no members, it may be transformed in accordance with the stipulations of the present Act applying to foundations.

Section 352

Transformations already initiated. Changeover to the single currency

(1) The stipulations of the present Act are not to be applied to those transformations for the preparation of which an agreement or a declaration has already been recorded or certified by a notary prior to 1 January 1995, or regarding which an assembly of the holders of shares has been convened prior to 1 January 1995. The provisions applying until this date continue to be applicable to these transformations.

(2) Where a transformation is entered in the Commercial Register after 31 December 1998, the nominal amounts of the shares in a share capital company as the acquiring legal entity, the shares of which still correspond to the denomination of the nominal amounts applicable until that point in time, will be redefined in accordance with the provisions applicable until that point in time. Where the present Act refers to the respectively applicable company formation rules as regards a new legal entity, or a legal entity in its new legal form, or where, in the case of a change of legal form to that of a share capital company having a different legal form, the present Act leaves unaffected the provisions of other acts concerning the modification of the nominal capital or of the capital stock, this also will apply to the corresponding transitional provisions on the introduction of the single currency set out in the Introductory Act to the Stock Corporation Act and in the Act on Limited Liability Companies; where an application has been filed for entry in the register of a new legal entity, or a legal

entity in its new legal form, until 31 December 1998, the company formation rules applying until this date will continue to be applicable.

Section 353

Release from liability for pre-existing obligations

Section 45, section 133 subsection (1) and subsections (3) to (5), sections 157, 167, 173, 224, 237, 249, and 257 apply also to liabilities in existence since before 1 January 1995 if

1. the transformation is entered in the register thereafter, and
2. the liabilities become due no later than four years after the point in time at which notice of the transformation's entry in the register has been given by publication, or if they have come into existence after the Act on the Limitation in Time of the Continuing Liability of Shareholders (*Gesetz zur zeitlichen Begrenzung der Nachhaftung von Gesellschaftern*) of 18 March 1994 (published in the Federal Law Gazette I, p. 560) has taken effect.

Section 45, section 49 (4), section 56, section 56f (2), section 57 (2) and section 58 (2) of the Transformation Act in the version promulgated on 6 November 1969 (published in the Federal Law Gazette I, p. 2081) and modified by Article 10 (8) of the Act of 19 December 1985 (published in the Federal Law Gazette I, p. 2355) are applicable to liabilities falling due at a later time that had been in existence before the Act on the Limitation in Time of the Continuing Liability of Shareholders of 18 March 1994 (published in the Federal Law Gazette I, p. 2081) taken effect, with the proviso that the prescription period amounts to one year. In those cases in which the laws applicable thus far did not provide for the possibility of transformation, the liabilities set out in sentence 2 will become statute-barred in accordance with the provisions cited therein.

Section 354

Transitional provision on the Act Transposing into National Law the Directive on the Exercise of Certain Rights of Shareholders in Listed Companies, on the Third Act Amending the Transformation Act and on the Act to Strengthen Financial Market Integrity (*Finanzmarktintegritätsstärkungsgesetz*)

- (1) In the case governed by section 15 (2) sentence 1, the interest rate applicable for the period ending 1 September 2009 will continue to apply.
- (2) Section 16 (3) sentence 3 no. 2 in the version of the Act Transposing into National Law the Directive on the Exercise of Certain Rights of Shareholders in Listed Companies of 30 July 2009 (published in the Federal Law Gazette I, p. 2479) does not apply to procedures releasing certain measures for entry in the register in spite of their having been appealed before the courts, nor is it to be applied to complaint procedures pursued against court decisions, where these procedures were pending prior to 1 September 2009.
- (3) Section 62 (4) and (5), section 63 (2) sentences 5 to 7, section 64 (1), as well as section 143 in the version of the Third Act Amending the Transformation Act of 11 July 2011 (published in the Federal Law Gazette I, p. 1338) apply at the earliest to transformations regarding which the merger agreement or the agreement governing the division was concluded after 14 July 2011.
- (4) Section 11 in the version applicable from 1 July 2021 onwards applies for the first time to the audit of mergers regarding which the merger agreement was concluded after 31 December 2021. Section 11 in the version applicable until 30 June 2021 (and including that date) applies to the audit of mergers for the last time to the audit of mergers regarding which the merger agreement was concluded before 1 January 2022.

Section 355

Transitional provision on the Act Transposing into National Law the Directive on Conversions and Amending Further Acts (*Gesetz zur Umsetzung der Umwandlungsrichtlinie und zur Änderung weiterer Gesetze*)

(1) A merger, a division or a change of legal form may be implemented by the legal entities involved in keeping with the stipulations of Books 2, 3 and 5 in the version applicable in each case prior to 1 March 2023 if

1. the merger agreement or the division and takeover agreement was concluded prior to 1 March 2023, the draft terms of the merger or the draft terms of the division were drawn up prior to 1 March 2023, or the resolution as to the change of legal form was adopted as a transformation resolution prior to 1 March 2023 and

2. the application for entry in the register of the transformation is filed by 31 December 2023.

(2) Section 14 (2), section 15 (1) and section 312 in the version applicable from 1 March 2023 are to be applied for the first time to transformations regarding which the consenting resolution was adopted by the holders of shares after 28 February 2023. Section 307 (2) no. 14, sections 314 and 316 (2) in the version applicable from 1 March 2023 are to be applied for the first time to cross-border mergers regarding which the draft terms of merger were published after 28 February 2023.