

Third Council Directive of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies (78/855/EEC) (repealed)

#### CHAPTER IV

##### **Acquisition of one company by another which holds 90 % or more of its shares**

###### *Article 24*

The Member States shall make provision, in respect of companies governed by their laws, for the operation whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings. Such operations shall be regulated by the provisions of Chapter II, with the exception of Articles 5 (2) (b), (c) and (d), 9, 10, 11 (1) (d) and (e), 19 (1) (b), 20 and 21.

###### *Article 25*

The Member States need not apply Article 7 to the operations specified in Article 24 if the following conditions at least are fulfilled:

- (a) the publication provided for in Article 6 must be effected, as regards each company involved in the operation, at least one month before the operation takes effect;
- (b) at least one month before the operation takes effect, all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;
- (c) Article 8 (c) must apply.

###### *Article 26*

The Member States may apply Articles 24 and 25 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if all the shares and other securities specified in Article 24 of the company or companies being acquired are held by the acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

###### *Article 27*

In cases of merger where one or more companies are acquired by another company which holds 90 % or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States need not require approval of the merger by the general meeting of the acquiring company, provided that the following conditions at least are fulfilled:

- (a) the publication provided for in Article 6 must be effected, as regards the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger;
- (b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;

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- (c) Article 8 (c) must apply.

*Article 28*

The Member States need not apply Articles 9 to 11 to a merger within the meaning of Article 27 if the following conditions at least are fulfilled:

- (a) the minority shareholders of the company being acquired must be entitled to have their shares acquired by the acquiring company;
- (b) if they exercise that right, they must be entitled to receive consideration corresponding to the value of their shares;
- (c) in the event of disagreement regarding such consideration, it must be possible for the value of the consideration to be determined by a court.

*Article 29*

The Member States may apply Articles 27 and 28 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company if 90 % or more, but not all, of the shares and other securities referred to in Article 27 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.